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Senate

EXECUTIVE SESSION

The PRESIDING OFFICER (Mr. CHAMBLISS). The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I yield myself such time as I might consume.

Mr. WARNER. Mr. President, parliamentary inquiry: Can the distinguished Senator from Iowa—we were told to come here at certain times, and if he were to take as much as he wishes, that would preclude any other Senator speaking in the time period.

Mr. GRASSLEY. I yield to the Senator whatever time he needs.

Mr. WARNER. I withdraw my parliamentary inquiry.

Mr. GRASSLEY. I yield the Senator whatever time he wants.

Mr. WARNER. I will sit down. The Senator may go ahead.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I rise today to discuss the Democrats' filibuster of President Bush's judicial nominees. The Senate Democrats still think it is Halloween and are trying to spook us into believing that President Bush has nominated a bunch of extremist individuals that cannot be good judges. The Democrats are claiming that these nominees are ''outside of the mainstream''. The truth is that these individuals will not implement a liberal agenda on the bench. The truth is that these individuals will follow the law, rather than bend to the will of the political left. But these inside the Beltway, left wing groups have gotten the Democrats to do their bidding. They have hijacked the judicial confirmation process in an unprecedented filibuster of judicial nominees, and they are denying these good men and women an up or down vote. Federal judicial seats will remain unfilled, and litigants seeking justice from those courts can expect further delays.

The reality is that the Constitution of the United States gives the President the power to appoint individuals to seats on the Federal judiciary. The Constitution gives the Senate the responsibility to advise the President in this process. And the Constitution requires the Senate, by a simple majority

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ROBERT W. NEY, *Chairman.*

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vote, to give its consent to the President's choices for Federal judgeships, or to withhold that consent. But through an unjust abuse of the filibuster, a minority of Senators is preventing the majority of the Senate from taking an up or down vote on President Bush's judicial nominee. That is not right.

I have always been of the position that judicial nominees should be carefully scrutinized by the Judiciary Committee because they are life-time appointments. It is my opinion that judicial nominees should have intellect, experience, character and integrity. They should also have the right judgment and temperament for the job. But most importantly, they should understand their role on the bench, which is to interpret the law and to follow the law, not to make the law and legislate from the bench. That is the most important credential in my book. And I take that job of looking at judicial nominees very seriously.

However, once the Senate Judiciary Committee has had the opportunity to review these candidates and to approve them, these individuals should get an up or down vote by the full Senate. This is the right process. This is a fair process. During my tenure with the United States Senate, I haven't always agreed with a sitting President's choices for the Federal bench. I have voted against a number of judicial nominees because I didn't believe they were qualified to be a judge, or because I didn't believe that a seat needed to be filled. But I have never filibustered a judicial nominee.

But that is just what is happening right now. We are seeing the unprecedented use of the filibuster rule to stop judicial nominees from being confirmed. An exceptional group of men and women are being used for political gain by this minority group of Senators. The nominees that the Senate is considering right now, Janice Rogers Brown, Carolyn Kuhl, and Priscilla Owen, as well as Bill Pryor and Charles Pickering, two nominees that have been filibustered, they all are distinguished individuals that deserve an up or down vote. They all deserve to be confirmed.

Let me say a few words about the men and woman that are being filibustered. These men and women are being characterized as outside of the mainstream, extremist people. They are being characterized as ''bad judges'' that have to be stopped. Nothing is further than the truth. The reality is that some left-wing interest groups are skewering these nominees' reputations with baseless allegations because they don't have a liberal ideology. And the Senate Democrats are more than happy to do the bidding of these racial outside groups. And our nation will suffer dearly for it.

Priscilla Owen is currently a judge on the Texas Supreme Court. She was unanimously rated well qualified by the ABA and enjoys a steller reputation in her home state. She's been repeatedly reelected to the Texas Supreme Court by wide margins and has served that court admirably. Judge Owen enjoys the support of her two home state Senators and has been endorsed over and over again by elected officials, fellow jurists, and attorneys alike.

Janice Rogers Brown, the daughter of a share cropper who attended segregated schools, put herself through California State University and eventually law school at UCLA. She did all this while raising two children as a single mother. She served her state in a variety of legal roles, including Deputy Attorney General and then later as a legal affairs secretary to the Governor. Judge Brown has served on the California Supreme Court since 1996.

Carolyn Kuhl has been a judge on the Los Angeles County Superior Court since 1995. She served in a variety of positions in the Justice Department, and then was a partner at a prominent Los Angeles law firm. Judge Kurl received a well qualified rating by the ABA, and enjoys bipartisan support.

Three other highly respectable nominees have already been filibustered. Bill Pryor has earned the reputation as one of the most experienced states attorneys general in the country. He graduated from law school magna cum laude, and clerked for Fifth Circuit Judge Wisdom. We have seen that he enforces the law regardless of his personal convictions. General Pryor also has overwhelming support from across the political spectrum.

Judge Charles Pickering has been a lawyer and county prosecutor, and has served as a distinguished federal district court judge for the past 11 years. He received the ABA's highest rating, ''well qualified.'' He stood up against the Ku Klux Klan, and has been a leader for equal rights, integration and inclusion in his community. The people that know Judge Pickering best support him without hesitation.

Finally we have Miguel Estrada, who was nominated to the D.C. Circuit Court of Appeals. He become so frustrated with the process that he withdrew his nomination after waiting over 2 years for an up of down vote. Yet he is the true American inspiration story. Born in Honduras, he came to America as a young boy and through determination and hard work, elevated to the top echelons of the law profession. He was an Assistant Solicitor General of the United States in the Clinton Administration, and was a partner in a prominent law firm. Mr. Estrada received the highest rating from the American Bar Association, and is well respected by colleagues and friends alike.

It is a real shame that this fine man felt he had to withdraw his nomination from consideration because of the guerilla smear tactics of the far left and because of the guerilla smear tactics of the far left and because of the Democrats' unprecedented filibuster tactic. And it is a real shame that these other fine men and women, and their families, have to go through this same miserable saga. As I think about these nominees with their stellar reputations, outstanding intellects, and their compelling life stories, it saddens me to know that the Democrats have been so ready and willing to stomp all over their good names and to deny the American people quality jurists—all this in the name of carrying the sword for special left wing interest groups.

I have served in this body for many years. And I have seen the filibuster used to leverage a better bargaining position on legislative matters. But it hasn't been used to block a judicial nominee, and especially not where that nominee enjoys majority support by the Senate. This is the first time in history that the filibuster has been used to prevent a judicial confirmation, even though my colleagues on the other aisle say that isn't the case. It is wrong and probably unconstitional. It is an abuse of the process. The Senate is supposed to provide advice and consent. The Democrats are denying the rest of the Senate our responsibility under the Constitution to give our consent—or even to withhold our consent. It is a terrible disgrace and ought not to continue.

The Democrats are leading us down a path that is just going to make matters worse. The judicial confirmation process is already in an unhealthy state of repair—we don't need to destroy it altogether. The Democrats need to stop playing politics with the judiciary. They need to stop spooking people about the qualifications and ability of these nominees to be good federal judges. They need to stop spooking away qualified nominees like Miguel Estrada. We need to stop this unjust filibuster and give these worthy nominees what they deserve—an up or down vote.

I yield the floor. I yield whatever time the Senator from Virginia needs.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I thank my good friend, my colleague from Iowa.

Mr. President, what is the parliamentary situation, and what time remains under the control of my distinguished colleague from Iowa who is managing this set of debates at this time?

The PRESIDING OFFICER. The majority controls 10 minutes, the minority has 30 minutes.

Mr. WARNER. So we have 10 minutes remaining.

The PRESIDING OFFICER. That is correct.

Mr. WARNER. I thank the Chair.

Mr. President, I commend my good friend from Iowa for a very statesmanlike coverage of the responsibilities of the Judiciary Committee on which he has served these many years.

I turn to the following. If we look back in history in the summer of 1787, 55 individuals gathered in Philadelphia to write our Constitution. It was a very hot summer, and it was a long and arduous debate, many drafts back and forth, but careful consideration was

given. Finally, in mid September, it was over. It was a monumental achievement. But the Framers did not know at that time what a great achievement they had made, one that would enable the United States, today, these 200-plus years later, to become the oldest continuously surviving Republic form of government on Earth today.

Almost every other government in existence at the time of the Constitutional Convention has fallen into the dustbin of history. So we must ask ourselves, why? It is very clear to this humble Senator that it was due, in part, to the wisdom of the Framers to have three coequal branches of the Government. I view this debate as one to determine the survivability of the coequal stature of the three branches.

I am not going to argue about all the things that have taken place back and forth, but just go to this magnificent document—the Constitution. The Presiding Officer has placed a copy of it on every desk in the Senate chamber, and many of us daily carry it in our pocket. The Constitution very clearly states that a simple majority vote is the regular order of business, with the exception of a few instances specifically enumerated in the Constitution that require super-majority votes. Had the Framers decided that we should require 60 votes for the confirmation process of the Senate, they would have explicitly written in such a requirement.

It is quite interesting to note that:

Two-thirds of the Senate must vote to ratify a treaty; two-thirds of the Senate must vote to convict on an article of impeachment; two-thirds of a House of Congress must vote to expel a Member of that body; two-thirds of each House of Congress must vote to override a President's veto; and two-thirds of each House must vote to propose an amendment to the Constitution. With regard to the advice and consent, clearly enunciated in the Constitution, and given to only one body of Congress, the Senate, there is no mention of a higher than simple majority vote. It is there to protect, again, the checks and balances. It is there to protect against an executive branch nominee which, in the fair judgment of the Senate, does not meet the high standards to become a member of the judicial branch.

The case here is very simple: Are we going to abide by what the Framers laid out, what has kept this great Nation together these 200-plus years? Or are we going to devise and contrive in our own words some system by which to prevent a simple vote up and down on a judicial nominee?

The Constitution does not include that super-majority. If the bar is to remain at 60 votes, as my colleagues on the other side have so vehemently argued in favor of, I say then the Senate would have far more power on questions of judicial nominees than was intended by the Framers. The checks and balances concept of our Constitution would be changed. And how would that affect our Republic?

Well, when the Constitutional Convention was over in September 1787, Benjamin Franklin emerged and was greeted by a crowd, some were reporters. He was questioned, ''what have the Framers wrought?'' He replied, ''a Republic, if you can keep it.''

And that is what we are doing here in this historic debate. We are determining the rules by which we keep that Republic.

Throughout this historic debate, this Chamber has resonated with the use of the word ''filibuster.'' I ask: Can any Senator point to use of that word in any of the rules of the U.S. Senate? In every desk, every Senator has their book on the rules of the Senate and procedures of the Senate. You can't find the word ''filibuster'' in that book because it is not there. But, should I be wrong, parliamentary inquiry to the Presiding Officer, can the Parliamentarian find the word ''filibuster'' in the rules of the Senate or any definition in the rules of the Senate?

The PRESIDING OFFICER. The word ''filibuster'' is not contained in the standing rules of the Senate.

Mr. WARNER. I thank the Presiding Officer. It is not in the rules. Where do you go to look for it? Webster's Dictionary. This dictionary has been in my office these 25 years since I have been privileged to serve in this body. And I use it often. I say to my colleagues, this is an interesting bit of history. The dictionary defines ''filibuster'' as, ''An irregular military adventure especially one in quest of plunder, a free-booter, applied to buccaneers infesting the Spanish American coast, later an organizer or member of a hostile expedition to some country or countries with which his own is at peace in contravention of international law.''

Go all the way down to the last definition, and you will find a reference that is most appropriate to this debate. I read:

> A member of a legislative or deliberative body who, in opposition to the proposed action of the majority, obstructs or prevents action by the extreme use of dilatory tactics such as speaking merely to consume time and so forth.

It is about the fifth definitional use of this word.

I say, most respectfully, that it is a word that is a slang word. It probably has been used to cover many types of procedures that both sides have followed under the rules for many years.

I went back and did some research in this wonderful book. It is entitled ''Senate Cloture Rule, Limitation of Debate in the Congress of the United States, Legislative History of Paragraph 2 of Rule XXII of the Standing Rules of the United States Senate.''

I do not find in this excellent treatise, put out in 1985 by the Library of Congress, printed by the direction of the Rules Committee and Administration of the United States Senate, any instance in which the situation we are faced with today with these nominees is covered. They do refer to the use of the word ''filibuster,'' but loosely.

Ultimately, with all of the confusion surrounding the word ''filibuster,'' I think you have to come down to what it was the Framers intended, what is in this book—the Constitution, which has held this Nation together these 200-plus years, this great Republic of our's.

I say to my colleagues, as Ben Franklin said, we have a Republic, and this debate is determining the ground rules by which we can or cannot keep it.

Clearly, the President has the authority to nominate. Clearly, this body has the authority of advice and consent. But remember, it is to be in a balance of powers between the executive and the legislature. I say if we are to set a precedent here that it requires 60 votes to act upon a nominee, three nominees—

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

Mr. WARNER. I ask unanimous consent for 1 additional minute.

Mr. LEAHY. Then I ask for 1 additional minute on our side.

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

Mr. WARNER. If we were to set a precedent that nominees reported out of the Judiciary Committee were subjected to a 60 vote requirement, this precedent would disrupt the carefully crafted system of checks and balances embedded in our Constitution by giving the Senate far more power in the judicial selection process than the Executive Branch, the President. These nominees deserve a simple up-or-down vote as provided in the Constitution by the absence of any reference to a super-majority or a 60 vote requirement.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Mr. President, I am honored to follow the Senator from Virginia. I want to return to the Constitutional Convention that he spoke of from 216 years ago. Among the last issues resolved at the Constitutional Convention was the question of whose job it is to select the members of this third branch of Government that was to be created.

We have an executive branch, the legislative branch with the House and Senate, and a judicial branch. At that time in this country there was a great concern on the part of those framing the Constitution and trying to craft a framework of our Government. Foremost among the concerns they had was the concern that somehow we would unintentionally invest too much power, too much authority in one person. Having dealt with the King of England and not wanting to have to deal with another figure of authority with the kind of powers of a monarch, there was a great debate over what would the powers be for this new President and how would we constrain those powers.

Among the last issues resolved at the Constitutional Convention was the

question of who selects the judges, who selects the members of that third branch of the judiciary. There were plenty at the Convention who thought that in order to make sure we didn't end up with another monarch in this country, a king, the power of selecting the judiciary should lie with the legislative branch. There were those who thought the Senate or the House or some combination thereof should select who the judges would be. There was another school of thought that said, no, maybe we should give the President, our Chief Executive, the power to select who our judges would be. As we all know, the compromise that was struck was one that says the President may nominate with the advice and the consent of the Senate.

Yesterday, as our youngest son came home from school, he shared with his mom and me some good news. He shared with us that while he won't get his report card for another week or so, he had learned the results of his scores, his grade in English language arts. He is in the eighth grade. He came home and he said: I got a 94 for English language arts in this grading period, dad. I get an A. I get an A.

We were delighted. He has a tough teacher. He has worked real hard, and he earned a 94. He is going to get an A. We hope he does as well in his other courses.

On the scorekeeping for how this President is doing with respect to getting his nominees confirmed, I think of the 172 we voted on so far; 168 have been confirmed, 4 have not. That is 98 percent. In my book, in my son's book, that is an A. That ain't bad.

Before I came here to serve in the Senate with my colleagues, I was a Governor. I know some people get tired of hearing me talk about that. But it was a great privilege to be Governor of my State. In our State, Governors nominate people to serve on the bench. The Senate can confirm. Whether it was a judge, supreme court, magistrate court, any commission, I would like to have had every single nominee confirmed. I suspect that most other Governors who similarly make nominations for appointments in their States would like to have all their nominations confirmed as well. Not all of my nominations were confirmed.

There is a give and take with the Senate in my State, just as there is a give and take with the Senate in this city for our National Government. I don't often quote Mick Jagger and Keith Richards, but there was an old song from my youth they used to sing: ''You can't always get what you want, but if you try sometime, you get what you need.''

We need from this President good nominees. I expect they are going to be Republicans. I expect they are going to be conservative. My guess is that of the 98 percent who have been confirmed, they were all Republicans. For the most part they were all conservative. I don't think it is realistic of this President to expect that we are going to confirm 100 percent of his nominees.

It sure wasn't the expectation of his predecessor, Bill Clinton. He got a majority of his nominees confirmed but not 100 percent, not 95 percent, not 90 percent, not 85 percent, but about 80 percent were actually nominated, had hearings, and their names actually ended up on the floor for a confirmation vote. That is a B-minus. Compared to the A-plus that this President is getting with respect to confirmations, I am not sure I understand fully the great dissent and the great disappointment and the great frustration our friends on the other side have shared.

Here is my frustration. I didn't come here to be about partisan politics. I didn't come here to be about gridlock. I didn't come here to pursue that agenda. I came here as one who wants to work with people on the other side of the aisle. I want to get things done.

I have voted with this President more than 75 percent of the time. I am told that only 7 Democrats have voted with this President more than I have in the last 2 years. I have tried to provide leadership on issues that both of my colleagues are concerned with, Senator LEAHY and Senator HATCH: class action, asbestos reform, bankruptcy, welfare, a comprehensive energy policy.

Meanwhile, while we are standing here tonight debating on whether or not 98 percent is good enough, we don't have an energy policy. Over half the energy we get that we use in America comes from foreign sources, a lot of it controlled by people who don't like us. We don't have an energy policy. We should be debating an energy policy and adopting it.

Standing here tonight we have a legal system that has lost its sense of balance, whether the issue is class action litigation that is being heard in small, remote courthouses around the country or whether the issue is asbestos and folks sick and dying getting the help they need. Meanwhile, the people who will never be sick will get money from those who need it. We should be debating those issues here tonight.

We have too much sulfur dioxide or nitrogen oxide and mercury in our air, putting out too much carbon dioxide, causing global warming. We should be addressing those issues.

We had a trade deficit last year that exceeded $400 billion. It is getting worse. We have a budget deficit that this year will approach $500 billion in 1 year alone. We are paying today on our national debt, just today, $800 million—plus just in interest on the debt. We ought to be debating how we rein in those budget deficits and trade deficits, not deciding is 98 percent enough or is 97 percent high enough in terms of success in nominations.

As former Governor and someone who was once privileged to chair the National Governors Association, we looked at the States as laboratories of democracy. We looked at the States to provide best practices, whether it was moving people off welfare, helping to make sure people coming out of prison didn't recidivate and go back to prison, what could we do to raise student achievement.

I want to talk about one model that works real well with respect to judicial nominations, and one I know the most about is my State of Delaware. Since 1897, the constitution of my State has called for balance with respect to our judiciary. We have year after year a legal climate and a judiciary that is acknowledged by some of the foremost attorneys who practice in this country as the best—the best legal climate, the fairest of any State in America. We are proud of our judiciary.

In the 8 years I was Governor, I nominated as many Republicans to the bench as I did Democrats. MIKE CASTLE, my predecessor, now a Congressman, when he was Governor, he nominated as many Democrats to the bench as he did Republicans.

In our State, there has to be a symmetry. Essentially, for every Democrat you nominate, the next one has to be a Republican. We have done that for over 100 years and have ended up with a terrific judiciary, widely respected at home, across the country, and even beyond our borders. There is a saying, ''If it ain't broke, don't fix it.'' That is not what we ought to say. We should say if it is not perfect, make it better.

The way we nominate judges in our National Capital for our Federal Government is broken and it needs to be fixed. Whether George Bush is President or Bill Clinton is President, we waste more and more time on judicial nominations. We are bogged down in that. We still haven't passed our spending plan for the new fiscal year, which started a month and a half ago. We are still wrestling with our appropriations bills. This system is broken.

My friends, the solution may be in Delaware, it may be in Vermont, or it may be how they nominate judges in Georgia or in Iowa. There is a better way to do it than what we are doing here. We have to find it and we have to come to some kind of closure around a better plan. When we do, instead of facing the prospect of leaving here without action on class action legislation, action on asbestos, or action on an energy bill, or without action on transportation policy, or early childhood programs, maybe we can do our jobs and even pass appropriations bills on time instead of the kind of mindless—oftentimes mindless debate we devote to judicial nominations.

That having been said, I yield to the former chairman of the Judiciary Committee, the ranking Democrat, Senator LEAHY, with my thanks.

Mr. LEAHY. Mr. President, I thank the Senator from Delaware for what he said. He has a distinguished record in the other body, as Governor and now here. We listened to him in this Chamber. I wish they would listen to him on the other end of Pennsylvania Avenue

because the person who makes the nominations is the President. I have been here with six Presidents. I have never known a time when a President is less willing to engage the Senate in advise and consent. President Ford did, President Carter did, President Reagan did, former President Bush did, and President Clinton did. I hope this White House would begin to do that also.

Interestingly enough, today I was given a petition signed by 310,000 Americans from all over the country. This petition supports a filibuster of extreme judicial nominees of the President. In fact, in the last 72 hours, 172,000 Americans signed these petitions. I went through them, thanks to the ability to search electronically, and picked out some from my State of Vermont.

In Moretown, VT, someone wrote:

> It is a disgrace how this administration is attempting to pack our Federal courts with right-wing extremist judges that seek to undermine the hard-fought pillars of legal precedent that reflect the values of a vast majority of Americans. I wholeheartedly support the efforts of the Senate Judiciary Committee Democrats to oppose this blatant abuse of the majority power. . . . The Senate GOP leadership should be ashamed of wasting precious legislative time to engage in what amounts to a publicity stunt. . . ..
>
> Shame on them. They don't deserve the seats that the people have entrusted in them.

Moretown, VT, is a little town a few miles away from where I live. It is straight down the valley; you can look straight down the valley from the front lawn of my home. We used to go to mass there on Sunday. It is where one of my grandmothers was born. So I was pleased to see that.

I received this petition from West Townshend, VT:

> Thank you very much for all your hard work and valuable work. We appreciate it.

West Townshend is a very small town in Vermont. People are very independent there.

This one is from South Burlington, VT:

> I support any measure to prevent Bush's extreme judicial appointments. Keep up the good work.

This is from Barre, VT:

> Please be strong and stand against the Republicans. Ashcroft has already taken away too many of our civil liberties; we cannot have judges doing the same.
>
> Barre, VT, is considered the granite center of the world, with the largest granite quarries in the world. My grandfather, Patrick J. Leahy, was a stonecutter in Barre, VT. My father was born in Barre, VT. The people of Barre, VT, are as strong and independent as the beautiful granite in their quarry.

I have one from South Ryegate, VT:

> You must protect the cherished rights of women to control their own bodies. Do not approve judges whose records show that they do not believe in women's rights.

South Ryegate, VT, is a beautiful little town on the eastern side of Vermont. I know it well. When my maternal grandparents immigrated to this country from Italy, not speaking a word of English, they came to South Ryegate, VT, where my Italian grandfather was also a stonecutter. My mother, a first-generation American, was born there, her first language was Italian, but she learned English at school. I remember my grandfather, so proud of the judicial and constitutional system of this country, and so proud of taking the oath of citizenship. My father, in Barre, VT, was so proud of the separation of powers in this country—the legislative branch, an independent branch of Government, equal to the other two; the executive branch, independent and equal to the other two; and the judicial branch, independent and equal to the other two.

I remember him sitting in the gallery when I was first sworn in as a Senator, knowing I was part of that triumvirate of powers in this country, which is why our democracy has lasted this long. But throughout it all, it was so important that one branch was outside of politics, that one was independent of either of the political parties, and that is the judiciary. It should not be a Democratic judiciary or a Republican judiciary.

The battle we are having now is because this White House does not want it to be an independent judiciary. They want it to be the most extreme possible. They want it to be an arm of the Republican Party.

One hundred sixty-eight to four. We have confirmed 168 of President Bush's nominees. We stopped four of the most extreme. Lordy, the crocodile tears that have been shed here, at great cost to the American taxpayers, over the last 24 hours—the crocodile tears that have been shed for that.

I do not remember one single Republican standing on the floor and saying how terrible it was when the Republicans blocked 63 of President Clinton's nominees, but, oh, my, it is like Niagara Falls, the crocodile tears, when we blocked four of theirs.

I received another one from Burlington, VT:

> The courts need to represent all Americans. Keep extremists out. Thank you for fighting for representation of all Americans by blocking the extremist judge nominees. Shame on President Bush.

I mention Burlington because I was married there 41 years ago. I still vote there. My children were raised there. I know the people in Burlington, VT. They are independent, good people—people who care for an independent, not a political, judiciary.

Little Hardwick, VT, stands at that junction between Montpelier and St. Johns and Barre. They say:

> Stay awake. Stay vigilant. Protect civil rights, a woman's right to choose, public education and worker's rights. We stand with you.

Hardwick, VT, let me tell you, I stand with you, and I will stay awake and be vigilant. The people on this side of the aisle will stay vigilant and we will protect an independent judiciary. We will not allow the judiciary to be an arm of any political party.

The President said that he wanted to be a uniter and not a divider. Oh, how much I wish he were. If there was ever a time that this country needs a uniter, not a divider, it is right now. But, instead, in deference to groups on the far right, the President has nominated judicial activists about whom one cannot help but raise questions regarding their ability to act impartially, with justice for all. We need an independent judiciary.

We are fortunate in Vermont because we have the most independent Federal judges you can imagine—people with total integrity, who will treat whoever comes into their court with impartiality regardless of whether they are Republican or Democrat or independent. That is what all courts should do.

Time and time again, Democratic Senators have acted in good faith to fill vacancies Republicans kept vacant by blocking a Democratic President's judicial nominees. After Republicans blocked 63 of President Clinton's nominees, when a Republican President came in, they said: Look at all these vacancies. My God, we have to move as fast as we can to fill them. This is terrible. This is a crisis in the judiciary. How could this possibly have happened? How could this possibly have happened; there are 63 vacancies here. My Lord, the sky is falling down.

Where did those vacancies come from? They came from one person, one Republican, holding an anonymous filibuster. If one Republican said, I don't want this judge of President Clinton's, the nominee went no further. Notwithstanding that, some of them had the highest qualifications this country has seen. Notwithstanding that, some of them were the most brilliant judges. Notwithstanding that, they were Hispanics, women, African Americans, people of faith, and people of great conscience. They were not allowed to go forward because one member of the Republican Party said he or she did not want them to go forward. But notwithstanding that the Republicans created all those vacancies, notwithstanding that, the Democrats said, we will help you fill them.

Notwithstanding the arrogance and the one-person filibusters on the other side, the Democrats started filling those vacancies with President Bush's nominees. We have filled 168 vacancies. We stopped four of the most extreme nominees. And now, lordy, lordy, lordy, the Niagara Falls of tears comes from the other side—crocodile tears, hypocritical tears, from those who said not a word, not a word when they blocked 63. Not a word. Not a word. They blocked 63. Not a word. We stopped four of the most extreme, and you would think the world was coming to an end.

What Democrats have done is that we have stood up for our principles and for the independence of the Senate in its constitutional role in the judicial confirmation process. The Republican leadership has decided to spend, I am

told, upwards of a quarter of a million dollars of the taxpayers' money to have this debate. I apologize for that. I am not the one who wanted to do this. I apologize to all the staff—the police officers, who should be home with their families, the doorkeepers, those who keep the journal of these proceedings—who are some of the finest men and women I have worked with in nearly 30 years here.

But that quarter of a million dollars the Republican leadership is spending on this charade of crocodile tears could almost be worth it if one thing comes out of it. If the President would realize that this whole process begins with him, not with the Senate. The President has an absolute right to nominate anybody he wants. The Senate has an absolute right to advise and consent, to determine whether nominees are confirmed, especially to lifetime jobs.

I ask him once again, work with the Senate. Every President through history has sought the Senate's advice and consent. In those instances when they did not, they did not get their way. There was another President named George, the greatest President in this Nation's history, George Washington. He was the most popular man in America in the time he lived and probably the most popular person America has ever had. He was a man who brought us together as a country, who set the precedent to make this a great democracy. But George Washington nominated judges the Senate felt he should not have. The Senate exercised its constitutional authority, and not all of George Washington's judicial or executive branch nominees were confirmed. President Washington knew he had to come back and seek the Senate's advice and consent before his nominees would go through.

A great hero of mine, not just because I am a Democrat but because I remember what he meant to people like my parents, who owned a small business in Montpelier, VT, was Franklin Delano Roosevelt, also one of the greatest Presidents to ever serve this country. He kept this country together, kept the world together at the time of naziism and fascism, and the Japanese attack on Pearl Harbor. He brought us out of a recession, and he did this even though he was physically crippled. He worked so hard for this country, it finally killed him. But even Franklin Delano Roosevelt, when he tried to pack the court and change the independence of our Federal judiciary, a Democratic-controlled Senate said he could not do that. In fact, not only did Franklin Delano Roosevelt not get every one of his judges confirmed, but his court packing plan was filibustered.

No matter how partisan anybody is here, I don't think anybody is going to suggest the problems began here. The Senate said no to Washington. The Senate said no to Franklin Roosevelt. The Senate can say no to George Bush. Tradition is there. The Constitution is there. Our rights are there.

Basically, we have taken all this time spending a quarter of a million dollars of the taxpayers' money to talk about this because we don't want to vote on minimum wage, or workman's compensation, child programs, or the appropriations bills that, by law, we are required to have voted on by September 30. We still haven't. We don't want to vote on veterans benefits even though the administration seems hell-bent on cutting veterans benefits.

We don't want to do any of those things. We will spend a quarter of a million tax dollars on the Republican's charade. I say the same thing today that the Senate said to George Washington and said to Franklin Roosevelt: We are going to ask for advice and consent. The Senate is going to stand up for its rights. I yield the floor.

The PRESIDING OFFICER. Does the Senator yield back his time? He has 56 seconds.

Mr. LEAHY. Mr. President, let me say this. Again, I have been here with six Presidents, Republican and Democrat. Presidents have always sought advice and consent. They have not always liked what they have heard. Five of the six Presidents have been willing to work with us on judicial nominations: Presidents Ford, Carter, Reagan, former President Bush, and President Clinton. I urge the current President to follow their example. Things will go far more smoothly. I do yield the remainder of my time.

The PRESIDING OFFICER. All time has expired. Who yields time? The Senator from Alabama.

Mr. SESSIONS. Mr. President, I appreciate the remarks of the distinguished ranking member of the Judiciary Committee. He has been around the Senate and the confirmation process for a long time.

He said he wanted to apologize for people staying here and having to work tonight. It is unfortunate that we are here. We are here because we have a filibuster organized and sustained by the Democratic leadership against six nominees. We have more in the pipeline to be blocked, so it is not just four. I want to ask, would the Senator want to apologize for his remarks that he made in 1998 when he, Senator LEAHY, in the CONGRESSIONAL RECORD, said:

> I cannot recall a judicial nomination being successfully filibustered. I do recall earlier this year the Republican chairman of the Judiciary Committee and I noted how improper it would be to filibuster a nomination.

That was when President Clinton was in office and Chairman HATCH, a Republican, was chairman of the Judiciary Committee. Chairman HATCH said on the floor of the Senate and in committee and in private Republican conferences that a filibuster was not good. Senator LEAHY and the Democratic leadership all said filibusters were not good. We did not have those filibusters.

So it is amazing to me, now that within a year or two after making statements such as that, and taking that position, we now have those very same people leading a filibuster. I would say apologies need to come from the other side.

Let me mention a few basics about confirmations under President Clinton: 377 nominees were confirmed, 1 was voted down on this floor in an up-or-down vote, not blocked by a filibuster, and no filibusters were had against those nominations. That is what happened.

There were 41 left pending and unconfirmed. Many of those were nominated late, after the August recess. Some of them had FBI background problems, including drug use or other unresolved issues. So there were 41 left pending and unconfirmed; 18 nominees were withdrawn by President Clinton before the final term. So I guess that is how they get 59, 60 nominees who they say got blocked. But that is what happened.

When former President Bush was President and he left office and the Democrats controlled the Senate, they left 54 of his nominations hanging. So under Senator HATCH's leadership and under TRENT LOTT's leadership, only 41 were left unconfirmed when President Clinton left office.

They say you blocked them with holds. Holds were put on nominations, just as they are today. Senator LEVIN has a hold against four circuit judges for the Sixth Circuit. They say they are only holding up four; this is not truth; with the nominees being blocked by Senator LEVIN they are holding at least eight. In fact, there are 13 circuit judges who are being held up and blocked by the Democrats right now. It just so happens we are only in full-blown filibuster of five, one having withdrawn, making six.

I will say one more thing. My colleagues on the other side of the aisle just blithely and consistently and repeatedly say these nominees are extreme, extreme, extreme. ''Most extreme,'' I believe is the phrase I have heard: Most extreme possible; extreme judicial nominees. As if saying this can make it so.

When we talk about judges, each judge is a human being. Each judge is entitled to a fair and decent consideration on the floor of this Senate and in committee. If they are not extreme, they ought not be called extreme. That is wrong for us to do that.

I know these attack groups, People for the American Way, the Alliance for Justice, the National Abortion Rights League and that crowd are the extremists.

They accuse and call our nominees extreme. That is for sure. These groups are not accountable. The problem is when these extreme notions are picked up by Senators. This should not happen. Senators are the ones who are elected. Senators are the ones who have taken the oath. Senators in this body have a responsibility not to call a nominee such as Priscilla Owen extreme. She got 84 percent of the vote in Texas and was given a unanimously

well-qualified rating by the ABA to be a judge—she is not extreme.

Judge Janice Rogers Brown from California, who got 76 percent of the vote in the State of California, not a conservative State, for justice of the supreme court in that State, is not extreme. And neither is Carolyn Kuhl, who rated the highest rating possible by the American Bar Association, who has received incredible bipartisan support from the hundred or so judges in her area where she practices as a State judge. She was editor of the Duke Law Review and clerked for Justice Anthony Kennedy and is a brilliant nominee of the highest order. These are outstanding nominees. They are not extreme.

The extremists are the groups and the people calling them extreme. These nominees teach Sunday school. They serve on the Altar Guild. They are involved in civic groups in their communities. They have held important positions in their States. They are the kind of people we ought to have on the bench. It is wrong for them to be accused of being out of the mainstream.

President Bush knows what the people want in Federal judges. He has nominated that kind of Federal judge. The people will support him on that, and it is very disturbing to hear them called extremists when they are mainstream and effective judges and nominees.

I now recognize the Senator from Colorado. I believe he is prepared to make some remarks.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. CAMPBELL. Mr. President, this evening I am pleased to join my fellow Senators—including my good friend from Utah—Judiciary Committee Chairman HATCH—for this ''Justice for Judges'' Marathon. I doubt if anyone will change their minds, but the debate is one we need to air.

First of all, I would like to thank Senator HATCH for the excellent work he has been doing—just as he consistently does day after day and hearing after hearing—as the Chairman of the Judiciary Committee.

I also thank Chairman HATCH for his support for another bill I am sponsoring this year, the Law Enforcement Officer's Safety Act of 2003. Every one of our Nation's leading law enforcement organizations—including the Fraternal Order of Police—consider this bill to be one of their top legislative priorities. I am especially pleased that this bill now enjoys the strong bipartisan support of 66 cosponsors—including 41 Republicans and 25 Democrats. I also want to point out that Senators LEAHY and HATCH are lead original cosponsors of this important legislation, and thank them for their support. Unfortunately, this bill is a perfect example of how the intent of the U.S. Senate can be subverted by the few opposed to a bill.

I also want to point out that even though this bill enjoys bipartisan support, and easily enough to get it passed by the Senate in an up-or-down vote—or even to invoke cloture—it is still being held hostage by a few Senators who have dug in their heels and refuse to let it pass.

It is not fair nor just in a body where fairness and justice is paramount that a minority of a few can hold up the will of 67 Senators.

I want to let my fellow Senators know that I will be pushing for the passage of the Law Enforcement Officers Safety Act early next year.

The challenges we are now facing in the form of the unprecedented filibustering of Circuit Court judicial nominees is in no way the result of Senator HATCH's ability as a Chairman or as one of the Senate's great gentlemen.

Unfortunately, we are now facing a situation in which judicial nominees that clearly have the bipartisan support they need to be confirmed by the Senate in an up-or-down vote simply cannot get the vote they deserve.

Repeated refusals to allow Circuit Court nominee Miguel Estrada the straight up-or-down vote he deserved unfortunately led to him withdrawing his nomination.

As a Coloradan, I am not alone in my assessment that an injustice was done, and not just to Miguel Estrada, but to our finely balanced system of Constitutional government as handed down by our Founding Fathers.

We all know the history of Miguel Estrada. He is a great American success story. He is a man of impeccable credentials dedicated to upholding the law. Unfortunately, he has committed the high crime of being a conservative. He does not deserve the insult of being called a ''lemon'' as one Senator has done today. Whether to vote against nominees is each Senator's decision, but they do not deserve insults. On September 10, 2002, the Pueblo Chieftain editorial stated:

> One would think that Democrats in the Senate, who claim to hold diversity in such high esteem, would be amendable to Mr. Estrada's nomination. But he committed the political sin of being conservative.

The Pueblo Chieftain went on to say:

> For the first time in the Nation's history, Senate Democrats filibustered the nomination. By doing so they turned the Senate's historic practice of advice and consent into a litmus test for liberal interest groups. The Democrats also have launched filibusters to stall the nominations of a half-dozen other candidates.

The editorial continues:

> Mr. Estrada asked President Bush to withdraw his nomination, which had languished in the Senate for nearly two years. Mr. Bush did so, with regret.
>
> Mr. Estrada should have been confirmed. He was just as qualified as a dozen other judicial nominees who were eventually confirmed.
>
> But Democrats have resorted to the filibuster to stop those judicial candidates feared to be opposed to abortion. But when asked about the Roe v. Wade abortion ruling during confirmation hearings, Mr. Estrada said, ''It's the law. I will follow it.''
>
> In the long run, Democrats may have hurt themselves and their outreach to Hispanic moderates and independents by denying all Hispanics a historic moment—the first and highest-ranking Hispanic on the Federal bench who also had strong backing from a wide range of Hispanic groups.

Mr. President, let me speak about a towering figure in Colorado history. Byron White, a football star and then a conservative U.S. Supreme Court Justice who retired in 1993 after 31 years on the Federal bench. After having lived a long and fruitful life, Justice White passed away on April 15, 2002. I met Justice White. His many achievements made most but not all Coloradans proud.

Justice White was appointed to the Nation's highest court by President John F. Kennedy in 1962. I knew Justice White—he had a handshake that would make you wince, even in his 80's.

Byron White combined physical prowess—as a nationally acclaimed football star in the 1930's who went on to become a Rhodes scholar and, eventually, a leading jurist.

In 1937, Byron ''Whizzer'' White was an All-American football player with the University of Colorado Buffaloes. He led the nation in both scoring and rushing yards while leading an unbeaten team. He never liked his nickname ''Whizzer''. But sports writers did so he was stuck with it.

He also was an outstanding football player in the earliest days of professional football, playing running back for both the Pittsburgh Steelers and the Detroit Lions.

He used his professional football signing bonus to pay his way through Yale Law School. He graduated first in his class.

During World War II he served as an intelligence officer with the U.S. Navy. It was Byron White who wrote the official report on the sinking of John F. Kennedy's patrol boat, the PT–109.

White ''had excelled in everything he had attempted'' President Kennedy said admiringly when he appointed his long-time friend and the Deputy Attorney General as our Nation's 98th Supreme Court Justice in history.

However, despite the outstanding strengths and qualifications, as articulated by President Kennedy, Justice White had some views that most likely would have led to filibuster by today's Senate. In fact, if it had been a Republican President who nominated Byron White in 1965 instead of a Democrat, he probably would not have been confirmed even then.

For instance, he dissented from the historic 1973 ruling that declared that women have a constitutional right to an abortion.

In 1986, he stirred a storm of controversy by writing the Supreme Court's opinion that constitutional protections of privacy do not extend to homosexual conduct.

Justice White consistently opposed restrictions on law enforcement officers, which led him to dissent from the famous 1966 Miranda ruling that police

officers inform a criminal suspect being arrested of their rights.

Justice White also dissented from rulings that outlawed voluntary prayer for children in public schools.

By the late 1980's, Justice White had joined conservatives in opposing ''affirmative action'' programs on the grounds that they amounted to reverse discrimination.

The point is that he was appointed by President John F. Kennedy—but even so—under today's atmosphere, including political correctness and in-your-face special interests—with litmus test approaches to public policy—Justice White would have almost certainly been relentlessly filibustered and would probably not be confirmed.

I am not sure that I would have voted for his confirmation had I been here, because I disagree with some of his decisions, but I would have been given the chance.

The way that today's Senate is treating judicial nominees stands in even starker contrast when it is pointed out that Justice White was confirmed by the Senate by a voice-vote, and without objection. Not one Senator objected—''D'' or ''R.'' That was on April 11, 1962.

A lot has changed since then. Some for the better and some not. One thing that has certainly not gotten better is the way judicial nominees are being treated. Questioning has given way to badgering. Civility has given way to discovery. Playing ''Got Ya'' is a poor substitute for an impartial hearing.

The question is not whether the President's nominees should or shouldn't be confirmed. That is a smokescreen. The question is should we, as duly elected Senators be accorded our constitutional responsibilities of advise and consent by voting on each nominee. The minority is denying me the right to an up-or-down vote through their filibusters—and thereby are denying the people of Colorado the right to be represented through my vote. I have heard time and again from our colleagues on the other side of the aisle that 168 nominees have been confirmed and only four have not. What are they talking about? I haven't been given the chance to even vote on those four. Not a question of numbers. It is a question of fairness.

We need to do what we can do to reverse and correct the emerging practice of filibustering judicial nominees.

There is no question in my mind that many deserving and well-qualified people will refuse the call of public service after watching the kangaroo court they might now face in getting confirmed. It doesn't make any difference who is in the majority. No nominee should have to be verbally flailed in the confirmation process.

Mr. President, it is not too late to turn back, reverse course, and give all judicial nominees the up-or-down votes they deserve.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. I thank the Senator from Colorado for his remarks. It is true, we need to treat these nominees with civility. That is the least we can do in this body.

I believe we have one more Senator to speak, the Senator from Wyoming, and we have about 14 minutes.

Mr. ENZI. Mr. President, first, I wish to concentrate a little bit on some of the comments I heard during the 3½ hours I chaired last night.

A lot has been made of this number, 168 to 4. But you cannot compare district court judges with circuit court nominations. Instead, you should look at the situation for what it is, an attempt to obstruct the confirmation of circuit court judges.

Since January 2003, President Bush has nominated a total of 29 circuit court judges. Of those judges, only 12, or 41 percent, have been confirmed. Of the remaining 17, my colleagues across the aisle have obstructed or threatened to obstruct 11 qualified and talented judges. In other words, almost 50 percent of the circuit judges ready to come to the floor for confirmation have been held up by the Democratic side for political purposes.

Last night I heard this 98-percent factor, and I heard it said that if my child came home with a test and he got 98 percent, I should congratulate him and work hard to get the other 2 percent.

I will tell you what ought to happen if your kid comes home with only 50 percent, and that is what we are talking about when we are talking about circuit court judges, we are talking about failure of the system, a total breakdown of the system.

You have to look at the concentration that there is on the circuit court. That is because those circuit court folks could become Supreme Court Justices. And Lordy, we don't want to pass any who might make it to that.

Every day the Senate is in session we begin with a prayer and the Pledge of Allegiance. I know my colleagues on both sides of the aisle are firmly committed to this country, and that as we say the words of the pledge, like me, they mean every word of it and they honestly pledge their alliance to the flag and to this Nation. But I have to wonder if they haven't forgotten the meaning of all of the words in the pledge, especially when I hear them put forward the argument that we do not need to vote on all the judicial nominees because we have already voted on most of them.

The last six words in the Pledge of Allegiance, ''with liberty and justice for all,'' mean we do not preserve justice or liberty for just a few people or for most of the people and leave a few or even an individual behind. It means we have justice for all, for everyone. That is 100 percent. We pledge that and we don't make exceptions because we have a high percentage of success.

In fact, this is one of the situations that the courts were created to protect: the rights of the individual. I think it is a little ironic that there are those in the Senate who would be willing to withhold justice and rights from some, in this case four highly qualified individuals, and the cases they could be hearing, if they were confirmed.

That is justice being denied as well. That is justice only for a few, or maybe most, but not all—just because the individuals don't have the same political philosophy as those across the aisle.

While it may be true—the percentage of judges we have voted on—when you are the one who is left out and are not allowed justice, that is 100 percent of your life—the one who is being affected, and 100 percent of justice that is being denied as an individual.

I think this is wrong. I sincerely hope we move off this obstructionism and have an up-or-down vote on the highly qualified individuals with talent, experience, and integrity, and who could be considered as the ideal we want in all judges.

I think everybody knows about the qualifications.

The comments made last night are what we are seeing here for the first time—a change in the way we do judges. The problem with it is it probably will continue and at some point there will be a reversal of roles. We will spiral down and down until we are not approving judges. It won't be 2 percent counting all of the district judges and not doing the true statistics on just the circuit court judges. It will not be approving a majority of them.

I have to tell you, I have been through that spiral once before. When I first got here, there was a judge nominated. She would only sentence a person to 90 days in jail who had raped a minor because she didn't like the rehabilitation system of the prisons in her State. I was appalled by it. In our State, there are a lot of people who would think that maybe he should have been shot. He raped a minor.

I put a hold on that person so we could have a debate instead of a unanimous consent. I eventually got the debate.

I had an unrelated piece of property that some people had been paying taxes on for 70 years which they had bought from the BLM but the title had never changed. It took an act of Congress to change the title. Because I put that hold on, it took me 3 years to get that piece of property transferred to the people. Do you know what those people said? They appreciated what I had done on that judge.

But I have to tell you that unless an up-or-down vote happens on that judge, that is the way it is supposed to be.

It was exactly 200 years ago, in 1803, that the Supreme Court and our Nation's judicial system went through its first and most dramatic change since it was established by the Judiciary Act of 1789. This change occurred when then Chief Justice John Marshall issued his decision in the landmark case, Marbury vs. Madison. In that decision

Marshall established the responsibility of the Federal court to review the constitutionality of congressional actions. His action brought the courts out of almost obscurity, seen as the weakest and most timid of the three branches of government, and gave it a prominence and power that is not equaled by any other court system in the history of the world.

Before Justice Marshall was appointed to the court in 1801 the court seemed to lack direction. There was no clear idea of purpose or vision about whether or not the court could consider itself to be an important entity. The very first Supreme Court Session was held in New York City in 1790. It was almost postponed when only three of the original six justices arrived for the court's opening session. The court had to wait and put off doing business until a fourth justice arrived and they had enough judges to constitute a quorum.

Justice Marshall himself did not initially consider the court to be a prominent institution. At the time of his appointment to the court, he was also serving as Secretary of State for President John Adams and he had turned down an earlier appointment to the court in order to run for a seat in the U.S. House of Representatives. After President Adams finally talked him into serving as Chief Justice of the court, Justice Marshall served as both Chief Justice and Secretary of State for 2 months because he felt it wasn't worth giving up the position of Secretary of State to serve on the Supreme Court.

Over the next 34 years Justice Marshall reinvented the court and provided the leadership it needed to assume the prominent role it plays in our court system today.

One has to wonder what Justice Marshall would think about what is going on in the Senate today. Would he agree with my colleagues across the aisle that it is all right to put partisan politics and partisan bickering ahead of the rights of judicial nominees if those impacted are just a small fraction of society. Would he agree with them that justice denied for a few was acceptable? Or would he hold true to the basic tenets of the Constitution that all men are created equal and that everyone has the right to their day in court?

A lot has been made about the numbers 168 to 4. You really can't compare district court judges with circuit court nominations. Instead we should look at this situation for what it really is, an attempt to obstruct the confirmation of circuit court judges. Since January 2003 President Bush has nominated a total of 29 circuit court judges. Of those judges only 12 or 41 percent have been confirmed. Of the remaining 17, my colleagues across the aisle have obstructed or threatened to obstruct 11 qualified and talented judges, or in other words, almost 50 percent of the circuit court judges ready to come to the floor for confirmation have been held up by the Democrats for political purposes.

Every day that the Senate is in session we begin with a word of prayer and with the Pledge of Allegiance. I know that my colleagues, on both sides of the aisle, are firmly committed to this country and that, as they say the words of the Pledge, like me, they mean every word of it and that they honestly pledge their allegiance to the flag and to this Nation. But I have to wonder if they haven't forgotten the meaning of all the words in the pledge, especially when I hear them put forward the argument that we do not need to vote on all of our judicial nominees because we have already voted on some or most of them. The last six words in the Pledge of Allegiance, ''with liberty and justice for all,'' mean that we do not preserve justice or liberty for a few people, or for most of the people, and leave a few, or even an individual, behind. It means we have justice for all, for everyone, 100 percent and that we don't make exceptions because we have a high percentage of success.

In fact, this is one of the situations that the courts were created to protect, the rights of the individual. I think it is a little ironic that there are those here in the Senate that would be willing to withhold justice and rights from some, in this case four highly qualified individuals, and would not extend justice to all, just because those individuals don't have the same political philosophy.

While it may be true that the percentages of judges that have been voted on is high, when you are the one that is left out and are not allowed justice, that is 100 percent of your life that is being affected and 100 percent of justice that is being denied you as an individual.

I think this is wrong, and I sincerely hope we move off this obstructionism and have an up or down vote on these highly qualified individuals, whose talents, experience and integrity can easily be considered the ideal for what we want in judges.

We often talk about the ideal in our debates in the Senate. We hold up a picture of what things should look like and how things should be done in the hopes that someday, we can move our Nation forward to the point where the ideal is, more often than not, reality. One of those ideals that has been presented is a world where our judges and our courts are more representative of America. Our courts have often been accused of being elitist. The Bush Administration has been working hard to change that image by making sure our judges are more diverse. By nominating people like Miguel Estrada, Carolyn Kuhl, Janice Rogers Brown, Priscilla Owen, William Pryor, and Charles Pickering, President Bush has set an example of the ideal by selecting people from different backgrounds, with different styles, who share the same passion and enthusiasm for the law.

The list of judges that is before the Senate represents a group of candidates who are well educated, fully talented, and well qualified for the posts for which they have been nominated. Unfortunately, for some, this list also represents the unfairness of the system—a system which, in theory, guarantees each nominee a vote—but—in practice, can be used to deny a nominee a vote.

So here we are, well down the road, holding a list of candidates that still haven't received a vote. In spite of all their qualifications and the personal integrity they have shown throughout the process, these judges have been forced to wait as the Senate decides whether or not we can simply hold an up or down vote on them. Why? It's pretty clear to just about everyone. Because these are good nominees and in a fair and just world, they'd win the vote hands down. Therefore, the only way to avoid having these candidates confirmed is to deny them their constitutional right to an up or down vote.

What is most tragic about this situation is that these delays have not come without cost. These nominees aren't the only ones who are being denied their rights. Let's not forget the other victims in this situation who have been denied their right to a fair and impartial judicial process because there are not enough judges to hear all their cases. The real victims of these delays are not the nominees, or the Bush administration, or even the Republican Party. No, the real victims are the people whose rights have been denied to accommodate some increased partisan bickering.

There is a saying ''Justice delayed is justice denied.'' We make people with very real needs and very real issues wait while we try to score a few points in the game of politics. We drag out their court costs, their attorney's fees, and delay their restitution and damage payments all because we want to get one up on the other party.

We have a crisis in our courts that we can solve today. I urge my colleagues to step up to the plate and become a part of the solution. I urge them not to accept the belief that justice for some is sufficient. I urge them to allow the Senate to conduct its constitutional duty and hold an up or down vote on these judges. If you don't agree with them, or feel they are not qualified, then vote against them. That is your prerogative and duty as a Senator. But do not continue to deny justice for the nominees or the courts any longer.

Mr. SESSIONS. Mr. President, the Senator from Montana is here and I know he would like to finish up.

The PRESIDING OFFICER. The Senator from Montana.

Mr. BURNS. Mr. President, a lot of questions are being asked about this debate as we roll along. We went late last night and there are probably some folks who have been short of sleep.

Let there be no doubt about it, as we close this half hour, this is obstruction.

A week ago tomorrow, we argued about definitions. Now we are worried about ideologies and how we appoint our judges. Here is one way you can have an issue and you can be on both sides of it and never worry about the consequences. That is healthy for us. We passed that through this Senate with strong bipartisan support and only 14 folks voting against it. Now we can't name conferees. ''Well, I voted for it.'' But we do not want it to get to conference.

I am fighting for two judges, Janice Rogers Brown and Carolyn Kuhl. Both of them are nominated to the Ninth Circuit. Why am I fighting so hard for them? Let me tell you why.

I am sponsoring legislation to split up the Ninth. It is too big. It covers California, Arizona, Nevada, Idaho, Washington, Oregon, Alaska, Hawaii, and my home State of Montana. It covers 14 million square miles—that is a fairly good sized pasture—with 45 million people. The second highest population is the Sixth Circuit with 29 million. It has the highest number of active judges with 28. The average number per judges per circuit, including the Ninth, is 12.

Let me tell you another reason why. The decisions that have been handed down by the Ninth lately—from 1996 through 1979—the Supreme Court heard 228 cases from the Ninth Circuit, and 27 of those decisions were overturned, 17 of them by unanimous decision.

From 2001 through 2002, 12 of the 17 Ninth Circuit decisions were reversed, and 7 of those were unanimous.

How would you like to have that track record? And we live in that circuit. Then you wonder why we get excited about the appointment of judges to that Ninth Circuit.

It is absolutely unbelievable.

I am an original cosponsor of S. 562. We must get it done.

What we are talking about here is people in a circuit who can't handle the work and come up with decisions that can't stand the test in the Supreme Court. That is pretty bad—1 in 27. That is almost as bad as 0 and 1 in a gunfight in judicial terms.

I am not an attorney. I don't think I will ever be one. But I will tell you that you can read and you know where the American people are, and those people are denied representation on the Ninth Circuit.

Definitions: We have heard it. If we cooperate, things would really get along good here. If we cooperate—we did—that is healthy for us. Now we can't name conferees to finish the job that is in front of us.

This is not my first rodeo. I know what is going on here. They should be ashamed—ashamed to contradict their own conscience.

Obstructionism: Give these judges a vote up or down. That is the way you got here. They deserve the same.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama has 3 minutes 30 seconds remaining.

Mr. SESSIONS. The Senator from Virginia.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ALLEN. Mr. President, I wish to speak about some statements that have been made in the past and the inconsistency of these statements with the ones we are hearing today.

Let me quote for my colleagues some sentiments with which I very much agree, and I then I will ask you all to guess who said it: ''I find it simply baffling that a Senator would vote against even voting on a judicial nomination. Let the Senate vote on every nomination.''

Here is another quote. See if you can figure out who said this: ''I don't know how Members tell the Hispanic community we are being equally as fair with them as we are with all non-Hispanic judges when that simply is not true. Hispanic or non-Hispanic, African-American or non-African-American, woman or man, it is wrong not to have a vote on the Senate floor. What are they afraid of? What are they afraid of? What is wrong with a vote?''

Another quote from one of our colleagues who quoted Chief Justice Rehnquist: ''As Chief Justice Rehnquist has recognized, the Senate is surely under no obligation to confirm any particular nominee but after the necessary time for inquiry it should vote them up or vote them down. An up-or-down vote that is all we ask.''

Have you guessed the speaker yet? No, that is not ORRIN HATCH; it is not Senator SESSIONS; it is not Senator ENZI and it is not me. That is Senator TOM DASCHLE, the Democratic Minority Leader. These quotes are from October 5, 1999 and October 28, 1999.

Senator KENNEDY said nominees deserve a vote. He said: ''If our Republican colleagues don't like them, vote against them. But give them a vote. Don't just sit on them. That is obstruction of justice.''

My goodness. Senator DASCHLE and Senator KENNEDY certainly had the right idea 3 years ago.

Senator DASCHLE also said that Senators ''have a constitutional outlet for antipathy against a judicial nominee. Vote against that nominee.''

Senator DASCHLE, the Democrat leader in all of this obstruction and delay, said in 1998: ''All we are asking of our Republican colleagues is to give these nominees a vote and hopefully the fair consideration they deserve. We will press this issue every day and at every opportunity until they get the vote.''

Doesn't that sound familiar as to what we have been trying to do for the last several years?

Senator DASCHLE is also on record complaining about how long it took for some cases and decisions that had been pending for months. He said for ''anyone to be held that long is just an extraordinary unfairness not only to the nominees but to the system itself.''

The PRESIDING OFFICER. The time has expired.

Mr. ALLEN. If I may, with consent, have 2 minutes that is attributed to our time at 9 o'clock.

The PRESIDING OFFICER. Is there objection?

Ms. STABENOW. Reserving my right to object, my colleague, I appreciate the time, but in order for us to stay on schedule and given the fact I have been waiting here at this point, I would appreciate his wrapping it up. If he would like to take 1 minute to wrap up, I would not object to that.

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

Mr. ALLEN. I would like to close with a final quote from Senator DASCHLE that he made in September 1999: ''It is so incredibly unfair to me that they would continue to persist in the determination not to allow these very qualified people to even have a vote.''

Mr. President, that is what all of this is about. Tomorrow morning we will have a chance to end debate on these nominees and allow for fair up or down votes. In addition we will be able to determine the veracity, truth, and sincerity of our colleagues that I have previously quoted. If they were willing to tell the truth 3 or 4 years ago, they will have an opportunity to stop this spiral of unfair actions and delays which only bring more retaliation and more delays.

Senators will then be upholding the Constitution and will be accounting to their constituents, as well as giving fairness to the nominees.

I thank the President and I thank my colleagues.

The PRESIDING OFFICER. The Senator from Michigan.

Ms. STABENOW. Mr. President, as I said before on the floor, all the statements that are being made, and all the time we spend in relation to our values and our priorities, I also believe we get things done when we work together, when we work in a bipartisan way. That is what our constituents expect us to do.

I see the esteemed chairman of the Judiciary Committee on the floor. I thank him publicly for working with the senior Senator from Michigan as we work through difficult issues that relate to Michigan. I appreciate his willingness to do that. That is how we get things done—when we work together.

When we look first at the record of legislation taken up on this floor, I think it shows we work together. I think when we have worked together to confirm 168 judges, most of those I have voted for overwhelmingly, and when we see that we have only had a disagreement on 4, I think that shows bipartisan cooperation. I think that shows what the people of this country, and certainly the people of Michigan, want to see done. There is no question in my mind that this demonstrates our willingness to roll up our sleeves, to be fairminded, to look at the facts, to look at the nominees, and to work together.

It also shows, though, that we are willing to make a critique, that we are not a rubberstamp for this administration, nor should we be for any administration of either party. It shows we are willing to make a judgment. When the nominees go too far, we say no. That is what happened four times.

What I am most concerned about now, though, in this 30 hours—which now, instead of ending at midnight, is going to go until 9 in the morning—is that we are saying our values and priorities are spending time talking about four people who already have jobs and want to get a promotion that will last a lifetime. These are lifetime appointments.

My concern is that we need to be spending time on this floor not only talking but doing something about the 3 million people who have lost their jobs in the last 2½ years—3 million people. They do not have a lifetime job. They would just like to know they have a job tomorrow for their families. They would like to know that the job probably carries health care with it and will be there so they can put food on the table and they can pay the mortgage, the car payment, send their kids to college, and know they can have a good life in America that they assume if they work hard they will be able to achieve.

That is the debate I have said a number of times that we need to be having. One-hundred and sixty-thousand-plus of these 3 million are people who have lost their jobs in Michigan; people who have lost good-paying jobs, good-paying jobs with health care and pensions. They find themselves in very difficult circumstances and they are asking us to help them.

I am very proud of the fact that Michigan is the first in the production of automobiles. Thirty-one percent of all the automobiles in this country are produced in the State of Michigan.

My dad and my grandfather owned a Cadillac dealership in Claire, MI. We have been proud to be a part of supporting the Michigan automakers.

We also are first in the production of trucks, producing 17 percent of trucks. We have the three leading office furniture manufacturers in Michigan and produce nearly half of the office furniture.

Why do I say this? Because we have a crisis in manufacturing in this country that we need to be addressing in this Senate. Jobs can't all be in the service industry. We need to make things and we need to grow things. That is what we do in Michigan. We make things and we do it well. We will compete with anybody any time. Just give us a level playing field. We also grow things. We are willing to compete with anybody any time. Just give us a level playing field. We don't have that right now. We don't have that level playing field. We are not addressing that.

We are not addressing what is happening with the fact that China is violating the WTO or that China and Japan basically have put a tax on American goods and services sold in this country by manipulating their currency. We are not doing anything about that.

As a member of the Banking Committee, I sit and listen to the Treasury Secretary basically acknowledging that something is not right but not wanting to step up and take the tough action on behalf of American manufacturers and American workers.

We need to be talking on this floor and taking action on behalf of the men and women who have been the backbone of this country in manufacturing and have created the middle class that separates us from other countries around the world.

Why aren't we having that debate? Not a debate about 4 people who already have jobs, who want to get promoted. Three million people do not have a job and are now struggling with their families.

I want to share a few comments that I have heard. Earlier today I shared some headlines from newspapers in Michigan about what is going on. I want to share one of those this evening with my colleagues. It is from the Ludington Daily News, in northwest Michigan. It says: ''Tough Loss, Straits Steel closing sad news for plant's 180 employees.'' Then it starts out by saying:

> Despite the looming possibility over the past few months that their plant might close, workers at Straits Steel & Wire Co. kept their production quality high and their attitudes positive, said General Manager Tyndall.
>
> But on Friday, Tyndall was forced to tell his co-workers and friends that corporate officials decided to close the Ludington plant, 56 years after it began operations in 1947.
>
> Making the announcement twice—to the first shift in the morning, then the second shift in the afternoon—was not easy for Tyndall, who joined workers on the floor of the production plant as he shared the bad news with the group.
>
> ''People are down,'' he said Friday afternoon. But he stressed the plant's closing is not related to performance. ''When we walk out, we can hold our heads high and go chest to chest with anyone on the street and say we did our jobs well.''

They did their jobs well. But because of what is happening and the unfair competition around the world and the stress and struggle as it relates to cost, the plant closed.

Why aren't we dealing with issues that will help this Straits Steel and Wire Company in Ludington, MI? Those are the jobs I want to be talking about. Those are the jobs people in my State want us to be trying to fill.

Let me mention a few letters I have been receiving from people in Michigan that say it better than I can. First from a gentleman who says: I am writing you regarding the health of my business. I have a high tech business servicing industrial lasers, much like the ones that are no doubt cutting metal subassemblies for our armed services use as well as civilian businesses. My business has the flu. It is feverish and sluggish almost to the point of no business at all. Our country was initially built on small businesses providing services and employment. Our government encourages small business growth yet at the same time small businesses are being destroyed one by one because our economy is in such dire straits that business orders are essentially flat, which in turn is causing my business to fail. Occasionally I call the few customers I have left and ask questions about how they feel about the economy and what they think will happen in the near future. They say they are very concerned about the future. Some are laying off personnel. Others take pay cuts to keep their jobs. Still others feel they are sinking with no relief in sight. My business is now on the verge of collapsing and the only reason is the economy. I find it extremely difficult to believe that because of a few positive economic reports showing up here and there that our economy is getting better. The only real indicator of an improving, recovering economy, in my opinion, are reports coming in of companies rehiring people and putting them back to work. No other indicators, in my opinion, mean a thing until people start going back to work.

I agree with that. It is about putting people to work and having businesses recover from the flu.

Also from a Michigan resident: I am a tool die maker for over 40 years. I now find myself out of a job and unable to find one in my field. I have no health insurance. Why has America farmed most of our manufacturing jobs out to other countries? I think America has got to be not only the greatest thinking country in the world but we have to also regain our status as the greatest producing country in the world, as we did in World War II. That is, as you remember, the reason we won.

From Bridgman, MI: I would like to say I have worked in manufacturing for 20 years. This is the first time in my career that my hours have been reduced. I have a house payment, utility bills, children to feed and clothe, doctor bills, car payment, insurance, school lunches and preschool. This is just a few of my expenses. We are hanging on by a thread, day by day living. This is not the way Americans should have to live, especially in this day and age.

I agree. If people work hard, they get up in the morning and they go to work and they work all day, they ought to be able to know they are going to be paid a good wage, that they can count on that job being there, that we want them to be able to have health care. We want them to be able to put money aside for a pension, and we want them to know they will have the security of being able to take care of their families and plan for the future as part of the great middle class of America.

Our manufacturing economy has given us that. We are losing that. We

are losing that. We need to pay attention. We need to talk for 30 hours on the floor about jobs and how to help our manufacturing sector. We need to talk for 60 hours or 90 hours. More importantly, we need to act to do something so we can level the playing field. As I have said before, I will put our workers and our businesses up against anybody, if it is a level playing field. Just make it fair and we will compete. We need to address issues of health care. We know one of the biggest challenges right now for our manufacturers is the explosion in the prices of health care. I also know from talking to our automakers about half of that is because of prescription drug prices, the lack of competition, and the explosion in prices. We ought to be doing something about that.

We have bills in front of us right now in the Medicare conference where we could do something, if we wanted to, about that to lower prices. I would love to have a 30-hour debate on that because there is nothing right now more challenging to businesses and workers than the issues of health care. Workers are finding they are being asked to pay more in premiums and deductibles or their salary is capped in order to pay for health care increases or, worse yet, they are losing their jobs because of the increases. That is a debate worth having. That is a debate that would result in our focusing on something that means something very important to the people of this country. I would look forward to that debate.

Let me read a couple more letters: I've worked in manufacturing for 23 years, and this is the first time in my career I have had my hours reduced. I am worried about losing my job. My family is suffering because of my reduced income and planning for the future of my trade. I am a mold maker, and this has always been a solid trade. My trade is faltering, not only because of the economy but also because of foreign competition. How can we compete with countries that pay drastically reduced wages with no benefits?

We have to address that, not by saying you have to work for less, Michigan workers. You have to work for less and you have to take no health care and no benefits. We have to be fighting for our middle class and creating a way to raise the standards of living around the world instead of lowering ours, which is exactly what is happening right now. It is probably the most serious threat to our future in terms of maintaining our economy and our middle class. That is worthy of a 30-hour debate.

There are many more letters I could read that are the same. So where are we, when we are talking about 3 million jobs lost and counting just in the last 2½ years, a little less than 3 years. What is the response from the administration to this number? Are we pulling everybody together to figure out what we can do to lower health care costs? Are we figuring out what we can do to level the playing field and stop China and Japan from using advantages and manipulating their currency and creating a situation that is unfair to us? Are we looking for ways to stop the small manufacturers from going and moving their plants overseas? No.

What is the response from the administration? The first thing is to propose to cut people's overtime pay, people who already are working. We are going to cut their overtime pay. That is one of the major points the administration is fighting for right now in the appropriations process. They fight every effort to extend unemployment for the people who are currently unemployed. In the past, on a bipartisan basis, every President from Nixon and Carter and Reagan and Clinton, every President we have during times of recession, we have extended unemployment compensation for those who are unemployed. We have to fight now at every turn on behalf of the unemployed. I have mentioned earlier the administration has not been willing to get tough with China, has not been willing to deal with what is happening in Japan as well, that has so affected our automobile industry and our manufacturing economy.

We need leadership to step up and do more than just words to get tough on them, to create a level playing field. We have seen the administration not be willing to address the high cost of health insurance and do those things that will bring prices down. Earlier today I offered a unanimous consent request to increase the minimum wage $1.50 an hour so 7 million people, a large share of them women with children who are working for the minimum wage and trying to make it and don't have health insurance, paying their child care every day, trying to make it, trying to do what we are asking them to do in this country, could get a raise. It was objected to by colleagues. So we are seeing the people who earn the least can't get a raise. The administration won't support 7 million folks getting a raise. They want to take overtime away from the folks who are already working, not wanting to deal with those who are out of work with unemployment, not wanting to level the playing field so we can keep our manufacturers here and keep those good-paying jobs.

Over and over again, we see efforts that block what we need to turn this number around of 3 million jobs lost and counting.

That is the reality of what is happening. Frankly, I am disappointed we are not willing to spend time. If we are going to ask people to stay up all night and the staff to be here and so on, let's address something that affects them and their families and everyone who is listening and watching, and that is how we move this economy forward, how we protect manufacturing, how we support our businesses large and small, and our workers working harder and harder every day just to make ends meet, so we can make sure the quality of life and standard of living we want for our families is maintained in this country.

We are the greatest country in the world. But we are truly in crisis, I believe, as it relates to what is happening in our economy and with our manufacturing sector.

Let me take an opportunity to read a few more of the letters I get every day, unfortunately, from the people of Michigan. A letter that says: I have never written to a Michigan Senator before, but for me, now is the time. You see, I am one of the discouraged unemployed in Michigan. After over a year of fruitless searching for a nonexistent job in my field as a CAD designer, I have given up. It breaks my heart to leave the field I love. I must just ask you this: Where are all the automotive engineering jobs? Is it true that we in Michigan have lost much of our employment base as it relates to engineering through outsourcing? I know many colleagues who are also out of work and many who have left the field altogether, as I am contemplating. I just want you to know how one of your constituents is feeling about the employment situation here in Michigan.

Of the 3 million jobs that have been lost, over 2.5 million of them are in manufacturing. These are jobs that pay well, that bring health care with them, that bring a pension, that create middle-class America, those folks who can buy the houses and the cars—we want them to all buy them American made—who buy the boats and the snowmobiles and the cottage up north, who send the kids to college and believe in the American dream: that if you work hard, you can be successful in this country and you will have the opportunity to have the dignity of work.

From Union City, MI: I am writing this letter because there seems to be some confusion about our economy. Our government seems to think that a tax cut will help but I don't think so. Since the year 2000, there has been over 3 million manufacturing jobs that have been lost, gone to China. My wife and I own a small machine shop in Union City, Michigan. At one time we had 7 employees. Now my wife, my son and myself are all that is left. Most of the time we don't even have enough work for ourselves. I have watched as many of my friends and competitors have gone out of business and just closed their doors or filed bankruptcy. While we fight the war on terrorism, if we are not careful, we will lose a much bigger war to the rest of the world without a shot being fired.

From Clyde, MI: My husband, a 25-year mechanical engineer, designer of automotive special machines, has been laid off for seven months. The company he worked for was bought by Fiat and within two years, began outsourcing the engineering to countries such as Bosnia where engineers will work for $6 an hour. Our workers can't compete with that obviously. The engineering department is now closed completely,

everything is outsourced. He is 55, laid off, 2½ weeks short of his retirement, vesting at 100 percent, can't draw Social Security, and has been unable to find work. The market is flooded with engineers because outsourcing is happening all over. I work two jobs and a third when I can get the work. If we want to maintain the quality of our environment and keep our families fed, we need legislation to address the inequities in manufacturing standards globally, balancing tariffs, something. Our workers can't compete with the salaries outsourcing provides from other countries but for which foreign workers can maintain their own standard of living.

Again, I have received letter after letter after letter saying the same kinds of things. I also receive letters from furniture makers. I have had the opportunity to be in Grand Rapids, MI, and talk with furniture makers who have lost their contracts to Chinese contractors or subcontracting has moved over to China. They say: Well, it is because they can't compete. It is just the way the economy works.

Well, no, it is not. China manipulates their currency and it amounts to about a 40 percent tax on goods and services we send to China. They are not playing by the rules. They don't play by the rules. Why aren't we standing up for us? My constituents are saying: What about us? What about our jobs? We appreciate the fact that four people who wanted to be promoted as judges have not had the opportunity to do that. One hundred sixty-eight, yes; four, no.

But I hear from people representing this 3 million people saying: What about us? What about a marathon for us? What about spending time on the floor debating solutions that will create jobs for the people in this country that represent the majority who believe in this country, who work hard every day, who want to work hard, who want the dignity and respect of work? They don't want a handout. They want to work. They are finding their jobs are leaving, and they need our help.

Our manufacturers, large and small, and the people who work for them, need our help. They are asking us to work on a bipartisan basis. These folks are not Democrats or Republicans. They are Americans. They are Michigan citizens. They are asking us to turn our focus to those families, those people in our country who need our help. What we do is always about values and priorities—always. It is always about values and priorities.

I believe this debate is about misplaced priorities and we need to return to what is most important in the precious hours we have here and the time we have to get something done for the American people, because there is a lot at stake, including the quality of our way of life as a country. We cannot afford to lose our manufacturing base. We cannot afford to lose the middle class of this country, which has made us strong. If we are not careful, that is exactly what is going to happen.

I call on my colleagues to spend this time on how we move forward and take this number of 3 million jobs down to 2 million and to 1 million and get it down to zero, because that is the number that truly counts for all of us.

Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. I inquire of the time. Where are we?

The PRESIDING OFFICER. The minority still has 41 seconds remaining.

Mr. REID. We are happy to yield 41 seconds to the majority.

The PRESIDING OFFICER. Does the Senator from Idaho seek time?

Mr. CRAIG. The chairman of the Judiciary Committee is on the floor. I will yield to him.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I apologize to those listening in and to my colleagues for having laryngitis.

Mr. REID. I want my 41 seconds back with that voice.

Mr. HATCH. Your voice is not much better than mine, from what I can hear.

Whenever you are losing an argument, you try to bring up something that might help you to win. This argument about jobs is very important, but I remember all last Monday being wasted by our colleagues on the other side. I can list all of the obstructions that have occurred this year, time after time, when we tried to do something that might be good in that area. This phony chart of 168 to 4, it doesn't take any brains to realize that is totally false.

Tomorrow, we are going to have two cloture votes on two more, so there are at least six. If you go through all those they really do plan to filibuster, you get up around 15, 16, or 17. This is the first time in history this has happened.

I rise to speak about the judicial nominees being filibustered by a minority of Senators. I have served in the Senate for 27 years, and I can honestly say President Bush's nominees are among the best I have ever seen. They are experienced, intelligent, ethical, hard working, respected in their communities, and they have given their lives to public service. We honor these great men and women for volunteering to serve their country. They have put forward their good names for evaluation by the Senate and they deserve a simple up-or-down vote—just the dignity of the vote. Our priority is to vote on these nominees. We owe them no less.

By June of this year, we had two well-qualified nominees blocked by filibusters. These filibusters were the first two in the history of this body. By the end of July, we again made history, adding a third filibustered nominee. By October, we had four nominees filibustered, another record. Shortly, we will have two more filibustered nominees, yet another record. The number continues to rise.

Those who are watching this, don't believe this phony chart. That has never happened before. Like you say, it is one thing to say we gave the 168 a trial. Most of them are district court judges now. So we gave 168 a trial, but we only lynched 4 of them—6 of them now, or 8 probably next week. It will be up to 17 before long.

I promise not to talk about the color of somebody's tie or my favorite fast food. I want to talk more about numbers tonight. I want to talk about President Bush's nominees to the Federal court. Ambrose Bierce defined nominee as a ''modest gentleman [or gentlewoman] shrinking from the distinction of private life and diligently seeking the honorable obscurity of public office.'' That may or may not be the case, but I want to highlight several of the distinguished and respected judicial nominees who are currently being filibustered by the Democratic Party members, Justice Janice Rogers Brown, Justice Priscilla Owen, and Judge Carolyn Kuhl. We can talk in terms of numbers, but I prefer to talk about why these three distinguished judges deserve a simple up-or-down vote on the Senate floor, and why they deserve to be confirmed as Federal judges.

We started hearing from the other side that, according to my colleagues, these nominees have despicable views, or are wildly out of the mainstream, or from the hard right, are mean people, have embarrassing records, are far out and off the charts, are unqualified, are activist, are extremists, or right-wingers who would like to take the country back to the 1890s, are deeply hostile to and actively seeking to undermine civil rights, women's rights, and workers rights—gee—seek to turn back the clock on constitutional rights, have records of not really helping women, seem to have little regard for the rights of women, and represent the ''worst of the worst,'' as one colleague on the other side put it the other day. Those were the nice things they have said.

Actually, Judiciary Committee hearings often remind me of an old Far Side cartoon showing three cowboys on Main Street in the Old West. One cowboy lies sprawled on the dusty street, with a revolver lying next to his arm. The cowboy on the left stands with a smoking gun, staring at the fallen man, and saying: ''OK, stranger . . . What's the circumference of the Earth? . . . Who wrote the 'Odyssey' and the 'Iliad'? . . . What's the average rainfall of the Amazon Basin?'' The cowboy on the right stands stunned, with his hands to his face, saying, ''Bart, you fool! You can't shoot first and ask questions later!'' In a similar vein, Ambrose Bierce wrote that to nominate someone was to ''designate for the heaviest political assessment. To put forward a suitable person to incur the mudglobbing and deadcatting of the opposition.'' I often fear we do not give

our judicial nominees a fair chance before shooting them down.

The other side, before they heard one word out of Janice Rogers Brown's mouth, was already shooting her down; they didn't give her a chance.

I hope we can move past applying labels to the fine men and women who have volunteered to serve their country through judicial service. Our duty under the Constitution is to determine whether judicial nominees possess the experience, intelligence, and temperament needed for judicial service. Our constitutional responsibility is to judge whether judicial nominees are willing and able to place the rule of law above all other concerns in rendering justice. The Senate cannot fulfill its constitutional duty when a minority of Senators refuses to allow an up-or-down vote for the President's nominees. As it stands, a bipartisan majority of U.S. Senators stand ready to vote on and confirm each of these excellent nominees.

Mr. COLEMAN. Will the Senator yield for a question?

Mr. HATCH. Yes, I am happy to.

Mr. COLEMAN. A concern we have with nominees is they are competent and able to do justice and do the right thing. There are ways to measure that. I ask the chairman, is it true the three nominees we are debating have been rated qualified or well qualified by the American Bar Association? Is that an objective standard by which nominees can be rated?

Mr. HATCH. That is true. Remember, all throughout the Clinton administration, on all their nominees, our friends on the other side were saying if the ABA approves them with a qualified rating, then they deserve to have an up-or-down vote. When they have a well-qualified rating, the highest rating you can possibly have, then there is no question they deserve an up-or-down vote. Like the three cowboys in the street I talked about, they shoot them down before they even get a chance to have that vote up or down.

Mr. COLEMAN. Sometimes the people can rate judges, when judges are up for election. I ask, is it true Justice Owen was elected to the Texas Supreme Court by 83 percent of the vote in Texas?

Mr. HATCH. Absolutely true.

Mr. COLEMAN. Is it true Janice Rogers Brown was retained to serve by 76 percent of California voters?

Mr. HATCH. Yes. I might add Justice Owen, to get back to her, had 84 percent of the vote in the year 2000. That is the highest support of any State supreme court justice that year. Most every major newspaper in Texas endorsed her. Our colleagues on the other side say she is out of the mainstream. Give me a break.

In the case of Justice Brown, she won 76 percent of the vote. I think there were four, if I recall correctly, supreme court justices up for election. She won the highest vote of all of them in a State not known for conservative politics. Yet they have tried to paint her like she is some sort of a rightwing nut. Well, just look at NBC News. They made it pretty clear she is no rightwing nut. She is a very good person.

Mr. COLEMAN. I ask the chairman, sometimes judges can be graded by peers, folks who served with them, who know firsthand the quality of the work they do. Is it true Judge Kuhl has the support of over 100 California judges across the political spectrum?

Mr. HATCH. Yes, of both Democrats and Republicans. She is one of the most highly rated judges in California. She is outstanding. Frankly, these are Democrats saying she made one of the best judges on the Ninth Circuit Court of Appeals.

Mr. COLEMAN. I ask one last question. How is it the opponents of these nominees can claim these nominees are extreme or out of the mainstream, or not qualified?

Mr. HATCH. Well, I suppose the overwhelming majority in the most populated State, in the case of California, is out of the mainstream. I guess the overwhelming majority in one of the largest States in the Union, Texas, is out of the mainstream. You know, I suppose having the support of her fellow judges, in the case of Carolyn Kuhl, across the board, Democrats and Republicans, is out of the mainstream. According to these people over here—I will tell you who is out of the mainstream, it is these people over here who are filibustering judges for the first time in history and really endangering this process. It is ridiculous. It is wrong. I think the American people have to rise up and let them know it is wrong.

Mr. COLEMAN. I thank the Senator.

Mr. ALLARD. Will the Senator yield for a question?

Mr. HATCH. I am happy to.

Mr. ALLARD. I am a veterinarian by profession, and we have a code of ethics in our profession. I understand we are expected to abide by the code of ethics, and I understand the American Bar Association has a code of ethics for judges. My understanding is the code of ethics says you will not take a position, when you are in the process of seeking a position on the bench, that might prejudice your ability to decide a case. Every one of these individuals up for consideration is highly respected by their peers. I suspect it is because they are honorable and they live by the code of ethics.

I am disturbed by the specific questions that come from members of the committee when, in my view, it makes it difficult for the nominee to answer those questions because it would make it difficult for them to be objective in the way they look at a case that comes before them. I wonder if you would share with me about the code of ethics and the question on how is that practical, and do you have any reason to believe these are horrible individuals who would not measure up to the highest standards of the court, based on their peers who recommended them as highly well qualified?

Mr. HATCH. I have been on the Judiciary Committee for 27 years. I have to say I have not seen any better nominees in that whole time. As far as ethics, the only one the Democrats demanded an answer to every question—questions about future cases that will come before them—not the only one, but the main one, was Bill Pryor. The other one was Miguel Estrada. To make a long story short, it has been a very unfair process for these people. We have more than made the case that Miguel Estrada was treated completely different from John Roberts. Both of them served in the Solicitor General's Office. They asked these stupid questions about documents that are the most highly privileged documents in the Government today, and seven former Solicitors General said these cannot be given, and they used that as a phony excuse to shoot down Miguel Estrada, who is well qualified by the American Bar Association. When Bill Pryor answered all the questions, they said you answered too many questions. You are damned if you do, damned if you don't.

It is pretty clear, they just wanted to shoot these people down right from the beginning. To come out here and make such a fuss about jobs when they have been obstructive all year long is so phony that I have to admit, it almost brings tears to my eyes. Maybe it does bring some tears to my eyes because phony things tend to do that.

Mr. ALLARD. I thank the Senator for responding to my question. I have one other followup question. You mentioned jobs and it seems to me we have an efficiently operating judiciary. We don't have a lot of lawsuits that help the economy. That means we need to move out of filibuster and get these nominees voted up or down and get them on the bench, particularly in the circuit courts where we have a lot of pending cases. One of the best things I think we can do is to get these nominees on the bench and fulfilling their duties. Do you agree?

Mr. HATCH. I do. Sometimes the district courts are involved and that is why we need the circuit court of appeals. Yet this President is treated different than prior Presidents, including President Clinton. About two-thirds of the circuit court nominees haven't even had a vote. Usually by this time in a President's career about 90 percent have had a vote.

Ms. COLLINS. Will the distinguished Senator yield for a question?

Mr. HATCH. I am delighted to.

Ms. COLLINS. The Senator from Utah is an extraordinary lawyer, and he also has a distinguished history in the Senate and has served so ably as the chairman of the Senate Judiciary Committee. I wonder, given the Senator's breadth of experience, if he happens to know the origin of the word filibuster and could he enlighten the Members of this body and those who

are watching tonight as to its origin and meaning.

Mr. HATCH. I was hoping somebody would ask that. We have a chart prepared. They put it up. Filibuster comes from a Spanish word ''filibustero,'' meaning a pirating or hijacking, one word for obstruction. That is what it is. Look, I have no problem with filibusters on the legislative calendar because the Senate can set its own rules. But when it comes to the Executive Calendar, that calendar depends on your exercising restraint by advising and consenting, which means a simple majority vote up and down.

In the Clinton years, every Clinton nominee who came to the floor got a vote up or down. We did have a few who wanted to filibuster Clinton nominees. I personally stopped that because I recognized it would be disastrous for the Senate if we went down that road. As you can see, it is disastrous. We are in the middle of going down that road. We have already gone down it because our colleagues on the other side just don't seem to understand how important it is for them not to filibuster Federal judicial nominees. But I thank my colleague for bringing it up.

Ms. COLLINS. I thank the Senator for his clarification. That is indeed fascinating and we have learned a great deal here this evening.

Mr. SESSIONS. Will the Senator yield for a question?

Mr. HATCH. I will be happy to.

Mr. SESSIONS. Addressing the distinguished chairman of the Judiciary Committee, who has served so ably for so many years on these matters, I would like to follow up on that question that was just asked.

During your tenure as chairman of the Judiciary Committee when President Clinton was President, and he was nominating judges that sometimes would not have been our choice, or your choice for a judge, did you have occasion to express your opinion as to whether a filibuster was appropriate or not?

Mr. HATCH. As the Senator will recall, right in the middle of a couple of very controversial nominees, Judge Paez, now Judge Berzon, there were some on our side who legitimately felt they should filibuster both of those——

Mr. SESSIONS. I hate to interpret the Senator, but his microphone is distorting pretty badly. Maybe the cord is broken?

Mr. HATCH. Maybe I can bring it down here. Maybe it will work better here. I have it too close to my mouth. I am glad the Senator corrected that.

Judge Paez had been an activist judge in the eyes of many of our colleagues on the district courts out there in California. Marsha Berzon was one of the leading labor lawyers in the country. We had some who wanted to filibuster them. I stood up in caucus and said that is not going to happen. To his credit, the then majority leader TRENT LOTT stood up and said that is not going to happen.

We are both leading conservatives, but we knew that was a disastrous thing to do in this body because it would lead to animosities you could never quite—that would remain. It would lead to partisanship. It would violate the Constitution, it would violate the very advice and consent clause, the great power we have been given by the Founding Fathers.

Frankly, as the distinguished Senator has pointed out, I stood up and said that is not going to happen and it did not.

Did we have some cloture votes? Yes. But the cloture votes were to get to the nominee so we could vote. Every Clinton nominee who came to the floor, who was brought to the floor, got a vote up or down. Only one was defeated and that was Ronnie White, on a straight vote up or down. But every other one, all 377 of them, the second highest total in history, passed.

Did I agree with all those judges? You bet your life I didn't. But they were qualified. The fact I didn't agree with them ideologically was irrelevant. What is relevant is, Are they qualified? I certainly would not take away the opportunity of serving in the Federal Government for an otherwise qualified person just because I disagreed with that person on abortion or on any other issue, for that matter.

Mr. SESSIONS. Will the Senator yield for a further question?

Mr. HATCH. Yes, I yield.

Mr. SESSIONS. I remember that very well. I remember you speaking clearly that the filibuster was inappropriate. You both said it publicly and in the Republican conference when the issue was raised by people who did not have your experience in this matter. TRENT LOTT, the Republican leader in debate—I voted to end debate, TRENT LOTT voted to end debate, you voted to end debate and allow an up-or-down vote, and when that occurred I voted against the nominee. But I agree with your argument that a filibuster was not sound.

Let me ask you this. At that time, when Senator DASCHLE was the Democratic leader and Senator LEAHY was ranking member on the Judiciary Committee, did they take a public position that a filibuster of Clinton judges was not appropriate?

Mr. HATCH. Virtually every Democrat said it, took the position a filibuster should never take place. All they asked for was an up-or-down vote. That is all they wanted, if we would just be decent enough to give them an up-or-down vote. We did. We were decent enough.

What does that imply about what is going on on the other side? I will let the public draw their own conclusions. But we were decent. We did what was right. We gave them up-or-down votes. Frankly, what is going on here is just appalling.

Mr. SESSIONS. Let me follow up. Now that President Bush is in the White House and he is sending judges over, has your position on whether a filibuster is appropriate or not changed in any way?

Mr. HATCH. No, it has not, because a filibuster is inappropriate when it comes to judicial or even executive nominees, especially judicial nominees. Our ability to give advice and consent means if you don't like the nominee, vote against him or her. If you do, vote for them. But, above all, don't obstruct, which is exactly what they are doing here, obstruction, from the Spanish word, ''filibustero,'' meaning a pirating or hijacking. Just one more objection. Now we have six more objections, as of tomorrow—actually they require cloture votes to be filed on Janice Brown, and of course Carolyn Kuhl, so we now have six. I could name up to 17 they have threatened to filibuster and probably will.

To keep bringing that phony chart up here is an insult to everybody on this floor. It is an insult to everybody watching. It just shows they are void of any real arguments. To now try to change the nature of the debate to jobs, when they have obstructed all year long, is an insult.

Mr. SESSIONS. Will the Senator yield for one following question?

Mr. HATCH. I will be happy to.

Mr. SESSIONS. Senator HATCH, so it is clear to me, it is your position, the position of TRENT LOTT, has not changed as to whether a filibuster was appropriate, and neither has that of our majority leader, BILL FRIST?

Mr. HATCH. It has not changed. But their positions have changed.

Mr. SESSIONS. Let me ask you with regard to TOM DASCHLE, the Democratic leader, and Senator LEAHY, the ranking member on the Judiciary Committee, who argued so aggressively against filibusters just 2 or 3 years ago, has their position changed today? Are they, in fact, participating in an unprecedented procedure, an unprecedented filibuster of judicial nominees?

Mr. HATCH. No question. They were very forthright and very strong that there should never be filibusters of judicial nominees. Now all of a sudden when it is to their advantage, they think—I think it is to their great disadvantage. They lost the 2000 election in part because of the way they are treating judgeship nominees. I think they are going to lose a lot of standing in this country. The way they are treating southern nominees is abysmal, like Bill Pryor. Like Charles Pickering.

It doesn't take any brains at all to realize they just don't think these two able people are worthy of being on the bench when in fact they are more worthy than many of the nominees we approved for them in the 8 years of the Clinton administration.

Mr. SESSIONS. I thank the Senator for his leadership. I asked those questions because it was suggested last night in debate that somehow those on this side had changed our view. I think it is quite crystal clear the only views that have changed and only positions

that have been changed are those on the other side. Unfortunately, it has changed the historical principles of this Senate with regard to filibusters of nominees.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, will the chairman of the Judiciary Committee yield for a question?

Mr. HATCH. I will be happy to.

Mr. CRAIG. The chairman in earlier questioning by the Senator from Minnesota alluded to the fact that NBC News tonight featured as their lead story Janice Rogers Brown, Supreme Court justice from California. I am a freshman on the Judiciary Committee so I have not had the experience you have had, going through numerous years of confirmation hearings. But I must tell you I was so impressed with this woman's talent and her clarity in answering questions.

What is her background? What was her beginning, if you will? I think it is the great American story, I am told.

Mr. HATCH. She was born a sharecropper's daughter. This woman had it rough all the days of her life. She put herself through college and law school as a single mother. She has worked in State government now for I think it is 26 years. And they are trying to say she is against government? My gosh, she has worked there and been supportive for I think 26 years. She is one of the best nominees I have ever seen.

If we had done to three woman nominees what they are doing to these three—Priscilla Owen, who broke through the glass ceiling, getting women a right to be partners in law firms; Carolyn Kuhl has the support of 100 of her fellow judges out there, Democrats and Republicans; Janice Rogers Brown, sharecropper's daughter, has risen to the top of the heap, who has fought her way all her life—if we had done this to any of their nominees they would be screaming about it right up to today. It is unbelievable they are trying to do this on these three women nominees. They want a regimented liberal approach to everything, and if it is not there, then they are out of the mainstream, according to them.

I think most people in this country are in the middle and, I think, the middle or moderate conservative. But, be that as it may, these are competent, qualified, well-qualified women, and they are treating them like dirt. I don't understand it, myself.

Mr. CRAIG. Will the Senator yield for another question?

Mr. HATCH. I will be delighted to.

Mr. CRAIG. It was also mentioned in that questioning by the Senator from Minnesota that Justice Brown had received—I think your response was—74 or 76 percent of the vote of the State of California in a reconfirmation of her position. We have heard a great deal about judges who dissent too much. She was criticized by the Democrats for some of her speeches, that she was ''out of the mainstream,'' even though she received this phenomenal vote in California. Didn't Justice Brown write more majority opinions than any other justice in the Supreme Court of California—in the last term, I believe is what they are saying?

Mr. HATCH. Yes, the distinguished Senator makes a good point. She was elected by 76 percent of the vote. I would have to say, she wrote a majority of the majority opinions, and joined in some 73, if I recall correctly, unanimous opinions. In other words, she is not only in the mainstream, she is one of the best justices, State justices in the country. They are treating her like dirt. I don't understand that kind of treatment.

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

Mr. CRAIG. I thank the Senator for his answers to my questions.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. NELSON of Nebraska. Mr. President, I rise this evening to express what might be best described as my disappointment in what has occurred during the past 24 hours, now I understand perhaps another 12 hours. I ask we move the process forward.

Mr. HATCH. Will the Senator yield for a unanimous consent request? It will only take a few seconds.

UNANIMOUS CONSENT AGREEMENT

I ask unanimous consent at 8:30 a.m. on Friday the Senate begin an hour of debate equally divided prior to the first cloture vote; further, that the last 20 minutes be equally divided, the first 10 minutes under the control of the Democratic leader or his designee and the last 10 minutes under the control of the majority leader or his designee.

Mr. REID. No objection.

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

Mr. HATCH. I thank my colleague.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. NELSON of Nebraska. Mr. President, I rise tonight to express disappointment over what has happened over these past nearly 24 hours, or past 24 hours-plus, and perhaps another 12 hours. I just ask we move the process forward.

I would like to make very clear a few statistics I think are appropriate tonight. We have seen many statistics or many different versions of the same statistics over these past many hours. Tonight I would like to make very clear a few statistics with respect to my voting record on confirmation of judicial nominees, which is really based on the principles I hold as a Member of the Senate.

I voted to invoke cloture 13 times. That is a 100 percent voting record on judicial nominees. To date, I have never voted against invoking cloture on a judicial nominee, not one.

I have voted in favor of confirming all nominees except one, and I voted for cloture to move the process forward, even on a nominee I cannot support.

I have done all these things because I believe in moving the process forward. As Governor of Nebraska, I had the great privilege of appointing judges to the bench. I appointed the entire Nebraska Supreme Court and the entire Court of Appeals over my 8 years, and nearly 50 percent of the judges in Nebraska. I may not be good at it, but I have had a lot of experience.

I would hope we could move forward this process. If we cannot agree, then at least we ought to move on. What is happening right now during these hours of debate is not about moving the process forward. In fact, what is being accomplished seems to me to be just the opposite, setting us back. This debate has served only to further frustrate the work of this body, delayed action on critical legislation that must be addressed, and has further polarized the competing sides on these very controversial appointments.

The question I ask tonight is, Does using a tactic of delay to criticize and attack another tactic of delay cause you to make the point or lose the point?

To add further frustration to this matter, this delay occurred only after we were forced to choose between missing votes on Tuesday, Veterans Day, or cancelling the many obligations most of us made to our constituents to participate in events to honor veterans back home. The leadership basically decided having these hours of debate seemed to be more important than honoring those who fought and died while protecting the freedoms that under ordinary and normal circumstances are debated and defended in this very Chamber every day. By having votes on Veterans Day, I could not participate in that exercise, and I didn't appreciate having to choose between Nebraska veterans and votes on legislation before this body. Like others, I chose to be with my veterans. I missed two votes. I would do it again in a heartbeat.

But it is not only our veterans who were not given the consideration they deserve. It is also our seniors, who are anxiously awaiting a prescription drug benefit. What do I say to George and Lee back home when they ask me, ''Why haven't you been able to get a prescription drug benefit but the Senate could debate on other issues for 30-plus hours''?

It is those who suffer from mesothelioma who desperately await an asbestos reform bill. What do I say to a widow of a recently deceased judge in Nebraska who was waiting to collect money because of the bankruptcy of a particular company? She is unable to collect it, but would have the opportunity, under an asbestos reform proposal, to collect on behalf not only of herself, but on behalf of her young children.

I am just one of 100 in this great legislative body, and I am very honored to be here. Even though I am relatively new to the scene, I think it is very

clear each of us is entitled to his or her own opinion. I have to say some of us are moving the process forward. I find it difficult to explain to others why we cannot be independent in our thinking about judges. Someone might say there is not too much of a difference about this judge or that judge. That is what this process is all about. But when we can't come to an agreement about a particular judge and we can't move forward, we cannot delay in this situation, but we must in fact move on.

I oftentimes try to impress upon myself and my family and my friends and others that reasonable people can and will disagree. But when they are unable to agree, it is unreasonable to expect the process to come to a halt regardless of the rules, but it is important to go ahead and move on. I embrace that philosophy because I too would always like to have everything go my way. I would like to see every bill read exactly as I wish and every nominee be the one I choose. Instead, I do embrace that philosophy because I believe we can have those differences of opinion, hold different views on the issues, serve different constituencies from diverse regions of this great Nation, and we can, in spite of all that, and in many instances because of that, achieve progress in addressing the critical issues of our entire Nation.

I don't believe these hours of debate have helped us move closer to resolving our differences on these 4 nominees. In fact, I am afraid it has achieved just the opposite. I fear this exercise may have poisoned the well, leaving this body with such stark disagreements, and any progress on the issues that matter to my constituents—a prescription drug benefit, an energy policy, asbestos reform, welfare reform—and the bills that run the Government may not be now attainable.

Many Americans question the motives of both sides as this spectacle continues. I am not going to suggest a motive for all of this, but I can surmise a conclusion: These hours have been needlessly carved out while the critical issues remain unresolved. My constituents sent me here to get things done—not to pander, not to be a partisan, not to disrupt, delay, object, or deny, not to waste 30 minutes or 30 hours.

In the interest of moving forward, making progress, and doing good work for the American people, I urge my colleagues, not in any partisan way, to think long and hard about what is being orchestrated here for these hours and what the American public expects of us during the final days of the session—so we can deal with the prescription drug benefit, so we can deal with the energy needs, so those folks who are today worried about the cost of natural gas and the high cost of energy sources in the future know there is a solution in sight.

Drought relief: I can go back to Nebraska and say, Well, we couldn't get a drought bill. I guess it was OK that we debated 30 hours on other issues, but in fact when you are losing your family farm as a result of the continuing drought, that isn't probably going to sell.

Highway reauthorization: Many States today are waiting for the highway reauthorization so they can continue to build and improve their infrastructure, because that relates to jobs—jobs in construction, but also jobs because of the improved infrastructure.

Many States are worried today about FAA reauthorization. I have airports in smaller communities in Nebraska that are worried about being able to build and expand and improve their airports due to part of the reauthorization.

What do I say to them if that doesn't get accomplished? What do I say to those who are waiting for asbestos legislation? What do I say about class action? When are we going to get that accomplished?

When are we going to say enough is enough? If these 30 hours-plus that are now going into more hours had been used to debate health insurance, the full funding of special education, dealing with the Federal unfunded mandates, or some of us had worked previously on State fiscal relief, or in finding more ways to create jobs and improve the jobs and the markets we have today, looking for ways to make trade not only free but fair so we don't export jobs but we do import and export our products at the same time—if we had spent the time on that, then this time could have been productive.

In many ways perhaps there can be a catharsis as we move forward on finding new ways to deal with the judiciary. I have looked back and forth over the years looking at the role of the judiciary to see if there is anything anywhere that ever gives the judge the right to legislate or to make law. The one thing I made clear with every judicial candidate was: Are you going to be in the position of a judge or do you want to be a legislator? Are you going to legislate or are you going to adjudicate? The position of a judge is not to legislate. It is to interpret law, to apply law, and to adjudicate.

To win constituency groups in Presidential elections, the unfortunate thing for some time has been to say I am going to appoint judges to do certain things, to rule certain ways on the Supreme Court bench, to rule in certain ways on certain issues that will appeal to a constituency or to win constituency groups.

Sometimes I think we politicize the judiciary, and that is why we are where we are today. We need to move away from worrying about ideology, political philosophy, and to make sure judicial activism is not a part of what we do. If Presidential candidates say they are going to appoint Supreme Court judges not to be conservative or liberal, but those who will fairly apply the law and those who will do what they think is right under the law, not to make the law, then I think it is important. Politicians do keep promises. In the view of many, maybe not many promises. But politicians do keep promises when they say they will appoint judges of a certain kind. Then they are obligated to constituency groups to do that.

That is the root cause of our problem—moving away from ideology and political philosophy so we only deal with judges who come to the bench with the idea they are there to apply, to interpret the law, not to legislate, not to make the law. Until we do that, we are going to be hopelessly bogged down from time to time. But I am here to move the process forward. If the rest of us can't get together to move the process forward as a body, then we at least ought to move on.

Thank you, Mr. President. I yield the floor to my colleague from West Virginia.

The PRESIDING OFFICER. The Senator from West Virginia.

UNANIMOUS CONSENT REQUEST—S. 1853

Mr. ROCKEFELLER. Mr. President, I ask unanimous consent that the Senate proceed to legislative session and that the Finance Committee be discharged from further consideration of S. 1853, a bill to extend unemployment insurance benefits for displaced workers, the Senate proceed to its immediate consideration, the bill be read a third time and passed, and the motion to reconsider be laid upon the table.

Mr. CRAIG. Mr. President, reserving the right to object, I ask unanimous consent that the Senator modify his request so that just prior to proceeding as requested, the three cloture votes would be vitiated and the Senate would then immediately proceed to three consecutive votes on the confirmation of the nominations with no intervening action or debate.

Mr. ROCKEFELLER. The Senator from West Virginia will not do that.

Mr. CRAIG. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. ROCKEFELLER. Mr. President, I am extremely frustrated that the Senate continues this debate, or whatever it is. It is already more than a day. We are dealing with the nominations of a handful of judges. That is not trivial. I understand that. As a Senate, we have a responsibility to address the most urgent issues facing our Nation. Unemployment insurance for those who are unemployed, I think, happens to be one of them. Today we are, embarrassingly, failing to live up to that responsibility.

This morning I talked at some length about the crisis facing our Nation's manufacturing sector. I will not relent on that subject. As factories close down, people across this country are losing jobs, losing health care benefits and retirement benefits. As a country, we are losing the industrial base that is responsible for the greatness of this Nation.

Some of the statistics I mentioned this morning I am going to repeat.

Manufacturing employment is at a 41-year low, and more than 2½ million

manufacturing jobs have been lost in the last couple of years.

This morning I described legislation I introduced to address this manufacturing crisis. I happen to feel very strongly about that legislation. As I explained, the bill I crafted would offer relief to American manufacturers in three ways:

First, by lowering the effective corporate income tax rate by about 3 percent; second, by providing employers tax credit up to 75 percent to help cover the cost of health care coverage for retirees who had worked for that company; and, third, by strengthening our trade protection laws. There is a plan I laid out to help stem the terrible flow of manufacturing jobs from the United States overseas. I recognize other Senators have different ideas about the best way to help our Nation's manufacturing companies compete. I welcome the vigorous debate. I believe we ought to leave no stone unturned when looking for a solution to this crisis which is so vital to so many of our people. That is why, frankly, I am so frustrated and disappointed we are going through this 30-hour charade.

On the 1st of October, the Senate Finance Committee, on which I am proud to serve, approved legislation known as the JOBS Act. That stands for ''Jumpstart Our Business Strengths.'' The legislation enjoyed broad bipartisan support in the Senate Finance Committee and passed out of it. But 6 weeks later it is still awaiting action by the full Senate.

I do not necessarily agree with every provision of that bill, but that did not happen to be important to me because it represents a serious effort to help America's factories and the people who work in those factories. I care about those people. I represent those people and I will fight for those people.

The more important provision of the bill reduces the corporate tax rate, much the same as my own legislation would do. Unfortunately no debate has been scheduled for this important legislation. Some seem to believe we will not have time to consider the legislation before adjourning this year. That is tragic for the people who are not working. This Presiding Officer faces that in his own State, the State of Illinois.

I cannot understand that thinking. How can we possibly have 30 hours to air our grievances about judicial nominees when we all know exactly what the result is going to be? There is no time to debate a way to protect American factory jobs. I could pick on many other subjects and would be happy to do so, but I pick one subject tonight.

I believe if the Senate took up the JOBS Act, we could have a thoughtful, constructive debate and we could pass it. In fact, as I look about the Senate floor, I see the Senator from Nebraska, the Senator from Maine, and the Senator from West Virginia, and the last time we were on the floor together, we passed a bill which spread out to the States $16 billion of Medicaid assistance which they desperately needed—two Democrats and a Republican. It could have been two Republicans and one Democrat. It makes no difference. We got the job done. The bill passed, and the States benefited from it.

But what are we doing now? We are talking. We could pass legislation on all kinds of things. I would ask all of my colleagues to think for a minute about the Americans who right now as we speak are hard at work on the evening shift in factories around the country. They are making everything from cars to contact lenses. Many of these factory jobs are exhausting. They require concentration and heavy lifting. They cause injuries. They require concentration. When Americans are toiling away in our factories right now, we cannot help but be inspired ourselves to concentrate and to do some heavy lifting of our own. We must work hard and do our jobs. It is our job as Senators to look at the serious policies that make our country work or work less well. People having a job and putting food on the table is a very major part of that.

Much to my dismay, we are not engaged today in serious debate about ways to create and maintain jobs in America. That is the subject of discussion in my State. We are not a wealthy State. We are a good State. Our people are as good or better than anybody in any other State. I fight for then. But they need work. Instead, our factories continue to struggle and are forced to shut down. Millions of Americans are out of work. Because so many of our factories are leaving the country, it is more and more difficult for Americans to find new jobs.

People always think when you lose a job, you can get another job. There was a day when that was true. That is no longer true. Indeed, economic experts have concluded the vast majority of job losses suffered in the last few years are permanent, are not replaceable. Factories are closed and will not reopen.

Let me take a moment to discuss the economic situation in my own State of West Virginia. Our steel industry has been struggling to recover from years of unfair and illegal competition against steel that was dumped on our markets and sold in America at below the cost that it cost to produce it in the country it came from—dumped steel, illegal steel, breaking our national law.

What was once our State's largest employer, Weirton Steel, recently announced it will cut an additional 800 jobs. I can remember when 13,000 people worked at that company. If President Bush backs down on the steel tariffs, of course, it will hurt the industry just as it is poised to recover. Ending the tariffs early will cost many more Americans jobs and at a time we know that new factories are not being opened in steel. We have to protect those steel jobs we have. I mean ''protect'' in the best sense of the word by using the American law and by being faithful to our own conscience.

Employment in the coal fields is also affected. The coal industry has long supplied our steel industry with the finest quality coal in the world. That has continued to decline. There are not many coal miners left anymore in West Virginia. Indeed, the manufacturing base all over my State continues to shrink drastically, and, as it diminishes, so do jobs with good wages and good benefits. That is the American dream.

In the southern coal fields, two other established prominent manufacturers—EIMCO, a Norwegian company that manufacturers mining equipment, and the Dean Company, with which I spent most of my life, a maker of wood veneers—are closed; they went overseas.

The past year has brought the closing of two long-time manufacturers in north-central West Virginia, the Clarksburg Casket and Glassworks Company. In the Mid-Ohio Valley in Parkersburg, two long-time manufacturers, Johns Manvillle and Ames True Temper, closed plants. Just 3 weeks ago, it was announced another 50-year-old plant was scheduled to close in Parkersburg, putting almost 200 workers at Schott Scientific Glass out of work. Their jobs went overseas.

In the Kanawha Valley where this Senator lives, two well-established chemical companies are closing, Flexys in Nitro and FMC in South Charleston. These closings mean hundreds of jobs lost.

Where are these workers supposed to turn? Their average age may be 45 to 55. What are they meant to do? Take up computer sciences? Biochemistry, physics? They can't do that. There is no place for them to go. There are no replacement jobs. Some of them take temporary jobs where they don't get benefits and try as best as they can to work with their families.

I was extremely pleased at the recent news of the strong economic growth in the third quarter of this year in this country. This does not translate into new jobs in West Virginia. New jobs is what we look at. People do not feed their families and do not pay their mortgages with news of strong economic growth. They need paychecks. It comes from jobs.

This Congress has not done enough to protect the paychecks of hard-working Americans. We have failed to stem the flow of jobs overseas, a subject about which I could speak for 6 hours. We have not done enough to provide temporary assistance to workers who have lost their jobs. Currently, 9 million Americans are unemployed and almost 2 million Americans have been unemployed for more than 6 months. In West Virginia, almost 42,000 workers are facing the holidays without a job.

Today, the Senate ought to be addressing the needs of these workers. Therefore, I am pleased to be a cosponsor of legislation introduced by Senator KENNEDY that would extend the

unemployment compensation for those Americans of which I speak who are still struggling to find work in our so-called jobless economic recovery.

As factory after factory closes its doors, or freezes hiring, workers are unable to find new jobs. They are running out of unemployment benefits at an alarming rate. As many as 80,000 workers per week are expected to exhaust their unemployment compensation in December itself. Senator KENNEDY's bill would continue Federal unemployment benefits for an additional 6 months. The legislation would also provide 33 weeks of additional Federal benefits in States with especially high unemployment rates.

This bill provides crucial assistance for long-term unemployed workers. There are more than 1 million workers who have already exhausted their extended benefits but have not been able to find a new job.

Let me be clear. Men and women in West Virginia and across the country would rather have a paycheck than an unemployment check. We all know that. However, the jobs are not available. The choice is not theirs. They have families to feed. The Federal Unemployment Insurance Program was specifically created to help workers when the economy suffers prolonged downturns. Workers have paid into the unemployment compensation fund and they deserve to collect benefits from the fund during such a weak jobless recovery.

Currently, the unemployment insurance trust funds have $20 billion sitting in a bank. The benefits outlined in Senator KENNEDY's bill would cost $16 billion. To me it is unconscionable to leave the funds in the bank when they are needed by workers during hard times. Moreover, by making additional unemployment benefits available, Congress will also obviously be helping our economy.

I am afraid that the charade we are engaged in at the moment is a lose-lose proposition for the American people. I do not diminish the importance of judges, but I do not diminish the importance of unemployed workers whose self-esteem is destroyed and whose skills are ready to be put to work. It does nothing to help 9 million Americans who have already lost their jobs to have this debate. It does nothing to protect the jobs and factories that are currently struggling to compete to have this debate. I would also suggest that it hampers the ability of Senators to come together to address the urgent business of the Nation because of the nature of this debate.

There is certainly no shortage of important business before the Senate. We need to pass a prescription drug bill, and there are many other issues I could discuss.

I will end with simply this thought: I love America. I love my State of West Virginia. I love its people. I know they need to be well represented by judges. But I also know they have to work or else it probably doesn't make much difference to them.

What I am talking about tonight, what I talked about this morning is the ability for Americans to have jobs, to hold jobs and, if they lose them, to get unemployment insurance.

I yield the floor.

The PRESIDING OFFICER (Mr. ENZI). Who yields time for the majority?

Mr. HATCH. Mr. President, I appreciate our colleague's comments about the necessity of jobs. I agree with him. We are debating the third branch of Government, without which there wouldn't be any jobs for anybody, without which the Constitution wouldn't be alive today, without which we wouldn't have the freedoms we have.

In all this talk about jobs, I haven't heard any real ideas as to how we get more jobs. It is as though they think Republicans aren't concerned about jobs. Of course, we are. We are debating something that is equally important; in fact, over the long run, much more important than almost anything else we can debate. That is, are we going to have an honest, decent judiciary to uphold the Constitution?

I have seen this body and the other body pass unconstitutional legislation many times in my 27 years. I have seen Presidents act unconstitutionally a number of times in my 27 years, and before that. It has been the judiciary that has saved the Constitution. It has been the judiciary that has corrected matters. It has been the judiciary that has helped small business, where the jobs are. It has been the judiciary that has given justice to this country, that has protected Americans from criminals, that has done so much good for this country. That doesn't mean all judges are perfect or right. But by and large, it has worked very well. That is why we make these positions lifetime appointments, so they don't owe anything to anybody but the law.

Here we have a distortion for the first time in history, filibustering judges and phony, untrue charts of 168 to 4. Let me tell you, they wouldn't have allowed the 168 to go through had we not been fighting as hard as we could and forcing them to allow those judgeships to be brought up. We would have nowhere near 168.

With regard to the four, we are already up to six. We were there last night. We were there months ago when they indicated they were going to filibuster Janice Rogers Brown and Kuhl, in addition to the other four who have been mentioned. Then there are probably at least 13 others who I can name. There will be more, because there is an arrogance here, it seems to me, that goes beyond doing what is right for this country.

Very few things rise to the dignity of the importance of judges and getting a good Federal judiciary. I am for jobs like everybody else, but because they don't have any other arguments, that is why they are doing that.

I would be happy to listen to my colleagues on any suggestions they have with regard to jobs. Usually it is another big Federal program that literally doesn't create any jobs. It just creates another burden for taxpayers. That is what they think creates jobs.

I am happy to yield to the distinguished Senator from Virginia.

Mr. WARNER. I listened carefully as our distinguished chairman was referring to other nominees who have been acted upon by the distinguished members of the Senate Judiciary Committee. I have been studying extensively the very impressive record of achievement of a number of these individuals who are awaiting action on the floor.

You mentioned Justice Janice Rogers Brown, a distinguished jurist of 25 years on the California Supreme Court. The record shows that she was born to very proud parents but ones of modest means. Sharecropping was their profession.

This distinguished, hard-working young person worked her way through college, worked her way through law school, and has now served the people of California for a quarter of a century, including the last 7 years as a California Supreme Court justice. That is remarkable.

Further, we heard that she was elected or reelected to the California Supreme Court. I think the chairman should explain the distinction between our Supreme Court, which is subject to the process we have been discussing these several days. But in a number of States, they do have a State election. All of us in this Chamber are here by virtue of the support of people in elections. But how many of us have been elected to the Senate with 76 percent? I don't think my distinguished junior colleague from the State of Virginia got that.

Mr. ALLEN. Far from it.

Mr. WARNER. Well, I was pretty close to it, I mention to the Senator. But I don't claim 76 percent. That is quite a record. We have heard that she has ruled for the plaintiffs in many civil rights and consumer protection cases. She is supported by her colleagues in California, those who know her best.

But could the distinguished chairman advise the Senate with regard to his opinion with respect to the nomination as it is hopefully brought before the whole Senate?

Mr. HATCH. Well, of course, she is subject to the same advice-and-consent rule of article II, section 2 of the Constitution, as are all of these Federal judges. But she deserves the dignity of an up-or-down vote.

The senior Senator has brought out she is an African-American woman who has come from nowhere, in a sense, a sharecropper's daughter, to being a justice on the California Supreme Court.

Mr. WARNER. That is a dream of millions of students all across this country, to have that opportunity to

come up through our system, to gain their degrees, to take their place in society, to stand for the cause of freedom in this great country, and some few do manage to get on the judiciary of the States. I know that Presidents look to the jurists in States, because they have a proven record, to select them for the Federal judiciary.

Mr. HATCH. That is right.

Mr. WARNER. I do hope this distinguished nominee will fare well and be treated with fairness when that name is brought before the Senate.

Mr. HATCH. I appreciate my dear colleague. But we will find out tomorrow that the other side is going to vote against cloture. They are filibustering this terrific African-American woman justice who has made it on her own throughout life, who wrote most of the majority opinions in the California State Supreme Court while joining unanimously with others in over seven cases just last year.

They have tried to paint her as though she is out of the mainstream. I would like to suggest who is out of the mainstream. It is a high percentage of those on the other side of the aisle who think that only the left has any ideas in this country. Because she is a conservative black woman and she is not monolithically in step with what they think black people ought to be, they are against her. If we did that to one of their nominees, the whole world would come down on us.

Mr. WARNER. She is proud of her African-American heritage. I hope the Senate gives her fair treatment.

Mr. HATCH. I do, too. I hope the Senator is right. But from what I have seen here, she is going to be filibustered right along with the rest of them.

I recognize the distinguished Senator from Virginia, and then I will come to the distinguished Senator from North Carolina.

Mr. ALLEN. Mr. President, following up on my esteemed colleague from Virginia's comments and observations on Justice Janice Rogers Brown, she is the first African-American woman to serve on the California Supreme Court, having come from segregated schools in the South, worked her way up.

I find it very interesting that the following quote was made a few years ago: Whether it is Hispanic or non-Hispanic, African American or non-African American, woman or man, it is wrong not to have a vote on the Senate floor. What are they afraid of? What are they afraid of? What is wrong with a vote?

Tomorrow the person who made that statement on October 28, 1999, Senator TOM DASCHLE, Democratic leader, is going to lead a filibuster against Justice Janice Rogers Brown.

Mr. HATCH. That is my understanding.

Mr. ALLEN. Clearly, a prior inconsistent statement showing duplicity. I would ask, when you referred to some of their arguments that she is out of the mainstream, I was looking at the record from the hearings. I understand Justice Brown was criticized for a single ruling she made on a parental consent case. We have parental consent laws in Virginia. The vast majority of people, even some who consider themselves pro-choice, recognize that if an unwed minor daughter is going through the trauma of an abortion, that at least the mother or father ought to be notified, ought to be involved, because it is a medical procedure that even for ear piercing or tonsils being taken out, you need consent. So for something as traumatic as the surgery of abortion, which is physical obviously, but also something that is emotional, parents should know when their 17, 16, 15-year-old daughter is going through such a procedure.

She is being criticized for that. I don't find that, at least from Virginia standards, or if the Senator could share with us, do you consider that out of the mainstream? From what I can see from surveys, 80 percent-plus of all Americans, regardless of the color of their skin or their ethnicity or gender, think parents ought to be involved when their unwed minor daughter is contemplating such a procedure.

Mr. HATCH. Well, the Senator raises a good point. But not according to that side. It is out of the mainstream. Just think about it. The Senator is correct. Eighty-two percent of the people are for parental notification laws. Challenging the reasonableness of parental notification statutes lies somewhere between hard and impossible. That is why an overwhelming majority of Americans support those laws, including the parents of Holly Patterson. Holly was a young girl who died 7 days after taking RU–486, the abortion drug.

Her father learned about her abortion just hours before her tragic death. If there was a parental notification statute, Holly might still be alive today.

Parents do have some rights here. Most people acknowledge that. But that is one of the big reasons why our friends on the other side are against all three of these women nominees, I suppose. If there had been a parental notification statute, young Holly would be alive today.

It is ridiculous to criticize these two fine nominees for their opinions upholding parental notification statutes. Justice Brown's opinion on the parental consent statute is well within the legal mainstream. The U.S. Supreme Court has routinely found notification statutes constitutional.

So the Senator has raised a very important point. But that is considered out of the mainstream by our colleagues. Again, we know who is out of the mainstream. It certainly isn't Janice Rogers Brown.

I will just point to the side that is out of the mainstream. Yet they are trying to make everybody march in unison, in accordance with their liberal plan for America. That is not right. I turn to the distinguished Senator from North Carolina.

Mrs. DOLE. Mr. President, will the distinguished Senator yield for a question?

Mr. HATCH. I would be delighted.

Mrs. DOLE. I have heard that the Senate minority leader called Priscilla Owen unqualified. Yet I understand Justice Owen attended Baylor University and Baylor University Law School, graduating cum laude from both institutions. I understand that she finished third in her law school class and earned the highest score on the Texas bar exam. And she accomplished these remarkable achievements at a time when women were a distinct minority in the legal profession.

Isn't it true that 15 past presidents of the Texas State bar, both Democrats and Republicans who hold a variety of views on important legal and social issues, agree that Justice Owen is an outstanding nominee and should be confirmed as a Federal judge?

Mr. HATCH. Absolutely true. By the way, one of the arguments that the side across the aisle from us is out of the mainstream again is over parental consent, a dissent that she had written, upholding the finder of fact in the lower court. The majority just ignored those facts and overruled the right of parents to consult with their daughter before the daughter had an abortion.

She is not out of the mainstream. Guess who is out of the mainstream? I thank the Senator.

Mrs. DOLE. Senator, is it not the case that former Texas Supreme Court Justices John Hill, Jack Hightower, and Raul Gonzalez, all Democrats, say Justice Owen is unbiased and restrained in her decisionmaking?

Mr. HATCH. That is correct. These are people who know her or who have worked with Justice Owen on the Texas Supreme Court. They are all Democrats. They are all partisan Democrats, by the way. They think she would make a fine judge on the circuit court of appeals.

Mrs. DOLE. As I understand it, some of our Democratic colleagues oppose Justice Owen because she is too pro-business, her opinions are results-oriented. Didn't the leading tort law professor, Victor Schwartz, look at Justice Owen's opinions and find those opinions, those characterizations of the opinions to be untrue?

Mr. HATCH. Victor Schwartz is one of the law professors who wrote the book on torts. He is one of the most distinguished legal thinkers in the country. In fact, Professor Schwartz wrote:

> Any characterization of Justice Owens as pro-plaintiff or pro-defendant is untrue.

But we are getting used to that. The reason they are all talking about jobs, it is a political reason, of course. They are trying to get people to not pay attention to this debate. But the reason they are talking about jobs is because they don't have a good argument against Priscilla Owen, nor do they have one against Janice Rogers Brown, nor do they have a good argument

against Carolyn Kuhl. And three outstanding women who, if we treated three of their women justices like that or nominees like that, all hell would break loose.

In all honesty, Professor Schwartz said that just isn't true.

Ms. LANDRIEU. Parliamentary inquiry.

The PRESIDING OFFICER. Does the Senator from Utah yield?

Mr. HATCH. Not yet, I yield to the distinguished Senator from Texas.

Mrs. HUTCHISON. To follow along with what the distinguished Senator from North Carolina was saying, Justice Priscilla Owen, a personal friend of mine who I have known for years, isn't it true that she was endorsed by every newspaper in Texas when she ran for reelection to the Supreme Court of Texas, every single one?

Mr. HATCH. The distinguished Senator from Texas knows that is true. That is not easy in the State of Texas. There are some very liberal newspapers down there that scrutinized every aspect of her life.

Mrs. HUTCHISON. It was really phenomenal. In fact, isn't it true that she got the highest number of votes of any person running for the supreme court that year?

Mr. HATCH. No question about it. She is a terrific person.

Mrs. HUTCHISON. I heard one of my colleagues on the other side of the aisle say: There are not enough hours in the universe that would be sufficient for debating Justice Owen's nomination. I thought that was very interesting because, the fact is, if we had 1 more minute of debate, it wouldn't matter, because she already has a majority vote in the Senate. Isn't that true?

Mr. HATCH. That is true. In fact, all three of them do.

Mrs. HUTCHISON. If she has the majority vote on the floor of the Senate, and the Constitution says that advise and consent is not a supermajority, that is what it implies because it didn't ask for a supermajority, then why isn't she sitting on the Fifth Circuit bench right now?

Mr. HATCH. Well, I think it is because she is not a liberal. That seems to be the only mainstream the other side is interested in. I cannot say she is all that conservative either. But the fact of the matter is, she is not a liberal Democrat. Here is a woman who has every credential in the world, as the Senator from Texas pointed out, who broke through the glass ceiling for women so women can now become partners in law firms, when that was tough to do. Here is a woman who has fought every day of her life to excel, who has excelled. Yet look how she is being treated, like she is ''outside of the mainstream.''

Since they don't have any real legal arguments, any real philosophical arguments—they don't have any real arguments, and that is why we are getting a filibuster on one of the best nominees I have seen. By the way, she got the highest rating from the not-conservative American Bar Association, which during the Clinton years was called the gold standard. If you got a ''qualified'' from the ABA and you were a Clinton nominee, that meant you were OK, you were in the mainstream.

Here is a woman with a ''well qualified,'' the highest rating from the ABA, and they are trying to say she is outside of the mainstream. That is just another misuse of terms because they don't have a real argument against her.

Mrs. HUTCHISON. You know, the distinguished Senator from North Carolina is a graduate of Harvard Law School. She went through when it was very tough. I am a graduate of the University of Texas Law School, and there were five women in my class of 500. So we know what it is like to go through those hard times and graduate from law school. Frankly, we would have a hard time finding a job.

Priscilla Owen went through that. She has known the tough times. She has known herself to be superior. That is why I appreciate the Senator from North Carolina talking about my friend, Justice Owen, and why I am standing up for her today, because I know what she has been through. She has come out on top. She has come out on top in everything she has done, and she would have gotten a majority vote on the floor of the Senate. She deserves to be sitting on the Fifth Circuit today.

I will ask this final question. Why in the world would the Senate put a blemish on the record of a woman who has high moral standards, who has faced the electorate and won overwhelmingly, who has been endorsed by every newspaper in Texas, and got the highest number of votes the year she ran? Why would the Senate keep her from getting the appointment she is so qualified for?

Mr. HATCH. I cannot see a good reason. It is a mystery to me why our Democratic colleagues refuse an up-or-down vote. Like the distinguished Senator from Texas said—and I really admire the Senator from Texas, who is a lawyer, from the University of Texas, and the Senator from North Carolina, Senator DOLE, who is a lawyer, who graduated from Harvard Law School. I think the other side ought to be listening to the two of you, especially with regard to an eminent woman jurist named Priscilla Owen, and another jurist named Janice Rogers Brown, and another one named Carolyn Kuhl.

To make a long story short, if they don't like these nominees, then vote them down. The reason they are stopping them is because all three of them have a majority of the Senate willing to vote for them. They are flying in the face of the advise and consent clause, refusing to give them the dignity of an up-or-down vote. I think women across this country ought to be outraged by it—liberal women, moderate women, and conservative women. It is a slap in the face to every one of them, the way these three women are being treated by the other side. I have heard for 27 years how much greater they are for women. Don't believe it. If they were, they would not be arguing against these wonderful women nominees. Don't believe that for one second. It is all politics.

The only reason they are talking about jobs, in all honesty, is because they don't have the arguments against these eminent women lawyers and judges. It is pathetic.

Mrs. HUTCHISON. I thank the Senator from Utah.

Mr. HATCH. How much time is left?

The PRESIDING OFFICER. There are 6 minutes 15 seconds.

Mr. CRAPO. Will the Senator respond to a question?

Mr. HATCH. I surely will.

Mr. CRAPO. The Senator from Utah spent time responding to questions about the nominees we are going to vote on tomorrow. I note those who oppose this vote often bring up a chart that says 168 to 4, noting they have only filibustered 4 judges in this Congress. I think it is important to point out, though, that number 4 is the first time in the history of this country, in the history of the Senate, a filibuster has been sustained against a judicial nominee of the President of the United States.

I think it should be clarified to the American people that the fact we are now seeing a filibuster sustained against nominees of the President turns the Constitution on its head and begins a very dangerous precedent with regard to how the nominees for the judicial branch are treated by this Senate.

Mr. HATCH. No question about it. That 168 to 4 doesn't even begin to tell the story, because if it had been up to our colleagues on the other side, there would not be 168. We had to fight for every one of those people, and we had to fight hard fights. We had to force them to vote. They cannot vote against everybody. So there is not just four. We have already got six. We had to file cloture on Carolyn Kuhl and Janice Rogers Brown, which will be up tomorrow. I can name probably another 11 they are going to filibuster. So that is a blatant, outright lie.

Mr. CRAPO. Would the Senator from Utah tell us how many of the nominees of President Clinton to the bench were filibustered during his Presidency?

Mr. HATCH. Not one. Our side would not permit that because of the detriment to the Senate, the detriment to the Federal judiciary, the detriment to the Constitution, the detriment to just good reasoning. We didn't filibuster one.

Mr. CRAPO. Isn't it also true that out of the last 11 Presidents—and I think we used 11 Presidents because it was 1949 when the filibuster became possible—not one of their nominees, until today, until this Congress, not one of the President's nominees has

been successfully filibustered in the Senate of the United States because of the understanding of the fact that the Constitution gives the President the right to a vote?

Mr. HATCH. That is right. Once they hit the floor, they have had a vote up or down. And 377 Clinton judges are serving in the Federal judiciary today because we had the decency to give them the dignity of votes up or down—something not being accorded our nominees.

Mr. CRAPO. It is my understanding that 2,300 nominations have come to the floor since the filibuster was possible.

Mr. HATCH. It is 2,372.

Mr. CRAPO. Zero were filibustered this year, and this year four have been successfully filibustered, and what is it, five, six, or seven more are scheduled to be filibustered?

Mr. HATCH. That is right. Actually, it is more than that. We have two more tomorrow. That gets us up to six. Then probably there are another 11 I can name. I won't take the time to do that now. There hasn't been one filibuster by us. There have been cloture votes, but they were used for time management purposes to get us to a vote. In every case, the Clinton nominee got voted up, except for one.

Mr. CRAPO. I thank the chairman. I think it is important to look at this and understand what this debate is about and why we are giving it this time, to focus on the threat to the Constitution that is being posed by the treatment of judicial nominations in this Congress. I thank the Senator.

Mr. HATCH. I thank my colleague. The real number, for the past 11 Presidents of judicial nominees confirmed versus the filibustering they are doing, is 2,372 that were confirmed. None were filibustered, until President Bush became President. He is being treated wrongfully. It is unfair to him, unfair to these nominees. I like what the Senator said earlier. I think he said we gave a fair trial to 2,372—actually 168. We gave a fair trial to them and with regard to the four, we just hung them. That kind of shows in that one sense it is great to give a fair trial, but we are not giving a fair trial to these four. They are arguing it is all right for four because it is only four. Well, it is not all right if people are hung without a fair trial. They are certainly not getting a fair trial.

Mrs. HUTCHISON. Mr. President, will the Senator yield for a question?

Mr. HATCH. I surely will.

Mrs. HUTCHISON. I think in hearing the debate, the most egregious misrepresentation I have heard is about Judge Carolyn Kuhl and a case she had, where there was a woman who was being examined who had breast cancer, and there was someone in the room who was not a doctor, a person from a pharmaceutical company. It was said she callously let the pharmaceutical company be dropped from the case. Isn't it true, though, there was also an action against the doctor who was negligent, and she kept the lawsuit alive so that woman could have a recovery?

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

Mr. HATCH. I ask unanimous consent for 30 more seconds.

Ms. LANDRIEU. I object.

Mr. HATCH. Let me just say that it is true.

Ms. LANDRIEU. I object. I know the distinguished chairman has been on the floor for a while making some truly offensive statements to colleagues on this side of the aisle that, in my opinion, are beneath the dignity of the committee on which he serves as chair. I ask the chairman if he recognizes the number on this chart. Could he state for the record what it is.

Mr. HATCH. I don't recognize the number. However, I do recognize the argument.

Ms. LANDRIEU. The Senator from Utah——

Mr. HATCH. Let me answer the question, if I may.

Ms. LANDRIEU. The distinguished Senator from Utah has answered the question.

Mr. HATCH. May I please finish?

Ms. LANDRIEU. He has answered my question. He said he didn't know what the number was. I would like to explain to him and to the other Members.

Mr. HATCH. Will the Senator yield?

Ms. LANDRIEU. No, I will not. The number is 98 percent——

The PRESIDING OFFICER. Senators will address other Senators through the Chair.

Ms. LANDRIEU. The number the distinguished Senator from Utah did not recognize—I don't know why he would not recognize it since he is chairman of the committee, but he says he doesn't recognize it. The number is 98. Ninety-eight percent of the judges that were sent to this Senate by President Bush we have approved—98 percent. There are not many people in America, not white people, or black people, or Spanish people, or women, or men, who think the Senate should approve 100 percent of any President's nominees. It is beyond the realm of reason, particularly a President who did not win the popular vote.

Earlier in the debate, the chairman, who also doesn't recognize this number, this 98 percent, also fails to recognize the numbers in the last election. The numbers of the last election were Bush 50,456,169; Gore 50,996,116. So 500,000 more people voted for Vice President Gore in the popular vote than President Bush. He won by a handful of electoral votes in Florida, and we know that. The Court decided it. I am not complaining about it, but numbers are important. Let me tell you another number——

Mr. SESSIONS. Will the Senator yield for a question?

Ms. LANDRIEU. I will not.

Mr. REID. Regular order.

Ms. LANDRIEU. I will not yield for a question.

Another number is 63. I want the public who is watching this—and I think a lot of people are watching this, and I am glad because this is what the next election is going to be about, and I am very excited to help lead this fight. Sixty-three nominees were blocked. It wasn't an open filibuster. It wasn't debated in the open, like tonight where there are no secrets and we can all speak about what we believe. This was done in secret, and not by many Senators who represent millions of people, but maybe by one Senator who just decided he or she didn't like the nominee, and so they would not sign the slip.

The chairman of the committee reigns over this. He understands this number 63. They didn't even have the decency of getting a vote or a hearing in committee because the chairman from Utah had a system in place that blocked them.

Mr. HATCH. Will the Senator yield?

Ms. LANDRIEU. No, I will not yield.

Mr. HATCH. I have a question.

Mr. REID. Regular order, Mr. President.

Mr. HATCH. I object to that, Mr. President.

Mr. REID. How rude that is.

The PRESIDING OFFICER. The Senator from Louisiana has the floor.

Ms. LANDRIEU. Thank you, Mr. President. I will not yield the floor, and we are not going to yield this point.

Technically, the majority is correct that there has not been a technical filibuster successfully completed. But there have been filibusters on this floor that have been tried, but they weren't strong enough to stand up to them because their arguments weren't strong enough. The only way a filibuster can survive is if the arguments and the truth is strong enough to stand up to lies. That is the only way a filibuster survives. That is why this filibuster survives, because the truth is always stronger than a lie.

This 63 people never could come out of committee. I am not even going to go into that. I am going to talk about something else.

How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 24½ minutes.

Ms. LANDRIEU. Good. I am going to take every one of them.

I want to tell the Republican majority something quite simple. This country, no matter your best efforts, will not be divided. No matter your vicious rhetoric about Protestants and Catholics and blacks and whites and Hispanics and women, we refuse to be divided. In a time of war, which we are in, when the country is under assault and we have men and women dying in Iraq, it is the height of disrespect and un-Americanism to come to this great floor and talk about the pettiness and say this woman Senator, who has spent 25 years in public office, and every woman who has ever served, that there is something wrong if I don't want a woman as a judge or I don't want African Americans to be here.

The Senator from Utah must forget where I am from. I would like to remind him where I am from. I am going to fight for Louisiana. In the 63 years before Rosa Parks decided to sit down in her seat because her feet were so tired she could not move, a man named Homer Plessy decided he would get on a rail car that was entitled ''whites only.'' He got on it in New Orleans, my hometown. He rode on the train and he knew he would be arrested. But a group of lawyers, African-American free men of color, had decided that he would be the right one. Why? Because he was white enough to pass, to get on the train, and black enough to be arrested. And that is exactly what happened.

Forty years before the Civil Rights Act, Plessy rode that train and the great movement began to free people who had been slaves for 300 years.

I have to sit in the Senate Chamber and listen to the Republican majority argue that, in the whole country, they can't find a better African-American woman than this Janice Rogers Brown to serve on the bench, to hold up Rosa Parks, to honor the work of Louis Martinet, and to honor the memory of Plessy. The only person they can find to serve on the bench is a woman who says—and I want to read what she says so the people in this country can just decide for themselves. Don't listen to all the technical parts. I am just going to read to you what the woman said and you decide for yourself if you think this is mainstream or not:

> Some things are apparent. When government moves in, community retreats, civil society disintegrates, and our ability to control our own destiny atrophies. The result is families under siege, war in the streets, the precipitous decline of the rule of law, the rapid rise of corruption, the loss of civility and the triumph of deceit. The result is a debased, debauched culture which finds moral depravity entertaining and virtue contemptible.

What do you think Rosa Parks thought when the Federal judge came down to Alabama and government intruded and said: Lady, you don't have to suffer anymore. You think that Rosa Parks thought that government was bad?

Let me go on to say what this mainstream woman thinks of all the grandparents in the United States.

> My grandparents' generation thought being on the Government dole was disgraceful, a blight on the family honor. Today's senior citizens blithely cannibalize their grandchildren, because they have a right to get as much ''free stuff'' as the political system will permit them to extract.

Excuse me, but on behalf of all the grandparents I represent, this is an insult to every single one of them who raised their children, and then when some of their children got into trouble, raise the grandchildren and the great-grandchildren on their Social Security paychecks of $672 a month, which the Republican side refuses to raise, and a minimum wage which is $5.50, which they won't raise, and you are asking me to put a woman on the court that insults the grandparents of Louisiana? Take your dossier and go somewhere else.

Now, if these people are in the mainstream, then I don't know what mainstream we are talking about, because it is not mainstream in Louisiana. That is what this debate is about.

The Senate Democrats didn't want to have this filibuster. We are made to have this filibuster because the Republicans on that side think they can divide the country and split us up and cause trouble. I will tell you what people at home want. We are in a war. They want us to be united and fight together. But they have us fighting against Catholic, Protestant, rich, poor, young and old. It is a disgrace, and it is not the Democrats fault. It is the Republican majority.

I will just say this. I know the men and women who serve over there and individually they are fine. But, boy, collectively they can sure get themselves up into a lather. The country deserves better. The people want better.

We have an Energy bill to pass; we have appropriations bills to pass; I have 400,000 veterans in my State who are looking for help, and they turn on the television to see the chairman from Utah saying something about the women in the Senate don't want women on the bench, and we don't want Hispanics on the bench, and we don't want African Americans on the bench? Whoever heard of such ridiculousness?

I beg this body, let's stay on the facts. The facts are that we have approved 98 percent of President Bush's nominees. We have rejected people such as Janice Rogers Brown, and no matter how many times they bring her up, she will be rejected because she makes statements like this that are an insult. She is not going anywhere. We will vote on her 100 times. She will never get on the bench. Whether or not we have a vote on her, she is not going to get on the bench.

Let me say I just made a call—how much more time do I have?

The PRESIDING OFFICER. The Senator has 16½ minutes.

Ms. LANDRIEU. Good.

I just made a call to the National Bar Association, which is the most distinguished group of African-American lawyers in the country. I am sure maybe there are smaller groups that other people might think are, but this is the most well thought of group of lawyers. This group of lawyers, more than almost any other group, would surely know the history of the civil rights movement. They would surely understand the characters and people I have talked about, and all the stories and all the drama. You would think that President Bush, who ran on compassionate conservatism, and the Republicans who keep saying we are reaching out to African Americans—we want to reach out to African Americans, we want to go and put African Americans on the bench—you would think that sometime in the last 3 years they would have called the National Bar Association, or the President would have called the National Bar Association and said: Look, I'm a conservative. You all probably are more liberal as a group, although there are probably some conservative members. Why don't you give me a recommendation, knowing that I can't support a real liberal judge. But if you work with me we could get some really good African Americans on the bench that are highly qualified, that the Democratic majority would like. I would feel happy about that. We are in a war. It would be really important for us to unite our country.

Do you think he ever consulted with them? No. The President, this White House, or the Republican leadership never called the National Bar Association, which is the most prestigious group of African-American lawyers, to just ask them. Is there any conservative judge, moderate conservative judge you all would think would be good that I could appoint?

This is not about doing what is right. This is about winning elections and ginning up the far right in the wings. I understand that. It has been done before. But not during a war. Not when people are dying. It is just not right.

So we could stay on the floor all night, all tomorrow, all next week, but I tell you the people in this country are going to have enough of it pretty soon because they don't believe this is right. They can tell when something is not moving in the right direction.

I will end with this. No matter how hard the Republican majority tries to divide us, we will not be divided. We are going to stand united. We are going to speak the truth. We will debate in the open why these nominees do not deserve to sit on the bench and why we will filibuster these nominees.

We will continue to do that until the people decide in the next election what kind of America they want. In my heart I believe they want an America that is united, not divided.

I see my colleague from New Jersey is here. We have a few moments left. I thank him for his patience.

Mr. CORZINE. I thank the Senator from Louisiana. I think you have spoken brilliantly tonight, about the idea of trying to divide us over something that is basically a disingenuous issue to start with.

You talk about the 98 percent. Over the last 24 hours, we have seen this 168 to 4 over and over. No one could speak more eloquently about the facts; 98 percent is a hell of a number.

Ninety-five percent of judicial positions in this country are filled. When President Clinton left office and President Bush took office, it was at 75 percent. The reason was because those 63 that the Senator from Louisiana was talking about never got a hearing, never got a chance to get a vote in committee, never got reported to the Senate to get voted on. Sixty-three

judges were blocked. It is a different technique under the rules of committees as opposed to here on the floor, no committees, no votes, no reports—63 qualified judges, at least in the opinion of the then-President, never had a chance to fill that void, and 25 percent of seats went unfilled. Now 95 percent are filled.

When there is cooperation—I can tell you there has been cooperation in New Jersey. We have had five district court judges and a circuit court judge, we worked with the White House and the Judiciary Committee, and it has worked very smoothly. It can work if we reach out and work with each other, which we have to do in this society if we are going to get good things done—not by dividing us.

You know, it strikes me that we spent a lot of time talking about four judges or six judges. One of those 63 judges—by the way, who couldn't get a hearing, it went on for a year and a half—is now the dean of the Harvard Law School. It is hard to understand how he wasn't qualified to be considered for the bench but is qualified to be the dean of the Harvard Law School.

By the way, this shows it in a pictorial sense. This is the list of 63. This is the 4. It is very clear.

I want to dwell on something else. The real issue is not 4 people who are not being approved on this Senate floor. The real issue are the 3 million people who have lost jobs since 2000, the 9 million Americans who do not have a job, the 2½ million Americans who have lost manufacturing jobs, and the real agony we have in the country because we are not creating jobs fast enough in this country.

We have gone fast enough to get 98 percent of the judicial positions filled, but we have not gone fast enough to take care of the 3 million Americans and the 9 million unemployed and the 2.5 million manufacturing jobs lost.

I think we have our priorities wrong. We have been debating 4 people while there are 9 million Americans out of work. We have been doing that now going on 24, 26 hours. We are going to go on some more.

Americans know what impacts their lives: their ability to take care of their kids, their families, their grandparents, their future. They are interested in having a job. Jobs count. We are talking about 4 while 9 million are missing in action in our debates on the floor of the Senate.

I think it is disingenuous. I think it is clearly staged. I think we are off on the wrong target.

I point out today I went through some of the press reports that came out over the AP wire today. The U.S. trade deficit grew to $41.3 billion in September—$41.3 billion. We are going to have a $500 billion current account deficit in this country, and what we are going to have, more importantly, is a deficit in manufacturing jobs because they are all going overseas. We ought to have a debate here about economic policy that puts Americans to work—a $41.3 billion trade deficit this month. It is going to be $500 billion for the year.

We have had discussions in committee—which, by the way, we had to cancel all our committee meetings—about whether we have the proper trade policies, the proper positioning with China where we are losing jobs right and left across the manufacturing sector. We had the biggest trade deficit with China we have ever had in the month of September.

Why are we talking about 4 jobs when we are losing millions of jobs, 2½ million jobs, because we have an economic policy that is out of kilter with the needs of the American people?

If that is not enough, the poverty rate has grown 1 percent in this country in the last 3 years. That is about 1.7 million people. We have seen the uninsured in America, those without health insurance, go up a little over 2 million. We are having no discussion on issues that impact people's lives who are watching this debate. We want to have real debates that make a real difference in people's lives. We ought to be talking about these jobs. We ought to be talking about health insurance. We ought to be talking about that trade deficit, ripping out the heart of middle-class America's jobs.

I don't understand why we have our priorities on 4 people when we have a 98-percent positive ratio of confirming judges. It doesn't make sense, particularly when we can argue about whether they are mainstream or they have made the kinds of statements the Senator from Louisiana quoted from one of those individuals who is going to be considered tomorrow for confirmation. It doesn't make sense.

There are all kinds of things we could be doing right now. We could be raising the minimum wage. That would improve the lives of about 4 million Americans. We could pass a transportation bill that would create, by almost every estimate about 1 million jobs. It is lingering in committee. We don't want to talk about it on the floor, but it is a million jobs. It builds America; it invests in our future.

We could talk about increasing investment in higher education or maybe do something about making sure we don't take 8 million Americans away from having the opportunity to make overtime pay so they can operate and live in this community of America in a more secure way.

Then, the greatest tragedy, in the last 13 days we have had 42 Americans killed in Iraq. We have changing policies. We have generals in Iraq saying we are not living in the real world. We are not talking about it as if it is a war. General Sanchez today said we are not walking away from using the word; we are going to win this battle—no, we are going to win this war because the people back in Washington need a dose of realism in their debates about this issue.

Then we have a meeting to discuss the intelligence report that was leaked by someone with regard to what is happening on the ground in Iraq, and nobody shows up because we are debating 4 judges.

It strikes me we have our priorities wrong in this country when we are talking about 4 judges when we have 9 million people unemployed, when we have lost 2.5 million manufacturing jobs, when we have 2 million people losing their health insurance. We have a tie-up on the prescription drug benefit bill and the Energy bill and we can't get these bills out. We have generals in Iraq saying we don't have a realistic view of what is going on in the debates we have here in Washington. There are real issues that matter to real people across this country, in the millions—in the millions, not 4—not when 168 are approved and 4 are not.

I don't know where our priorities are when we turn our attention to such an issue when there are real debates about whether they fit into the mainstream or not, whether we ought to have a real debate. By the way, other people used other techniques at another time when it was convenient to do it. It is disingenuous to say, use the rules of the Senate which are authorized under the Constitution. I hear all this ''unconstitutional'' view. That is not unconstitutional. We should change the rules if we don't like the rules of the Senate, just the same way that we can change the rules in committees.

It is not sensible that we are not putting our priorities on the loss of jobs and taking care of the American people in the way they expect us to—to debate and put in the time and effort.

This whole debate, which has now gone on for 26 or 27 hours, should be about jobs—not 4 but 9 million. It should be about the important issues that impact people's lives, the people who are uninsured, the people who haven't had an increase in the minimum wage in 7 years—7 years. We can't get a vote on that. We can't get a vote on the Transportation bill that would create a million jobs. There are all kinds of things we can't get votes on around here because people don't want to have them. They use the rules for those purposes.

Four out of 172, 98 percent have gotten votes. It is very hard to see how we have our priorities straight in this area tonight and have had properly placed priorities for the last 26 or 27 hours.

I hope we can get focused on something other than 4 jobs. We should get focused on the 3 million people who have lost them, the 9 million people who don't have jobs. We ought to be talking about extending unemployment benefits to the 80,000 people a day who are going to lose those in another 30 days when we are not in session.

It is incredible—our priorities. It is incredible. I believe as much as anyone else that we ought to cooperate. We have in many, many places. That is how we got 168 judges approved. That is how we got to a 95-percent fill ratio on the number of judges' slots that have

been filled. But we have major problems with employment and the economics of this country. It is time we get our priorities straight.

I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Utah.

Mr. HATCH. Mr. President, it has been a good debate. But I have noticed the folks on the other side of the aisle want to shut down the debate on judges because they don't have an argument. Jobs is where it seems their only argument is, and more Federal Government programs. In fact, they don't even have very good arguments there. It is ''increase the minimum wage.'' I am not sure it will create jobs. And ''re-up insurance,'' which certainly doesn't create more jobs.

On the other hand, I am not saying they are not compassionate. They are decent people wanting to do those things. But when you do not have any arguments against the judges we are talking about, then you change the subject. That is exactly what they have done.

If the distinguished Senator from Louisiana were here, I would ask her why she took the number 129 because, of course, that is a number of confirmed judges that were left off her chart. We have had distortions of the facts. We have had distortions of the statistics. You can prove anything with statistics if you want to manipulate them. There are 129 judges left off that chart she was showing. We confirmed 377 Clinton judges—not 248. If you want to be factual, be factual. Don't distort the facts.

I was a little surprised that now at the 29th hour of debate an awful lot of Democrats come on the floor without any arguments that are really valid against these nominees we are talking about. They are changing the subject because their arguments don't hold water.

As for Democrat claims that they have been blocking only the most extreme Bush judicial nominees, let us look at the facts.

Priscilla Owen won 84 percent of the vote in her last election for the Texas Supreme Court. Bill Pryor won 58 percent in his last election for the Alabama attorney general's position. Janice Rogers Brown won 76 percent in her last election for the California Supreme Court. And Charles Pickering was confirmed to the Federal district court in 1998 by this body by unanimous vote. Yet he has been treated like dirt. You wonder why people in the South are getting sick of it.

By the way, the unanimous consent vote included the support of 24 of the Democrats currently in the Senate, 23 of whom now refuse to give him the dignity of an up-or-down vote. Why? Because they know he would be confirmed.

These nominees are hardly extremists as painted by the other side who claim that is what they are talking about. Give me a break.

Let us look at this a little differently. What is more extreme? Receiving 84 percent of the votes in Texas, the second most populous State in the Nation, as Judge Priscilla Owen did in her last election? They are filibustering a qualified nominee for the Fifth Circuit for the first time in American history. That is what they are doing, without any real arguments against her. They don't have any. They do not have the facts on their side so they change the subject.

I think jobs are important. I will tell you, there will not be any jobs in this country if we lose our freedoms because we don't have the Federal courts staffed by competent and decent judges.

Mr. COLEMAN. Mr. President, will the Senator yield for a question?

Mr. HATCH. I would be happy to yield.

Mr. COLEMAN. I listened to the Senator from Louisiana. She was talking about filibusters. I was glad to hear her say unequivocally that it was a filibuster. We will filibuster these nominees. There is no question.

Mr. HATCH. We are not going to let these people through.

Mr. COLEMAN. She also said, I believe the only way filibusters survive is the truth—truth. I have only been in this body for less than a year. I know there is history in this body. The history is not always the greatest history when it comes to filibusters. There were attempts on the floor of this Senate to make sure that minorities didn't have certain rights; that minorities had poll taxes; that anti-lynching laws were filibustered. I have a chart here that talks about filibusters.

I ask the distinguished chairman whether under F.D.R. civil rights was filibustered; under Truman, civil rights was filibustered; under L.B.J. civil rights was filibustered.

Again, would it be the Senator's belief that necessary laws that were filibustered is something to be ashamed of and they were not the truth; filibusters were not the truth; the attempts to provide civil rights and opportunities for Americans for good things and they were filibustered, and filibustered was not the truth?

Mr. HATCH. Absolutely right. In every case it was Democrats who led the filibuster. In every case, including this one. It is not the truth.

Janice Rogers Brown, 76 percent of the vote, State of California Supreme Court; Priscilla Owen, 84 percent; William Pryor, 59 percent of the vote.

What is more extreme, receiving 76 percent of the vote in California, the most populous State in the Nation, as Janice Rogers Brown did in her last election to the California Supreme Court—filibustering a brilliant nominee to the DC Circuit, the Nation's second highest court? If Justice Brown is so extreme and leftwing, California voters certainly would have recalled her, but they didn't. Three-quarters of them voted to keep her on the bench.

By the way, the late Justice Stanley Mosk on the California Supreme Court was the California Supreme Court's well-known liberal voice for decades. In that same election, she got 76 percent. He only got 68 percent of the vote in the last retention election.

Does anyone want to guess whether the Senate Democrats would call him more extreme than Justice Brown in left-leaning California if he were up for the District of Columbia Court? Of course not. He would be in the mainstream.

Once more, extreme—receiving 59 percent of the votes in Alabama, as Bill Pryor did in his 2002 election to the office of attorney general of that State. They are filibustering a nominee with broad bipartisan support across the Eleventh Circuit for a judicial emergency vacancy on that appellate court. In each of these cases, these unprecedented filibusters of qualified nominees to the appellate courts are undoubtedly extreme.

There is extreme action by our colleagues on the other side. There is nothing else you could call it. It is demeaning to this body. I don't care how excited someone gets on the other side. Sooner or later they run out of arguments and start talking about jobs because they have to change the subject and hopefully get the American people off of the importance of putting people on the Federal bench.

The Senator brings up a very important point. Every one of those unjust filibusters was conducted by Democrats. It was the Republicans who basically pushed through the civil rights law, along with some good Democrats as well. I want to make sure credit is given on both sides.

The fact is, the leaders of those filibusters were Democrats. But in this case, 168 to 4, virtually all Democrats—not all. I know one or two who do not believe filibustering should be done to the judges. But all the rest of them are leading this unjust filibuster.

Mr. BROWNBACK. Will the distinguished chairman yield for a question?

Mr. HATCH. Yes, I would.

Mr. BROWNBACK. I want to follow up on a question by my colleague from Minnesota. I think this is the point. He points out that you have a couple of filibusters on major issues to change the country. The issues that were filibustered ultimately got through, and I believe these judges will ultimately get through when the public gets the RECORD and has a chance to read it. These issues were things that were changing the country—when you talk about the law, civil rights laws, things that were being brought forth. Isn't that what is really being addressed here today? We are not talking about 4 judges or 29 who are being blocked on circuit courts. This is really about a group trying to block a certain set of individuals who may, as some say, have deeply held beliefs being on the Federal bench and trying to purge that set of philosophies or thoughts from the Federal bench. Isn't this a much bigger

issue than the appointees? Those law changes were bigger than filibustering one law. This is about the impact on all of society, on a whole culture.

Mr. HATCH. That is right. Frankly, yes. It is as important as these four and tomorrow's six. Next week, who knows how many nominees are being filibustered. It is demeaning to the Senate. It is detrimental to the country. It is detrimental to the judiciary. It is unfair to the President. It is unfair to these qualified nominees who have been rated so highly by the ABA—their gold standard, by the way, during the Clinton years. If you got a qualified rating from the ABA, that is all you needed, you should be confirmed. We did confirm 377 of them, the second highest total number of confirmations in the history of this country—Bill Clinton's judges. We did it because we were fair. We didn't filibuster those judges. Every one of them got a vote. It was 377 to 0. We didn't filibuster them.

For all I have heard from the other side—I heard some of the emotional remarks—I was the one, along with Senator LOTT, who made sure we didn't filibuster their nominees. I don't think they are in a position to criticize me.

By the way, in the past, there were 11 Presidents' judicial nominees confirmed versus those who were filibustered, the past 11 is when the filibuster rule came into being in the current filibuster rule. We can go all the way back to the beginning of this country 214 years ago. We have never had a filibuster before these folks on the other side have been doing it this year, 2,372 judges have been confirmed to zero filibustered.

The history of the successful Senate filibuster, from July 4, 1789, to March 6, 2003, there is no question about the successful or unsuccessful because there were not any until March 6, 2003. March 2, to the present, we have had four so far as successful filibusters. We are apparently going to have two more tomorrow even though all six of these folks would win an up-or-down vote in the Senate.

One of the Senators said we are going to vote on these judges tomorrow. No, we are not going to vote on the judges. We will be voting granting the right to vote on these judges. Since only 41 Senators are necessary on this side to stop us from granting that right for these judges to have an up-or-down vote, there will be six of them tomorrow. I suppose when we go down the line there will be as many at 17.

Let me make a couple of other points that I think are important. Look at three of the President's nominees who have been accused by the Democrats of being out of the mainstream. They don't look to me like outside the mainstream. They have received overwhelming support in each of their home States. Apparently, these are not only a majority of the Members of the Senate outside the mainstream who support them but a vast majority of the citizens of California, Texas, and Alabama are all outside the mainstream, too, I guess.

Democrats seem very fond of their 268-to-4 chart and believe this number 168 of President Bush's judges who have been confirmed since he took office will distract people from the important fact that the Democrats have filibustered four appellate nominees, Miguel Estrada, Priscilla Owen, William Pryor, Charles Pickering, and now Janice Rogers Brown and Carolyn Kuhl for the first time in American history.

The point is that no raw number of confirmations means anything in and of itself while these unprecedented filibusters continue. While the number of filibusters as of today stands at four, Senate Democrats are virtually certain to add others to the list, including Janice Rogers Brown nominated to the District of Columbia Circuit and Judge Carolyn Kuhl nominated to the Ninth Circuit. That makes a total of six.

There are other filibuster targets on the horizon, a Fourth Circuit nominee Claude Allen and Terrence Boyle, North Carolina District Court nominee, James Dever and Bob Conrad. They are also potential for filibuster. These are just some of them who we have already been told will be filibustered.

That figure is extremely misleading, all the while more vacancies in our Federal courts continue to be classified as judicial emergencies.

Mr. SESSIONS. Mr. President, will the Senator yield for a question?

Mr. HATCH. I would be happy to yield.

Mr. SESSIONS. I notice the Senator, when this 98-percent chart was put up the Senator didn't recognize it and neither did I. Isn't it true that the President has nominated some 200 judges and 160 or so have been—and the idea that the 98 percent of his nominations have been confirmed is certainly not accurate; is it?

Mr. HATCH. The President has nominated 209 judges; 168 have been approved. So 20 percent of his nominations have not made it.

Mr. SESSIONS. I do not know where the eight came from.

Mr. HATCH. I don't know. I knew what the distinguished Senator from Louisiana was driving at. Again, a distortion of the facts.

Mr. SESSIONS. I ask another question: They show a chart that says 168 to 4. Is that the 4 they were filibustering last week or is that the 4 who have been held hostage? What 4 are they talking about? There are well over 10 nominees who are being actively filibustered or obstructed at this point.

Mr. HATCH. That is right.

Mr. SESSIONS. I do not know how that chart comes about, either.

Mr. HATCH. This chart is just the beginning of what they intend to do to the Federal judiciary. Democrats have also implied that it is just fine to prevent an up-or-down vote on at least these four nominees because we blocked 60 or so of President Clinton's nominees. That is extremely misleading. I think their number is 63.

Let me briefly break that down. First, 18 of those nominees were withdrawn by Clinton himself—18 of them. Second, 25 of these nominees were either nominated after the August 2000 recess, do not have home-State support because the Clinton administration did not consult at all with the relevant Senators, or there were confidential investigative reasons that prevented the nominations from moving forward. At most, there were about two Clinton nominees who the Republican Senate did not confirm.

The numbers are even more stark. If you look at the difference between 168 and 209, you can see that it is about the same. The numbers are even more stark when you compare the number of nominees left hanging at the end of the first Bush administration by Senate Democrats with the number of Clinton nominees awaiting confirmation at the end of the Clinton administration.

Let me refer to this chart. There were 54 judicial nominations not confirmed at the end of Bush 1. That is when the Democrats controlled the Senate. Fifty-four of the first President Bush's nominees were unconfirmed at the end of 1992.

In contrast, at the end of the Clinton administration, only 41 nominees remained unconfirmed. But 9 of those were put up so late there was no way we could have confirmed them. There were really only 32.

At almost the end of the Presidencies you have that or more who just can't get through the system. Looking at that, according to the Senate Democrats, they don't even deserve the dignity of an up-or-down vote. Contrast this with the prior 3 Presidents' confirmations for their first 11 circuit nominees.

In every case, less than 100 days, Senate Democrats in the 107th and 108th Congress have been the most obstructionist of the President's judicial nominees in recent U.S. history. It is that simple. Confirmation times for the first 11 circuit nominees, Reagan-Bush, it was one. George Bush, look at how much that has gone up, and it is growing. This President is not being treated fairly. Neither are his nominees.

Furthermore, there are more Federal appellate vacancies today, 18, during President Bush's third year in office, than there were at the end of former President Clinton's second year in office, where there were 15. Over half of President Bush's appeals court nominees in this Congress have not been confirmed. There are 41 total vacancies on the Federal district and appellate benches, 22 of which are classified as judicial emergencies by the nonpartisan Administrative Office of U.S. Courts. A staggering 67 percent of the vacant appeals court slots are judicial emergencies.

There is a different scorecard that I find more significant. That is the 377 to

zero. President Clinton, with 6 years of a Republican Senate after 1994, had 377 of his judicial nominees confirmed without a single filibuster by Republicans, even though Republicans had to swallow hard on a lot of them. Only President Reagan, with 382, had more of his judges confirmed, 5 more than President Clinton. But Reagan had 6 years of a Republican Senate to help him. Clinton only had 2 years of a Democrat Senate. Yet he came out with almost the same number as Ronald Reagan. He was treated fairly. Clinton is No. 2 in U.S. history, even though his opposition controlled the Senate for 75 percent of his term.

Just to give you a sense of how unprecedented Democrat current filibusters are, here is another scorecard we have talked about: 2,372 judges have been confirmed in the last 11 Presidents and zero were filibustered. The 11 Presidents that precede the current President Bush, back to President Franklin Delano Roosevelt, never had a judicial nominee filibustered and had 2,372 nominees confirmed. So these filibusters are empirically unprecedented.

How about this scorecard? Years since the Judiciary Act in 1789 that we have gone without filibustering judges until this President. Since the beginning of the year, beginning with Miguel Estrada, there have been four, and there will no doubt be two more tomorrow. How many more? Up 10 percent, 15, 17? Up to 10 percent as Senator SCHUMER suggested last week in the Judiciary Committee? If there is some filibuster percentage the Democrats have in mind, what is it? The majority of the Senate and President Bush would really like to know. I think the American people would really like to know, too.

One final word on the Democrat scorecard. Even one filibuster of a judicial nominee is too many, because every judicial nominee who reaches the Senate floor should be afforded the dignity of an up-or-down vote. We owe our third branch of government no less. By way of analogy, would it be acceptable to enforce all but four of our criminal laws? Would it be acceptable to defend all but four of the constitutional amendments that comprise the Bill of Rights? Of course not. It is no more acceptable to allow up-or-down votes on all but four and counting of the President's judicial nominees. Vote them up or vote them down. But just vote. That is all we are asking.

The Democrats have a right to consent. They have a right to advise. If they don't want to give their consent, then they have a right to vote against any of these nominees. That I will find no fault with. I might disagree, but they have a right to do that. What they don't have a right to do is to subvert the Constitution for the first time in history and allow 41 Senators to prevent an up-or-down vote of these judicial nominees.

The distinguished Senator from Minnesota, with his chart on the terribly wrong filibusters, brought out a very good point. I don't want to compare rankings or anything, but this one is just as important as the others because without a good Federal judiciary, our civil rights would not be enforced. Explain the chart one more time, because I think people need to hear it. But in all four of those, those filibusters were conducted by Democrats, and every one of them was wrong, especially this 168 to 4 we are going through right now, but especially the other three as well.

Mr. COLEMAN. Will the Senator yield for a question?

Mr. HATCH. I am happy to yield.

Mr. COLEMAN. Again, I listened to the words of my friend from Louisiana, where she made the comment that the only way a filibuster survives is if it is the truth.

I was reflecting on the history of filibusters. I read about it when I was a young man. Certainly preceding my youth, going back to the times of Harry Truman and FDR, unfortunately, there is a terrible history in this body of opposing efforts to provide civil rights opportunities, opposing efforts to ensure that there were antilynching statutes, opposing efforts to get rid of things like the poll tax. This is a sad part of the history of this body. I ask the distinguished chairman, who has a much better sense of history than I, is it true the tool that was used to oppose those efforts, oppose good things, the tool was the filibuster, and the filibuster did not represent the truth? Would that be a fair statement?

Mr. HATCH. The Senator is absolutely correct. Here we have a situation where we have a terrific African-American justice on the California Supreme Court who won 76 percent of the vote, who came from nowhere to somewhere, who fought her way throughout life to be what she is, who has ruled in favor of plaintiffs, civil rights claimants, the poor, the disadvantaged throughout her career, who is being treated in this shabby fashion with a filibuster.

Mr. COLEMAN. Would it be the truth in regard to these nominees, in regard to Owens and Kuhl and Pickering and Estrada, who we haven't talked about, that in each and every case the measures of their competence, be it the bar association, the gold standard my colleagues across the aisle have talked about for so long, be it the recommendations of their colleagues, other judges with whom they have worked, be it the recommendations of the voters when they put themselves up for a vote—in each and every case, they received the highest recommendation; that is the truth, is it not?

Mr. HATCH. That is right. And let me just say this: Filibusters are not the only means the Democrats are using to obstruct. During the 3 years of the Bush administration, the Senate has taken 108 rollcall votes on judicial nominees at Democrats' insistence. Eighty-seven percent of these votes have been unanimous, 87 percent, calling into question why we needed these rollcall votes at all. Contrast that to 8 years of the Clinton administration during which the Senate took only 46 rollcall votes out of 377 judges, only 39 percent of which were unanimous. Couldn't we have been passing appropriations bills or creating jobs instead of wasting the time on unanimous votes?

Look at this chart. Clinton, 18 votes, 2.25 average votes per year, 486 minutes were consumed, 8.1 hours, 61 average minutes per year; Bush, 104 votes, 34.7 average votes, these are unanimous rollcall votes, 34.7 average votes per year, 2,808 minutes were consumed, 46.8 hours, 939 average minutes per year. In this body that is delay, obstruction, complete shutdown of the body while we have these votes everybody knows will be unanimous. It is just another illustration of how far they have gone to obstruct on these judges.

Finally, who is wasting time? Unanimous rollcall votes on judges, compare Clinton; we didn't require rollcall votes on unanimously to-be-approved judges. Look what they have done to the Bush administration. This President is being treated very unfairly.

When you hear them talking about jobs, look, I am as interested in jobs, and so is every other Republican, as they are. The only reason jobs is coming up is because they know they can't handle the criticisms that are coming their way for the way they are treating these judicial nominees. They just can't. They can distort the facts. They can distort the statistics. They can distort the record. But they really can't justify what they are doing.

Again, go back to your chart, the distinguished Senator from Minnesota. Every one of those unjust filibusters that took away rights from people and kept people enslaved to a large degree, every one was led by Democrats.

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

The Senator from New York.

Mr. SCHUMER. Mr. President, I yield myself 15 minutes and the remaining 15 minutes to my colleague from New Jersey.

I have enjoyed these debates. I said at the very beginning these debates would be good for our side. They have proven to be. One little chart here, this chart seems to be under all of my colleagues' skin because they are debating it and coming with up with their own numbers, et cetera. But let me tell you, this one chart has won this debate. You can come up with as many others as you want, and tonight what have we debated, why 168 to 4 is not true? That is what the other side has said.

I said at the beginning of this debate this would help us. Because this one chart was equal to 30 hours of palaver. To my good friend from Utah, he is a good man. He is my friend. But do you know what he just said? Rollcall votes are a form of obstructionism. I would just like my colleagues to have recalled the words of my good friend

from Utah: Rollcall votes are obstructionist.

My goodness. What are we called on to do here if not vote. And letting people know how you voted, isn't that the whole mark of democracy?

I realize my colleagues on the other side of the aisle are frustrated, and so they have had to come up with all kinds of sophistic arguments. But this one tops the cake. The fact Democrats have asked for rollcall votes on judges is a means of obstructing. Maybe we should just, when the President nominates somebody, not have a hearing and not have asked questions and not have any votes and just let the President appoint all the judges. Next we will be hearing from my colleagues on the other side of the aisle that is what the Founding Fathers really wanted.

Again, to all of those who are listening, I hope there are a few left, 168 to 4. That fact is immutable, unchangeable, irrefutable. The reason it has such resonance is because the other side fails to mention it. Whether it be our colleagues when they speak, whether it be the rightwing radio shows when they say we are obstructing all of the President's judges or most of the President's judges, whether it be the editorial pages that try to kneecap us, 168 to 4, 168 to 4, 168 to 4. Don't forget it. There is no judiciary in crisis. There is no obstructionism.

There are some judges—whether they be Black, Hispanic, women, Catholic, Jewish, Muslim, Baptist, southern, northern, eastern, western—who are so far out of the mainstream that they should not be on the bench, and we are upholding the Constitution by doing that.

Now the arguments of my good friend from Minnesota, these charts, are getting to the point of ridiculous. They are what logicians and lawyers would call ''outcome determinative.'' We want an outcome so we put together numbers. Successful filibusters. I ask my colleagues, if a filibuster is against the Constitution, why is an unsuccessful anymore unconstitutional than a successful filibuster? Why is a filibuster of an executive branch nominee any different than a filibuster of a judicial nominee?

Do you know what the other side is saying? We are just going to take judges in green shoes and give you the numbers on those and not judges in pink shoes or purple shoes.

They are differences that don't make a difference. What we are talking about here, again very simply, is how many judges have come before this Chamber and how many have been approved. One hundred sixty-eight to four. No denying it. No refuting it. No getting around it. The truth hurts because the American people know—30 hours, I guess now it is 39 hours, you can debate this for 390 hours, 3,900 hours, 39,000 hours, and all your words are not equal to 168 to 4.

For those who watched this debate, this has been elucidating, because what the hard right and their allies tried to spread throughout America is, we were holding up all the judges, most of the judges, a judiciary in crisis, a huge number of vacancies. My colleagues, do you know what answers all of that hyperbolic falsity? One hundred sixty-eight to four.

We are going to keep that chart up. I realized when I first put the chart up, one of my colleagues objected. I understand it gets under your skin. I understand it pulls the rug out from the argument.

Now, do you want to talk about judges rejected? Do you want to talk about judges who didn't get a majority vote? Then talk about them. Here we have two charts. Sixty-three of President Clinton's judges didn't get a majority vote. It doesn't matter whether they didn't get it by filibuster or by not bringing them up for any vote. Again, that is like green shoes versus pink shoes. They are all judges.

Here are some names. Did every one of these people twist in the wind? You bet. Some longer, some shorter. Were some withdrawn by the President? Of course. Some withdrew their names themselves. My good friend from Utah, who I dearly love said: Well, some of the names were withdrawn by President Clinton. Does that mean we can erase the name of Miguel Estrada from this debate? He was withdrawn. That is not going to work. He was blocked. So were the others.

One final thing I would say, because I do want to spend about half my time now, or less than half, talking about one of the nominees. The Senator from Louisiana was correct. We are opposing judges because of their views, not their ratings by the bar association, which talks about their education and legal training, and not their sex, ethnicity, or religion.

The other side seems to think that should be a determination of who becomes a judge. Shame on the women because they won't just rubberstamp any woman. Shame on the Blacks or on the rest of us because we won't rubberstamp every Black, shame on everybody, me. They called me because I didn't agree with Miguel Estrada, but should I have let him go because he was Hispanic? That is un-American. It is not right. It is un-American. It is below the belt.

My good friend from Louisiana—I have never heard her more eloquent—had every right to be angry and upset. To say the women should be ashamed of themselves because they are not voting for another woman. What do you think the American people would think if they thought that ought to be our norm? Every Baptist should vote for every Baptist and every Catholic should vote for every Catholic and every Jew should vote for every Jew. What kind of logic is that?

Let's get back to the reality here. The reality is a handful of these judges are way out of the mainstream, at least in the opinion of a good number of us. Enough to block them. The one that I would like to talk about for the little bit of time I have left is Justice Brown.

I don't agree with her views on affirmative action, but that is not dispositive to me in this case. What is dispositive to me is that we have not seen—I have not seen, in the 18 years I have been here, a judge further out of the mainstream than Justice Brown. I want to read to you what she said in a case called San Remo Hotel v. City and County of San Francisco:

> Turning a democracy into a kleptocracy does not enhance the stature of the thieves, it only diminishes the legitimacy of government.

What does she mean by that? She was against zoning laws. Do most people think zoning laws are a kleptocracy in 2003? Maybe that went on in 1900, when we could have factories built next to homes and when workers' lungs would be polluted. But no more.

Here is what else she said in a speech to the Federalist Society:

> Where government moves in community retreats, civil society disintegrates, and our ability to control our own destiny atrophies. The result is [this is when government is around] families under siege, war in the streets, unapologetic expropriation of property, the precipitous decline of rule of law, the rapid rise of corruption, the loss of civility, and the triumph of deceit. The result [this is what government brings] is a debased, debauched culture which finds moral depravity entertaining and virtue contemptible.

Many colleagues on the other side of the aisle believe in limited government. That is legitimate. I, for one, feel in certain areas Government goes too far. But this view? That is kind of disturbing, particularly for a judge on the DC Court of Appeals, which has more to do with Government than any other court in the land, with the exception of the Supreme Court. Please, you can find conservatives, you can find people who are against affirmative action who don't express these views; but these views are circa 1850, and even then would not be supported by most Americans. We are supposed to support a judge like that? Do you know what. I would guess if you asked my 51 colleagues on the other side of the aisle to nominate someone for the DC Court of Appeals and the record of Justice Brown were brought before them, they never would have nominated her.

Why is she here today? That is the question we ask. Is this to be deliberately provocative? Is it that the President doesn't believe he should nominate African Americans who are within the mainstream? I don't think so. He has nominated a few. I don't get it. The views of Justice Brown go so beyond what there is in a consensus in America, liberals and conservatives, that it is appalling to me she would be nominated for the DC Court of Appeals. There is only one reason: The extremists on the hard right are demanding something of the President. He is doing a prescription drug bill. He is talking

to the United Nations. He is not demanding Roe v. Wade be repealed at this very moment. By nominating somebody like Justice Brown, maybe he appeases them, even though he may know she will not be approved. I don't know. That is just a theory.

But I will tell you this. If Justice Brown were White, or Asian, or Hispanic, a man, or if she were Protestant, Catholic, or Jewish, or Muslim, or Hindu, I would oppose her nomination. If Justice Brown got 100 percent of the vote in California, I would oppose Justice Brown. Justice Brown does not belong on the DC Court of Appeals where over decades, over centuries, beliefs among Democrats, Republicans, liberals, conservatives, 99 percent of Americans about what Government should and could do would be totally rejected. Justice Brown will be defeated tomorrow, I hope and I believe. It will not be because of outside groups and it will not be because of any of the women not standing up for women. It will simply be because her views are so ideologically out of the mainstream that she does not belong on the DC Court of Appeals. It is that simple.

When we knock out Justice Brown, I believe the Founding Fathers will be smiling upon us. One of them might say to the other: That is why we gave the Senate some power to block the President's nominees. This is the kind of nominee who should be knocked out. This is the kind of role the Senate, as the cooling saucer, should play, and whether it be by filibuster or by not bringing her up for a vote, or by defeating her in committee, which are the various ways the Senate has to be the cooling saucer, none of them—51–49, none of them simple majority, the Senate will be fulfilling its hallowed, ancient, and continuing role as a check on abuse of power of the President.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. CORZINE. Mr. President, I thank the senior Senator from New York for making sure the fundamental issue is understood by the American public. The fact is, 172 nominations have come to the floor; 168 have been approved. Four have not been sustained under the rules of cloture. And 98 percent—you can talk about it any way you want. The numbers fit the commonsense judgment of the American people that something positive is going on here with regard to how we are dealing with the confirmation of judges. I go back to the practical reality that 95 percent of the judicial positions in the Federal courts, district and circuit and Supreme Court, are filled; 95 percent of them are filled. In 2000, at the end of the Clinton administration, only 75 percent of those positions were filled.

This is the lowest vacancy rate in 13 years. The reason is very simple—168 to 4. It is not a complicated issue. It is not a complicated issue. Then you have to look at the four. The Senator from New York read this statement about the judge we will be looking at tomorrow, talking about ''when government advances, freedom is imperiled.'' I don't think that is what the American people would think—those people who believe in Social Security, those people who might think we ought to have a prescription drug benefit for all Americans, people who believe we ought to pull together an army to protect the American people from terrorism, the folks who think we ought to build highways, bridges, schools, and other things, which are generally done by the public. When the government advances—what is this? I want to say this right. ''When the government advances, freedom is imperiled.'' There is one out of the four. One wonders whether that is the mainstream of American thought.

A couple of judges in this four have serious issues some people think approach or have gone over the line of ethical violations. I have heard almost everybody say at some level they believe integrity is an issue. There are serious concerns about actions of several of the people who are involved—aside from their views. I will not even mention the judge. One judge said, in talking about the role of Congress:

Congress, for example, should not be in the business of public education, nor in the control of street crime.

That may be a view that is mainstream for some in this body, but I have a hard time understanding where many of us believe the role of Congress would prohibit us from being involved in the business of public education or the control of street crime. It doesn't sound to me like a mainstream thought. That is one of the judges.

Then another judge we will be considering tomorrow talked about privacy rights, threw out a case where someone was performing an operation on a patient, and it happened to be a female. The doctor had a male drug salesman attend without asking for that right of the individual. Then the judge said that wasn't a violation of privacy rights. That kind of thing—I am not a lawyer and I don't know all the details of this precedent, but it is kind of like 168 to 4. You would think if somebody is undergoing surgery and somebody asks you a question about who the person was who was observing you going through surgery, if you had a drug salesman overseeing that, you might think that was an invasion of privacy. That is sort of common sense to me.

I think there are reasons to debate these four and maybe the two, if we are going to get people who are not necessarily following precedent, settled law—I hear a lot of arguments about activism on the court. It sounds to me like there is an active view that is different than settled law with regard to privacy. There is a view that is outside settled law and precedent with regard to the role of Government, with regard to schools and crime in our streets.

I think there is a reason to question some of these four. Therefore, it is not inappropriate, when you think people are going to be out of the mainstream and may have ethical issues that are legitimate questions that people raise, that somebody ought to exercise that judgment here on the floor of the Senate when we are asked to vote on it. From my perspective, that is what guides my vote and one of the reasons I have helped make this 168 to 4 happen.

By the way, I am proud of the 168 and while we now have the highest percentage of occupancy of judicial positions in the last 13 years—that looks to me like a pretty good track record. In most walks of life, it would be a pretty reasonable statement of cooperation and effort to make things happen. That is certainly, again, the perspective I want to start with, 168 to 4, filling up the judiciary.

Then we heard the argument raised that somehow we are trying to change the subject. This is changing the subject. We are talking about four folks, while we have 9 million people unemployed, 2.5 million manufacturing jobs lost in America, and we have the rampaging trade deficit, budget deficit, a rise in the poverty rate, declining insured and health insurance coverage in America, no prescription drug benefit for seniors, no passage of the Transportation bill, no consideration of a minimum wage increase for 7 years. We cannot get it to the floor.

We don't want to talk about four judges when we have a war going on and all these economic issues before the country. They say we are changing the subject? I think we ought to change the subject. I would imagine the people watching this debate are changing the channel because they want to know what the heck is going on in the fundamental parts of their lives, their jobs, what their kids are doing in Iraq, what is going on with regard to jobs that are going to be created for the rest of their families. They want to know what is happening to their health insurance. They would like to know whether school class size is going to be 18 or 26. Those are things that matter, and we are debating four judges who, as I read some of the most extreme comments here—again, we are debating whether it is appropriate to have a filibuster about somebody who says ''where government advances''—it says ''advances relentlessly''—''freedom is imperiled.''

We are debating that, as opposed to worrying about whether 9 million people can get extended unemployment benefits, whether we can get a jobs bill to build highways and bridges and other things in this country, whether we can have an honest debate over intelligence operations in this country. It strikes me we have our priorities out of place. It just makes no sense in the world we are living in that we are debating 4 judges out of 172 and they have views like ''where government advances, freedom is imperiled.'' I don't think the American people—anyone you sat down around the kitchen table

with and you talked about this issue, with this language, and this perspective on judicial philosophy—would say I would rather you be focusing your time on the floor of the Senate at 5 minutes to 12, 29 hours and 55 minutes into a debate, saying it is more important that we are talking about that judge than we are talking about what is happening with our men and women in Iraq, or whether we have appropriate investment in our intelligence operations that protect them, or the 9 million people are getting the proper attention on their unemployment benefits. I don't get it. There is no comparison of the importance. It is not changing the subject. It is getting to the subject the American people want us to do. At least that is the way it is in New Jersey. I have not had one single person ask me about a judge, until today when we got a call-athon calling in—the first time we got a call with regard to whether the filibuster was holding up these rights. I had my people read back this: ''When government advances, freedom is imperiled.'' About half of the people said I don't know whether that is somebody I want to stand with because I don't know that that is a position that really fits with the American Constitution, in my view, of what the American democracy is about. It is very hard for me to understand where we have our priorities.

Lastly, I want to bring up a point that filibusters weren't only used to stand in the way of civil rights acts by Democrats back in the 1930s or 1940s. On February 3, 1991, a filibuster was executed on this floor on the Family and Medical Leave Act. There were no Democrats who voted for that cloture. Let's see. Handgun violence prevention on November 19, 1993. I think that is the Brady bill. Let's see. Goals 2000, to educate America on March 24. I have a list of about—something that approaches about 50—maybe a little more than that—60 filibusters that were executed, including a couple with regard to judges, where judges withdrew their nominations that were executed by the other side of the aisle.

Filibusters have been used. No one was calling them unconstitutional when you were trying to deal with family and medical leave, or nobody was calling them unconstitutional when we were talking about the Hatch Act. Funny how that comes up. No one was calling them unconstitutional when we were dealing with judges at an earlier time when they withdrew their names. I want to make sure we keep the right perspective here because we are making all kinds of statements. Frankly, I think all of it is irrelevant. It makes no sense when we should be talking about the 9 million Americans who don't have jobs and we are talking about the 2 million people who have lost health insurance in the last 2½ years, when we are talking about the 1.7 million people who slipped into poverty in the last 2½ years, when we have gone from a $250 billion budget surplus to a $375 billion budget deficit, a $550 billion negative cashflow swing in this country because we are not handling our finances right, and we have a war going on and the generals are saying we are having unrealistic views about it back here.

I don't know, maybe we should not change the subject. We should just talk about these four judges. I wonder if the Senator thinks that is the right prioritization. It strikes me it is out of touch with America, and we are now 29 hours and 59 minutes talking about 4 judges.

The Senator from New York is right; 168 to 4 actually expresses what the debate about judges is all about. But one could think we ought to be talking about the 9 million Americans or, by the way, the 130,000 troops we have on the ground who are in harm's way. It strikes me, the discussion we have had for these 30 hours is missing a very major point to the American people.

I yield the floor.

The PRESIDING OFFICER (Mr. BROWNBACK). Is there further debate? The Senator from South Carolina.

Mr. GRAHAM of South Carolina. Mr. President, we got to the bewitching hour. It is midnight. I am going to enjoy the evening the best I can because I have a chance to engage with two of my colleagues. I don't know how long it will last, but I really enjoy the give and take of dealing with Senator SCHUMER. It may come to surprise people, we actually have been working on a couple of things. We had some successes in the past and we will have some in the future. I believe with a great deal of certainty, if the shoe were on the other foot, if my party were engaged in filibustering nominees of a Democratic President, that Senator SCHUMER would be right out here fighting for his cause. Senator CORZINE and I are getting to know each other. We will have all night to get to know each other. I have enjoyed working with him, also.

This is unusual for the Senate. I don't know if this has ever been done before. I hope it is not necessary to do again. But here we are. We are here at midnight. We are talking about whether or not there is a filibuster. Has there ever been one in the past? Who shot John? Who has been the meanest and the baddest in the past?

I guess what I am trying to focus on for the next few minutes is, What about the future? I guess that is my biggest concern. We have had all kinds of charts about how nominees were treated in the past. I have been here a year. Since I have been here, it has been like pulling teeth to get certain people on the floor for a vote. But that is OK. The process is what it is. The Constitution says what it says and we will all have our chance to express what we think is right versus what we think is wrong.

This is a big deal. It is a big deal for the Senate. There are a lot of other issues that need to be talked about. Sure, Iraq is certainly one of them, people out there in harm's way. We have 9 million people unemployed. I am the first to admit there are a lot of issues in this country that need to be talked about and addressed.

But this is one of them. One of the reasons Senator CORZINE has not had too many calls is Americans are able to walk around with a pretty secure feeling that the system works. I think it is a blessing we are not nervous every day about whether or not you can go to court because we expect, if we have a problem, a legal problem, there will be a place to go to get it resolved. That is just part of our mindset. We don't worry a whole lot about that and I think that is great.

But, really, that is a luxury. There are a lot of countries in this world where there is no venue to go to settle disputes. You have to go by force or violence, or you have nobody to help you out when you are down.

We have a pretty good legal system. God knows it needs to be fixed in some respects, but the idea of a rule of law nation caring about how you appoint judges is a big deal. Imagine if you had a system where it would be almost impossible to confirm somebody who had an actual belief or opinion. What you would find is there would be a lot of vacancies and there would be a backlog of cases. The things we assumed were always there for us would no longer be there. So this really is a big deal.

If you believe in a system where the weak can hold the strong accountable, then you ought to be listening to this debate because only in a rule of law nation, a courtroom, is that possible, because in a political environment the strong always win over the weak. In a confrontation of resources, the strong always win over the weak.

But America is a little bit different. You can hold anybody accountable. You can have your day in court. Even the President of the United States can be sued by an average, everyday person, if the President of the United States is claimed to have violated their rights.

That is a big deal. That is something worth fighting for. Some people believe that is worth dying for.

Now, that is very much at risk. The way we do business with our legal system is very much at risk. Because you can put up all the charts you want to put up and you can play all the number games you want to play, but the truth is, and I challenge someone to prove me wrong, that this is the first time in the history of our Nation that nominees have come out of the Judiciary Committee with a majority vote and have been blocked by a filibuster from being voted up or down. This is unprecedented. This is dangerous. We find ourselves in political and constitutional quicksand.

Of all the conflicts we have had in this Nation, of all the fights between the Republican and Democratic Parties, of all the likes and dislikes that

have happened politically, no one before has chosen to go down this road. The road our friends on the other side have chosen to go down really is the road to oblivion, in terms of trying to get good men and women to be willing to serve their country as a judge.

My friend and colleague, Senator COLEMAN from Minnesota, is new to the Senate like myself. The strength of this Nation is people with accents have a chance to get ahead in life. I am the first person in my family to go to college. My dad was a World War II veteran and came out of the war and started his own business and married my mom and neither one of them finished high school. But they impressed upon me and my sister the value of an education. Because of the good, sound, strong public school system of which we partook, I was able to do things I never dreamed of doing. Now I find myself in the Senate.

I am a lawyer. If you can't take a joke, you should not be a lawyer, because there is a lot of lawyer jokes out there. But I have always enjoyed the role of being an attorney because I like representing people and I like representing causes. The law to me was not just a job; it was a passion.

The ultimate ascendancy for somebody in the law is to become a judge. You will make less money but you will get authority and respect, and you will have a chance to mold the law. To many people that is much more important than money.

To me it is a shame, if you are willing to apply for the job, that you have to be treated so poorly as these four people we are talking about have been treated. But make no mistake about it, they are not four people; there are going to be at least a dozen in the next couple of weeks. They are being treated differently than anybody in the history of the Nation. They are having some very hard things said about them and all they want to do, and all they are willing to do, is to serve their country in the Federal judiciary.

Our friends on the other side have pulled out a chart, 168 to 4, with an illustration: 168 apples represented those people who were allowed to go forward. The Senator who had the chart said, I like apples, so I picked apples to represent the 168. And the four, well they were called lemons. I thought that was pretty cute at the time. But the more I thought about it, that is really not fair. If you don't like these people, if you disagree with their philosophy, if you disagree with their view of the world, you have a chance to express it. You have a chance to vote them up or vote them down. But I don't think it helps anybody to label them as lemons. We are going to have a long talk about the people they have labeled as lemons. Between now and 9 o'clock in the morning, we are going to have a long talk, eventually, about the individual nominees.

You can decide whether or not you will vote for them. You can kind of be a Senator for a day, if you would like. That would be an exercise that would be interesting for those who want to watch. If you don't like them, you can vote against them in the Senate. But I think you have an obligation to vote them up or down.

As I talk about these individuals I will tell you why I am willing to vote yes. I don't expect anyone on the other side, or my side, to vote because of my reasoning. I do expect the people at home, in South Carolina, to be able to judge me and hold me accountable for my reasoning. I will tell you, with a deep sense of pride, that I think the four people who have been called lemons are very fine Americans and deserve more respect than they have gotten.

The thing I like most about serving with my colleague, Senator COLEMAN from Minnesota, is that his race was one of the most watched and unusual races in the Nation. It was full of triumph and tragedy. His opponent, Senator Wellstone, who I knew fairly well and certainly respected for his strong beliefs, tragically died right before the election. Senator COLEMAN ran against former Vice President Mondale.

The thing that impressed me most about his race, as I watched the debate, was the sincerity he had when it came time to present the reason he wanted to be a Senator for the people of Minnesota, along the lines of: I would like to go to Washington and do something. I watch you from afar and you seem to be fussing and fighting about everything. People are hurting out here and I would like to be a Senator who could go to Washington and work across the aisle and actually do something.

Tonight, at almost quarter after midnight, I would argue to the people who may be listening in Minnesota that your Senator is doing something. It is not what he envisioned. It is not what he hoped for. It is not what I hoped for. I hoped to be home right now. And we passed some legislation long overdue. But I argue the Senator from Minnesota is doing something that needs to be done; that is, standing up for his beliefs and his view of the Constitution.

I am confident that over time this exercise will be judged well in history. When there is an accounting in this period of the Senate, it will be one of the darker periods of the Senate and my hope is it will be a period that will not have lasted long. Because the future is why I am here. The future is why I and Senator COLEMAN ran. We have a lot of problems with Social Security and Medicare and a budget and a war to fight and many obstacles facing this country. We are dying to get on with it. We really do want to help win this war on terrorism and make the economy better and stronger and fix the retirement problem the Nation faces.

We didn't ask for this. But it came our way. It happened on our watch. I think this may be one of the most important things we will ever do as Senators.

With that, I will yield to my good friend, Senator COLEMAN from Minnesota, and let him know in my opinion that he is doing something that is very important to the country by participating in this debate.

The PRESIDING OFFICER. The Senator from Minnesota is recognized.

Mr. COLEMAN. Mr. President, first, I thank my friend and colleague, the Senator from South Carolina. We came in in the same class. He served in the Congress. He is more experienced and understands the ways of Washington. But he understands the ways of South Carolina. He is about as real as he can be. People think of Washington as a phony town. I look at my colleague, my friend from South Carolina, and he is very real. That is a good thing.

In the discussion we have had tonight—now past 30 hours—I appreciate his effort to humanize the four individuals whose lives have been, in some ways, put on hold, their future put on hold, certainly by the actions of this body. No, they are not lemons and they are not simply numbers. They are people. They are moms, dads, fathers, daughters, sons. They are folks who have the capacity to have an incredible influence on our lives.

I was a former prosecutor. The Senator from South Carolina had that experience of doing some prosecution in his time. I can tell you, courts have an impact on your lives, on your family's lives in many ways. So I appreciate it, if as we move now into the morning hours, there will be votes coming up this morning—not tomorrow morning, this morning—to put a human touch on what this is about.

I think there was a mood or a feeling in the country at the time that we got elected that really did focus on getting something done. I was running for office and disaster assistance bills were being debated in the Congress. The House was passing bills but the Senate was not. I can tell you my constituents were unhappy. They were concerned.

Last year there was a debate over a prescription drug benefit. I was running for office. There were still seniors forced to make the choice between prescription drugs and food. That is a bad thing. That is not a good thing. Hopefully, this year we are close and before we get out of here, assuming folks come together, we can get something done.

I think that was the tone. That was the message. By the way, I hope, certainly the message I heard—it should not be a partisan thing. There are a lot of things I heard in the debate tonight from my colleagues on the other side. I don't disagree with all of it. My colleague from Louisiana made a comment that we can't be divisive. She is right. I can tell you we are not trying to be divisive. Being divisive is when you do something that is unprecedented, and that is really what we are talking about today.

The fact is, one of the things we did kind of settle tonight is the filibuster.

There was a discussion all along about whether they are really filibustering nominees, a lot of discussion about filibusters.

First, I say again I was disappointed what I heard tonight. If anything, it was the comment of my colleague from Louisiana saying filibuster was the successfulness of the truth. No. With filibusters we have stopped some very good legislation. We have used the filibuster in a very terrible way in this body in its history. We have filibustered to try to prevent antilynching laws coming into effect. We have filibustered civil rights legislation. We have filibustered against the poll tax. We filibustered about a lot of things and not often good. A filibuster is often to be ashamed of and this one is to be ashamed of.

My colleague asked what is the difference between filibustering legislation and judges? The difference is this little book. It is called the Constitution. That is the difference. The Constitution laid out very clearly when the President has certain powers. The President, by the way, doesn't get elected unanimously. He gets elected following the laws. Not everyone votes for him but he then becomes the President. Once you become the President, you have certain powers and the Senate has certain powers and responsibilities. So it is a matter of seeing there is a difference between what one can do legislatively, using filibusters, and what the Constitution provides.

There is a reason why, in the history of this country of 214 years, up until this Congress, this body has never used a filibuster to stop circuit court nominees once they got through committee. That is the reality.

You can put all the charts up and all the statistics; that is the reality. If folks are listening, they have to be thinking there has to be some reason in over 214 years why folks have not done what is being done today. In part, it is because of the consequences. If we do that, what we do is we let a minority—that is what we have here because in each of these cases the judge is being filibustered, a majority of the Senators, Democrats joining with Republicans—yes, they are going to vote for them. We know that. That is why the minority is filibustering, stopping the vote.

So what you have here is a situation where the minority stands up and says: We don't support a person. Maybe it is because of a particular issue. Maybe the issue of abortion comes up again and again, which, by the way—and we will have plenty of time to talk about this—what is so interesting if you look at the record, the nominees who have been criticized or attacked because of their position on abortion, to a person have said that they would follow the law, that they would put personal beliefs aside.

You choose a judge and what you ask of them over here is can you put your personal beliefs aside and make a judgment. That is what these folks have all said. Because they have those beliefs, the minority comes together and blocks them. What is the outcome?

This, I know, frustrates my friend from South Carolina and it frustrates me. We all look into the future. I campaigned and I wanted to be a charter member of the ''Let's Get It Done Coalition.'' Let us figure out a way to solve problems.

The Senator from New Jersey is right. We have to get an energy bill through. I hope we get it through. We have to do something about prescription drugs. We have to do something about jobs, and something about medical malpractice. We should do something about class action. Those efforts are not going to be allowed to come to a vote. Those are the jobs bills. Let us get it done. Let us put the bickering and partisan stuff aside and figure out a way to get it done.

The problem we have as we look to the future is who is going to get confirmed. If anybody with deeply held views is going to be filibustered by one side, now the Democrats are in the minority, there may come a point in my time where my friend from South Carolina is sitting in the minority and a Democrat President may propose a judge, and I will say to the body that I intend to use the same standard with a Democrat President. Are judges qualified? Will they commit to uphold the Constitution? I will not support folks who will use the Constitution to create laws of their own beliefs. But if they agree to follow the Constitution and are qualified, then you support them. The President has that authority.

If you look at the history of the judiciary, it is kind of a balance. There have been Democrat Presidents and Republican Presidents going back over the last 12 years—8 years of Bill Clinton, 8 years of Reagan, 4 years of Bush, Jimmy Carter. There are about almost equal numbers of Democrats and the Republicans on the judiciary. It is balanced. What is happening here today is we are changing that balance. When we allow minorities to take hold, we change that balance. That is what happens.

In the future, you are going to get folks with strongly held beliefs and there may be a Ruth Bader Ginsburg, a liberal who went to my high school, James Madison in Brooklyn, NY. I disagree with some of her reasoning on decisions. She is a good judge. She is bright. She exercises her judgment. I don't think in this environment if the Democrats are in charge that Ruth Bader Ginsburg would be confirmed. That would be sad for America. The same would be true with Scalia and a number of members of the Court.

What are you going to get? The best and the brightest are going to be cast aside because they may have a strongly held belief, which is what you see in some of the nominees here because a minority says we don't want them to come forward. A minority then filibusters in a way again in contradiction to article II of the Constitution. That is why we are raising this. That is what we are talking about and doing something that has not been done in history.

It is interesting. In terms of the Constitution, it is very clear. The President has certain powers—unlike, by the way, in European countries and in contrast to monarchs who would simply make treaties. Leaders in Europe could make treaties. Our folks said, no. The President's power of making treaties is going to be contingent upon two-thirds of the Senate present and concurring. That is in the Constitution. We wanted to limit the powers of the President. When it came to appointment of judges, it is not two-thirds. Two-thirds is only for treaties. Very clearly there is a delineation.

For some reason to date, 214 years into our country's existence, the standard has been changing. That is an important thing. Jobs are important. As a former mayor, I have said 1,000 times the best welfare program is a job; the best housing program is a job; the best health care comes with jobs. Jobs are important. I understand that. What is interesting is my colleagues on the other side of the aisle are crying economic—by the way, never once mentioning 9/11. If you talk about what has happened to this economy, you have to talk about the impact of 9/11. You have got to talk about the recession that occurred before the President came into office. You have to talk about the impact of WorldCom and the impact of Enron.

The reality is now because of the policies, many of which this Congress passed, policies which cut taxes, which put money in the pockets of moms and dads which give businesses the incentives to invest, the economy is starting to move forward. The last numbers report 7.2 percent gross domestic product growth, and over 200,000 more jobs in the last couple of months. The number is revised upward. Business investment is moving forward, in part in large measure because of the tax cuts. Yet the other side of the aisle says we want to talk about jobs. I am looking forward to that debate. But it is all important. The judiciary is important. What we do with judges is important. In order for businesses to operate and for families to operate, you have to have a judiciary that works.

What is fascinating here—and I love that chart of 168 to 4. I love seeing that chart. When the other side puts up a chart showing 168 to 4, that is their argument. They keep coming back with the underlying supposition of, It is false. Their argument doesn't carry weight. Let us talk about 168 to 4. The real discussion here and what is going on here is the President of the United States has the power to appoint district court judges.

A little lesson, for those listening, a first impression in the Federal system: What happens when the district court

judge issues an opinion, there is a review process. It is reviewed by the circuit courts. The courts of appeal level, by the way, is right below the Supreme Court, which is one of the things I think comes into play here.

When you pick judges who may be on the circuit court, what happens is they then became a candidate for the Supreme Court. That is the real deal. They are all the real deal. Being a judge on the court of appeals is an incredible honor. It is a higher court than the district court. What is happening is the President has had 29 circuit court judges confirmed. We as of tomorrow will have six who have been filibustered. There are more in the hopper. That is very clear from my colleagues on the other side of the aisle. They will be filibustered. Out of the circuit court, the other side is saying 168 to 4, and some judge like wearing pink shoes and green shoes—no. The difference between circuit and district court judges is not the color of their shoes. The difference between circuit court and district court judges is these judges are on a higher court. These are the judges who are right below the Supreme Court.

District court judges sit in a particular district. Circuit courts sit in a multistate area. They have a broader range and geographic jurisdiction. It is the higher court.

What has happened here is it is not 98 percent. Even 98 percent of the time, adherence to the Constitution is wrong. When we took our oath, when the distinguished Senator from Kansas took his oath, and the Senator from South Carolina took his oath on that floor, we swore to uphold the Constitution of the United States 100 percent. It wasn't qualifying.

I find it absolutely startling that folks take pride in upholding the Constitution 98 percent of the time. The first amendment, freedom of the press: If there are 172 newspapers in the country and 168 of them are going to have freedom of the press and not the other 4, they wouldn't be very happy and very American.

The reality here is we have 29 circuit court judges who have been approved and we have 12 who are being filibustered. I think we are talking around 30 percent, 25 or 30 percent. That is a big number. I believe that is the largest number certainly since World War II. I have to go back in the history books. That is wrong. That is the number here.

The other side keeps coming back saying 168 to 4; therefore, no problem. The problem is you can put up all the numbers you want, but the difference is not the difference, whether it is green shoes or pink shoes; these are courts of highest jurisdiction.

What has happened here and what is happening is unprecedented in 214 years of the history of this country. This hasn't happened.

All we are asking is for these 12 judges to simply have a vote. We are talking about a vote. A cloture vote tomorrow is not a vote on the judges. We are simply saying give—Miguel Estrada, by the way, withdrew.

My time may be coming to an end. I want to get back to talking about him—an immigrant, incredible record, education record, incredible performance record, a brilliant man, and withdraws.

Priscilla Owen, give her a vote. William Pryor and Pickering, give them a vote. If you do not support them, you vote them down. Your voice is heard. It is not about a rubberstamp. I am not asking my colleague, the Senator from New York, to vote for these folks. Vote them down. If you do not like Judge Brown, vote her down; Judge Kuhl, vote her down. Vote these folks down. But give them a vote. That is what the Constitution requires.

Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Searchlight, NV.

Mr. REID. Thank you, Mr. President.

First of all, I want to extend my appreciation—and I speak for the Senate, both Democrats and Republicans—to the staff which has been supporting us the last few days. People are working very long hours. The Capitol Police are working a 16-hour shift. Their shifts are very important. There are some people from all over the world who target the Capitol of the United States where we now stand. These men and women who guard us, protect us, make us secure, have to be vigilant. They are among the best trained police officers in the entire world. I extend appreciation from all Senators to them for the work they do, not only during the time in the past few days but all of the time—having been a Capitol policeman in the day when things were much more calm and deliberate than they are now.

I also extend the appreciation of all Senators to all the staff, Parliamentarians, clerks, the enrolling clerks, the court reporters—I don't think I have done that—and the pages. We have juniors in high school who are here tonight. I haven't mentioned everyone. But my compliments go to everyone who supports this great institution. I am sorry they have had to work another night, but that is the way it is.

The reason you have seen all the charts on the other side of the aisle change is because this number Mr. SCHUMER talked about bothers them a lot. Now they have come up with judges who haven't even come before the Senate. They know only four have been turned down. But now they have the other thing, that there is going to be 12. Well, we might wait and see what is going to happen. Why don't we wait?

I say this: The 30 hours we have spent so far has been totally wasted. There isn't going to be a single vote changed. Nothing is going to change. This has been an effort to toss meat to the rightwing extremists. Many Senators—and I say many—certainly at least a dozen Republican Senators approached me and made different excuses and apologies for what is going on on the other side. They know this is very nonsenatorial. But we are involved in this and we are going to proceed in the best and most dignified way we can.

There is something else I would like to spend some time talking about tonight, and that is jobs.

Let us talk about what is happening in the last 30 hours. What has happened? We can start at a number of different places. During the last 30 hours, 2,833 Americans—men women, teenagers, old people, married, unmarried, grandparents—have been laid off. They have lost their jobs.

In America today, things are so difficult dealing with jobs. For the 2,833 Americans who have lost their jobs during the last 30 hours, the average time for them to find a good job will be 5 months. Five months, 2,833 Americans will wait an average of 5 months to find another job.

It seems to me it would be good for us rather than spending 30 hours plus on 4 people and not a single vote has been changed—4 people who have jobs, good jobs—that we would spend some time talking about how to create more jobs, thirty hours of debate here in the Senate about programs.

For example, I think what we should have is an infrastructure development program where the Federal Government is involved in putting out money so the contracts can be let in the private sector so companies can build roads, they can build dams, they can build bridges, they can do water systems, sewer plants. We could spend some time here debating where it should go and how much we should spend. We know for every $1 billion spent, we would create 47,000 jobs as compared to 2,833 Americans who have lost jobs in the last 30 hours—47,000 high-paying jobs. Of course, the spinoff from these jobs would be significant and magnificent.

As I indicated, 2,833 people have lost their jobs in the last 30 hours. The four people who have been dwelled on by the majority have jobs—good jobs. Who are the people who have lost their jobs? I have already talked about parents, single parents, families. It is really sad to understand that 2,833 people are going to have to wait on average 5 months to find another job.

During the last 30 hours, 8,698 people have lost their health insurance.

A man flew in from Arizona to meet with me today. He graduated from Utah State University where I did. He was a star football player at Utah State University. He is a big man physically and a big man emotionally. He flew back here because he is now a physician. He is terribly concerned about the 8,698 people who have lost their health insurance. He understands what it means for people to come to him and have no health insurance. He talked to me and my staff about what we can do about it. He felt so strongly about it that he came back and talked to me.

How does a mother feel, how does a father feel, who have children or no children, how do they feel going to bed at night recognizing if something happens to them or their family, they have no health insurance. What do they do? They do not get the treatment and care they need. They only go when something desperate has happened to them. An automobile accident, they go to the emergency room. Preventive care, forget about it. During the last 30 hours, 8,698 people have lost their health insurance. I think we should talk about that. We need to do something about that. There are 44 million Americans who have no health insurance.

In addition to 44 million people who have no health insurance, there are millions of people who are underinsured, meaning they have insurance but it isn't very good. That is what I talked about today among other things with my friend from Utah State University, a wonderful man, who is a young physician who cares about his community and his country.

We have 44 million Americans with no health insurance, and we are here, and we have been here for the last many hours talking about four people who not only have jobs but they have health insurance. Every one of the four have health insurance. And they have jobs.

What does it mean not to have a job? Does it take away someone's dignity? Does it cause divorce, dissension? Does it cause kids not to be able to go to school, to college? Of course it does. Does it cause crime? Of course it does. Does it cause our welfare rolls to go up? Of course it does.

But the 4, the 168 to 4, those 4 have jobs. They have health insurance. Why are we not here talking for 30 hours of constructive debate about doing something in this Nation about health insurance so people when they get sick can go to a doctor, people when they need preventive care can get it. In the long run it would save the country lots of money.

In the last 30 hours, the trade deficit of this country has gone up $300 million. In 30 hours, the trade deficit has gone up $300 million. What does that mean? It means we have bought more into this country and sold less outside our country to the tune of $300 million. That is not good.

I have heard my friend from North Dakota, Senator BYRON DORGAN, give lectures in this Senate about the need to do something about our trade policies because the trade deficit continues to rise, causing this country lots of problems. We are doing nothing about it. We have a trade deficit with China. They jiggle their money, and it is continuing. We are afraid to take that issue up here.

My friend, the distinguished Senator from New York, Mr. SCHUMER, has attempted on several occasions to bring forth an amendment to stop the Chinese from playing with the numbers so that the trade deficit continues. But we have been unable to do that. Why? Because we are talking about four people who have jobs, who have health insurance, and could care less about the trade deficit.

In the last 30 hours, focusing away from some problems that to some may not seem important—the trade deficit—we could talk about something that is real important. During the last 30 hours when we have been here talking about four people who have jobs, who have health insurance, and who have nothing to do directly with the trade deficit but are keeping us from talking about it, during that 30 hours the food stamp rolls in this country have gone up by 6,237. During the last 30 hours, 6,237 desperate people have signed up for food stamps saying, in effect: We are hungry. Government, will you help us buy food for our families? We have never done it before. But these are new people signing up for food stamps.

I could say without any qualms or reservations, the four people I have talked about here tonight and the majority has talked about here for a long time, they have not lost their jobs. They have not lost health insurance. They don't even have to consider food stamps. But wouldn't it be good for us as a nation to spend some time talking about food stamps?

I can remember when I was a new Senator, the great Senator Pat Moynihan—his chair was right back there. There was a vote going on about the homeless. Senator Moynihan said to me: We have helped create the homeless by Federal policies where we have, in effect, emptied out our mental institutions, but we have done nothing to have community health centers. A lot of the people who are homeless are people who need medical attention.

Well, food stamps, we need to do something about that.

About poor people, in America today, as sad as it seems, the rich are getting richer. The rich are doing fine. The wealthy are doing fine. The elite of America are doing great. The poor are doing real bad. The middle class is narrowing all the time. We need as a nation to figure something out to do something about that. We don't want to live in America like many countries where you have the rich and the poor and no middle class. Why don't we spend 30 hours doing that? Not spending 30 hours talking about four people who are well educated, have jobs, have health insurance, are not on food stamps.

During the last 30 hours, when we have been here in the Senate talking about these four people, we have had in America 36 mass layoffs. Employers have had 36 experiences where they said: We have to lay off more than 50 people. A mass layoff, by Department of Labor standards, is more than 50 people. During the last 30 hours, we have had 36 of those.

Why are we having so much trouble in America today keeping people working? Why is it taking so long for people who lose a job to find a job? I would think this Nation would be better served talking about jobs, not about four people who have jobs, who have health insurance, who are not on food stamps, who have not been part of a mass layoff in the last 30 hours.

On this Senate floor, during these last 30 hours, there have been seven attempts by the minority to extend unemployment benefits for people whose unemployment benefits have run out. Is that important? During the last 30 hours, while we have been here talking about four people who have jobs, who have health insurance, who are not on food stamps, who have not been part of mass layoffs, 13,194 people have had their unemployment benefits run out. The people who have lost unemployment benefits are real. These are not statistics that somebody made up.

Let me read to you a letter I received from a woman in Las Vegas, NV. We will just call her Margo. I won't give her full name. She writes, October 10, 2003:

> Dear Senator Reid:
>
> On July 2, 2003 I became a displaced airline worker after 38 years as a TWA (now American Airlines) Flight Attendant. As a result of union concessions given to American Airlines, I received no severance pay.
>
> My Unemployment Benefits will expire on January 2, 2004.
>
> Congress has passed new legislation which made December 28, 2003 the cut-off day for Temporary Extended Unemployment Compensation. After that date, there will be no more extensions. I will miss the deadline for Extended Unemployment Benefits by 5 days.
>
> I am a single woman and a sole supporter. I have no skills applicable to this difficult job market and my age makes an already bad job market even more limited. It will take time to learn skills and find a suitable job. Extended Unemployment Benefits will be needed for my very survival.
>
> I ask you—

She has it in bold type—

> to please support S1708—

The one we have tried to move seven times to the floor in the last 2 days, objected to by the majority—

> which will extend the TEUC [benefits] and provide additional Unemployment Benefits to those who cannot find jobs.

This is a real person. This is not someone who is made up. This is descriptive of the 13,194 people who, during the last 30 hours, have lost their unemployment benefits. That is sad.

I have another letter here from another woman. I will read the last paragraph:

> I am not writing this letter to get a hand out or sympathy. For every job that is open, 50 people apply. I have faith in God that he has a perfect job for me and that he will provide for us.

I ask unanimous consent that these two letters be printed in the RECORD, and with the permission of the Chair, I would ask the clerk to block off the names because I have not spoken to them for permission to make their names public.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

JULY 31, 2003.

To: President George W. Bush, Congressman John Gibbons, Senator Harry Reid.

Re unemployment benefits.

GENTLEMEN: I really don't expect that any of you will actually read this letter. It will probably go to an aide and if I am lucky I may get a response. So why I am writing this letter? Because there are many other people in this country who are unemployed and have run out of unemployment benefits. Man people like me, feel that writing a letter like this is a waste of time. Many have no hope, but I believe that one person's voice can make a difference.

I live in a small community in Northern Nevada. There are at least 50 people applying for every job opening. We have thought about moving to other cities, but the job market is tight every where. My husband is disabled and receives a small social security check each month. It pays all but $15 of our first mortgage on our house. I have to supply the money to pay a second mortgage and all of our living expenses. Three years ago we had to file for bankruptcy. With a job and a new start we have been rebuilding our credit, but have not been able to refinance our home.

In December of 2001 I had to quit my job. I quit for cause. My doctor wrote a letter and I was eligible for unemployment benefits. Less than 6 months after I left that company, the position that I had held for 6 years was eliminated company wide. Some people moved up into management, but many were laid off. It took me five and a half months to find a job. My training and experience has mostly been in the accounting field. I took a job as an outside sales rep. for an office supply company, because that was what was available. The job lasted 8 months. Then the company that I was working for updated their computer system to make it easier to purchase items off an internet web site. As a result they laid off some sales people including me.

Here in lies the problem. Because I was on unemployment from January to June 2002 it affected my base period for benefits. When I got laid off on March 2003 I was only eligible for 13 weeks of unemployment benefits not the full 26 weeks. My lack of employment in the base period was not by choice. I was on unemployment, but because I was on unemployment and had no job earnings it shortened the amount of weeks that I was eligible for benefits. When I applied for the federal extension the same thing happened. I was eligible for 7 weeks not 13 weeks. I have sent out hundreds of resumes with little response.

I am not writing this letter to get a hand out or sympathy. I have faith in God that He has the perfect job for me and that He will provide for us. There are many thousands of people who do not have this hope. They have been laid off multiple times, and were eligible for little or no benefits. I have friends that were laid off over a year ago and are still trying to find work. Unemployment should not be a free ride. There has to be a limit on benefits or it would turn into another welfare situation. People would get on it and have no incentive to better themselves and get off it. But the way the current system is setup, it paralyzes people who have been laid off multiple times over several years. All I am asking is that people, who are truly trying to find work, get a fair chance to provide for their families while they seek employment. I would work a part-time job or 2 part-time jobs in lieu of a full-time job if I could find them. So the solution is two fold. Get the economy going so that people like me can find a decent paying job or jobs. And revise the current system so as not to penalize people who have already gone through one or more layoffs in a short period of time.

Gentlemen, this is the greatest country in the world. The middle class needs a break. I don't want a free ride. I just want a job or jobs that will supply the basic needs for our family.

OCTOBER 10, 2003.

Hon. HARRY REID,

U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR REID: On July 2, 2003 I became a displaced airline worker after 38 years as a TWA (now American Airlines) Flight Attendant. As a result of union concessions given to American Airlines prior to my furlough, I received no severance pay.

My Unemployment Benefits will expire on January 2, 2004.

Congress has passed new legislation which made December 28, 2003 the cut-off date for Temporary Extended Unemployment Compensation (TEUC). After that date, there will be no more TEUC extensions. I will miss the deadline for Extended Unemployment Benefits by 5 days.

I am a single woman and sole supporter. I have no skills applicable to this difficult job market and my age makes an already bad job market even more limited. It will take time to learn skills and find a suitable job. Extended Unemployment Benefits will be needed for my very survival.

I ASK YOU TO PLEASE SUPPORT SENATE BILL S. 1708 which will extend the TEUC bill and provide additional Unemployment Benefits to those of us who cannot find jobs.

Thank you for your consideration in this matter.

Respectfully submitted.

Mr. REID. I would also say that this woman says she would take two jobs at minimum wage just to make things work. She has a husband who is disabled. That is what this is all about.

We know that during the last 30 hours people in America have had some problems. Two thousand eight hundred thirty-three people have lost their jobs; 8,698 have lost health insurance; food stamps increased by 6,237; the trade deficit has gone up $300 million; 36 mass layoffs, 13,194 people lost their unemployment.

During the last 30 hours, we have 65,357 people who applied for unemployment benefits for the first time. We have had, during this 30 hours, desperate people; 5,137 people have filed for bankruptcy.

I did general practice. I have had interviews with people who told me they had no choice but to file bankruptcy. Usually it is some problem with medical expenses, but these people are desperate. We don't have a bunch of deadbeats out there. We don't have 5,137 deadbeats. We have 5,137 desperate people.

What are we talking about here? Not doing something about the bankruptcy law when we came that close to passing it. There was one provision in it that because of the ideology of certain people it didn't pass. We came so close to reforming the bankruptcy law which would have helped a lot of these people. We should spend some time on bankruptcy.

I have talked to the distinguished senior Senator from Iowa on many occasions about the need to do something about this. And by the way, he is a Republican. We need to do something about it. But what are we doing? Spending 30 hours talking about people who have jobs. They have not lost their health insurance. They are not drawing food stamps. They have not been part of mass layoffs. They have certainly not lost their unemployment. They have not had to file for unemployment benefits for the first time, and they have not had to file for bankruptcy.

During the last 30 hours, to get real personal about this, 80 people have committed suicide. While we have been here talking about these 4 people, 80 people in America have killed themselves. These are real people. The distinguished junior Senator from Oregon lost a 22-year-old son about 2 months ago as a result of suicide. In this Senate Chamber, there are lots of people who have suffered as a result of suicide. My father killed himself.

We need to learn more about suicide. More than 31,000 people in America a year kill themselves. We don't know why. It is one of the leading causes of death for teenagers. Why are we spending time on these four people? Why couldn't we spend 30 hours trying to find out why people kill themselves? We don't know. And we, as a Congress, have trouble even having a hearing on it. The first hearing on this was held less than 10 years ago. We have done a little since then but not very much. There are desperate people out there trying to decide are they going to kill themselves today.

I met up here in my office today with a prominent person, a prominent name in Washington, DC. She proceeded to tell me when she was 17 years old she tried to kill herself. She took a lot of pills. She described to me how she believed she went to the other side and came back. This isn't some nut. This is a good friend, someone who a lot of people know, a wonderful person. We need to learn more about suicide. But we are not going to do it talking about these four people, these four people who have jobs, who have health insurance, who are not on food stamps, who have not been part of mass layoffs, who have not filed for unemployment benefits or bankruptcy.

During the last 30 hours—and this is very difficult to comprehend—during the last 30 hours, 10,000 people have died in Africa because of AIDS; 10,000 people in 30 hours have died in one continent because of AIDS; 70,000 people in a week. There are no vacations. Christmastime, Thanksgiving, Easter, it doesn't matter, they keep dying. What about a debate for 30 hours recognizing what we can do to approach the needs of this worldwide problem which has an affect on America?

During the last 30 hours, Nasiriyah, Iraq, a suicide bomber, 31 killed; during the last 30 hours in Baghdad, Iraq, 2 of the 1st Armored Division killed; during the last 30 hours in Iraq, 37 attacks by terrorists, many of our troops not dead but injured; during the last 30 hours,

seven funerals of American servicemen killed in a helicopter downing in Iraq, seven funerals.

I understand how strongly people feel about these four people. I know how strongly people feel about this. But as I said yesterday, I don't in any way suggest we are wrong. I believe as strongly as I can that we have done the best thing for America in turning down these people who would be bad for the judiciary.

I have been to juries lots of times. I have tried over 100 cases with juries. I have the greatest respect for our justice system. I have tremendous respect for judges who try cases themselves. But I also have some idea in my own mind, having been a trial lawyer, how important it is to have good people on the bench, especially the Federal bench. These are appointments for life. I think no matter how strongly people feel about this issue, and assuming for purposes of this discussion that we are wrong, which I disagree, but let's assume for purposes of discussion, don't you think we have carried this thing a little too far? Don't you think the same points could be made?

I have tremendous respect for my friend from South Carolina. I sat right here, just like this, scared to death 5 years ago. It was the first time I had ever sat this close, first time I ever had the job as the assistant leader of the Democrats. I was afraid to be here. The first big thing was the impeachment trial of the President of the United States. The Senator from South Carolina was one of the managers. He is a fine lawyer. I have great respect for him. He is a man of courage. He breaks from his party on occasion. I admire him for that.

But I say to my friend, I think we have made our points. I mean, you make a good case. But for Heaven's sake, everything has been said by your side, and everybody has said it. On our side, I think everything has been said, and everybody has said it.

Enough is enough. I think during the last 30 hours we could have been discussing issues that are more important, such as jobs, not the four people who have jobs, who have health insurance, who have not had to go on food stamps, who have not been part of mass layoffs. They have not lost unemployment benefits. They haven't had to file bankruptcy. There are just so many problems we need to deal with that we have not done because of these 30 hours.

I say to my friends, we have had an equal discussion. I think that is good, that the two leaders worked that out, because it could have been a real nasty situation here without allocating the time in a balanced fashion. Maybe history books will look at this as something that has been important to the country. I hope so. But I have my doubts.

I think the more important issues are not those dealing with these four people. The more important issues are those dealing with the personal lives of other than those four people.

I would ask that we recognize that. I know the content of the character of the Senator from South Carolina who is leading the debate on the other side. I know he will lead a civil debate. I appreciate that. But I just say: Why don't we all just wrap it up and go home. Come back and vote at 8:30. That is what the schedule is anyway. I think that would be better for the whole body.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. REID. Whatever time we have remaining, I yield to the majority.

The PRESIDING OFFICER. Time is yielded back from the minority side. The Senator from Minnesota.

Mr. COLEMAN. Mr. President, I have great respect for the Senator from Nevada and the deep concerns he has for a range of problems and concerns that he talked about. They are real. We are talking about more than just four people. We have to recognize that. It is not just about four people. For people who were confirmed and should be confirmed as court of appeals judges, we will have a tremendous impact on the lives of the folks about whom the Senator from Nevada was talking. That is what the courts do. It is not a personal thing. This is not a measure of whether these nominees have jobs, don't have jobs. It doesn't take away from anyone else. This is about the third leg of the stool of Government: legislative branch, we are part of that; executive branch; and judicial. Those are the three legs of the stool that uphold the system we have.

It is not about four people. The Senator is right. There are so many important issues to talk about, such as AIDS. I came back from a trip to Africa with the majority leader and a group of my colleagues. We saw the devastation and destruction. We were in South Africa where 5 million people are HIV positive, and 20,000 of them on treatment. We looked into the eyes of people who were dying and into the eyes of the doctors treating them. We are doing stuff about that; we are acting. We passed in this body a bill that provides over $2 billion—$2.4 billion, and you add in our commitment to the global fund. The President made a commitment of $15 billion, which is unprecedented, and overwhelmingly we are acting on it.

It is not enough to simply lay out a litany of problems. Maybe I am more of an optimist and a realist. My favorite quote is from the first Prime Minister to serve Israel, who said that anybody who doesn't believe in miracles is a realist. Goodness gracious, the world is not falling apart. There is a lot of hope and optimism. It is not just enough to talk about problems, as my colleagues on the other side of the aisle do. We can talk about the economy and jobs. What are you doing about it? That is the question. What is the plan? Their plan has been to roll back the President's tax cut. That is what their nominees for President are talking about—rolling back the tax breaks we are giving to moms and dads, that we are giving to small business, accelerating depreciation, increasing the opportunity to expense capital investment to generate more investment. The latest survey shows that business investment is up by 15 percent. So it is not simply to lay out a litany of woes, how terrible the world is. What are you going to do about it?

That is what my colleague from South Carolina and I talked about in our campaigns. We want to do something about it. It is not enough to lay out just how the sky is falling and how the world is falling apart. We are trying to do things here.

We will have time to debate the economy. We have debated it, and we passed the third largest tax cut in the history of this country. And what do you see? The GDP is estimated at 7.2 percent, down in the third quarter of 2003. Employment increased by 126,000 in October, while the number of jobs added in September was revised to 125,000 from the previous estimate of 57,000. The unemployment rate decreased from 6.1 percent in September to 6 percent. It is still too high but it is decreasing. There is a downward trend in jobless claims. The stock market, on November 3, jumped to a new 17-month high. We have trillions of dollars of new investment in this economy.

The tax cuts we passed here, which were opposed by our friends across the aisle, are responsible for the accelerated growth in opportunity. Spending by businesses grew at an annual rate of 11.1 percent in the third quarter, following an impressive 7.3-percent gain in the second quarter. Again, these are things we have done that have encouraged investment and, in the end, generated opportunity and are generating jobs. That is what it is all about. We have a ways to go, absolutely. But it is not enough just to lay out the litany of how terrible things are. What are you going to do about it? One of the things we do about it is why this debate is important—it is to make sure we have a strong Government, that we have a strong judiciary. That is what this is about.

The fact is, when the President of the United States has 30 percent of his circuit court judges and court of appeals judges filibustered, it is unprecedented in 214 years of the history of this country, and it is wrong. The fact is, we should talk about upholding the Constitution.

I am a former solicitor general in Minnesota. I had the opportunity to argue before the highest court of my State many times. I have great love and appreciation for its constitution and history, and it is important. To the person who is unemployed and is getting a job, that is important.

I say to that person that I am committed to doing everything I can, with every breath that I have, to make sure

you have opportunity. I am going to do that. At the same time, we have the ability to do more than one thing at a time in this body. I can tell you, we are debating at 1 in the morning, but to those listening, I hope this is an educational experience.

Let's talk about the Constitution now. By the way, to my friends across the aisle, I noted his conversation with the doctor from Utah State, that he was concerned about health insurance, as he should be. One of the keys to getting health insurance is jobs, small business. The things that we have done to generate new investment and grow jobs, that helps people get health insurance. I ask my colleague, the distinguished minority leader, assistant minority leader, whether the doctor talked to him about medical malpractice, whether he talked to him about the impact that medical malpractice has on his ability to practice and to provide quality health care. The cost of that, by the way, on businesses makes it more difficult for them to grow jobs. That is another issue that was filibustered by our friends across the aisle.

I think we came within a vote or two on class actions—within a vote of changing that. The fact is, it is not enough just to talk about it. So it is important to talk about the Constitution. That is what we are going to do.

The fact is that all of us, when we got sworn in, raised our hands and swore to uphold it. The Congressional Oath of Office is: I solemnly swear that I will support and defend the Constitution of the United State against all enemies, foreign or domestic, that I will bear true faith and allegiance to the same, that I take this obligation freely, without any mental reservation or purpose of evasion and that I will well and faithfully discharge the duties of the office upon which I am about to enter, so help me God.

That is a pretty strong commitment. It is not a partial commitment. It is not a 98-percent commitment, and it sure as heck isn't a 70-percent commitment. That is what we are dealing with today. My colleagues seem proud of that. You are even using the 98-percent figure.

Again, the reality is we are dealing with circuit court judges, and close to 30 percent have not been confirmed and have been filibustered. The fact is that right now it is four but tomorrow it will be six. We know the other six are there. Unless my friends from across the aisle would say we are not going to filibuster another six, I will run the names by them. We will change the chart and say something different. We all know the reality. Let's lay it out here at 1:10 in the morning.

Twenty-nine nominees were confirmed and 12 were not. Just think, if we took the approach that it is not important, you know, 98 percent—as I said before on the floor, if the airline that got me to St. Paul told me that I had a 98-percent chance of getting there and a 2-percent chance I would crash, I would not be flying.

The Constitution is wonderful. The first amendment says:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peacably assemble, and to petition the Government for a redress of grievance.

I want those listening to think why is it that in the 214 years of the history of this great Republic, this great country, the Senate has not done what we are doing now. We are changing the system. It is very dangerous.

The second amendment says:

> A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, not be infringed.

Minnesotans are pretty strong about the second amendment. We like to hunt and we like our firearms. That is OK. Imagine if I went to a group of 172 using my colleagues' chart and said 168 of you are going to have the second amendment, or if I went to 41 and said we are going to give these rights to 29 of you. There would be a revolution.

The third amendment says:

> No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Can you imagine if I went to 41 Minnesotans and said 29 of you are going to have a third amendment right, but 12 may be forced to quarter without your consent. I don't think they would do it. They would say, where is America? There is a reason why we have fidelity to the Constitution.

The fourth amendment says:

> The right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.

Can you imagine going to 41 Minnesotans and saying 29 of you will have the right not to be subjected to unreasonable search and seizure but 12 of you don't have that right? There would be a revolution. On and on.

The fifth amendment talks about the right against self-incrimination.

The sixth amendment says:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Can you imagine if out of 41 defendants, 29 were told you would have a right to speedy trial? Even if you told 168 they would have that right, but not the other 4, there would be a revolution.

We are not just talking about four individuals here. We are talking about one of the foundations and the underpinnings of this Government.

I tell the young people listening in the Chamber, this is your future. The greatness of this country is built on its fidelity to the constitutional principles. It has allowed us to kind of grow into the greatest nation in the world with the freedoms we enjoy, and those freedoms we have enjoyed have triggered great entrepreneurial opportunity—growing jobs. It is tied together and it is about growing jobs.

You grow jobs when you have a constitution that is adhered to and you have stability. I am chairman of a subcommitte of the Foreign Relations Committee on which we both serve. I can tell you that the concerns I have about some of the countries in Latin America have to do with whether they have rule of law. The reality is, if there is no rule of law, we see there is no investment, you don't grow jobs. So they are related. They are related.

In the end, I want to get away from just talking about the principles, these sorts of abstract constitutional principles. They are important and that is why we are here, because we must have fidelity there. We have to get things back in sync. We have to get away from this process, this unprecedented filibuster. By the way, those are not my words. Those are the words, as I understand it, of JOHN CORZINE, the chairman of the Democratic Senatorial Campaign Committee. In an e-mail he had—we have a chart here—it says:

> Senate Democrats have launched an unprecedented effort by mounting filibusters against the Bush administration's most radical nominees. Senate Democrats have led the effort to save our courts.

Unprecedented filibuster, that is what this is about. There has to be a better way. This is about being divisive. We have to get away from divisiveness, from everything being a battle. We have to get back to a fidelity to the principles that founded this great country. They are pretty clear. You don't need a Ph.D. or a law degree to understand the Constitution. It is pretty clear, pretty easy reading.

So that is what this is about today. In the end, it is not simply about four people; it is not about whether they have a job. It is whether, in fact, we uphold the obligation that we have, that we do our duty, that we do our job. In the end, we should simply give people a vote. If you think that they are good nominees, vote for them. If you think they are bad nominees, vote against them. But you give them a vote. That is what we have done for over 200 years. To fail to do that will have terrible consequences.

One last story before I turn the floor over to my colleague from South Carolina. It is about this building and a little bit of history from a number of years ago. There is an old Senate Chamber down the hall. When you walk out of here, it is maybe about 50 yards away. When we get sworn in in here in the official ceremony, we then have a ceremonial picture taking with the Vice President. It is a very special moment for all of us, especially for kids from humble roots. I am one of 8 kids,

and to have my mom and dad there was very special.

In that old Senate Chamber, in the old days the Supreme Court actually operated on the floor above the Senate. At one time, they were planning on remodeling the Supreme Court chambers. Some enterprising young architect decided that one of the pillars that was kind of holding it up didn't need to be there. So they said don't worry about that. What happened was that the Supreme Court crashed into the Senate, disrupting its work.

There is a moral to that story. If you displace or undermine one of the pillars of Government, which is what we are doing here, beware of the consequences. We cannot let that happen. These nominees—100 percent of them—deserve what we have done for 214 years: give them a vote, vote them up, vote them down, but give them a vote.

With that, I yield the floor to my colleague from South Carolina.

Mr. GRAHAM. I thank the Senator. The Senator did an excellent job of trying to put into perspective what we are trying to do. Senator REID from Nevada has left. If anybody deserves a break, he does. A couple of days ago, he spent about 8 hours-plus on the floor trying to prevent some legislation from coming forward that he thought was inappropriate. He was committed to making sure that the activity of the Senate did not go forward. He used his right as a Senator to speak. I applaud him for that. I don't agree with him, but the worst thing I think I can say about Senator REID is that sometimes I disagree with him. He is a very nice man. I have enjoyed getting to know him over the years and serving with him. I appreciate the nice things he said about me.

The point is that we disagree on this, and I don't question his motivation. I just question the judgment of what we are doing here. He described the United States problems in very graphic terms. God knows we have problems in this country, but I think it was used to try to illustrate or trivialize what we are doing tonight. If we have all these problems, why are we talking about this? I don't think it is healthy to trivialize the constitutional process of nominating judges. Whatever problems we have in this country—and there are a lot of them—none are going to be made better by hijacking the Constitution. If you expect us to just lay down and forget about it, then you have mistaken who we are. If you feel strong enough to stand up for 8 hours to stop something from happening, God bless you; if you think other people are not going to do the same, you have made a huge mistake. We are going to talk until 9 o'clock and do other things.

I announced today that if this doesn't change, I am going to ask the Supreme Court to decide whether or not the tactics of the minority have violated the Constitution, because I believe they have. If you are into numbers, I can tell you this. In the past 11 Presidents, on their judicial nominees confirmed versus those filibustered, we have had 2,372 people confirmed. We have not had one person filibustered. Now we have 4, and in just a couple weeks we are going to have a dozen. Some things were said. If nothing changes, nothing will change.

I can stand here, talk until I am blue in the face, and I have no illusions about my ability to change anybody's vote on the other side. I feel a real need to let history know, and my constituents back in South Carolina know, I think this is a lousy thing that is going on. I think this is a change for the worse, that you are taking the country down a road no other group has ever taken it in the Senate. You are doing it for political reasons you believe are just, but I think history is going to judge you poorly. I think it is going to be one of the darkest chapters in the history of the Senate. You have started something you can't stop, and most likely we will answer in kind down the road and you have taken 200 years of history and thrown it in a ditch. That is a big deal.

There are a lot of problems in this country, but you are about to create one that is very bad. You are adding to that list of problems the fact the Constitution has been changed in a way I think is illegal. Certainly it violates the traditions of the Senate. And we have to deal with it and we are going to deal with it. We are going to talk about it and we are going to try to get you to vote and we are not going to let this go.

I am going to ask the Supreme Court to look at this case that is going on before the Senate and see if the filibuster, requiring 60 votes, violates the terms of the Constitution because the Constitution requires a simple majority vote to confirm a judge sent over by the President.

Since we are going to have about 8 hours, I will save some of the time to talk about the history of the constitutional debate that went into that clause, why they picked a majority versus a two-thirds requirement that you have for ratifying treaties and impeaching the President. There is absolutely a rhyme and a reason for everything in this document.

There is no rhyme or reason for what is going on now, other than politics of the moment.

If you listen to Senator REID, you would want to leave the country. I mean it is an assessment of the problems of the country, given to try to trivialize our objection to the Constitution being changed in an improper way. But it also is a distortion of who we are as Americans, because Americans, given all of our problems, are still the most hopeful people in the world. After listening to this rendition you would just wonder why everybody is not moving to Canada or Mexico.

We are not leaving the country. Other people are trying to get into our country. One of the biggest problems we have that he did not talk about is illegal immigration. People are literally risking their lives to get to be part of the American dream.

I would rather focus on some of the positive aspects of our country, one of them being a courtroom available to everybody and anybody, regardless of your status in life, where you can go have your day in court, and that requires a judge. Judges are picked by the President and confirmed by the Senate. The advice and consent clause for the Senate has never meant a minority telling the President what to do. It has always meant a vote on the nominee with a majority being required to put you on the bench, until now.

Let's talk a little bit about some of these people, the four names. But there are many more affected by this than just four. This is the America I like to talk about, and relish.

Justice Brown: Janice Rogers Brown is one of the four who is being filibustered. She sits on the California Supreme Court. Senator SCHUMER said she is out of the mainstream. She is not of the temperament and the thought process, in his opinion, that makes her a mainstream person, so she would do harm to the country if she served as a judge.

President Bush disagrees with Senator SCHUMER because he chose her to go on the court of appeals. Senator SCHUMER has an obligation under the Constitution to give his advice and give his consent and eventually vote. He doesn't have the right, in my opinion, to band together with 39 other Senators and bring us to a screeching halt. No one has ever done that before. It is called a filibuster. The number of filibusters in the last 11 Presidencies is zero up until now.

Let me tell you a little bit about Justice Brown. No. 1, she lives in California and she got 76 percent of the vote. In California you get to vote on a judge. You get to decide. You, as a citizen, get to vote to retain a judge once they become a judge. You actually get to express yourself. I am going to go out on a limb here and say no rightwing nut is going to get 76 percent of the vote in California. I am going to stand firmly behind that statement. I don't believe 76 percent of the electorate in California would vote for somebody described as Senator SCHUMER has described this lady. I believe 76 percent of the people in California see Judge Brown like the President sees Judge Brown. This whole argument that she is somehow out of the mainstream just does not pass the smell test because the people of California get to vote on Justice Brown.

We finally got a Republican Governor of California. Arnold is an interesting figure, Governor Schwartzenegger is a larger-than-life figure—literally. But I don't think anybody would ever accuse him of being a rightwing nut. California's political makeup is such that the person described by Senator SCHUMER

would never, ever make it. This is just one example of the cut-and-paste job on all four of these judges, with more to follow.

Let's talk about the America she came from. Only in this country can you do what Senator COLEMAN and myself have done. I grew up in a pool hall restaurant—beer joint is probably a more accurate term—and made it to the Senate. I am very proud of my parents. They worked hard. They are small business people. I feel I am the luckiest person in the world.

She is the daughter of a sharecropper. She was not born in California; she was born in Greenville, AL in 1949. She attended segregated schools. I attended segregated schools up until I was in the sixth grade. I was born in 1955.

I can remember, I think it was the sixth grade—about 1967, somewhere along that period of time—showing up and for the first time in my life having African-American students attend my class. It all worked well back home where I lived. In other parts of the State it was more dramatic. In Alabama it was more dramatic. This is the State where George Wallace stood in front of the door of the University of Alabama and said, No, you are not coming here if you are an African American. It took the Alabama National Guard, federalized by President Kennedy, to open that door.

That is where she grew up. She talked about listening to her grandmother's stories about the NAACP lawyer Fred Gray, who defended Dr. Martin Luther King, Jr., and Rosa Parks, and her experiences as a child of the South, and that motivated her to become a lawyer.

Senator SCHUMER said she is not very good on affirmative action. Maybe her view of affirmative action is not what Senator SCHUMER's view is, but I would argue if she was somehow in the right ditch on affirmative action, 76 percent of the people in California wouldn't have voted for her and somebody would have informed them otherwise.

This lady's story is compelling. She moved to Sacramento when she was a teenager. She got a BA in economics from California State in Sacramento in 1974, her J.D. from the UCLA School of Law in 1977. She received an honorary doctor of law degree from Pepperdine University Law School, Catholic University of America School of Law, and Southwestern University School of law.

Prior to more than 8 years as judge in the State courts, she served from 1991 to 1994 as the legal affairs secretary to California Governor Pete Wilson, another known rightwing crazy person, where she provided legal advice on litigation, legislation, and policy matters. From 1987 to 1990 she served as deputy secretary and general counsel for the California Business, Transportation and Housing Agency, where she supervised the State banking, real estate, corporations, thrift, and insurance departments.

She was deputy attorney general in the Office of the California Attorney General. She began her career as a legislative counsel of the California legislature and more will come about Justice Brown.

The PRESIDING OFFICER. The time of the majority has expired. Who yields time? The Senator from Minnesota.

Mr. DAYTON. Mr. President, I was on the floor the second time yesterday, 4 or 5 in the afternoon. I observed, then, the time we devoted to this had already become excessive as indicated by the fact the statements being mailed were becoming increasingly repetitive and redundant. Now I see the added problem is, as we go even further, they become less and less factually correct and reliable, which is bad enough under normal circumstances. But the accusations that are being made are the most serious accusations that can be directed toward another Senator.

One point of factual agreement is we all do take an oath of office when we are sworn in here in this Chamber by the Vice President of the United States and we do swear to uphold the Constitution of the United States. When I took that oath 3 years ago, that was the most solemn oath I have taken in my lifetime. There is nothing I ever committed to that I take more seriously, and I do my best, as I can possibly see to do so, to uphold that. I have never had occasion in my almost 3 years here to question or certainly not to cast aspersions on any other Member for failing to uphold that solemn oath as he or she believes it is best performed.

We have information available to us through the Library of Congress and the Congressional Research Service that has been in existence since just about the time the country began. We use it as a learned and nonpartisan and, as much as possible, nonbiased source of information about the 216-year history of this body. It is not hard to get this information. You just pick up the phone and call and ask to get it. So I did the other day.

They list the chronological history of efforts to limit debate in the Senate. It goes back to the Journals of the Constitutional Congress in 1778. It references the very first session of the Senate in 1789, which started adopting these rules of various sorts. You can read, and over and over in the summaries, I am sure you can go back to the Journals and read in greater detail, how this has been discussed, considered, debated, argued, voted upon, modified, turned down by Members of this body for 216 years.

When people are accusing us of acting outside the rules and the procedures of this body in doing what has been done here and debated about here for all that time, they either are woefully ignorant of the facts or they know the facts and they are being, I think, extremely irresponsible to the American people, if they have the misfortune to be watching this at this hour, to lead them to believe we are doing something here which is anything other than our right, well established in 216 years.

If the Members on the other side want to disagree with what we are doing, or why we are doing it, or who we are doing it for or against, they are perfectly within their rights to do so. But to say we are violating the rules of this body is not true. To say we are violating the Constitution of the United States is a heinous fault and I will go with the Senator from South Carolina, I will join with him going to the courts of this country, right up to the Supreme Court and let's get the ruling he wants. Because I guarantee what it will be. Courts have ruled for the last 216 years the House and the Senate have the right under the Constitution to establish their own rules. That is what we have done. That is what this book is about.

This book is 1,524 pages, called ''Senate Procedure.'' These are all the precedents and changes in the rules and modifications and the like. It only goes up to about 1992 because over the last 11 years the chief Parliamentarian, who is the editor of this book, hasn't had the time to add to it. There are probably another 500 pages or whatever that have not been added to this that are all the different precedents, all the different changes. Any time any one of us thinks anybody else here is acting in violation of those, we have somebody right there. Every minute we are in session we have somebody we can ask and get a factual answer, an impartial and nonpartisan answer, and that is the Parliamentarian.

I ask the Parliamentarian if anything in these books for 216 years precludes our right to do what we are doing and if it is not within the rules of this body. I think it is shameful that anybody states otherwise.

One important rule, in 1902, was adopted. Rule XIX was amended by inserting at the beginning of clause No. 2 the following:

> No Senator in debate shall, directly or indirectly, by any form of words impute to another Senator or to other Senators any conduct or motive unworthy or unbecoming a Senator.

I can't think of any imputing of any conduct or motive more unworthy to a United States Senator than the violation of the U.S. Constitution, violation of the Constitution that we each took the oath of office to uphold. To do so without basis in fact is just beyond the pale.

The Senator from Mississippi, the chairman from Mississippi, earlier today said he had his disagreements, he thought we should review these matters in the Rules Committee. I laud him for saying so. He doesn't have to agree with what we are doing. He has every right to disagree and he has every right as the chairman of the committee to go through that process and I welcome the opportunity for him to bring in constitutional scholars, the

Congressional Research Service, the Library of Congress authorities, and go through all this and consider other questions about whether the minority should be able to hold up the nominations of some 60 nominees of a President of the other party when they are in the majority; as the Senator from Florida suggested, whether these should be lifetime appointments. By the time he passed away, Thomas Jefferson was opining that they should not be, to the Federal judiciary.

Let's get the facts. Let's ask the Library of Congress, the Congressional Research Service, to tell us if this is wrong. It's on their stationery that up until 1917, when the Senate first adopted a cloture rule, until 1949, I read directly:

> . . . cloture could be moved only on legislative measures and nominations could not be subjected to cloture attempts.

But then the Senate rule was changed, by the Senate. Following the rules and procedures of Senate they changed it so these steps could be taken with regard to nominations.

I am on page 3, reading again exactly:

> Even after Senate rules began to permit cloture on nominations, cloture was sought not until 1968 on a motion to proceed to consider the nomination of Justice Abe Fortas which was debated at length.

Moving ahead:

> Cloture was sought on no other nomination until 1980. Subsequent to 1980, of the 12 nominations on which cloture occurred during the 103d Congress, ten were for executive branch positions except in that Congress most nominations on which cloture had been sought have been to judicial positions.

They have a table which says between 1967 and 2002 on judicial nominations cloture was invoked by the Senate 11 times; cloture was not invoked 6 times. Executive branch nominations, cloture was invoked 10 times, not 8 times.

It is pretty easy to get this information. If somebody thinks they are just making it up, they are wrong. They should make that case. But otherwise people are making up misrepresentations and misinformation. It is outright false. They are doing a great disservice to this body and to the credibility we all strive to maintain.

One of our predecessors from Minnesota, a man I worked for back in 1975 as a legislative aide, Walter Mondale, former attorney general of Minnesota, served for 11 years as a Senator. He said one of his proudest accomplishments was modifying the procedures under rule XX from two-thirds to three-fifths of Senators. On behalf of the change, Senator Mondale said at the time as sponsor of this resolution the proposal was a reasonable accommodation of the right to debate and the right to decide. We believe this might be harmonized in such a way as to protect action.

Anybody in this body has a perfect right to disagree with that statement by Senator Mondale with the actions of the majority of his colleagues in that session to make this modification and to leave this rule as it essentially is today. But to just imply it is a violation of the rules in what we are doing—implying we disrespect the body and the purpose of the established procedures and upholding the best interests of this country for 216 years—by people who have been here less than a year themselves I think is an abomination. Then to go beyond that and say we are in violation of our oath to uphold the Constitution of the United States is I think a disgrace.

I yield to my colleague from New Jersey the balance of our time.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. LAUTENBERG. Mr. President, I thank the Senator from Minnesota. It is obvious he is outraged at the triviality that is being thrown out here about how we are violating our oath and violating our standards.

Think about this. We are now in the 32nd hour of this talkathon on judicial nominations, brought to you by the Republican Party. I guess the first 30 hours were so successful they decided to extend the hours. But instead of helping anyone promoting a good cause, Republicans are using this staged event to push for job applicants who are unfit to take the job. They are unfit, they are unqualified, they have shown they are likely to abuse their authority as circuit court judges who advance an extreme rightwing agenda and not in the best interests of America.

The Republicans so desperately wanted this talkathon to be a made-for-television movie they attempted to coordinate their efforts with FOX News, the providers of fair and balanced Republican television. It comes from the distinguished majority leader's office, one of his staff people. It says: ''It is important to double your efforts to get your boss to S. 230 on time. FOX News channel is really excited about this marathon. Brit Hume at 6 would love to open with all of our 51 Senators walking onto the floor. The producer wants to know we will walk in exactly at 6:02 when the show starts so they can get it live to open Brit Hume's show. If not, can we give them an exact time for the walk in start?''

That hardly sounds like a sincere effort to me to get something done.

I hear the outrage about how we are playing politics on this side. What is this? If that is not raw production, I have never seen it. Line up. I wonder if the suit colors and ties were described at the same time. It is good to see a bunch of penguins walking down here 51 deep.

FOX News presents—it says 30 hours. They made a mistake. They didn't know how enjoyable this was, that we were going to go on with this.

The passions are so high there are things said that are just not accurate.

I point to this hallowed document, Senate Manual, which talks about the Constitution of the United States. It is part of the book. It talks about the powers of the President. He ''shall have power by and with the advice and consent of the Senate to make treaties et cetera and with the advice and consent of the Senate shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court and all other officers of United States.''

Advise and consent—it doesn't say consent and advise. It doesn't say just approve them and we will talk about it later. We are maintaining our responsibility to the Constitution to a ''t''. It is our friends who want to ride roughshod over it and perhaps maybe find another way to curtail the appropriate dissent of the minority as has been evidenced so many times in the past.

I think about what is going on here after a visit I made yesterday along with others to Walter Reed Hospital, and I met a young man there. I knew he was in a ward in an area—a single room but in an area where the amputees are cared for. I didn't want to really inspect him with my eyes. I reached out my hand to shake his hand, and I wound up feeling a cloth and nothing in the cloth. His hand was missing. On the other side his arm was missing. He is about 23 years old, full of life. My guess is 23. I know he is young. He was positive and said, I am going to get on with this. We had the good fortune to have former Senator Max Cleland from Georgia who lost three limbs in Vietnam and was made out to be unpatriotic in the last election. Figure that one out. But he had the good judgment to ride in there in his wheelchair and look at this young fellow who had been, by the way, 3 weeks in Iraq, and about 4 months in the Reserve; no hand on either side, and no arm on one side. He told this young man, Have courage. There is life for you. And then he gets visited by Danny Inouye, Congressional Medal of Honor winner, missing an arm. He comes in to say to this young fellow, There is life out there. You can accomplish something.

And here we stand on this nonsense. Why aren't we talking about what the problems are in Iraq and how we solve them?

Let me read to my friends on the Republican side what a very distinguished Republican Senator said, John McCain. Few had his experience in military matters in a war. He said:

> The Pentagon's proposed withdrawal of U.S. troops in Iraq would be an irrational move. ''If anything,'' said McCain, a senior member of the Senate Armed Services Committee and an outspoken critic of the administration's postwar policies in Iraq, ''the United States needs to increase its troop presence in Iraq, specifically special forces and Arabic-speaking intelligence officers. The attacks are up. The wounded Americans are up. Killed Americans are up, and the Pentagon announced a withdrawal or decrease in the number of American troops. It is not reasonable or rationale,'' says John McCain.

I agree with him. Why aren't we discussing that? Why aren't we having a marathon, 30-hour marathon, and talking about the war, talking about what

is going on and talking about what we do to make it easier on those to make them safer, and send the 10,000 or 20,000 additional troops John McCain says are necessary and I believe are necessary? I am no military expert. I spent 3 years in the Army. I was a corporal during World War II. But I know we need more there. We have to help our troops.

Do not talk about whether we are violating the Constitution. Where is your oath? Is it in your heart? It is the process we are talking about. Go to the Supreme Court and have a great trip. We will escort you there. Take and read the Constitution—just like you can, just like I can. Forgive me—just like the Senator from South Carolina can.

That is what we ought to be talking about and not talking in front of the American people about the process and about how fair we have to be with judges we think are unfit and we are going to talk about it. Just as we were threatened by the debate that went on, we are not going to go away, as I heard the Senator from South Carolina say. We are going to stay here. We are going to do this, and I am going to the Supreme Court. Have a good visit. The fact of the matter is it is very clear what our responsibilities are.

I talked about my trip yesterday to Walter Reed. On Monday, I made a trip to the Sacred Heart Cathedral in Newark and watched a young man who was on a Chinook helicopter. By the way, the fellow I saw in Walter Reed was not the American amputee. The other fellow, burned, broken bones all over his body, he was in the Chinook helicopter also. It wasn't many days ago this fate befell them, and they were already in the hospital here.

But Sergeant Joe Parez—25 years old, wife, little baby girl, mother, father, brothers—was buried at the Cathedral in Newark. He was one of the 16 who perished when the Chinook helicopter went down.

We had a brief moment of conversation. I said we would try to be of help to the widow and the family. She is a very young woman totally overcome by the loss of her husband.

This was a week for me that brought home reality. I saw it when I served in Europe during World War II, and I saw it here, and I saw it when I went to the hospital that took care of Vietnam veterans.

There is a price, a terrible price people are being asked to pay. They are there. They are worried about their families. They are worried about their jobs. They are worried about this country. They are worried about how they are going to adjust back into society after being away too long. We are stretching this rubberband so tight. We have reservists who signed up for duty that included weekends and a couple of weeks a year out in field exercises. Their job primarily was to be there in the case of emergency, floods, natural disasters, riots, those kinds of things that happen. But we do not talk about those. As a matter of fact, what has happened here I find quite shocking is there is a deliberate attempt by this administration to conceal the fact that these dead guys are coming home in caskets, and they deserve the honor of being acknowledged and not hidden off in some obscure air terminal and shipped quietly in trucks to get them out of the way. Stand up, Mr. President, and stand up, my friends on the Republican side, and demand we have an inquiry about this instead of fooling around with 30 hours here to prove nothing.

The Constitution tells you how it goes. Read it. Read it and tell the truth to the American public. Stop talking about politics because that is exactly what you are doing. You think the TV perhaps is going to get your brave message out to the rest of the country. Yes. Our heroes stood up and they stood up for a process. The rate, I think, is something like $80,000 an hour it costs to put on this not very good circus, I would say.

I say to the critics on the other side, stand up, talk about things that affect people, tell us how we are going to get out of Iraq without losing more of our young people. We are over 400,000. There are far more casualties than we had in gulf war 1.

I managed to be the first legislator to be there in 1990. We had 540,000 people on the ground and we lost far fewer than we have lost in Iraq II. Why? Maybe we were better prepared. Why? Maybe we had enough people to make sure they couldn't maraud our troops and our units there and decimate them, and not only break their lives but break the hearts of the Americans across the country because they do not understand what is happening.

This is a colossal waste of time. Face up to it. The minority disagrees with the selection. You have seen the statistics—168 to 4. I think the number is a very small percentage of those who have been challenged. More judges have been confirmed in this Senate than we saw in the entire years of the Clinton administration. We have done our job, and we have done it well. Tempers fly high. I think they ought to. I don't like losing my temper. But I dislike losing my mind.

That is what is happening here. This is a loss of purpose. This is raw politics. To call it anything else is unfair and false. The Constitution says advise and consent. It doesn't say consent and advise. It says nothing in the Constitution, no matter how many attributions, that we have to lay down and simply accept what the President sends down. There are checks and balances, just as a reminder, in case one doesn't understand that. This is a perfect example of what it is about.

No, we will not accept people who we think are unfit. This has not been an unreasonable Senate. We have done what we have to. We have watched appropriations bills language all over the place. We have seen there is hardly a serious long day of work to get the job done. But this falsely heroic effort to make a difference in the way our society functions is I think see-through politics. I think it is obvious what we are watching—someone called it theater. I call it a circus. It is not fair to the people we serve.

I hope we will be able to get on with the business of the people soon. We have our votes tomorrow morning. I would like to see us turn to the war in Iraq and have a serious debate about it and hear from the high-posted officials, the Secretary of Defense, the National Security Adviser.

I was at a briefing today. I don't know whether any of the other Senators here were in the room. It was a relatively junior staff presentation. The news didn't particularly have much insight attached to it. But we went to try to find out.

We ought to make a pledge right now that we will do another 30 hours, maybe start tomorrow night and talk about the Iraq war, talk about our people, talk about how we are going to get them home and talk about how we are going to end it; talk about how we are going to justify to the American people why we are spending $20 billion for the reconstruction of Iraq but we can't rebuild schoolhouses filled with asbestos or otherwise.

The PRESIDING OFFICER. The minority's time is expired.

Mr. LAUTENBERG. I yield the floor.

Mr. GRAHAM of South Carolina. Mr. President, I thank Senator LAUTENBERG for his services to this country. Serving in World War II is a big deal no matter your rank. My dad was a corporal, too. If you think it is a waste of time, have your say. This is a huge deal. The Democratic leadership and the members of the Democratic Party have set in motion something I don't know how to stop. I had a chart that says in the last 11 Presidencies we had 2,372 people confirmed and not one person filibustered. You decided to do something different. It bothers me as much as our response bothers you. The people being filibustered are very qualified people, in my opinion, and you certainly have your right to disagree.

I don't believe the Constitution gives the minority of the Senate the right to advise and consent. We have 214 years of history where the advice and consent clause has been the Senate speaking as a majority. What hurts the most about the filibusters, which are unprecedented and are harmful to the country, is every nominee that is being filibustered by our friends on the other side has enough votes to become a judge. Literally a minority of Senators have taken it upon themselves for the first time in the history of the country to make sure a majority of the Senate cannot vote to confirm a judge by using a rule of the Senate.

I would like the Supreme Court to hear that case because I don't know of any other way to make this go forward.

Chances are the Supreme Court may very well say this is not something we decide because you are the Senate. We are the Court. These rules are your rules. They may well say that, but I feel a need to push this as far as you can to get an answer and try to move on and have a better future.

The future of the Senate when it comes to judges is going to be lousy. We have four filibusters going on with another seven or eight to come. But if we behave with each other like this, we will have hundreds before long. As time marches on, we will have a lot of people caught in this vise.

Senator COLEMAN from Minnesota made a great point, I thought. Justice Ginsburg would not have a prayer because she has a liberal view of the law and a lot of people on this side voted against her. But they voted and she won the day. Justice Scalia is vilified by the left. He would never have a shot. A lot of people on the Democrat side voted against him. But he won the day and he is sitting on the Court. That is the strength of the Nation. When you have someone like Ginsburg and Scalia in a room having to talk to each other trying to find a way to move forward in terms of judges, it is going to be very disappointing because good people are not going to put themselves through this.

Justice Brown will be filibustered just as sure as I am standing here. She is an African American who sits on the Supreme Court of California. She has authored more majority opinions in California than any other justice. I gave a rundown a while ago about her story coming from a sharecropper family in Greenville, AL, going all the way to the Supreme Court in California, getting 76 percent of the vote in her last election. And you have to vote on judges in California. My argument is that no one would get 76 percent of the vote in California if they were the rightwing ideologue that the other side is describing.

I am not here to convince Members that I am right. I am here to set the record straight in terms of why I believe President Bush picked a good person. If you disagree, vote against her. Don't allow the Constitution to be changed in the way you are doing because you are putting the country in constitutional and political quicksand. Members will regret it down the road. I know the country will regret it.

Now, there is politics going on here. I will put a human face on this. Justice Brown has had a pretty rough time of it in committee. She has been very successful with her career in California. She has been successful in every endeavor she has engaged in, serving in a variety of capacities to the point that people want to promote her and the three-fourths of the citizens of her State think she has done a great job. But she comes to the Senate and she runs into a buzz saw because she is conservative. Apparently that is a crime.

This is a cartoon by the Black Commentator, a paper. The first amendment allows people to talk about public figures. This is just a little bit of what it is like to be in the environment our friends on the other side have created. This cartoon has ''Welcome to the Federal Bench, Ms. Clarence, I mean, Ms. Rogers Brown. You'll fit right in.''

And it is a caricature of President Bush and a racial stereotype, an offensive drawing, of Miss Brown. The people in the choir are clapping, as Justice Clarence Thomas—a very distorted picture which is offensive, I think—Colin Powell, African American, Secretary of State, a great general and somebody I admire, and Condoleezza Rice, our national security adviser, another African American who I think will help us do a good job in Iraq. This has been a miserable experience for this lady. I am very sorry she has had to go through this.

Over 50 percent of the Senate will vote for her when the cloture vote comes. Pickering, Owens, Pryor, all have received over 50 votes but we cannot get to passage because the filibuster rule requires us to get 60 votes. Therein is my problem. The Constitution does not require 60 votes to confirm a judge. There are several places where two-thirds are required. The Constitution says you will advise and consent by majority vote in the Senate.

They are using a procedural device, the Democratic Party is in this case, to block a vote on what I think are well-qualified people. No one else in the history of the country has done this before, Republican or Democrat. This is the first time someone has come out of the Judiciary Committee with a majority vote who cannot receive an up-or-down vote. There are four of them with a bunch more to come.

I give no apology for wanting to try to do something about this because, as sure as we are all here tonight, there will be a Democratic President come later on and that person will make a recommendation to this body, a nomination to this body, and if we do not change the way this trend is going, it will be a miserable experience. We will get bogged down and we will never be able to move forward as the Constitution has envisioned. This has worked well for 214 years. This is not time to change it.

Senator LAUTENBERG was right, there is a political dynamic going on here. I am sure Republicans have been abusive in the past in terms of the way the judges have been treated. I have heard a lot about that. Like Senator COLEMAN, I am new to the Senate. I would rather not perpetuate that problem. I would like to be someone who solved that problem.

We have some quotes from the past that I will read quickly. Senator LEAHY, the ranking member of the Judiciary Committee, said in 1998: I stated over and over again on this floor that I would refuse to put an anonymous hold on any judge—that is a way of keeping a judge coming through the committee—that I would object and fight against any filibuster on a judge, whether it is somebody I opposed or supported, that I felt the Senate should do its duty. If we don't like somebody the President nominates, vote him or her down.

Very wise advice. We are not doing that at all. I don't know why we changed but we have.

Senator LEAHY, 1998: I cannot recall a judicial nomination being successfully filibustered. I do recall earlier this year when the Republican chairman of the Judiciary Committee and I noted how improper it would be to filibuster a judicial nomination.

I will read before the night is over many statements in the past where our Democratic colleagues were absolutely against the idea of doing anything other than giving a person an up-or-down vote. That has changed in an unhealthy way.

E-mails were talked about before. Let me read an e-mail that I think says a lot. This came from Senator CORZINE, the chairman of the Democratic Senatorial Campaign Committee, November 3, 2003, not very long ago, and it was sent out to raise money. I am sure we have sent e-mails and letters saying: Help us. The Democrats are destroying all of President Bush's nominations. That is the political environment we have gotten ourselves into. Like Senator COLEMAN, I would rather not perpetuate this. I would like to end it and move on and get it right.

Based on the prior statements of Senator LEAHY and others that we will read later on, they have changed for some reason. Now they are going into the past and saying, we are doing this because you did that. Where does this end? The truth is, no one has done what they are doing now. That is just a fact.

From the e-mail:

> Senate Democrats have launched an unprecedented effort.

I will stop right there. I think that is a true statement. I don't believe Senator CORZINE is misleading the donor population. I think he is trying to tell them, folks, we are doing something nobody else has done before. This is unprecedented. You need to pay attention. You need to look at your Democratic Senators, pay attention to what we are doing, because we are taking a step no one has ever taken before. What is that step?

> By mounting filibusters against the Bush Administration's most radical nominees, Senate Democrats have led the effort to save our courts.

This e-mail is designed, quite simply, to let people in the Democratic Party know that the Senate Democrats have done something different, something unprecedented, and they are filibustering the President's nominees because they are radical. You cannot send this e-mail out to collect money and spend 32 hours denying you are filibustering anybody. You are filibustering judges in an unprecedented way.

And they are the Bush administration's nominees. The question is whether or not they are radical.

If you think they are radical, vote against them. I don't believe Justice Brown is radical. I don't think 76 percent of the people in California who have voted would have voted for her if she was radical. I think the attacks against her have been radical. But that is just my opinion.

This e-mail clearly establishes the fact that the Democratic Party has made a calculated effort in the Senate wing of the Democratic Party to do something different, to stand up against President Bush. They are blinded by the political moment. If we continue down this road, there will be more e-mails such as this on both sides of the aisle and it will be a disaster for the Constitution.

There are men and women serving in Iraq. There are people putting their lives at stake for this country. God bless them. We all did take an oath. They have their opinion and I have my opinion about what the oath means. But it will not withstand the filibustering of these nominees. It would be irresponsible on my part, given what I believe my oath is, to just let this go and make like it is no big deal because I think this is a huge deal.

I yield to the Senator from Minnesota.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. COLEMAN. Mr. President, following up on the comments of my friend and colleague from South Carolina, you have to ask yourself, 214 years and the Senate has not done this, has not stopped a judicial circuit court nominee by filibuster. That is a fact. My colleagues on the other side can argue with charts but that is the reality.

You have to ask yourself, for 214 years was the Senate a rubberstamp for the President? I don't think so. I don't think anyone could make that argument. What you have is the reality that the Senate was exercising its constitutional responsibility. And doing it in a constitutionally responsible way.

That is what is important, doing it with respect for the Constitution, respect for the authority of the President to set forth the nominee, respect for the obligations upon the Senate to advise and consent, by a majority vote. Again, the Constitution, article II, says treaties need a supermajority, not a simple majority vote. What we have here is the minority saying we are not living by majority votes when it comes to judicial nominees regardless of what is in the Constitution. That is unfortunate. It is more than unfortunate. It undermines the principles upon which this democracy is based.

My colleague from Minnesota, the senior Senator from Minnesota, talked about this not being unprecedented. We have done it before.

Here are the facts. This is a listing of judicial nominations subject to cloture attempts from 1968 to 2003. I will go through every one of them. The first one is Abe Fortas, Chief Justice. Cloture was rejected. I will come back to whether that was even a filibuster. That was not a partisan filibuster. In fact, it was a bipartisan effort because of ethic complaints about Fortas but it was not a partisan filibuster.

A letter was sent to JOHN CORNYN, chairman of the Subcommittee on the Constitution from the former Senator from Michigan, a predecessor of my colleague, Mr. LEVIN, who is sitting there, talking about the Fortas nomination and basically saying that it was not a filibuster.

What happened, in a letter he says, while a few Senators might have contemplated use of the filibuster, there was no Republican Party position that it should be employed. Indeed, the Republican leader of the Senate, Everett Dirksen, publicly expressed his support for the Fortas nomination shortly after the President announced his choice. Our position in 1968 to the Fortas nomination was not partisan. Some Republicans supported Fortas; some Democrats opposed him.

Go through every listing on this chart. Outcome of cloture attempt, may have been rejected, may have been invoked, may have been withdrawn, but every nominee got a vote. That is what this is about. Vote them up or vote them down but give a vote.

We have a minority for the first time in the history of this body basically saying, regardless of what is in the Constitution, regardless of the language of the Constitution that makes it clear that the advice and consent is based on majority, they are changing the rules of the game. The argument is that these candidates, these nominees are outside the mainstream.

What is the mainstream? Who is the mainstream? Priscilla Owen received 84 percent of the vote in the last election for the Texas Supreme Court.

I have to tell you, I would love to see an 84 percent in any election. Just about anybody in this body would love to see 84 percent. They would tell you that is mainstream. That is mainstream. That is the ''wholestream.'' What is left is extreme. And that is what you have.

Bill Pryor, 59 percent in his last election for Alabama Attorney General—59 percent.

Janice Rogers Brown received 76 percent in her last election to the California Supreme Court.

I would note one of the Senators from California, Mrs. BOXER, received 53 percent. Who represents the mainstream in California? Seventy-six percent of the vote. The other Senator from California, Mrs. FEINSTEIN, by the way, former mayor of San Francisco—I am a former mayor. I have great respect and appreciation for mayors. It is a tough job. She is a great Senator. I do not always agree with her, but she is a great Senator. She got 56 percent of the vote. Janice Rogers Brown, who supposedly is the extreme, got 76 percent in her last election for the California Supreme Court. That is mainstream, not extreme.

Charles Pickering was confirmed to the Federal district court in 1990 by this body by unanimous consent. What that means is no one objected; everybody agreed. And today he is described as extreme?

If I could go through some of the candidates, Priscilla Owen—a whole bunch of these nominees are out of the mainstream? I am not sure what they are talking about. She has served in the State of Texas on the highest court. She has been given the support of 15 past presidents of the State Bar of Texas, a bipartisan group. We are talking about the folks who know them best.

Justice Owen was unanimously rated as well qualified by the American Bar Association. Apparently, this unanimous rating of the American Bar Association is out of the mainstream as well. I would submit, by the way, the American Bar Association is not a conservative interest group. I do not know who the members are, but I have to guess it is a bipartisan group. I have to guess there are some Democrats in that group.

It is clear the so-called mainstream being portrayed by some in this body is not only an incorrect reflection of the average American but a single-issue extreme which flows only in the direction of special interest groups. That is really what this is about.

You have to go through the records of these folks. I went to law school. Senator GRAHAM went to law school. I went to the University of Iowa, did fairly well, and served 17 years in the attorney general's office, and solicitor general, chief prosecutor of the State of Minnesota. But you would love to have the qualifications and credentials of the folks here, the folks the President has nominated. These are quality, quality, quality folks.

Then you read the statements of some of their supporters. Mary Sean O'Reilly, lifetime member of the NAACP and a Democrat:

> I met Justice Owen in January, 1995, while working with her on the Supreme Court of Texas Gender Neutral Task Force. . . . I worked with Justice Owen on Family Law 2000, an important state-wide effort, initiated in great part by Justice Owen. . . . In the almost eight years I have known Justice Owen, she has always been refined, approachable, even tempered and intellectually honest.

That is what you want from a judge. That is what you want from a judge. You do not want fidelity on a single issue. What you want is the judge to be tempered, to be intellectually honest, to apply their best judgment, to interpret the Constitution.

Raul Gonzalez, former Democratic justice on the Supreme Court of Texas. In Texas they elect their justices. In the elections, Democrats run, Republicans run. Senator CORNYN, one of our colleagues, also elected with us, is a

former member of the Texas Supreme Court, former attorney general.

Raul Gonzalez, former Democratic justice on the Supreme Court of Texas:

I found her to be apolitical, extremely bright, diligent in her work, and of the highest integrity. I recommend her for confirmation without reservation.

John L. Hill, former Democratic chief justice on the Supreme Court of Texas:

After years of closely observing Justice Owen's work, I can assert with confidence that her approach to judicial decision-making is restrained, that her opinions are fair and well reasoned, and that her integrity is beyond reproach.

That is what it is about: integrity beyond approach, opinions that are fair, well reasoned. That is what you look for in judges. You cannot allow a minority of folks in this body to toss about the label mainstream, fueled by folks with special interests. They are kind of pounding the drum, and people follow that drum.

But you have to ask, who is in the mainstream? Folks who get overwhelmingly elected by the people of their State, who receive bipartisan support.

Another former Democratic justice on the Supreme Court of Texas, Jack Hightower:

I am a Democrat and my political philosophy is Democratic, but I have tried very hard not to let preconceived philosophy influence my decision on matters before the court. I believe that Justice Owen has done the same.

That is what you want. The reality is, judges are people. They have heart and soul like everyone else. If you are a defendant in front of them, you may worry about that. But they are people. They bring a life experience. They bring a perspective. They bring a philosophy. You cannot divorce that. You do not divorce that. Some may have been active in politics. There is no question about that. They bring positions on issues. They are not issue neutral. They have not been lobotomized. They bring a life experience and perspective.

What we ask of them is to do what these folks—their colleagues, by the way, are from a different political perspective—say they do. We look to their ability to be well reasoned. We look to their ability to have integrity. We look at their ability to put aside the preconceived notions and simply say they will examine each case on the facts, and apply the law, the law that is done by—yes, that is what we do. That is what legislators do. That is what you are looking for.

Former law clerk of Justice Owen, Lori Plager:

During my time with her, I developed a deep and abiding respect for her abilities, her work ethic, and, most importantly, her character. Justice Owen is a woman of integrity who has a profound respect for the rule of law and our legal system.

That is what it is about: respect for the law and the legal system. To be described as extreme, when you have this body of opinion of folks who know you, who have worked with you, who have been your colleagues, who sit side by side, who have watched you process and reason, and then to render judgments, when they are willing to put aside their political predisposition—and what we are asking for is our colleagues to put aside the politicization of this process, put aside what we have done. Do not go back on a history of 200 years. We have not allowed this to happen on the floor of this Senate. We have not rejected judges on the floor of this Senate by virtue of filibuster for 214 years.

Hector De Leon, past president of Legal Aid:

As the immediate past president of Legal Aid of Central Texas, it is of particular significance to me that Justice Owen has served as the liaison from the Texas Supreme Court to statewide committees regarding legal services to the poor and pro bono legal services. Undoubtedly, Justice Owen has an understanding of and a commitment to the availability of legal services to those who are disadvantaged and unable to pay for such legal services. It is that type of insight and empathy that Justice Owen will bring to the Fifth Circuit.

That is what you are looking for. You cannot do any better than that. Do not allow folks to wave a flag and say ''extreme'' when you have folks who in their own community, overwhelmingly—overwhelmingly—voted, reelected her to the Supreme Court of Texas in overwhelming numbers, and her colleagues coming forth and saying: Hey, this is a woman who is right. This is a woman who is talented. This is a woman who will not put the life experience she brings, perhaps preconceptions about issues—you have folks saying she will do what judges need to do. That is what it is about.

Before the night is over, we will talk about others. We will talk about Bill Pryor. We will talk about Judge Kuhl. We will talk about Miguel Estrada, who has withdrawn. We will talk about Judge Pickering.

But the common denominator in all of these, what the President has done is he has exercised his authority under the Constitution to nominate people who have integrity, who have the qualifications, who have the support of those with whom they have worked, and who, in many cases, when they have had to go before the people of their State, have been overwhelmingly endorsed as being part of the mainstream, not the extreme.

The PRESIDING OFFICER. The Senate majority's time has expired.

The Senator from Michigan.

Mr. LEVIN. Mr. President, how I wish we could take a week's worth of time to debate the issues which are of some critical importance to the people of my State; namely, the loss of manufacturing jobs and the problems we have in Iraq. These issues, the economy in general, job loss in particular, and loss of our troops abroad dominate the minds and the hearts of my constituents.

But the majority has the power to take the Senate on a fruitless cruise. That is what we are about: rehashing the merits and demerits of 4 of the 172 candidates who we have voted on in this Senate. I know these numbers are numbers which are very troubling to the majority. I can tell that by the fact they have attempted to come back with a whole bunch of other numbers.

When this debate is over, when the dust is settled, what I think most people will remember, at least in terms of the calls to my office, is, Is this Senate being tied up, night after night, with complaints that 4 of 172 judges have not been confirmed.

Mr. President, 168 is a number now which is impressed on the minds of people who have watched this debate and heard this debate. The number four is a number which people now understand. Maybe the 98 percent confirmation rate is not quite at the same level as these 2 numbers, but those numbers—168 of President Bush's nominees confirmed by this Senate, 4 have not been confirmed by this Senate—those 2 numbers are very much emblazoned in the minds of people across this country.

In rejecting these four, the Senate has exercised its advise and consent function according to our rules. It has carried out the checks and balances role according to the Constitution that gives us a check and a balance, according to the rules of the Senate.

I want to go back a little bit in history. We have heard quite a bit tonight that this is the first time a filibuster has been used against a judge on the floor of the Senate. I will get into this in a little more detail. I hope to have a little time to talk about the economy and manufacturing job loss, and other things which are very much on the minds of my constituents.

But since the majority has decided to set aside this time, mainly to debate the fact that only 98 percent of the judges who have come before us have been confirmed, and have now suggested, over and over and over again, that filibusters have never been used relative to judges, this is the New York Times headline of September 25, 1968 relative to Abe Fortas: ''Critics Of Fortas Begin Filibuster. . . .'' This is what the Senate Web site says about that filibuster. This is not a Democratic Web site. This is the Senate Web site for the date October 1, 1968: ''Filibuster Derails Supreme Court Appointment.'' That is a Senate Web site.

Folks on the other side, our colleagues on the other side, are saying: Well, what about circuit court nominees? We sometimes hear those words put in there when the statement is made that filibusters have not been used to derail judicial nominees. Sometimes the words ''circuit court nominees'' are put in there instead of ''judicial nominees,'' sometimes the words ''circuit court'' are left out, sometimes they are included.

If circuit court nominees have not been derailed by filibuster, it is not for

a lack of trying. The complaint of our colleagues on the Republican side, it seems to me, more accurately would be: Well, we have tried filibusters many times, but we have not succeeded. You folks are succeeding.

That is the complaint when you strip away the rhetoric and look at the reality. If filibusters have not succeeded in derailing circuit court nominees of Democratic Presidents by Republican Senators, it is not for lack of trying. Because the effort was made over and over and over again with Clinton circuit court nominees. The difference is, the filibuster effort did not succeed because the supermajority, which was required during those filibusters, was achieved for those circuit court nominees. That is the difference.

This is not at all unprecedented. This use of extended debate requiring a cloture vote on judicial nominees has been used repeatedly. It has not succeeded repeatedly, but it has been used repeatedly.

One of our Republican colleagues, during a debate on a nominee—this is not a judicial nominee, but this is a nominee which is subject to this exact same language of the Constitution about advise and consent as our judicial nominees are—when a Clinton nominee to be Ambassador was before us, and there was a filibuster underway and that nomination was blocked, this is what one of our colleagues said. Now this was in 1994, and the Senate was controlled by Democrats. The White House was controlled by Democrats. The House of Representatives was still controlled by Democrats. Our Republican colleague here in the Senate was pointing out the only power that was left to Republicans was the use of a filibuster and forcing a cloture vote. And I emphasize, this is on a nominee who had exactly the same rights or lack thereof to an up-or-down vote as a judicial nominee because the nomination is governed by the same advise and consent clause of the Constitution as our judicial nominees. Here is what our colleague said:

> In considering the nomination of Mr. Samuel Brown to be Ambassador . . . I have reflected on the latitude which ought to be accorded the President in making this decision for the Ambassadorship, reflecting as well on the constitutional responsibility of the Senate for advice and consent as a check. I am troubled by a situation where the only pressure point Republicans have in the U.S. Government is on cloture. Once cloture is obtained, there are more than enough votes on the other side of the aisle to cover the day. While the House is not involved in this matter, the House is overwhelmingly Democratic. There is a Democrat in the White House. The only place that Republicans can assert any effective, decisive action is by stopping somebody from coming up. We have 44 votes and we have more than enough, if there is unity among the Republicans, to do that. I think Mr. Brown's nomination and the responsibilities of the Conference on Security and Cooperation in Europe are sufficiently important to preclude his nomination.

That is what our Republican colleague said in 1994:

> The only place that Republicans can assert any effective, decisive action is by stopping somebody from coming up. We have 44 votes.

That has been the case not just with ambassadorial nominations but with other nominations subject to the advice and consent clause. The only difference with the circuit court nominees of President Clinton, for instance, who were filibustered is that there was not a supermajority to stop the confirmation of the judges. That is not a distinction which I would think the Republicans in this debate would want to emphasize, but it is a distinction in fact.

Mr. President, 168 of this President's nominees have passed the test; 4 have not. When the filibuster has been used relative to those four, the rules of the Senate which provide for that to occur, and there was not a supermajority, then those nominees have not been confirmed.

What is at stake here is the functioning of the Senate as a check and a balance on executive power. Our Republican colleague who spoke that way in 1994 was exactly right. He was using the rules of the Senate in a totally appropriate way and saying that the only way we can stop this, the only way the minority has a voice, if we feel so deeply that there are 41 or more of us who wish to stop this nominee from being confirmed, we must use the filibuster, and we must force a cloture vote. Checks and balances are what are at stake here. The historic role of the Senate is what is at stake here.

Then-Senator Lyndon Johnson, in March of 1949, said the following relative to these checks and balances:

> A man elevated to the Office of the President has virtually unlimited powers of influence over his country. His own personality is a force of great impact upon all the people of the Nation and, in fact, upon the people of the world. Add to those powers directly all those less conspicuous powers of his aides, his administrative agencies and the multitude of channels which feel his influence, and you have a force no other representative government has even trusted for long to one man.
>
> If on occasion you grant to this titular head of government the further intoxicant of an overwhelming majority of loyal supporters in the legislative branch, then you have a force well nigh irresistible. The distinctions between legislative and executive are difficult to preserve under such circumstances. Mere memorandums become laws and laws become mere memorandums. In such a situation, which happily is more hypothetical than historical, the entire theory of our Government system of checks and balances dissolves and evaporates. The right to check and balance was not granted to the majority because a majority rarely seeks control over itself. Those rights were conceived and installed in the Constitution solely as safeguards for the minority.

He said:

> I am no historian, but as I have studied the history of governments gone before us, I have been impressed by the fact that the freedom of unlimited debate in legislative chambers has been given up many times by members themselves who are irritated or frustrated by a minority. But so far as I have found, once that freedom was yielded, it has never been returned. If we now give up this freedom in the Senate, I, for one, do not expect to live to see its return.

Much has been stated here about filibusters on the floor of the Senate. Too little has been said about stealth filibusters which occur in committee. Political scientist Sheldon Goldman of the University of Massachusetts, who is a neutral observer of the process, said the following in a Los Angeles Times article on November 6:

> The Bush administration has been spectacularly successful in getting the overwhelming proportion of its judicial nominations confirmed. There are only a relative handful being filibustered and held up, and this contrasts with the dozens of Clinton nominees who were held up by the Republicans in the last 6 years of the Clinton administration.

Professor Goldman expressed it this way:

> The Republicans obstructed quietly in the committee. If they didn't want to approve you, you just didn't get a hearing.

Here is one example. Kent Markus was nominated by President Clinton for a seat on the Sixth Circuit. He testified to the Senate Judiciary Committee on May 9, 2002, as follows. To their credit, Republican Senators told him two things.

> There will be no more confirmations to the Sixth Circuit for the Clinton administration.

Two:

> This has nothing to do with you. Don't take it personally. It doesn't matter who the nominee is, what credentials they may have, or what support they may have.

Mr. Markus went on to testify that one Republican Senator told him the following:

> This is bigger than you, and this is bigger than me.

Senator KOHL, who kindly championed his nomination in the Judiciary Committee, encountered a brick wall. The fact was a decision had been made to hold the vacancies and see who won the Presidential election. With a Bush win, all those seats could go to Bush, rather than Clinton nominees.

That is what happened. That is exactly what happened to Kent Markus and his nomination. A hearing was denied to him. A vote was denied to him. And if there is some constitutional right which is being created here on the floor, I assume Kent Markus was denied his constitutional right to a vote, as were the dozens of other nominees of President Clinton who never got a hearing, much less a vote.

I can't believe for one minute that any court, even if it reaches the merits of this case that is going to be brought, would say there is a constitutional right to have your nomination voted on when there are so many ways of blocking a nomination from getting a vote, starting with not having a hearing, starting with not having a markup, starting with not reporting a nomination to the floor, starting on the floor not reaching a vote up or down.

When the Republican Senate denied committee hearings and votes for 63 judicial nominees and more than 200 executive branch nominees, they blocked

a vote on those nominations. That was their right. They may have done the wrong thing in doing so, but they had a right to do so. I wish they hadn't. I wish they had allowed those to come to hearings. At least have a cloture vote, if nothing else, on the floor, but that was not to be.

There are a lot of ways you can have a vote on this floor. One of them is a cloture vote and one of them is a vote up or down. But these 63 judicial nominees never even got to a cloture vote, never even got to see if there could be a supermajority put together for them under our rules on the Senate floor.

It is remarkable to me that our colleagues on the other side of the aisle make the claim that blocking nominees from having an up-or-down vote on the Senate floor is unprecedented, given the actions during the last administration.

Republicans filibustered several Clinton nominees on the floor of the Senate, including Richard Paez, Marsha Berzon, Rosemary Barkett, and H. Lee Sarokin. Cloture votes requiring supermajorities were required to be produced for each of them.

Our colleagues say these nominees were not blocked by a filibuster, which is an artful way of saying that the effort at the filibuster failed. That is very different from saying that the filibuster was not tried. It was. Cloture votes were required but supermajorities were obtained. That is the difference between those Clinton nominees and these four nominees. Here supermajorities have not been obtained. Therein lies the difference. Same cloture votes, same type of cloture votes required, but cloture was invoked for Berzon, Barkett, Paez, and Sarokin. Supermajorities supported those nominations, and the opposition had a right to force those votes. That required a supermajority. They had a right to filibuster, and, in fact, did so.

Two of President Clinton's nominees, not judicial but nominees, still governed by that same advice and consent clause in the Constitution, were defeated by filibusters. One was Henry Foster nominated to be Surgeon General, and the other one was Sam Brown nominated to be ambassador. The argument relative to that nomination was quoted by me at some length a few moments ago where a Republican colleague within his rights using the rules said: We have only to put together 41 Republican Senators and we can block this nomination. It is the only way to block a nomination with which we fervently disagree.

Given the fact that the Democrats didn't control the White House, the Democrats controlled the Senate, our Republican colleague pointed out accurately that the only way to block that nominee was by use of the filibuster. Were his constitutional rights violated? I don't think so. I think he was given consideration by the Senate in the way that the Senate decides to consider nominees, and it can consider nominees in many ways.

It can decide never even to give a nominee a hearing should it choose. I don't think that is a wise course, in most cases, but should the Senate choose not to give a nominee of the President a hearing, that is the Senate's decision. Or after a hearing, if it decides not to have a markup to vote that nominee either out of committee or to defeat that nominee, that is the Senate's decision. Should a chairman, acting alone, decide not to put a name on a markup, that may be that chairman's power.

So the suggestion that requiring a supermajority vote by filibuster is new to the Senate is just simply wrong. We can argue—legitimately argue—and disagree over whether or not the Senate should give up this important check and balance on Presidential power, but we cannot argue, it seems to me, that it is unprecedented in its exercise.

Here are the words of one more of our colleagues during a filibuster of a Clinton nominee on March 3, 2000. During the filibuster of the nomination of Judge Richard Paez to the Ninth Circuit, this is what our colleague said:

> I say to the American people who may be listening right now, judges impact our lives big time in the decisions they make. Citizens complain about violence and the criminals getting out. There are bad judges making bad decisions that cost Americans their liberties, cost them their lives sometimes. That is wrong. We have an obligation in the Senate to take a good hard look at a lifetime appointment to the circuit. The members are there forever, even when they get real old. It is pretty hard to get rid of them. This is a lifetime appointment. We have a responsibility to make darn sure these judges are going to represent the views of a majority of the American people in terms of the law. I intend to do that as long as I can stand here to do it.

He didn't have 39 others or 40 others to stand with him. As a result of that, there was a supermajority for that judge, but it was despite the filibuster. It wasn't that there was no filibuster. It was despite the filibuster which the Republicans had a right to stage and did stage. But most Republicans decided, or at least enough Republicans decided not to continue that filibuster but, rather, to invoke cloture.

To suggest the filibuster has never been used flies right in the face of history and recent history, as well as the history of Abe Fortas.

Historian Robert Caro wrote the Rules Committee of this Senate as follows:

> In short, two centuries of history rebut any suggestion that either the language or the intent of the Constitution prohibits or counsels against the use of extended debate to resist Presidential authority. To the contrary, the Nation's Founders depended on the Senate's members to stand up to a popular and powerful President. In the case of judicial appointments, the Founders specifically mandated the Senate to play an active role, providing both advice and consent to the President. That shared authority was basic to the balance of powers among the branches.

He continued:

> Surrendering such authority is not something which should be done just because of a Senator's point of view on the particular issue of the moment—because much more than the particular issue is involved. What if a Senator—let us say a Senator from a small population state without any other means of defense votes to support a new limitation on debate today. What will he [or she] do in some future year when he is trying to stop a bill or a nomination that a bare majority of the Senate supports, but that he and 40 colleagues believe would be terribly detrimental to their states or to the nation. . . . What will he feel when he suddenly realizes that his right to hold the Senate floor against that action has been so greatly reduced that the bare majority can silence him before he is finished making his case? What will he do when he realizes that, without the right of extended debate his cause is ultimately helpless?

Finally, I ask unanimous consent that the letter from Senator CORZINE, which has been referred to, apparently a fundraising letter, be printed in the RECORD in full because I think the words which were quoted by my friend on the other side had some very critical dots in there, and I think the dots should not have been there. The two sentences should not have been pushed together as though they were one. The document of Senator CORZINE says the following:

> Senate Democrats have launched an unprecedented effort to protect the rights of all Americans by keeping our courts fair and impartial.

That is the unprecedented effort. The next sentence is:

> By mounting filibusters against the Bush Administration's most radical nominees, Senate Democrats have led the effort to save our courts.

The suggestion that the words read ''an unprecedented effort to mount filibusters'' is not an accurate reflection of that letter. The dots which were in the chart, it seems to me, take the place of some very critical words making two sentences look as though it is one sentence.

I ask unanimous consent, just so we can have full disclosure of this letter, that this letter be printed in the RECORD.

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

> Despite the administration's desire to ignore the Constitution's rule of ADVICE and CONSENT, Senate Democrats are holding Republicans accountable.
>
> Why must the Democrats continue their fight against Charles Pickering?
>
> While in law school, Mr. Pickering wrote an article suggesting ways the state of Mississippi could better enforce its ban on interracial marriage.
>
> As a state senator in the 1970's, Mr. Pickering worked to repeal important provisions of the Voter Rights Act.
>
> In 1994, he went out of his way to seek a more lenient sentence for a convicted cross-burner.
>
> Once defeated when Democrats had a majority in the Senate, President Bush nominated Charles Pickering for a second time after the 2002 elections and now two successful filibusters launched by Senate Democrats have kept him off the bench!

The Bush Administration is devoted to using the courts to its political advantage. Time and again, this administration has nominated ultra-conservative candidates who are zealously devoted to advancing corporate interests, taking away reproductive freedom, smashing the wall of separation between church and state, and dismantling equal opportunity.

But the Administration has got a big problem: Senate Democrats. Senate Democrats have launched an unprecedented effort to protect the rights of all Americans by keeping our courts fair and impartial. By mounting filibusters against the Bush Administration's most radical nominees, Senate Democrats have led the effort to save our courts.

Help the Senate Democrats keep fighting. Support the DSCC efforts to help elect more Democrats to the Senate—and keep the proven leaders we have. Help the DSCC send a message to the Bush Administration—Senate Democrats will NOT rubber stamp extremist judicial candidates. Help us fight to maintain judicial integrity by sending more Democrats to the United States Senate in 2004.

Contribute Now!

Sincerely,

Senator JON CORZINE.

Mr. LEVIN. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER (Mr. ALLARD). Forty seconds.

Mr. LEVIN. I thank the Chair and thank my colleagues. I am happy to share with them the feeling that somehow or another hopefully we can find a way some day to get over the place we are at, not just on judges but on all of these nominees.

I look forward to that Supreme Court case which my friends are going to file. I think it would be just fine to have the Supreme Court rule on this issue to clear the air on it. I have great confidence that they will support the right of the Senate.

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

Mr. LEVIN. I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. COLEMAN. Mr. President, I have the greatest respect for my colleague, the Senator from Michigan. He serves as the ranking member on the Subcommittee on Investigations, which I chair, and serves this body as ranking member of Armed Services. He is a credit to this institution.

I disagree with him, however, in his interpretation of the reality of the history of this body. It is very clear that this body has not successfully filibustered a circuit court nominee in its history. The one case that is mentioned again is Abe Fortas.

As I indicated earlier, this was a bipartisan effort. It was not a partisan filibuster. So what we have here on the floor today is the first partisan filibuster, and the purpose is clear. My colleague has said this is the only tool that the minority thinks they have to stop the President from exercising his authority, but I think that he is right when he says the historic role of the Senate is what is at stake here.

I say that because we have to reflect upon how our colleagues who preceded us—by the way, some of them are still here in some of the cases he talked about—what was going through their minds when they were faced with the same circumstances we are faced with today; that is, a group of folks in the majority in many cases who objected to a particular nominee.

We can use the Clinton years as an example. There was a Republican majority for 6 years of President Clinton's term. No judicial nominee, not one judicial nominee, was ever deprived of a vote on the floor of the Senate. That is what we are talking about, a vote on the floor—not one.

My colleague and friend from Michigan made reference to the cases of Marsha Berzon and Richard Paez in the year 2000, Ninth Circuit. Although most Republicans opposed their confirmation—and we heard some of my colleagues earlier tonight. Senator SESSIONS talked about that case. Senator LOTT talked about that case. He was majority leader at the time. They also opposed any effort to prevent the full Senate from voting on their nominations. They did so and they told you it was because of their reverence and respect for the historic role of the Senate. That is what is at stake. That is the principle that has guided us for 214 years before today, before this 108th Congress.

Colleagues had the opportunity to invoke cloture only if the Republican majority said we were to go along, and it was not because, as my colleague from Michigan somehow inferred, that they could not kind of put together the necessary votes to block it. No. What happened is that they were not willing to ignore the history and the tradition, and I think most importantly what the Constitution says, and that is that supermajorities are not required to confirm nominees for circuit courts.

Debate on each of these nominations, Berzon and Paez, lasted only 1 day and a majority of Republicans joined all Democrats in supporting cloture motions for debate on each nomination, including over 20 Republicans who would eventually vote against confirmation and a majority of the Republican members of the Judiciary Committee. Senator HATCH talked about that.

So our colleagues at that time faced two candidates in the Ninth Circuit. By the way, that is the same circuit that ruled the phrase ''under God'' unconstitutional. That is the same circuit that initially was going to prevent the California recall from taking place until finally en banc the entire circuit had to come together and change that.

In neither case did Republicans mount a party-line filibuster effort to prevent voting on a nominee. In fact, Majority Leader LOTT filed the cloture motions for the above debates. So what we have is not what my friend and colleague from Michigan would infer, that somehow before there was simply an ability—yes, there were cloture motions and either they were invoked or they were rejected, and that somehow they were invoked and that is why you were able to vote on it. No. Here you had the Republican majority leader file the cloture motions for Berzon, for Paez. My colleague, Senator SESSIONS, said: I opposed them. I voted to support cloture. I voted against the nomination, and that is what we are asking for.

Follow the history. That is what is at stake, as Senator LEVIN said, the historical role of the Senate. If it has changed it, it has changed it at great risk.

The situation was similar in 1994 when some Republicans voiced objections to President Clinton's nomination of H. Sarokin to the United States Court of Appeals of the Third Circuit. A majority of Republicans supported a cloture motion after a relatively brief period of debate and cloture was invoked by a vote of 85 to 12. Judge Sarokin was then confirmed by a vote of only 65 to 35. Twenty-three then of my colleagues supported cloture. The majority supported cloture. Yet at the same time they voted against the candidate. That is the history of this body. That is what the Constitution requires.

I am told that the only judge nominated by President Clinton who faced a partisan filibuster was that of Brian Theodore Stewart, a nominee to the Federal district court in Utah. However, it was Senate Democrats who filibustered the nominee in protest over purported delays in bringing other judicial nominees to the floor. A cloture motion was voted upon on September 21, 1999, and failed, falling short of the 60 votes by a vote of 55 to 44, with all Democrats except Senator Moynihan opposing cloture.

Once again, Democrats' objection was not to Judge Stewart himself and on October 5, 1999, the Senate confirmed him by a vote of 93 to 5. So for all the handwringing that we heard about the treatment of President Clinton's nominees, one is very clear: Every single one of them got a vote.

The fact is that what happened here is that my colleagues followed the history and tradition of this body and said they would make sure they got a vote because that is what the Senate is called upon to do, advise and consent. There is a principle of majority rule, a principle, again, espoused in this document, in this Constitution, of the United States.

My colleague also implied that it is just fine to prevent an up-or-down vote on at least 4 of these nominees because we blocked 60 of President Clinton's nominees. I have two observations about that, and I know this is what frustrates me and my colleague Senator GRAHAM. The fact is that there is and has been a tradition in this body, shortly before the end of the President's term. What happens is that folks kind of say, well, let's see who the new guy is, see what happens, and they slow it up.

The numbers are even more stark, by the way, if we compare the number of

nominees left hanging at the end of the first Bush administration by Senate Democrats with the number of Clinton nominees awaiting confirmation at the end of the Clinton administration. The Democrat-controlled Senate left 54 of the first President Bush nominees unconfirmed at the end of 1992. In contrast, at the end of the Clinton administration, 41 nominees remained unconfirmed.

Let's stop that practice, unless a game is being played, unless these are clearly unqualified nominees, unless there is some reason to suspect we are not having qualified folks coming before us and we are playing politics.

On the other hand, well, they did it to us and we are going to do it to them. It is like the Hatfields and McCoys, like Montague and Capulet. It is like a family feud. It is futile and it needs to stop. It needs to change.

I appreciate the comments of my friend Senator LEVIN at the end saying maybe we can get beyond this. I hope we can get beyond this. I hope we can do what Senator GRAHAM talked about when we started this conversation a little over 3 hours ago and he said let's look to the future.

The future is only going to be a bright future if we, one, follow the dictates of the Constitution, understand that there is this concept of majority rule, that the Constitution dictates that these nominations be dealt with on a majority basis, and that this body respect the history and tradition. That is what we have.

Then, of course, it is the responsibility of the President to bring forth qualified nominees and get past the rhetoric of extreme. I dealt with Priscilla Owen. Let me talk about Bill Pryor, for example. Alabama Attorney General Bill Pryor, nominee to the Eleventh Circuit, has earned a reputation as one of America's most experienced and esteemed State attorneys general. His nomination has received overwhelming support from across the ideological and political spectrum. Mr. Pryor was appointed attorney general of Alabama in 1997 and was overwhelmingly reelected; outstanding credentials. He was a law clerk for civil rights legend, the late Judge John Minor Wisdom.

Senator LAMAR ALEXANDER, also one of our newer brethren, fraternity of those who just got elected this year, had an opportunity to work with Judge Wisdom, who is, by the way, one of the great civil rights legends. Attorney General Pryor worked for him. Pryor graduated magna cum laude in 1987 from Tulane University School of Law and was then chief of the Law Review. What is interesting is that Attorney General Pryor is being attacked as being extreme. He is a man, by the way, who does have very strong beliefs. He is human. He has strong beliefs. That is not a bad thing. That is a good thing.

He is a person who has shown that he is willing to put his beliefs to the side to look at the law and to interpret the law, and that is what we expect a judge to do.

My friend Senator GRAHAM and I have talked about this. We talked about Bill Pryor. There is the chief judge in Alabama, who was involved with the case about the Ten Commandments in court. The courts have said that is unconstitutional.

Now, I suspect General Pryor believes that is probably a good thing, but General Pryor then leads the effort to challenge—in effect, to prosecute—the chief justice saying the law has to be enforced. That is what it is about.

Bill Pryor has also been a moderate voice in the partial-birth abortion debate. By the way, that is a mainstream position, but a court decision came down and challenged the Alabama law. General Pryor, in accordance with his duty to defend the statute, that is what he did. He then exercised that authority putting aside what I am sure are personal opinions to enforce the law. That is not extreme. That is mainstream. That is what we want on a court.

Yes, we have people of character, principle, and strong beliefs. What the other side has done is they take folks who have these strong beliefs, who then espouse them. Along the way they may give a speech, they may give a writing, and then they wave that around to see how extreme they are, but we have to judge people by their actions. We have an attorney general who puts aside his personal beliefs to say he will enforce the law. That is what you do.

My distinguished colleague who will take the floor after me, Senator PRYOR, was a former attorney general. I know he operated in the same way. That is what he would expect of his colleagues, put aside personal beliefs to enforce the law. That is what makes a good judge. Vote them up, vote them down. Give them a vote.

I yield the floor to my colleague, Senator GRAHAM.

Mr. GRAHAM of South Carolina. I thank the Senator for yielding. I think he did a very good job of trying to explain the best we can that this has never been done before, that this is truly a new era for the Senate. We are filibustering judges who have been reported out of the Judiciary Committee for the first time in the history of the country. That fact will never go away. It has never happened before. Abe Fortas was not a partisan filibuster. Republicans and Democrats thought the man was not qualified to be chief judge because of some ethics complaints, and the President withdrew it. But you had Republicans and Democrats banding together trying to send a message to the President that they did not think this person was promotable. They had 4 days of debate. It was not a filibuster. It wound up being a bipartisan effort to come together to send a message to the President.

There is nothing bipartisan about this other than the fact that every nominee who is being filibustered has Republican and Democratic support to sit on the bench in a majority fashion. That is the problem here, that if all of these people who are being filibustered had their day on the floor, an up-or-down vote, they would be judges and they would have Democratic votes. One of them has 55, we believe, because 55 people have voted to allow a vote on the floor. That is important.

These people would be judges, just like the two Senator LOTT intervened on. The two Democrats who were being opposed by some Members of the Republican Party, Senator LOTT stepped in and stopped it. He filed a cloture motion and it passed overwhelmingly to end debate, and they are sitting on the bench today. Good for him. I am glad he did it.

I want to be fair, too, to Senator CORZINE. There is nothing wrong with people talking about issues before the Senate in trying to get money sent to the parties. Both parties do that. I have never suggested that Senator CORZINE has done anything wrong. I am just trying to put in perspective what this debate truly is all about, because when you are out there talking to your base about what you are doing that can be a pretty good evidence of what is in your heart and what you mean to do.

Now I have the whole document. This chart is an excerpt from a November 3 fundraising e-mail sent out by Senator CORZINE, the head of the Democratic Senatorial Campaign Committee. It says:

> Senate Democrats have launched an unprecedented effort . . . By mounting filibusters against the Bush administration's most radical nominees, Senate Democrats have led the effort to save our courts.

I have been saying for days now that this e-mail indicates that they view this to be an unprecedented effort by Democratic colleagues and the unprecedented effort is mounting filibusters. But this dot, dot, dot, now I have the whole e-mail and I do want to be fair. I do not think it has changed a thing. Having looked at the e-mail, I think it reinforces my point.

This is what the actual paragraph says in full:

> Senate Democrats have launched an unprecedented effort to protect the rights of all Americans by keeping our courts fair and impartial. By mounting filibusters . . .

I think a fair reading, a fair interpretation of the English language, is that the unprecedented effort refers to the filibusters. They are throwing in some nice language about being fair in there. Nothing has changed.

This was an e-mail sent out to try to tell Democrats that we are up here fighting Bush in an unprecedented way by filibustering his judges because we think they are radical. This e-mail is about a particular judge, and I am going to read the whole thing. This is the way it is entitled:

> Senate Democrats protect our courts again. Dear Erin, Senate Democrats have stopped another judicial extremist who

wants nothing more than to turn back the clock on fifty years of progress on civil liberties. Reproductive freedom, equal opportunity, and corporate accountability again.

What a lousy person that is—that is me stating.

After being defeated under a Democratic controlled Senate, controversial judicial nominee Charles Pickering was defeated again on Thursday by Democrats in the Senate.

For the first time in history, a President of the United States re-nominated a judicial nominee that the committee had already voted down but the Senate Democrats stopped the Bush Administration in its tracks.

That is true. When the Democrats had control of the Senate, Judge Pickering was voted down on a party-line vote. The President has a right to resubmit the nominee. I am very glad he did because this time he came out of committee on a party-line vote.

We just have a different view of whether or not this man is a racist, because there is no other way to interpret what this e-mail is saying about this man.

Continuing:

Despite the administration's desire to ignore the Constitution's rule of advice and consent, Senate Democrats are holding Republicans accountable.

Why must the Democrats continue their fight against Charles Pickering?

While in law school, Mr. Pickering wrote an article suggesting ways the State of Mississippi could better enforce its ban on interracial marriage.

As a State senator in the 1970's, Mr. Pickering worked to repeal important provisions of the Voter Rights Act.

In 1994, he went out of his way to seek a more lenient sentence for a convicted cross-burner.

They have described somebody who is not what you would want to have on the bench. There is no other way to say it other than this e-mail is directly and indirectly suggesting Charles Pickering is racially motivated. What a horrible thing to say about somebody if it is not true.

Once defeated when Democrats had a majority in the Senate, President Bush nominated Charles Pickering for a second time after the 2002 elections and now two successful filibusters launched by Senate Democrats have kept him off the bench!

The Bush Administration is devoted to using the courts to its political advantage. Time and again, this administration has nominated ultra-conservative candidates who are zealously devoted to advancing corporate interests, taking away reproductive freedom, smashing the wall of separation between church and state, and dismantling equal opportunity.

But the Administration has got a big problem: Senate Democrats. Senate Democrats have launched an unprecedented effort to protect the rights of all Americans by keeping our courts fair and impartial. By mounting filibusters against the Bush Administration's most radical nominees, Senate Democrats have led the effort to save our courts.

Help the Senate Democrats keep fighting. Support the DSCC efforts to help elect more Democrats to the Senate—and keep the proven leaders we have. Help the DSCC send a message to the Bush Administration—Senate Democrats will NOT rubber stamp extremist judicial candidates. Help us fight to maintain judicial integrity by sending more Democrats to the United States Senate in 2004.

That is the e-mail in its entirety. Now the accusations in that e-mail are strong, they are direct, and I think vicious. Judge Pickering, according to this e-mail, is someone who wanted to keep the interracial marriage statute alive when he was in law school by writing law school papers in support of this. He went out of his way in 1994 to make a sentence more lenient for a convicted cross burner.

The only thing a rational person would receive from that litany is Judge Pickering is friendly to a cross burner. If that is true, he should never have been a judge for 30 seconds. If the other things are true, it was a huge mistake to ever advance this man forward.

But here is the problem I have with believing what is in this e-mail. Number one, I have met the man. I have talked to him. I served in the House with his son, Chip, who is one of the nicest, brightest young men I have ever met. This e-mail describes him as a very intolerant, racially insensitive person. But I can tell you without a doubt from personal experience he did a great job as a father because his son is anything but racially intolerant. His son is a wonderful young man.

If that e-mail is true, then you explain to me how the American Bar Association could give him the highest rating possible, well qualified. Did they miss this racial past? Or do they condone it? How about this, maybe this is a cut-and-paste job and they didn't buy it. He graduated first in his class; 99.5 percent of the cases were affirmed or not appealed. His reversal rate is below the national average, two times lower than the average district judge in the Fifth Circuit Court of Appeals. He has never had a voting rights case appealed or reversed. He has never had a formal discrimination case reversed in 170 cases and is endorsed by the current president and 17 past presidents of the Mississippi State bar. Maybe they are all racist, too. He is endorsed by all major newspapers in Mississippi. He is endorsed by all statewide elected Democrats and the chairman of the Mississippi legislative black caucus. He was endorsed by former Democratic Governor William Winter, Bill Waller, former Democratic lieutenant governor, and the list goes on and on and on.

Other people object, but I assure my colleagues this e-mail is a distortion of this man. Here is the Judge Pickering I have come to know. In 1967 when Mississippi was red hot and racial tensions were very high in the South, particularly in Mississippi, he served as an elected county prosecutor. He was asked to testify against the Imperial Wizard of the Ku Klux Klan of Mississippi. He took the stand against the Imperial Wizard successfully but lost his job. He was not in the mainstream; he was swimming upstream.

In 1967, when schools were integrated in Mississippi—and I have told the story about integration in South Carolina—he chose to keep his children in public schools at a time when White flight was the dominant way of dealing with the problem in that part of Mississippi. You will see class photos in that era of a lot of African-American children and a smattering of White kids. Among those White families, White kids, were Judge Pickering's kids.

He chose at a time, when others did not in large numbers, to try to make Mississippi better. He has been head of the Mississippi Baptist Association. He has been on the Federal bench for a dozen years, rated well qualified by the American Bar Association.

Of all the events that have occurred in the Senate since I have been here, this one bothers me the most because southern White males are very open to the accusation that we are racially insensitive, due mostly to the way the South has conducted itself.

When I grew up, my family had a restaurant and African Americans came to get their food and to buy a beer and they had to leave because there was no mixing of the races until I was in high school. That is not something to be proud of. Judge Pickering was part of the solution.

What they are trying to cast this man as being is unfair to him; it is unfair to his family. If you believe it to be so, you can vote against him. But he is the best example of how sick the Senate has become.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. COLEMAN. I ask unanimous consent we use 5 more minutes of the majority's time and we subtract it from the next hour.

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

Mr. COLEMAN. Mr. President, I will continue the Pickering story because I think it is important.

My colleague, Senator GRAHAM, has done a tremendous job of laying it out. I don't know Judge Pickering's son as well as Senator GRAHAM does, but I have met him. I have to go beyond that.

Senator GRAHAM mentioned when he was in law school that he wrote an article on interracial marriage. That was in 1959. He was assigned to write an article. It was required, not voluntary. It was an academic exercise. The article evaluated various State laws on interracial marriage. He took no position on the moral nature of these laws nor did he advocate or condone the ban on interracial marriage. He was given an assignment and required to do it.

In the case of the cross burning—and I am a former prosecutor and I have seen this happen—he simply sought precaution in sentencing. There was a bad investigation done by the Clinton Justice Department. They recommended a plea bargain to the guy in the cross burning who was the ring

leader. So he gets off. There is a trial then for the other guy. Judge Pickering is there and he sees it is simply not proportioned. He told the guy he tried, who was not the ring leader—but the other got was off the hook. He said what he had done was heinous and dastardly and would not be tolerated and someone would have to spend time in the penitentiary for his act and ruled according to the sentencing guidelines. On and on.

This is an individual who, again, sent his kids to interracial schools in the 1970s. This is a guy who testified against the KKK. This was a death sentence.

In 1985, he was president of the Mississippi Baptist Association, and he presided over the first convention addressed by an African-American pastor.

I could go on and on and on. Again, what we have here is mainstream, not extreme. This is a person who was supported by the folks who know him best. Many African-American judges have written in support of Judge Pickering, including Justice David Keith, the first African-American Federal judge in Mississippi, Henry Wingate, the first African-American Supreme Court judge in Mississippi, Rubin Anderson, and Mississippi court judge Johnny Williams.

What we have is a case where the people who know him best see this is a decent man. This is a man without prejudice. We have special interest groups with their own agenda from outside looking to shoot him down. In doing so, what we have is this Senate undermining the Constitution and our obligation. They are doing something that has not been done before, without legitimate base. Vote them up, vote them down, give them a vote.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arkansas.

Mr. PRYOR. As I understand what just transpired, his additional 5 minutes or so will be applied to the next hour so I still have 30 minutes.

The PRESIDING OFFICER. That is correct.

Mr. PRYOR. Mr. President, I thank my colleagues on both sides of the aisle for their zealousness on the issues that are present here with regard to these judicial nominations. I know my colleagues on the Republican side have very strongly held opinions and viewpoints they are very sincere about holding. I may differ with them on some of the particulars and some of the conclusions, but I respect their opinions and I respect their zealousness and their commitment to their cause.

Likewise, on the Democratic side, I have a number of colleagues over here who have done a very good job of poignantly discussing these issues and trying to present the other side of the story. I think they are equally passionate.

In some of the finest traditions of the Senate, this august body, this Chamber, is like an arena where maybe two great competitors come in, hash it out and fight it out. That is how the Senate is designed. It is almost like in the Bible, the Book of Proverbs, as iron sharpens iron, one man sharpens another. I just hope that is the process we are going through, that we are sharpening the other, that we are making this engine better and we are progressing as a people and as a nation.

I appreciate the Presiding Officer being here. It is the second night in a row the Senator has had the graveyard shift. Someone with your seniority, I am surprised to see down here two nights in a row. I know you are doing your duty for your colleagues and for your Nation. Certainly there are untold numbers of staff people who work for the various Senators, who work for the Senate itself, the Capitol Police, the C–SPAN team. I have been watching some of this at home or in my office and C–SPAN has done a great job. Periodically when a term will come up that may be unfamiliar to the viewers around the country, they will flash up a definition of that term, such as what a filibuster is, what a hold is, whatever the case may be. They have been taking this opportunity to use this as an instructional time for viewers back home to help understand their Government and help understand their Congress.

I thank the cloakroom staff on both sides. I could go down the long list. The stenographers are doing double duty. There are so many people who should be thanked for allowing this marathon to go on. It has put strains on people. I am very sensitive to the fact they have families they need to get home to and they have lives outside of what goes on here on Capitol Hill. I express a deep and sincere debt of gratitude to those people.

Let me talk about the judicial nomination process. Both my colleagues across the Chamber know I signed on to a letter with them this spring about trying to make this process work better. One thing I was concerned about in signing that letter is we might come to this point today where we would lock horns and have some gridlock on a few nominees. I hope we do not get to the point of gridlock overall in this process.

As to the numbers, since we have been here this Congress, I believe we have confirmed 68 of President Bush's nominees and 4 have been blocked. Last Congress, there were an additional 100, so I believe the grand total is 168.

We have seen a lot of charts with numbers and percentages, but I hope the whole process does not bog down. So the people around the country understand, we are talking only about a select few of the nominations, not the overall nomination process.

One thing I was concerned about and one reason we wrote that letter several months ago was because we wanted to try to make the nomination process better.

We want to try to make it more constructive and more productive. To me, a lot of that responsibility rests with the White House. We talked about that very briefly in that letter. I feel strongly that since the President, under the terms of the Constitution, is the one who begins the process of nominating, he and the White House staff need to try to get the Democratic and Republican leaders involved and sit down to try to work through some of these controversial nominations and try to figure out how we can do this better as we move forward.

One thing I am concerned about is we, around here in the Congress, particularly in the Senate, probably more than the House, are so focused on tradition and history and how things have been done in the past that it is human nature, I guess, that we oftentimes cannot put aside the things that happened in the past. Sometimes those things are perceived to have been ill-willed or for whatever reason perceived to have been unfair, unjust, whatever the case may be. Of course, I have said many times that I have a concern that in this judicial nomination process there is sort of partisanship and gamesmanship, and it is just counterproductive for the people.

So, again, I hope we can move forward. I want to try to continue to work with President Bush on his nominations. I believe I voted for 66 of his nominations of judges. In fact, I was talking to my staff the other day, and I said: Well, the people who are calling in about some of these controversial judgeships, what are they saying to you? They say they want Senator PRYOR to vote for candidate X, whoever that may be. The staffer will say: We appreciate your call. But we also want you to know he voted for 66 or 67 of President Bush's nominees. Invariably, the person on the other end of the line says: No, he hasn't. Because they are not hearing the other side of the story, that, again, we are only talking about a small percentage of the nominees who are not getting through.

If you look at the numbers and the percentages that President Bush has accomplished since he has been President, they are historically high numbers.

So I want to continue to work with the President and find that common ground. I believe we all have the constitutional responsibility to advise and consent on judicial nominations. Mostly what I am hearing on the other side—mostly—people believe the Senate should not be a rubberstamp. I think the vast majority of Senators believe the Senate should not be a rubberstamp and an automatic approval process for the President.

I think we have a responsibility to the Nation to look at these—again, the concept of iron sharpens iron, the President and the Senate sharpening each other, because he knows we will review and look very carefully at the nominations he puts forward. He puts

forward a higher quality nomination than if it was just a rubberstamp. That accountability is a positive thing for the people and for the Government. I take this responsibility seriously. I know all Members of the Senate do take their responsibility very seriously.

Another thing I wish to say is that when I look at judges I kind of have a criteria. I have kind of broken it down into four parts. We try to be consistent in our office when we look at these four factors.

One is just a starting point: Is the nominee qualified? Most of the people who make it through the committee are qualified. I think, again, there is a weeding out process there, but I start with the presumption that if they get to this stage in the process they are qualified.

The second thing I ask myself is, can they be fair and impartial? I think that is an extremely important criteria. Admittedly, it is somewhat subjective. Reasonable minds can differ about if someone can be fair and impartial, and reasonable minds do differ.

Again, that is one thing we get back to in the Senate. Someone like either of my two colleagues, who have spoken here in the last few minutes, who are so articulate and so good, they look at some of those nominees and there is no doubt in their minds, they are going to be fair and impartial. I look at them and I have some doubts. Again, that is how the process works. I am proud that their two States have sent them to the Senate. They are here to do their duty as God gives them the right to do it. I feel like I am here to do the same.

So reasonable minds can differ about being fair and impartial. But regardless of how you come out on the conclusion, that is one of the criteria I use. I think it is extremely important for a judge.

There is another, a third, element I look at; that is, has the nominee demonstrated an ability to exercise and to show the proper judicial temperament? For all the lawyers out there, and all the parties out there, if you have been in court before, you understand how important the judicial temperament can be in cases. Literally these judges oftentimes hold life or death in their hands for a criminal defendant. Or they may hold a business's solvency or whatever the case may be. It is very important. Their temperament oftentimes is determinative in how the case will come out. So again it is subjective, but I try to look at their judicial temperament.

Then the fourth criteria is sort of the elastic clause. The Constitution has an elastic clause, so part of my criteria is kind of an elastic standard—and I don't say standard but elastic consideration—and that is, are there other factors or other circumstances, when you look at these nominees, that should be considered? And, boy, that is just open-ended.

But I think, as Senators, we should consider the totality of the circumstances. We should look at these nominees in a historical context; it may be a social context; it may be something unique to that region or that State or that person. I think it is incumbent on us to look at those carefully.

Here again, it is subjective. Is that something you can really write down as criteria of how it is going to work in every single case? No. Maybe it should not be. Maybe it should be left elastic so it can be changed and be looked at from different perspectives with each particular nominee.

But regardless of that, I do take my role and my duties as a Senator very seriously. One of those roles that I believe very strongly about is the people of Arkansas sent me here to work with everybody else who is up here. If the people of this country want to elect George Bush as President, I am here to work with President Bush. Mississippi sends their set of Senators and Texas sends their set of Senators, and Massachusetts and California, and I believe my responsibility, as a Senator for Arkansas, is to work with who is here. That is what I have tried to do, and I will continue to try to do that.

One thing also we need to keep in mind is that these judicial nominations we are talking about today and that we always have under consideration here in the Senate are lifetime appointments. Only under extreme circumstances will these people be removed from office. It is very rare that happens in American history, but it can happen. But these are lifetime appointments.

I think it is critical that our judiciary is independent. I think that is the way our Founding Fathers set it up. We better get these nominees right on the front end because these people will serve for life.

Like I say, they hold justice in their hands. Their application of the law will be determinative for so many things during the course of their careers.

I think, simply put, people are entitled to know what nominees think. I think people are entitled to know about the qualifications. They need to have the assurance that these nominees under consideration by the Senate—the people need to have an assurance that if these people do put on the robe, do serve on the bench, that the integrity of the system will be there and that these people will do justice, as their responsibility requires.

I personally believe the people of America want a moderate and balanced approach. Personally, I think most Americans do not want to see the courts packed with judges with a conservative agenda or judges with a liberal agenda. I think most Americans want to see moderate, fairminded people on the bench. Because people understand that if you go into this with an agenda, then the courts will not be balanced and that judge and the court will have one dominant point of view. That is not good for our justice system.

I do think there has been a lot of discussion about some of these judges' records. Again, I think those are subject to interpretation. I am not going to try to get into all the particulars of those. We do not have time tonight, plus my colleagues, for the last several hours, the last 30-plus hours, have tried to do that. Many of them have done a very good job.

What I would like to do, if I can, is talk about one thing that does bother me, and that is the fact we are getting toward the end of our calendar year in the Senate and this is crunch time for the Congress to get its work done. In fact, right now our colleagues in the House, down the hall, basically are only meeting about 1 day a week, maybe 2, for votes because they have taken care of a lot of their legislative business—not all. They still have some things pending. But they have gotten theirs down to the point where they do not have to be in very many legislative days. In fact, a lot of what they are doing is waiting on us to accomplish and to finish our business.

Well, here we are spending 30-plus hours in a talkathon about these four judicial nominations that have been blocked. I think we need to keep it in perspective. Some of the Democrats have talked about 3 million jobs that have been lost in the last 3 years and what we are arguing about here are four judicial jobs. Well, that may be fair; that may not be. But I think there is some merit to that.

To keep it in perspective, 98 percent of President Bush's nominees have been confirmed. That is a pretty good percentage. You try to find another percentage like that in history, I am not sure you will find it. Also, when you look at Government and we look at anything involving human events, 98 percent is a pretty high percentage.

So again, I would encourage all of us to try to keep this in perspective. I heard one of my colleagues last night talk about 98 percent of this and 98 percent of that. In fact, it was Senator CHAMBLISS of Georgia. He had a very humorous monologue about that. But the truth is, 98 percent in politics and in Government is a pretty doggone good success rate. In fact, I would go so far as to say I am not sure anybody in Washington ever gets 100 percent of what they want. Most people are happy to get 50 percent of what they want, if they can just get that done.

But regardless of that, I think most people I talk to back home understand that judges are important, and they understand that it is important that we have an independent judiciary, but they also perceive that these four nominations are not urgent to the welfare of our Nation. So that causes me to question why we are doing this right now. If this is a big issue, can't we put it off until another time? But regardless, we find ourselves here. That is just where we are right now.

I want to talk about one other thing that is a concern to people all over the

Nation; that is, losing jobs in the manufacturing sector of our economy. It was announced the other day that one of the great companies in the world, I guess—Michigan-based Whirlpool—plans to move some of its refrigerator production, which is made in Fort Smith, AR—they plan to move those jobs from Fort Smith down to Mexico. Very sad news.

Jim Pickens, who was, until very recently, Arkansas' economic development director, said that it is clear that some of the 4,500 Whirlpool jobs in Fort Smith will go.

The problem with this is it is not an isolated incident. It is a trend. It is something to which we in the Senate should be devoting our time. It is something that folks back home are very concerned about, losing these manufacturing jobs.

One thing that is of particular concern in the Whirlpool case is it was just a few months ago—about a year ago—when Whirlpool made an announcement they were going to actually add 700 jobs in Fort Smith. Of course, there was a lot of excitement about that announcement. Now there is a lot of disappointment about what Whirlpool has decided to do. I am not saying this to be critical of Whirlpool, but I am saying to my colleagues instead of spending this much time on these four judicial positions, let's spend this much legislative time in trying to figure out how to save our manufacturing sector. Because I think long term when you look at what is good for technology and good for this Government, good for this country, saving those manufacturing jobs is probably more important than these four judgeships we are talking about.

Another thing that I must tell you I experienced today is I went to Walter Reed Hospital, the Army hospital here in the DC area, and talked to men and women who had come out of Iraq and Afghanistan. Very sobering, very serious. These are patriots of the first order. Some of them will have lifelong injuries due to their service to this country.

One thing that was emphasized with us over and over is that Iraq is a very dangerous place right now. There again, I hope, and I sincerely hope, the Senate will spend this much time in deliberation and in consideration of how we should move forward in Iraq and what that future looks like for Iraq.

Mr. President, it does not bother me to work late. This is the second night in a row that I have had a late night slot. But it does bother me a little bit that we may have lost some perspective in that we need to keep these other important issues in perspective. No question that our judiciary is important. That is our third branch of Government. But we also need to keep it in perspective.

Mr. President, may I inquire, how much time do I have remaining?

The PRESIDING OFFICER. Four and a half minutes.

Mr. PRYOR. How much time?

The PRESIDING OFFICER. Four and a half minutes.

Mr. PRYOR. Let me read part of a letter from Robert Caro. He is the man who wrote the Pulitzer Prize winning book, ''Master of the Senate.''

''Master of the Senate'' is the story of Lyndon Johnson when he was a Senator. In June of this year, Robert Caro wrote a letter, not to me, but to TRENT LOTT and CHRIS DODD, the two leaders of the Rules Committee.

Mr. President, I ask unanimous consent to print this letter in the RECORD.

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

ROBERT A. CARO,
June 3, 2003.

Hon. TRENT LOTT, Chairman,
Hon. CHRISTOPHER J. DODD, Ranking Member,
Senate Committee on Rules and Administration, Russell Senate Office Building, Washington, DC.

DEAR SENATORS LOTT AND DODD: Several members of the Senate have asked me whether my research on the history of the Senate sheds light on the current debate over the role of the Senate with respect to President Bush's judicial nominations.

Defining the right of extended debate is always tricky. If it is being used against you, it is a vicious weapon of obstruction, whose use in a democracy is unconscionable. If it is you who is using that weapon, it is a great one to have in your arsenal.

Many times in America's history, the right of extended debate has been used to defend causes with which I profoundly disagree. In Master of the Senate, I tried to show how it was a last-resort, but very effective, barrier thrown up in the most ignoble of causes: the continuation of racial segregation.

Nonetheless, great care should be taken in placing new restrictions on that right. Senators who are considering doing so should understand that they will be taking a step that has significant implications for the balance of powers created under the Constitution, and also for another very fundamental concern in a democracy: the balance between majority and minority rights.

The writings of the framers of the Constitution make clear that Senators, whether acting alone or in concert with like-minded colleagues, are entitled to use whatever means the Senate rules provide to vigorously contest a President's assertion of authority with which they strongly disagree. One could say, in fact, that under the fundamental concept of the Senate as envisioned by the founding fathers, it is not merely the right, but the duty of Senators to do that, no matter how popular the President or how strongly the public opinion polls of the moments support the President's stand on the issue involved.

I said in Chapter 1 of Master of the Senate that ''. . . in creating the new nation, its Founding Fathers, the Framers of its Constitution, gave its legislature . . . not only its own powers, specified and sweeping . . . but also powers designed to make the Congress independent of the President and to restrain and act as a check on his authority, [including] power to approve his appointments, even the appointments he made within his own Administration. . . . And the most potent of these restraining powers the Framers gave to the Senate. . . . The power to approve Presidential appointments was given to the Senate alone; a President could nominate and appoint ambassadors, Supreme Court Justices, and other officers of the United States, but only 'with the Advice and Consent of the Senate.'''

I also pointed out that ''the Framers wanted to check and restrain not only the people's rulers,'' but also the possibility that the majority will would be used, in Madison's words, ''to oppress the minority.'' The Framers, he said, established the Senate as the body ''first to protect the people against their rulers; secondly to protect the people against the transient impressions into which they themselves might be led. . . . The use of the Senate is to consist in its proceeding with more coolness, with more system, and with more wisdom, than the popular branch.'' The Constitutional Convention adopted the two-House Congress with almost no dissent.

To give the Senate strong protections from transient public passions or executive pressure, the Convention kept the Senate small so that it would have, again in Madison's words, less propensity ''to yield to the impulse of sudden and violent passions, and to be seduced by factious leaders into intemperate and pernicious resolutions.'' To make the Senate more stable, to keep it ''firm,'' and ''to insure their independency'' [Edmund Randolph], the Framers gave Senators terms three times as long as House members and half again as long as the President's. As a final layer of armor, only one-third of the Senate would be elected every two years, so that the Senate would change only gradually over time.

As I wrote, since the power of the President and the power of the people would be very strong under the Constitution, ''to enable the Senate to stand against these powers—to stand against them for centuries to come—the Framers of the Constitution made the Senate very strong.''

I have pointed out that one of the first acts of the Senate was to write the 1789 statute setting up the federal judiciary system. Sixteen years later, the Senate was called upon to preserve and protect the independence of that system by standing up to Thomas Jefferson, a popular President with a majority in both Houses. Jefferson wanted the Senate to help him tilt the Supreme Court in his own direction, by convicting Justice Samuel Chase after the House had impeached him on a party-line vote. Jefferson had more than enough of his own party members in the Senate to convict Chase, but enough Senators from *both* parties voted against the President to sustain the independence of the Judiciary from the Executive. As your colleague Senator Byrd said some two centuries later, ''The Senate exercised in that fine moment of drama the kind of independence, impartiality, fairness and courage that, from time to time over the years, it has brought to bear on the great issues of the country.'' The independent Senate had vindicated the Framers' hope that it would stand against the tyranny of presidential power and the tides of public opinion.

The Founders, in their wisdom, also gave the Senate the power to establish for itself the rules governing exercise of its powers. Unlike the unwieldy House, which had to adopt rules that inhibited debate, the Senate became the true deliberative body that the Framers had envisioned by maintaining the ability of its members to debate as long as necessary to reach a just result. For more than a century, the Senate required unanimous agreement to close off debate. The adoption of Rule XXII in 1917 allowed a two-thirds cloture vote on ''measures,'' but nominations were not brought under the rule until 1949.

In short, two centuries of history rebut any suggestion that either the language or the intent of the Constitution prohibits or

counsels against the use of extended debate to resist Presidential authority. To the contrary, the nation's Founders depended on the Senate's members to stand up to a popular and powerful president. In the case of judicial appointments, the Founders specifically mandated the Senate to play an active role, providing both advice and consent to the President. That shared authority was basic to the balance of powers among the branches.

Surrendering such authority is not something which should be done just because of a Senator's point of view on the particular issue of the moment—because much more than the particular issue is involved. What is a Senator—let us say a senator from small-population state without any other means of defense—votes to support an new limitation on debate today? What will he do in some future year when he is trying to stop a bill or a nomination that a bare majority of the Senate supports, but that he and 40 colleagues believe will be terribly detrimental to their states or to the nation—an action that he feels a few members of the senate may change their view about if only he has enough time to explain the full consequences to them and to the public? What will he feel when he suddenly realizes that his right to hold the senate floor against that action has been so greatly reduced that the bare majority can silence him before he is finished making his case? What will he do when he realizes that, without the right of extended debate, his cause is ultimately helpless?

I am not attempting to say that the right of extended debate should not be modified. I am, however, attempting to say as strongly as I can, that in considering any modification Senators should realize that they are dealing not with the particular dispute of the moment, but with the fundamental character of the Senate of the United States, and with the deeper issue of the balance between majority and minority rights.

As I told a group of Senators last month, you need only look at what happened when the Senate gradually surrendered more and more its power over international affairs to learn the lesson that once you surrender power, you never get it back.

Respectfully,

ROBERT A. CARO.

Mr. PRYOR. Mr. President, basically what Robert Caro points out in this letter is:

Several members of the Senate have asked me whether my research on the history of the Senate sheds light on the current debate over the role of the Senate with respect to President Bush's judicial nominations.

Defining the right of extended debate is always tricky. If it is being used against you, it is a vicious weapon of obstruction whose use in a democracy is unconscionable. If it is you who is using that weapon, it is a great one to have in your arsenal.

I think right there we see the tension Mr. Caro captured so well in his book, but here again he has captured it and framed up the issue very well for us. The right of the filibuster or unlimited debate is something that is viewed very differently, depending which side of the filibuster you are on.

It has historically in this country been used time and time again for almost everything under the Sun—sometimes successfully, sometimes not successfully. One thing he talks about is:

Nonetheless, great care should be taken in placing new restrictions on that right. Senators who are considering doing so should understand that they will be taking a step that has significant implications for the balance of powers created under the Constitution, and also for another very fundamental concern in a democracy: the balance between majority and minority rights.

I have no doubt some of my colleagues on the Republican side genuinely feel the Democrats are out of line in using the filibuster in this context. Also, I have no doubt many of my colleagues on the Democratic side feel we are perfectly within our rights to use the filibuster. Here again, I encourage my colleagues to look at this letter from Robert Caro dated June 3, 2003, which brings a historical—not a political, not a partisan, but a historical—perspective to what we are talking about tonight and what we will be voting on in the morning.

Again, I thank all my colleagues for being here. It is late-night duty. It is not easy. The staff has just done a fantastic job. My legislative director, Walter Pryor, has been with me every step of the way. I know he would like to get some normalcy back in his life, as do so many of us.

Has my time expired, Mr. President?

The PRESIDING OFFICER. The Senator has 40 seconds.

Mr. PRYOR. Mr. President, again, I thank you and thank my colleagues on both sides of the aisle for all their hard work in bringing these issues to the forefront. I see my colleague from Rhode Island, Senator REED, walk in. We went to Walter Reed Hospital today. I know he has had a long day. I look forward to listening to his remarks.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM of South Carolina. Mr. President, I wish to acknowledge Senator PRYOR's commitment to moving this process forward. He did write a letter a while back trying to find a way to better handle the problems we are having with judges. I think he has a very good heart about this. I respect him as a person. He has truly become a friend.

With that kind of attitude, maybe we will find a way out of this down the road. Right now, unfortunately, we are stuck in the quicksand, not mud. The more we fight each other, the deeper into it we get. The atmosphere in the Senate right now about judges I think has taken a turn for the worse.

There are probably many things one can point to in the past on the Republican side. I am not here to defend the past. I am here to talk about the future, and we have to deal with the present. Here is what about the present bothers me the most.

There is an effort to filibuster judges in a way that has never occurred before in the history of the country. I think it is very unhealthy and constitutionally impermissible and will only be answered in kind. We are going to set the future course of the Senate down a road where it will be hard to get good men and women to apply. Let me tell you why I think they will not apply.

I read a fundraising e-mail that concerned Charles Pickering. As one can tell when I spoke, it bothered me greatly what they are trying to do to Judge Pickering because I come from the South. I know how easy it is to be associated with the sins of the past, to be, for lack of a better word, sometimes stereotyped. Here are the accusations in the e-mail:

Why must the Democrats continue their fight against Charles Pickering? While in law school, Mr. Pickering wrote an article suggesting ways Mississippi can better enforce its ban on interracial marriage.

That statement clearly tries to make the reader believe this is a person who has supported interracial marriage bans and is racially insensitive. I ask the country to look at it in these terms. He was unanimously confirmed by this body 12 years ago. Not one person objected. I can't believe the whole body was asleep at the switch and this law school article was not known. He didn't advocate the ban on interracial marriage. It was under attack, and he wrote a scholarly dissertation about it.

If you believe what the statement says, the entire Senate either didn't know about this or ignored it because the entire Senate unanimously approved Judge Pickering 12 years ago, long after he got out of law school, to sit on the Federal bench as a district court judge.

The second point:

As a State senator in the 1970s, Mr. Pickering worked to repeal important provisions of the Voter Rights Act.

The reader of this e-mail who is being asked to give money to help Democrats fight President Bush's nominees—what is the message you are trying to convey to the reader of this e-mail? That yet again in the 1970s this same person, while holding public office in Mississippi was working to undermine laws that protected African Americans in the State of Mississippi. There is no other fair interpretation of why that is in this e-mail and trying to cast him in that light.

Again, it is beyond my understanding and real belief, if that were true, if this man used his office in Mississippi in 1960 to undermine the Voting Rights Act, that this body 12 years ago would have unanimously approved him to be a district court judge.

I believe these two statements were designed to emotionally charge the reader and to unfairly label Judge Pickering in a way that is not deserved and flies in the face of the fact that the Senate confirmed him unanimously 12 years ago.

The last point:

In 1994, he went out of his way to seek a more lenient sentence for a convicted cross burner.

My colleague from Minnesota very eloquently spoke about that case. I am on the Judiciary Committee. When I heard that accusation, it really did pique my interest. I wondered what was going on because none of us want a judge who is going to be sympathetic to such a horrible crime.

Here is what actually happened. There were three defendants, not two—three defendants. The ringleader and the second oldest man, I believe, received a probationary sentence. The youngest of the three was charged with a crime of arson.

What this judge did is he looked at the way the prosecutor handled three defendants, and he said: That is not fair. You are letting two of the worst guys go and impounding the youngest guy.

That is what I want a judge to do. I want a judge to make sure the people who come before his court are treated in an apportioned manner.

The third person, the youngest one, was given a speech and a lecture by Judge Pickering about the act of cross burning that should make us all very proud. The youngest defendant went to jail, but his sentence was adjusted in light of what happened to the other two people who basically got away with it because the prosecutor did a deal I don't understand myself.

I do understand why Judge Pickering wanted to adjust the sentence, but if you listened to the words and read the transcript, he didn't go out of his way to do anything other than to make the sentences apportioned. He went out of his way to let the defendant know what a sleazy person he was by engaging in this activity, but he brought balance to the people before him.

The reason I keep talking about this situation and Justice Brown is I am trying to let the record reflect for future review that I believe very sincerely these judicial nominees are having a tremendous hatchet job done on their lives. They are trying to make up reasons to justify a filibuster, and there is no good reason to have a filibuster.

Senator PRYOR is a very fairminded person. If he disagrees with me about Judge Pickering or anybody else, that is just life; he is right. All I am asking him and other Senators to do is to follow the Constitution, and the advice and consent clause for the entire history of the country when it comes to judges has been interpreted in a manner that the majority of the Senate will advise and consent, not a minority.

What is happening to these four people—and we will talk more about the others—is very unhealthy for the country. The reason I say that is they are taking statements and articles, speeches, and letters to their church out of context, and liberal special interest groups are trying to oppose conservatives coming on the bench in an unfair way.

These four individuals' lives have been distorted. That is what bothers me the most. If you don't like their philosophy, vote them up, vote them down, just vote, is the saying. If we continue what we are doing today into the future, no reasonable person is going to feel good about wanting to go on to the Federal bench given what is happening to these people, and that will be a huge loss to the country.

The process we are engaged in today has no upside; it only has downsides, and the downsides I think are extremely dire for the country. Not only are you going to drive good people away because nobody is going to want to go through this—and I assure you it will be answered in kind, and that is sad because I know politics.

The other downside is special interest groups, liberal or conservative, are going to have more power than they deserve over individual lives because all they need to do is get 41 votes.

Special interest politics is part of our political landscape. The Constitution has checks and balances against each branch. One of the checks and balances I like the most about the way the judicial nominating process works is if a majority of us feel a person is qualified, they get to sit on the bench.

Please, let's not as a group empower special interest groups to the point that 41 of us can stop somebody from sitting on the bench because we will have rewritten the Constitution, not only in its letter but its spirit.

I end with this. Federalist Paper No. 66 has the following comment:

> It will be the Office of the President to nominate and, with the advice and consent of the Senate, to appoint. There will, of course, be no exertion of choice on the part of the Senate. They may defeat one choice of the executive and oblige him to make another, but they cannot themselves choose. They can only gratify or reject the choice of the President.

For the sake of the future of law in this country, for the sake of the future of the Senate, let's not let a small group make it impossible for good people to serve.

I yield the rest of the time to my good friend from Kansas, whom I have known since I have been in politics at the Federal level, Senator BROWNBACK.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Mr. President, I appreciate my colleague from South Carolina carrying the comments and the load for several hours in the early morning as we approach 4:15 in the morning. We are talking about something of great importance. He has real wisdom in his words, too, about the point that the process on which we are embarked has no upside to it. When you have good people, qualified people blocked from the Federal bench not by majority vote but by filibuster, you are headed down a bad path. This bad path doesn't have a good ending.

We will continue to have division in this body. I don't doubt we can be blocked on these for some time, but that is certainly going to carry over into the next election cycle, and this doesn't have an upside to it. Plus, we have good people waiting. We have people who are qualified and are not going to be serving on the Federal bench.

We have a lot of hurt feelings. We have a lot of accusations made without truth. We have harsh words, harsh comments, and that all leads to a downward cycle. There isn't an up cycle here.

I wish to take a few minutes to describe why I think we got to this point. We didn't used to be here. We have approved people of strong judicial opinions in recent times. They have generally been from the left, and those have been approved during the Clinton years.

Lord knows we are talking about circuit court nominees now. What if we got a Supreme Court nominee? Does the body get tied up for 2 years? We have actually had one Supreme Court Justice who has been filibustered in the past.

Why did we get to this point? It used to be if people had a litmus test on candidates, that was seen as a terrible thing and they were castigated. I don't know if the Presiding Officer or others remember when Ronald Reagan was accused of having a litmus test. That was just a horrible thing. His administration denied it. They didn't put forward people under a litmus test, and we were moving forward.

Now people are being subject to a litmus test. They are being blocked. They are qualified, and they are being stopped. How did we get to this point? I want to take a shot at that and develop it from the standpoint of a case that is currently before the Supreme Court. It is the case of Michael A. Newdow v. The U.S. Congress, United States of America, George W. Bush, President of the United States, State of California, Elk Grove Unified School District. That would be the operative group in the Newdow case, the flag suit case. It is the case most people are familiar with where the Ninth Circuit Court of Appeals determined it was unconstitutional for our children in school to say the Pledge of Allegiance. The reason it is unconstitutional is because of something Dwight Eisenhower signed into law when he was President of the United States in 1954, and that is where the Congress of the United States added the phrase: ''One Nation under God.''

That phrase was so offensive to Mr. Newdow or his child who was in the school that he said: I can't stand this any longer. He was joined by some other people and took this case to the Court.

The Ninth Circuit said you are right. You should not have to. This is not right for our children to say one nation under God. That evoked quite a comment across the country. It evoked quite a comment by this body. I believe this body voted 99 to 0 to say that the flag salute is right; we should say this; it should be allowed by our children.

There were a lot of protestations and the people commented that it was terrible that the Ninth Circuit would be so out of whack, so lacking of mainstream thought, so out of context and touch with the American public that they would rule against something that 98 percent of the American public is for, the flag salute.

The problem with the public outpouring on Newdow and the problem facing the Supreme Court now on this Newdow case is that they were following precedence being developed over a period of 40 years, that the Supreme Court, circuit courts, and others had been working for a period of 40 years to remove the recognition of a higher moral authority from the public square. They were saying this is something we do not want in the public square.

It started in 1962 that these series of cases is built upon. In 1962, Engel v. Vitale was the case that really started this whole string going. That was when our children were allowed to say a prayer at the beginning of the schoolday, and Engel v. Vitale said that was unconstitutional. It was followed by School District of Abington Township v. Schempp. There the Court held that the Bible readings in public school also violated the first amendment. It was followed, in 1992, by Lee v. Weisman, a case about prayer that was being held at a graduation exercise. The Court held that was unconstitutional. It was followed, in 2000, by Santa Fe Independent School District v. Doe where prayer was being removed from being said at a football game. That is followed by the Newdow case now before the Court. I predict it will be followed by a case that will call for this body to remove ''In God we trust'' off the mantle that is here. I predict it will be followed by a case that will call on us to remove off of our money any reference to a higher moral authority, ''In God we trust'' being taken off of the back of the one dollar bill. It will follow, follow, follow.

Well, people do not agree with that. Massive amounts of people in this country do not agree with that. People have mounted up now. Actually, some people do agree. Some people say, yes, we should remove the recognition of some higher moral authority, of God, from the public square. So we are engaged in this great ideological fight.

I contend that this battle, this fight, of blocking these justices started about 40 years ago. Some of us participating in this form of debate feel as if the last couple of days have been along that 40-year line. What we are seeing is the courts injecting itself here into a societal issue that many people feel deeply about and immersing itself in this. Then both sides get fired up and we get good people such as Charles Pickering and Priscilla Owen and others—particularly a guy like Charles Pickering. He is probably the most instructive of the cases here.

We have gone through ad nauseam his qualifications, but I want to make this point of him: First in his law school class, highest rating by Martindale Hubbell, unanimously approved by the Senate for a district court judge in 1990, affirmed on appeals 99.5 percent of the time, reversed only 26 times out of approximately 5,300 cases, received the ABA, the American Bar Association, highest rating, well qualified.

So what is the problem with this picture? Mr. Pickering was president of the Southern Baptist Convention for Mississippi, so he is a man of faith. As such, when we have these 40 years of cases coming up that say we have to remove God from the public square and run into a guy such as Charles Pickering who says, I will uphold the law—and he has upheld the law because, if he had not, he would have been overturned many more times—he says I will uphold the law but I really think this line of cases and some of these discovered rights the court has done in just these last 40 years, I think they are wrong personally. I disagree with these. I will uphold the cases. But they run into people who are saying we are trying to remove God from the public square and we are going to try to remove people who believe in God from serving in the public square.

You run into this clash, and you get this great clash in the civilization and you get this great clash in the culture. Now you have the courts injecting themselves in a great culture conflict that we are involved in in this country today. One of the key division issues in our country today is issues of culture. People ask what is that?

Culture, it is difficult to say what that is, but people are concerned about it. There is not a company in this country that is not deeply concerned about its corporate culture. There is not a family in this country who is not concerned about its family's culture. There is now in the country itself concern about what its culture is going to be.

The central issue is, are you going to recognize a higher moral authority or not? Is the motto ''in God we trust'' true or not? You get a guy qualified such as this who would say, yes, that motto is true. I believe it to be true. I will uphold the laws as ruled to date, but I do believe this motto is true. And it runs right smack into this series of cases and we are going to see it front and center again in Newdow. We will see it again and again.

That is the problem actually with this, because it divides us on something that should not. It divides us on something that should unite us. It divides us in a way that I do not think is healthy for the country. I do not think this is good at all. I think it divides us on something that as a policy matter is not good and that is why I think it is also bad politics when this happens. I think bad policy is bad politics. That is why we have this level of fighting today. That is why I am speaking on the floor of the Senate at about 4:30 in the morning.

We are going to continue to have this fight. Regardless of the vote that we take later this morning, how it takes place, probably really regardless of the dispensation of these four and future ones coming on, this is the cultural clash that we have. It is not healthy but it is going to continue.

Mr. SANTORUM. Would the Senator from Kansas yield for a question?

Mr. BROWNBACK. I would be happy to yield for a question.

Mr. SANTORUM. Mr. President, the Senator from Kansas points out that Judge Pickering, who is a sitting Federal court judge right now, was affirmed in 99.5 percent of his cases. What I have heard from the other side is that we do not want these judges out of the mainstream being nominated.

Now, would the Senator from Kansas say that someone who has been affirmed or not appealed in 99.5 percent of the cases since he has been on the Federal court is someone out of the mainstream?

Mr. BROWNBACK. Mr. President, the number speaks for itself. Absolutely, this is a mainstream judge. When you get approved on that percentage of your cases that you have ruled on—remember, this is at the district court level, so he is both finding fact and applying law. You have to be a really good judge, if you are going to be upheld by people reviewing you 99.5 percent of the time on both facts, that means there is wisdom there, and law, which means he is applying it correctly.

Mr. SANTORUM. I would ask the Senator from Kansas if he would look at maybe what the Senator from New York, Mr. SCHUMER, said yesterday he considers a mainstream judge. He referenced the Ninth Circuit and some of the judges that President Clinton nominated and were unanimously supported by Members on the other side of the aisle, a judge such as Richard Paez who was involved in the case the Senator just spoke of, the ''under God'' case in the pledge, who went in and tried to hold up the California election, ruled unconstitutional the California three strikes and you are out. This is a man that has been overturned—in fact the Ninth Circuit, with a majority of Democrat nominees, has been overturned more than any other circuit.

Is that group of judges mainstream in the Senator's opinion?

Mr. BROWNBACK. It is not mainstream.

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

The Senator from Rhode Island.

Mr. REED. Mr. President. Once again, we are engaged in the early hours of the morning in a discussion about judges and the role of the Senate, and our role is stark. We have the responsibility under the U.S. Constitution to give advice and consent to the nominations of the President of the United States, not advice and approval, not just advice, but advice and consent. That requires the Senate to take a very active role in reviewing the qualifications of nominees who come before us and making judgments about their ability to serve as members of the Federal judiciary.

We take that seriously. I think that responsibility implies that at times we have to disagree with the President. It

is not unusual that such disagreements take place. This whole debate, I believe, might begin and end with a very simple statement of fact, 168 to 4. One hundred sixty-eight of President Bush's nominees have been reviewed by this Senate and have been confirmed. Four have not. It suggests to me that the Senate is properly discharging its responsibilities to advise and consent with respect to the nominees of the President to the Federal judiciary.

In fact, of those 168 individuals, they represent, I would suspect, jurists who have a conservative outlook, probably a different outlook than I have, on certain issues. Yet they represent both in terms of their conduct personally, but just as importantly their judicial temperament and their judicial philosophy, individuals who uphold the tradition of the Federal judiciary at the level of the district and circuit court individuals who follow law, not try to make it, who do not impose their views on the case before them but, in fact, follow precedence, who follow the guidance of the Constitution and the Congress in establishing the law.

It is in those cases and the very few cases, 4 out of 168, where there seems to be a record of ideological commitment rather than legal scholarship, of political—with a small p—interest, rather than a judicial temperament that is fair and balanced, that the President's nominees have not passed the test.

An example of this is the comment I made in May of 2003 when I contrasted the nomination of Judge Edward Prado to the pending nomination of the Texas Justice Priscilla Owen. Judge Prado served 19 years on the United States district court. He is someone who has a record of fairness and evenhandedness. I would suspect, since he is a nominee of President Bush, that he has a conservative outlook in his approach to cases. But he is an appropriate judge. He follows precedence. He does not insert his particular philosophy, his particular ideology, into the cases before him. As a result, he was confirmed, an example of the 168 judges who have been confirmed by this Senate on behalf of President Bush.

The four who did not pass the test were those whose record suggested that they were not evenhanded, they were not balanced; that indeed they inserted political or ideological bias in the conduct of their decisions. In that case, I think it is not only appropriate but it is our responsibility, as the constitutional body entrusted with advice and consent, to register our consent and to register our protest. And we have.

This is not an unusual circumstance in the history of this Senate and of this country. There have been instances several times when Republicans have used the device of cloture votes and filibusters to express their concern about the qualifications or quality of a judicial nominee. It goes back many years, and it certainly continued into the administration of President Clinton. Abe Fortas, whose nomination as Chief Justice of the Supreme Court of the United States was subject to cloture votes, was subject to attempted filibusters by the Republicans. So were Rosemary Barkett and Stephen Breyer as a judicial nominee for the circuit court. Justice Breyer is now a member of the U.S. Supreme Court. In fact, I was here yesterday morning and listened to my colleague, the junior Senator from Missouri, talk about how Justice Breyer was at a conference he was attending and how he was articulate and appropriate, and might not be someone he philosophically agreed with but that he was a good judge—but Justice Breyer was the subject of cloture motions and a filibuster.

Mr. SANTORUM. Would the Senator from Rhode Island yield for a question on that?

Mr. REED. Could I just continue?

Mr. SANTORUM. Certainly.

Mr. REED. He was subject to a filibuster and subject to cloture votes before he was ultimately confirmed, and then ultimately went on to the U.S. Supreme Court.

So this is not a procedure or a device that has not been used by the Republicans, because, in fact, it is part—indeed, a significant part—of the procedural devices of the Senate, something that is appropriate.

As I pointed out yesterday, what I find disconcerting and indeed somewhat contradictory to the argument of the Republicans today is that they were quite adept during the Clinton administration of using delay and denial of hearings to frustrate the nominations of so many individuals, so many potential judges, because many of these individuals never even reached the floor of the Senate for a vote. It was, in my words, a pocket veto.

We are all familiar with the notion of a pocket veto. The President of the United States, in the last 10 days of a session, can simply put the bill in his pocket, not sign it, not comment on it, and it essentially dies as legislation. Well, that was done all too often in the Clinton administration.

The most significant case is the one I mentioned before. In fact, the Senator from Pennsylvania and I yesterday had a bit of a colloquy about this. That is a nominee, Elena Kagan, who was nominated in 1999, spent 18 months waiting for approval, no action was taken, and her nomination expired. Fortunately for Ms. Kagan, she has found other employment. She is now the dean of Harvard Law School, which might suggest that she certainly had some legal abilities that could have been used on the Federal bench. But that is an example of a pocket veto.

Again, we are engaged in this discussion, this debate. It is a serious one, but it is taking place at a time when there are other very serious issues pressing this country. As my colleague from Nevada, Senator HARRY REID, pointed out in his long floor statement preceding this debate, that as we worry about four individuals who have not yet been confirmed, other Americans are seeing their jobs undercut. We are looking at unemployment rates of about 6.0 percent. They are hovering there. They seem to be persistent. Long-term unemployment is growing. It is becoming increasingly difficult for people to maintain their employment with good, solid jobs. We see the poverty rate going up. Meanwhile, the vacancies on the Federal courts have diminished significantly. We are at almost record levels of Federal judicial employment. But as we look at the people throughout this country, the poverty rate is growing. It is affecting children particularly. The rate of the uninsured, or people lacking health insurance, is increasing. Our budget deficit is soaring. The national debt is soaring. These are difficult issues, and yet we are here today talking about 4 individuals, out of 172, who have not been confirmed as judges and not been confirmed based, I think, on sound analysis and sound review of their records.

So I think, again, to place this in context, we are performing our historic responsibilities that have been used and deployed by countless other Senates, both by Republicans and Democrats, throughout the course of this country's history. And indeed I think that is our responsibility and we are doing it.

What I regret, and I hope after the conclusion of the votes this morning we can get back to, is critical business such as how do we expand economic opportunity in this country? How do we reinvigorate our manufacturing base, which is eroding dramatically? How do we give working families additional resources by raising the minimum wage? That would be something that would be very beneficial to millions of Americans. Can we pass good legislation that allows us to continue to invest in our infrastructure, in our highways, in our roads? And then in international affairs, how do we come to grips with the increasing crisis overseas in Iraq, a crisis that sees our soldiers, marines, airmen, and sailors each day engaged in conflict over there in a very difficult insurgency?

As Senator PRYOR mentioned, yesterday several of us had the opportunity to go up to Walter Reed Army Hospital. I have been there a few times over the last several months and have seen a Rhode Island military police unit, National Guard, assigned to Baghdad. They have suffered, unfortunately, casualties. To go there and see these young men, to see them having suffered, having served so magnificently, it makes you wonder why we are spending so much time on this debate, and not more time talking about the way ahead in Iraq, not talking about other situations of international concern.

I find it startling just a few days ago the Central Intelligence Agency released a report concluding the North Koreans likely have several nuclear devices and likely will be able to deploy

those devices without testing. That they have apparently mastered a technological means to circumvent testing is startling, in fact, horrific information, but this is being lost in the shuffle with the Iraq situation. This is a fact that is startling and is pressing on our national security and our future security.

But there is no extended debate on North Korean policy. There is no extended debate on the way ahead in Iraq. We have committed ourselves as a nation to a course of conduct that requires sacrifice, and yet we are not fully coming to grips with the nature of that sacrifice and what we should do.

For many of these reasons, although this debate is certainly appropriate—that is one of the great things about the Senate, you can talk of the issues of the moment, the issues of the time, but certainly there are so many more pressing issues, so many more critical issues to the future of this country and to the future of America's families the continued obsession with this topic does disservice.

Mr. SANTORUM. We have had debates in the past and I would like to ask the Senator from Rhode Island this question, and I am posing a hypothetical. Assume that, and I am sure some in this country would like to see this happen, in the next election President Bush is overwhelmingly defeated at the polls, after his defeat at the polls in November, President Bush nominates a judge to a circuit court after the election, and that the Senate happens to be in a lame-duck session after the election. He would nominate a judge to the circuit court. Let's also assume when President Bush gets defeated, not only does he get defeated but the Republicans lose control of the Senate. It is a huge win by the Democrats. Assume all that happens.

President Bush, in the face of that, comes out after the election, nominates a judge to the circuit court and the Republicans jam that person through committee, get him to the floor and try to move a vote on that nomination to confirm him prior to the end when the Republicans would lose control and a new Democrat President is in place. Does the Senator believe your side of the aisle would confirm that nominee like that?

Mr. REED. Reclaiming my time, I like your hypothetical. I like the context.

Mr. SANTORUM. I thought this would be an interesting example.

Mr. REED. I think you are being overly generous. I like to believe if the nominee was of the quality to serve on the Federal bench as a circuit judge, he or she would be approved, which is the rule that applies so far to 168 of the nominees of President Bush.

I do say quite sincerely that, indeed, if someone was nominated by a President who did not measure up to those standards, the 168 judges who have been affirmed, they would not be voted in because they lack ability, skill, or judicial temperament, or the other criteria, and they would be opposed.

Again, the record suggests that in dealing with President Bush's nominees, 168 have been confirmed. I suspect all of them are more conservative than any nominee suggested by President Clinton. All of them are individuals who, had a Democratic President been in office, would not have been nominated. That is the nature of the nomination process. Nonetheless, they were confirmed.

Now, the last 2 days of a legislative session, with a change of power, et cetera, that introduces a unique aspect.

Mr. SANTORUM. Do you believe anyone on your side of the aisle would try to block or attempt to filibuster given the unique nature of that circumstance?

Mr. REED. There might be an attempt to do that, but your question to me is, what do I believe. Maybe this is an expression of my beliefs. I would like to think that, as in the case of 98 percent of President Bush's nominees, they would receive not only careful review but ultimately confirmation.

Mr. SANTORUM. I ask the Senator two more points quickly. A nominee in November, to be confirmed within 3 or 4 weeks, the Senator would agree a careful review would be very difficult during that period.

Mr. REED. I think the Senator is trying to refer to the more philosophical than pragmatic logistics. The reality is if someone, either someone who is a sitting judge or otherwise, was nominated——

Mr. SANTORUM. Even assuming it was not a sitting judge.

Mr. REED. Nominated in November, simply the FBI, background checks, the questionnaires, reviews, all those things, take time. In fact, the reaction, frankly, if any President did that, President Bush or President X or President Y did that, the public reaction would be very adverse, regardless of the Senate. I would like to move on.

Mr. SANTORUM. The final point is, Justice Pryor, 1980, nominated by Jimmy Carter after the November election in 1980. The President's party lost the election, the Democrats lost the Senate, he was nominated after the election and was brought to the floor with no judicial experience, and the Republicans, who then took control of the Senate in 1980, were asked to confirm him.

What did the Republicans do? There were some on our side, I think the Senator can understand in response to the question, who said we should filibuster because we do not have the time to read his record, he has no judicial experience, but the Republican leader who was going to be the majority leader pushed his side not to filibuster, and moved him through. It was Justice Breyer.

Mr. REED. My point was Justice Breyer was subject to a cloture vote, subject to a procedure that is being used here.

Mr. SANTORUM. Under extraordinary circumstance, I think the Senator from Rhode Island would admit.

Mr. REED. Let me reclaim my time. The circumstances might have been extraordinary but, again, this was an example of Republicans using the device of cloture votes, of threatened filibuster, of extended debate, to make a point that they felt uncomfortable with a judicial nomination. That is the principle.

There is no special rule for the last 20 days of a session. There is no special rule that says that is when the filibuster is OK. There were sincere, well-meaning Senators, Republican Senators, who felt that because they did not have a chance to evaluate his record or because they felt his record was too liberal, they needed to do what they did. Justice Breyer, in fact, was well known to every person in this body. He had been the counsel to the Senate Judiciary Committee, and worked for Senator KENNEDY on the deregulation of the airline industry. He was someone who had personal knowledge of every Senator in this body at the time.

So this was not a question of who is this person. This was a question of some people expressing their sincere belief that because of his judicial philosophy, because of his temperament, because of the way he conducted himself, the Senate should not go forward in this automatic fashion.

The point remains the same. This notion of the unprecedented, unconstitutional, un-American use of cloture votes and filibuster is quite wrong. It has been used before by both sides.

The question must be back to the original hypothetical posed by the Senator from Pennsylvania, What is the criteria we are using. I urge that criteria has to be based upon a careful review of the conduct and temperament of the nominee. That is a better construct of the individual. Is this person someone who recognizes the careful balancing a judge must perform daily? Is this someone who, although he has very strong beliefs, strong ideas about the way the law should be interpreted, respects the fact that as a circuit judge or a district judge he or she has to follow precedent? Is this someone who does not try to impose their views on the law but tries to faithfully judge based on the law? That is the issue. That is the issue of all of these nominees, and 168 of President Bush's nominees have passed that test with flying colors. Four have not. That, I believe, is what we have to focus on.

Once again, as we move forward—and this is an appropriate debate, this is one of the virtues, the glories of the Senate. We can stand here at 4:50 in the morning and talk about great issues that affect this great country. However, this is not the only issue. I would say there are so many more pressing issues. We will conclude this extended

debate this morning. We will vote, and then we have the responsibility of getting back to some very critical business the business of this economy, of this country, both here and across the globe.

There is one issue among many issues we have to be particularly concerned about and that is the issue of our long-term economic vitality. We have a situation in the country where we are losing jobs left and right. We are particularly vulnerable to the loss of manufacturing jobs. Under the Clinton administration, in a huge jobs growth of the late 1990s, we saw an increase of 257,000 manufacturing jobs. Now we are seeing a contraction of employment generally, and particularly in manufacturing. We have lost about 2.45 million jobs in manufacturing. We have to do something. I hope we can.

So far we have not taken action aggressively or as aggressively as we should. What we have seen in many respects is our manufacturing sector are jobs being lured overseas by lower wages, poor environmental quality standards, very little in the way of labor rights. It is attractive to employment. We have to do something about it. We operate in a context of international trade rules where we cannot simply put up a wall of tariffs around our country, so we have to be more creative and innovative. One of the problems that inhibits our creativity and our innovation is the fact that to help manufacturing concerns we have to provide some resources, in terms of manufacturing tax credits, in terms of a solution or at least progress when it comes to the issue of health care costs to companies throughout this country, which is probably one of the key problems facing every business enterprise in this Nation. That does not come cheap. When you look as it as we are, not only erosion of jobs but an erosion of the Federal budget moving in this administration from a surplus projected to be in the trillions of dollars over a decade, to deficits which are equally now being projected into the trillions of dollars, it constrains our ability to respond to these issues, to provide some type of benefits to alleviate the cost of health care for the manufacturing sector, to provide incentives for manufacturing, to provide tax credits and other programs so we can help manufacturing companies particularly deal with environmental concerns.

One of the consistent complaints I get in Rhode Island is it is not fair, Senator, I have to abide by very strenuous rules on environmental emissions, yet I see competitors in China and other countries spewing smoke out of their smokestacks and pouring solids into the wastewater streams. I cannot do that.

In fact, up my way, the manufacturers have been zealous in protecting the environment. But they are in a terrible dilemma. How do we help them? We could provide tax credits for environmental improvements. But again that costs money. It costs something else, too. It costs the time and attention of this Senate on this issue. It costs the same time we are spending to talk about judges to invest in the future of our economy and the future of this Nation. I hope we can spend the time.

We have seen over the course of the last several years an economy that is beginning to at least show some signs of life, but we are not back yet by a long shot. There is a real fear we are leaving millions behind, a real fear in parts of this country that those jobs that were there 3 years ago, particularly in manufacturing, have not only been lost temporarily but have been lost forever. That goes not just to the individual families that have been affected, it goes to the fabric of the lives of those families.

When a manufacturing plants closes, it is not just a sad day in the lives of the workers, it is a community feeling a loss. We are seeing too much of that.

We have not only this challenge, we have the challenge of the tumultuous world. Again, when we look at the requirements and demands on our economy, and the requirements and demands of protecting ourselves internationally, we have to ask ourselves where are we going to get the resources, given the budget, to fund our military? To provide the resources to conduct a very expansive and aggressive foreign policy?

Just a few days ago this body voted $87 billion for reconstruction of Iraq. That is $87 billion in the context of a deficit in which we are spending money literally we do not have. I am sure that will not be the last time we consider additional resources for Iraq, Afghanistan, and other countries. Yet we are not doing those things we need to do to ensure fully that our nation is entirely protected.

So we have serious challenges before us. I hope again at the conclusion of this very extensive debate and at the conclusion of these votes this morning, we can get back to that critical business. Interestingly enough, we interrupted Senate proceedings at a juncture where we were ready to pass the HUD–VA appropriations bill to get on to the discussion of these judges. At that point, we were considering how we could strengthen further, increase further, the resources going to our Veterans Administration. That is another area of concern I have and I am sure we all have. We have to make sure those young Americans who are today struggling—and the fact those young Americans I visited yesterday who are being sent literally from Walter Reed Army Hospital to a VA facility, many of them amputees because of the nature of the conflict in Iraq that 5 years, 10 years from now they have the same quality of services they are getting today.

That is a challenge. And it is a challenge we cannot meet unless we focus our attention and our time and our effort on this bill. That was the very bill we left to come on to this discussion of judges.

How much time remains?

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

Mr. REED. I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, before I resume debate on the judicial nominations, all this talk about not having done work on the economy ignores the fact this Senate early this year passed a jobs and growth package that is working—7.2 percent growth in the last quarter. A lot of people, maybe some, may be upset we are having great economic growth and 300,000 jobs have been created.

As this chart shows, we are now in the most jobs in the history of America, 138 million people. See the signs of doom and gloom and 6 percent unemployment that 10 years ago would have been full employment, we are at that level now. The idea we are going to hell in a hand basket with the economy, some may wish that to be the case for political purposes, but it just is not. It is not a fact.

The facts are this economy is growing. Sure, we have more to do. That is why we have the jobs and growth package we are trying to push through having to do with litigation reform, which is being blocked by the other side of the aisle. On several fronts, whether it is medical lawsuit abuse, whether it is class action reform—which we lost on the floor of the Senate by one single vote—whether it is asbestos legislation—talk about manufacturing jobs. Asbestos litigation is killing us. What is happening? The other side of the aisle is blocking it because their trial lawyer friends in the Democrat Party, who support the Democratic Party more than any group, they are blocking productivity, they are blocking job creation.

They come to the floor and complain that there are no jobs available. The fact is, the policies of this administration are working, and it is just driving the other side crazy. They want to complain about the past.

Look to the future. Things are looking great, except when it comes to the third branch of Government.

The third branch of Government, the judicial branch of Government, is one of the most important branches of Government because it interprets our Constitution. It says what our rights and responsibilities are according to that Constitution.

You have to wonder because I get this question all the time: Senator, why are you spending all this time on judicial nominations? What is so important? How does it affect me? I get reporters' questions all the time. Reporters sometimes can be insightful and sometimes they can ask the most basic of questions. And you wonder why. But in this case the basic question is a good question: Why should we care about this?

Now, if you would listen to some on the other side, they would tell you, you should not care about this. Turn your televisions off. Nobody is paying attention. The sign from the Senator from Iowa: I am going to be watching ''The Bachelor'' tonight. That, to me, was one of the most telling things. It was a joke. Oh, but you know humor. Humor is one of the great things in our society, every society, because for humor to be really effective, there has to be a little bit of truth in it. The little bit of truth in that—I am going to be watching ''The Bachelor''—is don't pay attention. Please, don't pay attention to this. Go do something else. We would rather have you not know what is going on. We would rather have you, at 5 o'clock in the morning, be safely snuggled asleep in your bed knowing that, trust me, we have taken care of all of your concerns and needs. So go watch ''The Bachelor,'' something really important, something really significant, something that is going to elevate your life. Don't pay attention to one of the most important debates this Senate has ever had. Go watch ''The Bachelor.'' Go watch the continued debasement of our society. That is what you should be doing.

Now, I know that people are going to say: Oh, well, you can't take a joke. But in humor is truth; otherwise, the humor does not work, does it? Go watch the debasement of our society. I would argue, if you want to watch the debasement of our society, you should turn on to C–SPAN right now because what is happening on the floor of the Senate is an attempt by a minority to circumvent the Constitution.

Why? Circumvent the Constitution by requiring a higher standard for the confirmation of judges than has ever been held before. Well, they say there have been filibusters before. There has never been a case where there has been an organized attempt to block a nomination by requiring a supermajority. There have been cloture votes filed here.

In the case of Stephen Breyer, Justice Breyer, nominated after the 1980 election, after Jimmy Carter lost, after the Democrats lost control of the Senate in a landslide election—can you imagine if President Bush had the gall to nominate someone to a circuit court after getting swamped in an election? There would be audible laughter on the other side of the aisle that we would consider a nomination at that point. Filibuster? My goodness, they would be screaming how dare you have the gall to do something like that?

I know the Senator from Rhode Island said: Well, I would hope we would consider this. Oh, please. Please. Look at the nominations they are blocking now, ''out of the mainstream'' nominations they are blocking now.

Janice Rogers Brown: 76 percent of the vote in California. Out of the mainstream?

Priscilla Owen: 84 percent of the vote in Texas. Out of the mainstream?

Oh, I would hope we would consider these nominations in due course? Really? Really not. No. What the Senate Republicans did in 1980, by confirming someone to an appellate court, shows what the Senate was like years ago. But it has fundamentally changed. Why? Well, back then we had leaders. You had Howard Baker. You had people here on this side of the aisle who put the institution first, who said, as a leader: We are not going to filibuster. In fact, they moved the cloture vote to move the judge. Why? Because we only had a week or so left when the nomination came up.

Here in the Senate just to move anything takes weeks. At the end of a session, one Senator has enormous power because they can make you go through the procedures in the Senate to get to a vote, which takes weeks if there is not consent. So just one Senator, at the end of a session—we all know it. We all use this leverage. It is the beauty of this place. It is why one Senator is so much more powerful than dozens and dozens of House Members. It is because of the rules here.

But the Senate minority leader, soon-to-be majority leader said: We are not going to do that. We are not going to filibuster. If there is a hold on soon-to-be Judge Breyer, we will work with the soon-to-be minority that was swept out of the election—huge losses; hemorrhaging—we will work with you to confirm someone who, by the way, is now on the United States Supreme Court and is writing opinions that make me throw up.

But we did it because the Senate was a different place then than it is now. We did it because the leaders were different then. Leaders did not respond to the latest pro-choice Web site. They were not manipulated by organizations far from this place, who fund their campaigns and support their grassroots activity, narrow special interests, who seep into this Chamber like hidden gases underneath the door panel. That is what is poisoning this atmosphere. That is what is poisoning this atmosphere. It is narrow zealous special interests. That is what has changed in this place.

But it is not just them. They cannot do it without us because there have been the NARALs and the ACLUs, and People for the American Way, and the trial lawyers association and all—labor unions—they have been out there before. But people in the Senate always stood up for the Senate against the passions of the moment, the special interests of the moment, the needs and wants of your supporters at the moment.

They felt a responsibility. They felt a responsibility for their leadership in the Senate.

It is amazing to stand here. The Chamber is basically empty. No offense to my colleagues from Kansas and South Dakota, but it is 5:10 in the morning, as my voice echoes, resonates without very many people here. But you still look around this place, and you look at the empty chairs and you close your eyes and you can just feel the presence of the greats who have been here in the past, of the people who have sat in these chairs—these very chairs at these very desks in this very place, this beacon of deliberation, this beacon of sometimes delay and sometimes not particularly pretty debates in the Senate, but yet the essence of democracy here. And for 214 years—214 years—the leaders in this Chamber, not necessarily all the Members—we are a society of saints and sinners and everything in between, but the leaders in this Chamber always took the responsibility of leadership of this august body as a sacred trust because what we do here sets precedent for what will happen.

The Senator from West Virginia changed the filibuster rule. I know with his sense of history he knew the consequence of his action. When he changed the rules postcloture for the recognition of a quorum, the Senator from West Virginia knew what the consequences of that would be. When we change any procedural thing in this Senate, we know because history has taught us that there are profound consequences.

So when Senator DASCHLE, Senator REID, Senator KENNEDY, Senator LEAHY, Senator DURBIN, Senator CLINTON, and Senator SCHUMER—the leaders of this new strategy—decided they were going to enlist their colleagues on a new course, they could not help but know. You cannot help but know, if you spend any time in this place. If you are a page, who comes in 15, 16, 17 years old, and comes in and just sits in this place for any period of time, you know that what you do here over the years remains in some way because you set precedent.

You all know, just by looking at these sometimes not particularly attractive, sort of stodgy-looking leather chairs that this place is a place of tradition. It is a place of precedent. These are old wooden desks. We have little ink wells. Look at this little sand that comes out of these things that were used for people who signed documents with feathered pens. Come on. You cannot be here and not know that this is a place of tradition and precedent. It reeks of it.

So when you change something here, you have to realize that it has a huge impact on our society. So I ask, what is the great issue of the day—issues of the day—that are so urgent, that are so powerful, that are so necessary for this precedent of the Senate, for a leader never to involve his party in a partisan attempt to block a nominee by requiring an unconstitutional supermajority to confirm the nominee. Never has been in history. Mr. President, 2,730 nominees since the filibuster rule was put in place in the last century. No nominee—never, never with a nominee in the history of the country did a minority leader ever enjoin his forces to

block by using the filibuster. Never before. Now that is a precedent-setter, folks.

Why? Why? Why is it so important? What has changed that would not lead George Mitchell to do that? That would not lead Howard Baker to do that? That would not lead Mike Mansfield to do that? That would not lead Everett Dirksen to do that? That would not lead Senator Taft or Senator Vandenberg or Senator Johnson to do that?

Let's go on back through history. All of these men—the giants of the Senate—the giants of the Senate never once employed this tactic. Do you think that Lyndon Johnson, as majority leader, ever had a nominee he did not want? I assure you, having read some of the history of Lyndon Johnson, and Caro's book—the Senator from Arkansas talked about it—there were people the Senator from Texas did not like. There were people the Senator from Ohio, Mr. Taft, did not like.

You could go on throughout history, but did they ever apply a higher standard? Did they ever do that? The answer through history is no. Could they have? Well, obviously from what is happening right now, the answer is, yes, they could have. But did they do it? No.

Were there issues of great importance during those times? Well, I would suggest if you were living through those times of war and depression and communism and segregation, and in prior centuries, slavery, reconstruction, and trust busting, and human rights, I would argue those are pretty big issues. Never before used.

So I am going to go back to what the Senator from Kansas was talking about in the last hour. What are the issues—or what is the issue—that is so important that the Senator from South Dakota and the leadership of the Democratic Party would seek to change the way the Senate does business, would seek to change the precedent of the Senate and potentially forever change the judiciary of this country?

Let's make no mistake about it, you are going to dramatically affect who is going to be applying for these judges, who is going to be confirmed, and what their point of view is going to be—I would argue what their competence is. The issue is clear, it all centers around this issue called the right to privacy—the right to privacy.

Now, here is a copy of the U.S. Constitution. I am holding it up in my hand. I challenge any person in this country, in the world, to find the words ''right to privacy'' in this document. It does not exist. It does not exist. Wait a minute. I always thought—I ask students all the time: What section of the Constitution is the right to privacy? Will you please read the section that the Founders, or through constitutional amendment, established the right to privacy? Can you please find that for me?

Well, oh, yes, it is in the—let me see. Is it in the 14th amendment? Is that where it is? No. I am sitting here reading: ''All persons born in the United States subject to jurisdiction . . .''—no, no, I don't see the words ''right to privacy'' in there. Maybe I was wrong. Maybe it is the 10th amendment: ''No powers delegated to the United States Constitution prohibit the States or reserve the States with respect to . . .''—no. Oh, it has to be the first amendment. Good: ''Congress shall make no law respecting the establishment of religion, prohibiting free speech or the exercise thereof, or abridging the freedom of speech or the right to peaceably assemble . . .'' —no, it is not there.

Where is this right to privacy? Well, it was created by whom? It was created by judges. Was it amended because there is a provision in the Constitution, we can find that, that says how you amend this document. Is that the way it happened? No, it did not happen that way.

We amended the Constitution because we put in place a power of authority, people on the highest court of the land who decided it was their responsibility to change the Constitution, that it was their responsibility to find new meaning in these words that have been around for a couple of centuries.

I have always thought we were a government of laws and not of men, but that is not the case anymore. That is fundamentally what this debate is about because, you see, the written words of the Constitution that says a majority vote is necessary do not mean anything anymore because the Constitution is a dusty old document we can manipulate and change for whatever purpose because we have advances in society; we know more than they did then; we are enlightened. Come on, folks, 240 years ago, they didn't have the level of sophistication and knowledge of our culture today, and so these dusty old documents need to be revised; it is so complicated to go through the amendment process of the Constitution; it is so cumbersome; we, the enlightened, will change it as, of course, the culture demands us to do, to free us from the bonds and shackles of these now long departed Founders of our country who couldn't possibly understand the complexity of the world today and the advancements today that have made this document so unnecessary. So we don't need to find anything in this piece of paper. In fact, if we can't find it, that is fine; we will simply create it.

Who does this creating? It is the very judges we are debating today. The Senator from Kansas talked at length in the last hour about the line of cases that is taking an eraser to the word ''God,'' religion, erasing it from our public consciousness. It is as if the first amendment was never written:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . .

''Free exercise thereof.'' I asked a group of students yesterday what were the first words in the Constitution, separation of church and state or exercise of free religion. Half said separation of church and state. Of course, if you listened to the judges and what popular culture says, you would believe that.

Can you imagine, half the people I talked with yesterday did not think free exercise of religion was in the Constitution? Can you imagine? Why would they think that? Because in practice that is the message the culture sends about the Constitution. It is not about freedom of religion. If it were about freedom of religion, we wouldn't be erasing God from everything that is public in our culture.

Who is doing the erasing? Is it Congress? Did Congress pass a law that says you can't have prayer before a football game? Did Congress pass a law that says we will scrap ''under God'' from the Pledge of Allegiance? Did the people speak out and say, We don't want the mention of any faith in the public square? Is that what Congress did? No.

So people ask: What are the consequences of what we are doing here today? The consequences are clear. We have elected people who are erasing from the public consciousness some of the most important and fundamental rights and, I would argue, some of the most important and fundamental principles that keep our country moral, safe, free, and prosperous.

Mr. BROWNBACK. Mr. President, will the Senator from Pennsylvania yield for a question?

Mr. SANTORUM. I will be happy to yield to the Senator from Kansas.

Mr. BROWNBACK. Mr. President, I have been listening, and I think the Senator from Pennsylvania puts forward a brilliant and eloquent argument, and it gets to the nub of what we are talking about instead of the areas. It is in this last 4-year time period that a constitutional right to privacy has been discovered and which has spawned a series of cases. This is done by the Court. The Court has discovered this, and the Court has done this.

Let me ask a simple question: Has the U.S. Supreme Court ever been wrong?

Mr. SANTORUM. You would think from the debate here that this right to privacy, that has now been established as this incredibly well thought out and documented thing, is wholly supported within this document. I have folks on my side of the aisle—I always think of the former Senator from Washington, Slade Gorton, who is for abortion rights who thought Roe v. Wade was one of the worst legal decisions he had ever seen. So many people who are for abortion rights, who would have voted as a legislator to allow the legalization of abortion, saw this judicial construction or deconstruction of the Constitution as an abomination to our legal system.

Has that ever happened before? Obviously, the Senator from Kansas is referring to some of the cases such as

Plessy v. Ferguson where the Court looked at this Constitution and said: You know, equality really doesn't mean equality. The words here aren't exactly what we think they are, and you can be separate and equal. Or we can go back to Dred Scott. They looked at this Constitution and said: You know, equal doesn't mean equal. This rash of cases we have seen where the courts have just decided to take these hallowed words and twist them into the culture of the day, this is not a new thing in America; unfortunately, it is a very old thing in America.

The Court in Dred Scott said: Yes, people have rights and people should be treated equally, but—I think of ''Animal Farm''—some people are more equal than others. Some people have more rights than others. In the case of the slave, they really don't have much in the way of rights at all.

We look back at those cases now with disgust, but judges found in this incredible document the right to do incredible harm to this country—incredible harm—and, in many cases, with complicity from the Senate, for it is we who are the guardians of this document because we put these judges in these places. So it is an important responsibility.

That is why this debate is so important. That is why we shouldn't be watching ''The Bachelor.'' We should be watching out for the future of this country.

In my next block of time in the next hour, the Senator from Kansas and I are going to talk about this right to privacy, this line of cases that has tried to erase God from the public memory and consciousness, all instigated by judges who would find wide praise and admiration on the other side of the aisle, who would be called mainstream judges—mainstream judges who are striking at the heart of this document.

What is a mainstream judge? Let's understand it. A mainstream judge says God has no place in the public square. That is a mainstream judge.

A mainstream judge says you have the right as an individual to have dominion over somebody else and terminate their life if you want to. That is a mainstream judge.

A mainstream judge says we are going to take the institution of marriage and corrupt it, deconstruct it, tear it apart, put it back together to mean nothing. It means any two people for any reason who want to get together should be recognized as married, irrespective of who they are. It has nothing to do with fathers and mothers and having children. What does that have to do with marriage? That is a mainstream judge.

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

Mr. SANTORUM. It is an extreme judge, not a mainstream judge.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. JOHNSON. Mr. President, reference has been made at this early hour this morning about debasing the values of this institution and this country. If any American sadly wants to see debasing of the institution, they have only to look at the strategy that has been foisted upon this body and on the American people by the Republican leadership of this Senate with their fabrication of a ''crisis'' relative to the nomination and approval of Federal judges.

There is no crisis. The fabricated crisis the media has talked about is a polite way of saying the phony crisis, the fake crisis.

The reality of the situation is that this Senate has approved 168 Federal judges nominated by President Bush. The Senate has blocked the approval of 4 Federal judges, a remarkable 98 percent success rate.

The ratio of unfilled judgeships is now at its lowest point in some 13 years. The pace of approval of judges is at a higher rate than that of past Presidents of either political party, and I think it is fair to say that of these 168 judges, most of whom I voted for, virtually all, if not all, were conservative Republican judges. That is to be anticipated. They were all nominated by President Bush.

The question is not whether we should approve conservative Republican judges. We have, overwhelmingly. The question is, Should there be some shred of moderation, some shred of bipartisanship in this institution relative to these judges who will serve life terms on the bench? These are not Cabinet officers. These are not people who come and go with whatever President happens to be in office. These are people who will serve virtually their entire lives on the Federal bench. So this body has a constitutional obligation of advice and consent.

Apparently, the other side believes unless there is 100 percent approval of Federal judges, that somehow we haven't done our job. I would say the opposite, that if all we do is rubberstamp the nominations of any President, Republican or Democrat, this body has fallen down in its obligations, constitutionally and ethically.

One of the great things about the Senate and the great traditions of the Senate—and there are great traditions in this body—is that unlike the House—I served in the other body, as did many of my colleagues—unlike the House of Representatives with its majoritarian philosophy, set up that way by the Founders, where if you have a majority of one vote, that is sufficient to ram through almost anything, the Senate was devised by the Founders of our Republic to be a moderating, cooling institution. That is why we have 6-year terms—because Senators are invited to take a longer term view of what is good for our Nation and what is not.

The Senate is designed to be a body that doesn't jump every time a whim is expressed by the public or in the political whims of the day. Our role is to take a longer term view and to moderate what is oftentimes the hot politics of the House of Representatives.

It is very difficult, because of the rules of this body, to jam through legislation for the approval of virtually anything of any controversy without some bipartisanship. That is the course of action we are seeing here today.

While we have approved 168 of President Bush's judicial nominations, the minority party, a 51-to-49 minority, has said these are such important positions, let's make sure there is a general consensus about the support of these nominees. That is what the 60-vote rule requires.

The other side is very frustrated because they like to jam things through the Senate with 51 votes, but that is not the way the Senate works on this or many other issues.

I have to say President Bush's nominees have received prompt hearings compared to virtually any other standard. That contrasts greatly with President Clinton's experience. President Clinton was told: Don't bring us a nominee who is liberal; they will not receive a hearing. And, indeed, they did not.

We had people nominated, closed up their law practices and put their family on hold for years upon years, and could not get a hearing under the Republican leadership during the Clinton years.

That doesn't happen anymore. Now people who are nominated do receive timely consideration. They do get votes. They get votes on the floor of the Senate. But the Senate has chosen to use its prerogative to require bipartisanship on some of the judges who many in this body believe fall outside the mainstream of conservative thought in terms of their politics, in terms of their legal interpretations.

There is no crisis in terms of judges. For over a decade, we have not had the ratio of judgeships filled as we have today. President Bush has an enormous winning record in terms of the nominations that have been approved. Again, virtually all of them are conservative Republican judges. That is his prerogative. The Senate has gone along with that. There is no problem there. This is not as though somehow the President is getting jammed.

What is happening here, I think, is that there has been a strategy concocted by the leadership of the other side to try to gin up political support among a faction of their supporters. What we have here is politics, an effort to play to the radical right. It is costing $100,000 or more of the taxpayers' money for this debate, and yet what we have here is a phony, fake, fabricated crisis. This is no crisis. The Senate is dealing with judges in a timely and responsible fashion.

President Bush, obviously, could have the approval not of 98 percent but 100 percent of his nominees if he were to send to us mainstream conservative Republican judges, as he largely has

done. Clearly, it is part of the political strategy to look around the country and find a handful who fall far outside the mainstream of Republican or Democrat judicial thinking and nominate them, knowing there will be resistance to these individuals.

The thought is that by nominating these individuals, they can energize the radical right-wing political faction within the Republican Party. They will contribute money then if they see all this going on. It is a very cynical strategy. This has nothing to do with the interpretation of the Constitution. We are approving conservative Republican judges. It does have to do with able people who are in the mainstream, broadly thought.

I think it is regrettable that we find this Senate and our work hijacked by those who want to push aside timely consideration in the Senate of issues pertaining to jobs, education, health care, energy, environment, our veterans and our military—all the issues with which this body ought to be dealing.

The Federal fiscal year began October 1. Yet the Federal budget is not concluded. So there is so much that needs to be done, that we are being prevented from doing as we spend these many hours around the clock on a fabricated, phony crisis that does not exist. All of this to play to a very small faction politically in America. It has to do with political fundraising. It does not have anything to do with the quality of the court.

I note that 95 percent of the Federal judicial seats are now filled. That is the lowest vacancy rate in 13 years. Last year, this Senate, led by my colleague Senator DASCHLE, confirmed the largest number of judicial nominees in a single year since 1994. There ought to be celebrations on the part of the other side in this body over the remarkable, timely, aggressive approval of Federal judges, the highest number of judicial nominees approved in a single year since 1994. The highest level of judicial seats filled, ratio of seats filled, in 13 years. That ought to be cause for celebration. That is a remarkable level of progress, and it was done in a bipartisan fashion.

Part of that time, the Democrats controlled the Judiciary Committee with Senator LEAHY as chairman. Part of that time the Republicans controlled the Judiciary Committee. So the track record is truly extraordinary. What an irony that in the face of that reality, we find ourselves through the wee hours of the night, through the day yesterday, through the day today, being prevented from dealing with the real legislative issues while we talk about this political gamut that we have before us.

Some say, well, what about the appellate court judges? That is the highest Federal court next to the Supreme Court itself, and one that truly does write law. Well, even there the Senate has confirmed 29 of President Bush's appellate court nominees to date, more Bush circuit court nominees than—get this, President Bush has had more of his appellate court nominees approved by this Senate than President Clinton, President Reagan, or President George Herbert Walker Bush had by this point in their administrations. Yet here we are, the other side posing as though there is some sort of terrible crisis going on when, in fact, it is just the opposite. Conservative Republican judges are being approved at a record pace by this body.

What the other side seems to find unacceptable is that the Democratic Party is insisting that one should not go to a lifetime Federal bench unless there is a generally broad consensus, bipartisan consensus, not unanimous but a broad consensus, of at least 60 votes that that person deserves to sit on the bench dealing with legal issues that are of monumental importance to every American citizen for the rest of their lives. I think that is one of the great strengths of this body. That is one of the great strengths of the United States Senate, that we cannot be stampeded into the radical actions of a few but that we take a longer term view of what is good for America, what is consistent with American values, what is consistent with American priorities, for all of our people. That is what is happening in this body this year, and that is why a few on the other side are objecting so strenuously.

Now, other judges have been filibustered; cloture votes have been held. Other judges have been held up in committee, which has been the favorite mechanism of keeping people from having a vote at all. That is to be said even for these four. They have been allowed votes in committee and cloture votes on the floor. They cannot get the 60-vote requirement and so they are not going to the Federal bench because they do not have that broad-based consensus of support in this body.

That is what this body is all about. It is not just judges. This same 60-vote rule prevails on virtually everything we do in the Senate, from the passage of health care, to education, to appropriations legislation. Virtually everything is subject to that consensus requirement. I think it reflects the best of our values in America and, in fact, it represents America coming together in this body to try to produce legislation that is good for us all. It is not ideologically driven. It is not the product of the far left or the far right. The product of the far left or the far right does not do well in this body because of the nature of the rules that have been the rules since our Republic began. It is one of the geniuses of the Founders of this Nation, that that is the profoundly important role of the Senate to moderate the radical winds that occasionally blow politically through this country and through Washington, DC.

So it is a bulwark of individual freedom and of American values and priorities that we have a body like this that mandates that there be greater thoughtfulness, greater moderation, greater reflection than would otherwise be the case.

There are other issues that we rightfully ought to be moving on to. Recently—yesterday, in fact—I visited the Walter Reed Army Hospital in Washington, DC. One of my constituents, a soldier injured in Iraq, was there. Senator DASCHLE and I and a contingent of other Senators visited our troops. We can take great pride in the quality of these young men and women and what they have done for America, what they are doing for America. They are extraordinary people with great courage, and they are getting on with their lives as best as they can.

It was heartbreaking to go from room to room at Walter Reed and see our Iraq military veterans. In one room, a soldier has lost an arm. The next room, a 20-year-old young man has lost both arms. In the next room, a young man has lost his leg all the way to the hip. In another room, there was a young man with brain damage. In another room, a man has lost his feet. Another room, a man has lost his hand. In another room, an individual has lost his arm again. It goes on and on.

There has been a lot of reference to those who have lost their lives and made the ultimate sacrifice in Iraq. Our hearts and prayers go out to them and their families, but we should not forget those as well who are alive and with us but whose bodies are shattered, whose lives are forever changed because of what they were willing to do for the United States of America in their military service.

Their families were there. Young wives were there yesterday, many of them with very small babies, some pregnant. Now they have a husband who has no arms, who has no legs, who has brain damage. We need to give some thought to these families as well, think about the enormous sacrifices they are making for America.

One of the great ironies and sad ironies of this debate that is going on is that the legislation that was taken off the floor in order for us to have this debate was the VA–HUD appropriations bill, the very bill where we will make determinations about whether these young men and young women, once they conclude their military service, will have the health care, the job training, and the therapy they need to get on with their lives. That was pushed aside. We do not have time for that debate apparently because we need to spend 2 days or more of the Senate's time on this phony crisis because 4 out of 172 judges have not been approved by this body. What a sad commentary about the priorities of the Republican leadership in this body.

I do not ordinarily make partisan references lightly. I am a Democrat. I am elected in a State that is overwhelmingly Republican, and I am proud of the Republican support that has been

extended to me for many years. They are good, wonderful, thoughtful, patriotic, religious people on both sides, no question about that. But I am profoundly disappointed, to the point of contempt, for what has happened in this body the last day or so with the hijacking of the Senate's agenda already behind schedule on these important issues that we ought to be talking about in order to take up this question of 168 to 4.

I suggest that if it was 172 to 0, that would be good evidence that the Senate is not doing its job of advice and consent. This body is not meant to be a rubber stamp. That is not what the Founders of this Nation thought that they were doing when they wrote our Constitution and devised the rules of the Senate.

Mr. President, in 1968 New York Senator Robert Kennedy launched a Presidential campaign at a time of great unrest and dissent in our nation. He ran a campaign that lasted 85 days to empower those who did not have the power, to bring justice to those who did not have justice, and the protest the direction of our great nation. At the beginning of that campaign, he addressed criticism of anti-war protesters by saying:

There are millions of Americans living in hidden places, whose faces and names were never know. But I have seen children starving in Mississippi, idling their lives away in the ghetto, living without hope or future amid the despair on Indian reservations, with no jobs and little hope. I have seen proud men in the hills of Appalachia, who wish only to work in dignity—but the mines are closed, and the jobs are gone, and no one, neither industry or labor or government, has cared enough to help. Those conditions will change, those children will live, only if we dissent.

So I dissent, and I know you do, too.

Mr. President, I rise today to dissent. I dissent to the majority of this body's unwillingness to focus and deliver on healthcare and education. I dissent to this body's inability to provide for our veterans. I dissent to the President's blatant disregard for treaty and trust responsibilities to Indians. And most of all, I dissent this political charade.

Instead of talking about judges, as a body, we should be addressing the unmet needs across this country.

Our Veterans made tremendous sacrifices in service to our Nation. They have answered the call to defend our freedom and served our country at the time of its greatest need. We are trying to provide our veterans with the full benefits they have earned. While the White House can find money for tax cuts for America's wealthiest families and a $20 billion lavish grant for Iraq, too often poverty is pled when it comes time to providing our veterans the benefits they deserve. Right now 60,000 veterans are waiting 6 months or longer for an appointment at VA hospitals. I think it is important to fully fund VA health care so that veterans of Operation Iraqi Freedom can get the care they need when they return home.

My own son served with the 101st Airborne in Iraq. He is home now. He is safe. He did not suffer one of these horrific injuries. We are grateful for that, but we are very mindful that tens of thousands of others are still there, have suffered horribly, have lost their lives, and their families have gone through enormous painful stress.

In contrast, the Republican leadership in the Senate has broken their promise to provide an additional $1.8 billion for veterans health care this year and even proposed an increase in prescription drug copayments that impose a $250 annual membership fee for veterans seeking health care. Should we not be talking about these kind of priorities? It is astonishing to me that the Republican leadership of the Senate has set a target adjournment date only days from now, November 21, and has scheduled 39 straight hours of executive session to discuss this phony issue; not 39 straight hours to discuss critical legislation such as lack of prescription drug coverage facing millions of American beneficiaries in this country. Do not the 40 million Medicare beneficiaries deserve as much attention as this phony issue is receiving?

We are at an impasse. We do not have a final Medicare bill. At this rate, spending hours and hours discussing nominations which have overwhelmingly been approved, instead of debating important Medicare legislation, makes me wonder about the priorities of the majority party in this body. They are dedicating nearly 10 hours each of discussion for four individual judges, but we cannot spend 1 hour each for every million individuals on Medicare. What is wrong with that picture? High drug spending is placing a heavy burden on American families, and many businesses are responding to rising drug spending by increasing the amount that employees must pay for prescription drugs. The public programs such as Medicaid and the Veterans Health Administration are also struggling to respond to soaring drug spending. Finding a solution to the prescription drug crisis in this country is a priority for me, for many in this body. It should be a priority for the entire body.

States and local communities are struggling with the worst budget shortfalls since World War II and many have cut back on education funding, on instruction time, have laid off quality teachers and school staff. School district after school district in my home State of South Dakota are having opt-out votes, trying to do something to try to make sure that children in our communities have the resources they need to learn. Parents and students are holding bake sales and auctions to save teaching jobs, music, art, other student activities. It would be impossible for our public schools to meet the strict demands of the new Federal education law if vital school services continue to be cut all across our Nation.

I believe that fighting to bridge this gap by increasing Federal aid to the States and raising public awareness of the school public crisis is essential. I think it is important to recognize that money alone is not the solution to improving our schools, but we need also to be cognizant of the fact that public schools need the financial resources necessary to successfully implement No Child Left Behind. The National Education Association's State-by-State report on layoffs and cuts affecting public schools and the responses of students, parents, and communities, NEA collected anecdotal data from 2003 through the end of September and finds the school district stress all across this country.

In my home State of South Dakota, our Native-American community is struggling badly—high unemployment, lack of health care, high infant mortality, lack of jobs. Again, that is another area that deserves the attention of this body.

These are the real crises that face America, not a 98-percent approval of conservative Republican judges, which this body has done.

This President has been served very well by the Senate on the timely approval of 98 percent of these judicial nominations. I submit that the four who have been rejected were selected with the thought in mind that they would be rejected because what the other side of the body wants, and I think what the President wants, is a fight. They know that a fight will energize the radical right wing of the Republican Party and will energize political contributions. Sadly, that is what this debate is all about. That is why the taxpayers are having to fund $100,000 or more for the cost of this. That is why we are not able to get on to the other issues that truly we ought to be addressing right now.

One hundred sixty-eight conservative Republican judges have already been approved, most with my support. That is not the question. The Federal bench has a higher ratio of judges seated now than we have had in 13 years. The appellate judges are being approved at a faster rate than Clinton, Reagan, or George Bush, Sr.

So the record of this body, Republican and Democrat on the Judiciary Committee, has been one of accelerated consideration of judges in a way that has not been seen in many years. I think that reflects well on the body. What does not reflect well on this Senate is this hijacking that has taken place of our agenda, where we are being prevented from talking about the real issues, the real crises having to do with our children, having to do with our schools, having to do with our seniors, having to do with our veterans, having to do with health care costs. That has been hijacked by a body that wants to talk about these four judges who were selected, I think, by a process where the President and the leadership of the other side knew very well that these

would be lightening rod candidates, that they do not fall within the same mainstream body as the other 168 conservative Republican judges.

That has led to this dispute, and the dispute, I think, is not about principle. It is about energizing politics. It is about raising money. That is a sad commentary. That is contrary to the values of this body and of the American people, Republican and Democrat. The American people deserve better than what has gone on on the floor of this Senate over these last many hours. We are going to see the rest of today wasted as well.

Mr. President, our roads, schools, and infrastructure are crumbling as Nero fiddles here in the Senate. Yet our friends in the majority complain about a 98 percent approval rate for President Bush's judicial nominees. In baseball, that would equate to roughly a batting average of .980. A power hitter is someone with a batting average in the range of .330. That means if the Bush Administration's judicial approval rate in the Senate were considered in baseball terms, we would be batting nearly triple what any major league manager would love to have.

And consider a baseball team that would have a .980 winning percentage. A winning percentage like that would far surpass any record set by any team in major league baseball; and would certainly beat the losing seasons of the Texas Rangers when President Bush was their managing general partner.

In fact, the quality of some of the judicial appointments sent up here by President Bush shows the same judgment he used when he traded Sammy Sosa, a perennial home run leader, to the Chicago Cubs.

The PRESIDING OFFICER (Mr. COLEMAN). The Senator's time has expired.

Mr. JOHNSON. Mr. President, I yield the floor. I am sure it is a great place. I have not been there. I am sure it is wonderful. He used the whole day to talk about that, while we hear endlessly, Why are we not talking about veterans benefits or unemployment when all Monday was used by the Democratic side to talk about Searchlight, NV.

It is a wonderful place, I am sure, but I don't know of any legislation pending about Searchlight, NV. Why weren't we talking on Monday about these things and not addressing the great issues of the day or addressing what we need to be doing about the war in Iraq? Instead, we are talking about Searchlight, NV. Where was the protest? Where was the anger? Where was the outrage. How about rabbits eating cactus? Again, I am sure it is a great place. No offense to anyone from Searchlight, NV.

A week ago Friday, a week ago today, the other side ate a whole day up and we got no votes done on appropriations bills because they were chewing it up on filibustering at that point. Where was the outrage? We were not dealing with the great issues of the day. I guess it did not matter at that point in time.

I find it interesting that this is all about fundraising. It seems the people fundraising are the left. This is NARAL, National Abortion Rights Action League, their Web site, going to task on Charles Pickering; others on the left, pushing this hard for fundraising and organizational purposes. I don't think that is at the root of what we are talking about and why we are spending this time and why we are being tied up on something that has been without precedent, a blockage of Federal judges. This is really about a big issue, and that is why we are here at 6 in the morning on Friday, because we are talking about a big issue and we need to talk about other issues as well—which I agree with; we need to talk about other items, but we need to talk about this one, too.

When you get a judiciary that is blocked, you need to talk about it. Why would these folks be blocked? These are highly qualified. They get painted different ways, but we have been through ad nauseam the qualifications. They are highly qualified judges in mainstream positions in their States on the highest courts in Texas and California—I guess Texas and California are mainstream—they are on the highest courts. One is on the Federal bench in Mississippi, approved by this body previously.

What this comes back to—and the Senator from Pennsylvania was hitting it when we last had the floor—was a discovered right by the Supreme Court, the right to privacy. If we blow away the smoke and we are stating why we are here at this point in time and why would such qualified judges be blocked, it is because of the court that has been writing laws and about the right of privacy, or this constitutional right, discovery. It is not in this document, as the Senator from Pennsylvania pointed out, the right to privacy.

I find it interesting that others have mentioned that the appellate court writes laws and that is why the judges are important. The lower court, the Federal district trial court, does not write laws, but the appellate court does. There is the issue and the problem. The appellate court does not write laws. The Supreme Court does not write laws. They interpret the laws. They interpret the Constitution. They do not write it.

Unfortunately, people in this body look at it differently. Some are saying, yes, the court can write laws at the appellate and the Supreme Court. If that is the case, we have a second legislative body in Washington: We have three units of government, but two happen to be legislative and one executive. Yes, one legislative also has a court and judicial judges as well, but we have a second legislative body. And we are seeing this stream develop further with some people on the other side of the aisle saying we should examine the political opinions of people we are appointing to the bench.

If they are going to be a judge and they are going to interpret the law, why should a political opinion be of significance in the consideration? That is not their role. They are not a legislature. I am a legislator; you are a legislator; people in this body are legislators, but those on the Supreme Court or court of appeals are not legislators.

Some say, OK, we need to examine the political ideology of the people coming forward for the bench even though they are saying we will follow the law and that leads to writing laws on the bench. I hold to the opinion—most people on this side do—what you want in a judge is someone who interprets the law and interprets the Constitution and does not write it. There would be times I would have actually liked a judge to interpret something to the right and write it more conservatively. I would think that would be appealing to me, but I don't want a judge like that. I don't want a judge to do that. That is my job. That is not his or her job.

I am asking for one to stay within the document and not to discover or write amendments to this document. I want them to interpret the law. This is what we are seeing seep into this. These are not legislators. These are not legislators-to-be, going on the bench, who write laws. They interpret the laws.

What we have seen taking place is one of the biggest laws written by the bench over the last 4 years, the right to privacy, or as is more common vernacular today, this is about abortion and the Supreme Court's discovering this right. That is why all the judges are always quizzed ad infinitum about their views, because if the court can write that law, the court can repeal that law, so they do not want someone to go on with a political philosophy contrary to this, who might write the law differently.

Now, we have a bad premise here. The court should not be writing law. The court should be interpreting laws. So stick within the documents.

We also have a bad premise in the second step, looking at the political philosophy of someone being appointed. No, look at the qualifications and their willingness to uphold the Constitution. We are down a bad road a couple of steps already. That is why we are here at this time of day, because these four appellate court judges would be not questioned to any degree if it was not about political philosophy. That is the issue, and it is a big issue, and it is worthy of this discussion. And it is sad we are at this point because I have some of my colleagues here who want to speak and I do not want to dominate this half hour.

Mr. SANTORUM. I would like to ask the Senator a question. You may have answered the question I posed earlier: Why, throughout the history of the United States, have we not had a leader of the Senate, minority or majority,

join in blocking of a nominee to require a supermajority? Why has it never happened prior to this session?

I think the Senator landed on it when the Senator said for the first time we are seeing people come to the court not to be judges but to be legislators, to make law instead of decide constitutional interpretation and to settle disputes. So we have entered into a time when political considerations now become much more important than the quality of the judge, the temperament of the judge, the qualifications of the judge, the experience. Those are now important, but they are almost secondary issues to the political philosophy of the judge because the courts now are fundamentally different than they were 50 years ago or 60 years ago.

Is that what the Senator from Kansas is saying?

Mr. BROWNBACK. It is what I am saying. And it is bad that we are seeing this route taking place. This is going to lead us down a bad road. We are already started down the road.

Now we appoint legislators for life with superpowers, and we are unable to pull them out other than maybe for moral turpitude. You have people who become—in essence, they can almost be dictatorial or tyrannical, and they are appointed for life. That is why so many people are so passionate about what takes place on the bench today, because now you have a superlegislator who does not answer to the public. It starts to get irritating to a lot of people.

This is not the way we should be going. We should be backing up and saying these are three coequal branches of government with different jobs—not legislators each, but a legislative and executive and a judicial branch. This is the problem.

If we keep going down this trail, and you have to examine political philosophy because judges can write laws or you can discover rights, including rights of privacy in the Constitution, and what other rights can you discover in the Constitution, and it will be important to know the political philosophy. Say we get one or two Supreme Court nominees to come up. Now we have somebody such that we are looking at a superlegislator for life in the highest court of the land who can, with a couple of other people, rewrite this document—not just legislate but rewrite the constitutional document. That is why we have the huge fights on this floor.

We used to say in the past—thanks to the question my colleague raised, we say, I disagree with the philosophy of Ruth Bader Ginsburg, I disagree with the philosophy of someone else, but they said they would uphold the law. They are confined, as I am as a legislator, with a set of power and authority. I do not agree philosophically, but they are qualified and will do a good job and I don't have a good reason to vote against them.

Mr. SANTORUM. This gets to the heart of this 168-to-4 number. The vast majority of the 168 are at the district court level, trial court level.

What the Senator from Kansas is saying—and I want to make it clear—the district court judges, by and large, do not make law. They are trying cases. Appellate court judges, we have seen now in recent years, have begun to take on the mantle of legislator in making law, and therefore all of the nominees who are being blocked on that side are these quasi-legislative-type judges.

The Senator is suggesting the superlegislator is the Supreme Court. So if we are in for filibusters for appellate courts, can anyone imagine what a Supreme Court nominee fight will look like in the Senate now versus 20 or 30 years ago?

Mr. BROWNBACK. Absolutely. That is the point. We will be in such a mammoth fight and engaging the entire country with this, how will you ever get that person through?

It does go to this constitutional case that is being considered by the Supreme Court now on the flag salute, ''One Nation under God.'' Here was a continuation of the discovered set of laws that somehow discovered that our kids cannot say our flag salute, ''One Nation Under God.'' Ninety percent plus of the public is for the flag salute. I am confident that percentage is ahead of that. In this body, there is outrage. And the Ninth Circuit, in a consistent opinion with 40 years of discovery law, says: No, you cannot do that.

So now you put somebody in a legislative role—circuit court, lifetime appointment, cannot remove them—and the Ninth Circuit, which gets overturned all the time—as a group of legislators they get overturned all the time by the Supreme Court. Now, say you get a Supreme Court position that opens. They are not going to get overturned by anyone. And you get people fearful of the tyranny of the judiciary which the Founding Fathers were fearful of themselves. They wanted the judiciary to be the most limited because they have the lifetime appointments. They have a pretty big set of powers. They feared tyranny could become an issue because it was a lifetime appointment and was not subject to the checks and balances of the people.

People check and balance everyone in this body. But do they check and balance the judiciary? Where is the populace's ability to check and balance? That is why this is an important debate and why so many are concerned.

What we should be doing is backing up and saying, no, this is about the strict construction of the documents that pass through the legislative bodies that are in the Constitution that go through an extraordinary process. Where, as the Senator from Pennsylvania pointed out, the Supreme Court discovers a new right in this Constitution, if we had written that in there, it would have taken a vote of two-thirds of this body, three-fourths of the States, to become law. This is a big, lengthy process and, as such, we have a limited number of constitutional amendments, as it should be. It is a strong document, standing over two centuries, and yet a court can discover this.

We should back up and stand on the issue of, this should be about strict construction of what is taking place. This is a very important key fight to have.

With that, I yield the floor. There are several other Members who seek to speak.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. I take a step back here and go through what we are doing. What is going on? What is going on in the Senate that has brought about this debate which has been so important? Can we agree on what is going on? I think we can. Let me use the words, and I would agree with these words written by JON CORZINE, the Senator from New Jersey, who happens to be the chairman of the Democratic Senatorial Committee.

The Senator from South Carolina was here and the Senator from Minnesota was here talking about this throughout the night. We can agree on what is going on.

Senate Democrats have launched an unprecedented effort. By mounting filibusters against the Bush Administration's most radical nominees. . . .

Unprecedented. And what does ''unprecedented'' mean, according to the dictionary? Having no precedent. What is precedent? An earlier occurrence.

So, having no earlier occurrence. What does that mean? It has never happened before. That is not me. It is not Republicans saying this. You have protestations on the other side. This happens all the time. Come on, no big deal. The Senator from Illinois will show a chart, look at all these filibusters. Come on, no big deal. We do this all the time. Unprecedented. Their words, not mine.

To whom? To their people? Guys, this is what we are really doing. We are not going to say this on the floor of the Senate, but this is what we are really doing. It is unprecedented.

So what is going on? An unprecedented filibuster to raise the bar for certain nominees. That is what is going on. Not my words, the words of the Senator from New Jersey to the people he relies upon to support their party.

Let's look at the facts. Is it unprecedented? Since the filibuster rule was put in place, 2,372 nominees came to the floor of the Senate. Has anyone been blocked by filibuster? No. So you see, 168 to 4—stack that percentage against 2,372 to zero. Four? Let me ask if it is four.

UNANIMOUS CONSENT REQUEST

I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 169, the nomination of Carolyn Kuhl to be a United

States Circuit Judge for the Ninth Circuit; and further provided there be 100 hours of debate equally divided for the consideration of the nomination; and provided further the Senate proceed to a vote on the confirmation of the nominee, with no intervening action or debate.

Mr. DURBIN. I object.

Mr. SANTORUM. Now it is 168 to 5. So that chart is now outdated that the Senator from Illinois will show.

UNANIMOUS CONSENT REQUEST

Mr. SANTORUM. I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 455, the nomination of Janice Rogers Brown to be United States Circuit Judge for the DC District Court; provided further that there be 200 hours of debate equally divided for the consideration of the nomination; provided further that following the debate, the Senate proceed to a vote on the nomination of Janice Rogers Brown, with no further intervening action or debate.

Mr. DURBIN. Mr. President, I ask unanimous consent that that unanimous consent request be amended and that we move to legislative session immediately to consider an increase in the minimum wage and additional unemployment benefits for the 3 million Americans who have lost their jobs under President Bush's administration.

Mr. SANTORUM. I want to make it clear that you are asking, in addition to this unanimous consent, that we would do this unanimous consent in addition to this?

Mr. DURBIN. I ask unanimous consent that before we consider any unanimous consent request by the gentleman from Pennsylvania, that we first——

Mr. SANTORUM. I would object. I object.

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

The PRESIDING OFFICER. Objection is heard.

Mr. DURBIN. Mr. President, I reserve the right to object.

Mr. SANTORUM. Mr. President, I have the floor.

The PRESIDING OFFICER. The Senator—

Mr. SANTORUM. Thank you.

Mr. President, I renew my unanimous consent request.

The PRESIDING OFFICER. The Senator may object or not object.

Mr. DURBIN. Mr. President, parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state his inquiry.

Mr. DURBIN. Will the Presiding Officer tell us what the pending business of the Senate is at this moment?

The PRESIDING OFFICER. The nomination of Janice R. Brown, of California, to be United States Circuit judge for the District of Columbia Circuit.

Mr. SANTORUM. I renew my unanimous consent request.

The PRESIDING OFFICER. Is there objection?

Mr. DURBIN. Mr. President, I object. If the Senator is not going to consider the——

The PRESIDING OFFICER. Objection is heard.

Mr. SANTORUM. Mr. President, I have the floor.

Now that chart the Senator from Illinois is going to show is 168 to 6. And I would project that 168 to 6 will soon be 168 to 7 and then 8 and then 9 and then 10; and that this number is going to actually, looking forward into the future of the Senate, be a good percentage. I might agree with him looking forward because we will have set a precedent tonight. We will have set a precedent in this session of Congress that will go to haunt both sides forever. If we maintain it, it will. I guarantee it.

What we are doing here is playing with real bullets. I tell you there are folks on our side of the aisle who are loving what you are doing. They are loving what you are doing, man. They just think, go, baby, go. Do this because we can't wait to get our arms around the next Democratic President who wants to stack the court with a bunch of people who believe God does not belong in the Pledge of Allegiance. We can't wait—who, by the way, got confirmed by the Clinton administration and by this Senate. We can't wait to get our arms around people who find in this Constitution things that are not in it, who believe it is their job to be the super Senator, the super legislator, the super President. We can't wait to block those nominees because, do you know what. You did it first. You did it first. You can say, oh, no, we didn't do it first. You did it first. You crossed the line. Oh, it has been threatened. It has been talked about around here. I will not deny that. I talked about it.

Richard Paez, by the way, who tried to stop the California election a few days before the election, found somehow or other that ''you can't hold this election,'' that, to the people wanting to recall the Governor, ''you can't do that because, of course, I know more than the people.'' Richard Paez, Ninth Circuit, overturned more than any other circuit in the history of the United States. Clinton nominees, liberal, activist judges, out of step with the mainstream, the Senator from New York and maybe other Senators call mainstream, who says ''under God'' does not belong in the Pledge of Allegiance, who said ''three strikes and you're out,'' that the people of California voted for, is unconstitutional. The Supreme Court overturned that.

That is the mainstream. Can't wait to get at the next Richard Paez. Can't wait to get at the next Marsha Berzon. Go on down the list of folks. Did I want to filibuster them? Did I want to filibuster Richard Paez because he was a district court judge? And he was awful. He expressed values and views that were so out of step with America and with my constituents in Pennsylvania, I just could not stand it. I said, come on. How can we continue to let these judges, who think they are God, who think they are Senators, who write laws that do not exist, who take the laws we do write and turn them into what they think, not what the Senate believed and what the President believed—how do we let these people keep coming at us and not do anything?

My leader, TRENT LOTT, and my chairman of the Judiciary Committee, ORRIN HATCH, said that is not the way we do things in the Senate. This is the passion of the day. But in the Senate, one of the great things—and you hear it on both sides all the time—one of the great things about the Senate is we do not get caught up in the passion of the day. We understand the long term. We understand the greatness of America. We hear we are the cooling off. We do not get caught up with the passion of the day. We are the deliberative body. Therefore—and therefore—we have a higher calling than to respond to the NARAL ads or the People for the American Way ads. We have a higher calling. We are Senators. We look out for the long-term interests.

How do you preserve the long-term interests? You do it by following the laws and the precedent. You do it by using what has been established over 214 years to protect rights, and we are throwing it away. We are throwing it away, and understand the stakes of what we are doing here. Understand the precedent we are turning over and what we are going to unleash on the floor of this Senate. Do you know what. Maybe it is a good thing. I have sat here now—I will not argue against my colleagues, but I have sat here now, and I listened to the Senator from Kansas.

I would ask the Senator from South Carolina: Do you believe there are some on our side who, after listening to the Senator from Kansas and listening to the judges who have been put through—because we have been good stewards. We have allowed the Richard Paezs of this world to come and undermine our Constitution. We have allowed the left to seed into the court system those who would destroy this Constitution.

Are there not Members of our side, I ask the Senator from South Carolina, who would say, thank you, we never had the courage—we never had the courage—to change the way the rules are here in the Senate to make sure that we could protect—as I think the Senator from New Jersey said—''protect our courts?'' We did not have the courage—as the Senator from New Jersey said—''to stop judicial extremists.''

So maybe what we should be doing, I ask the Senator, is thanking the Senator from Illinois—and the Senator from North Dakota is here—and the Senator from South Dakota, Senator DASCHLE. Maybe what we should do is instead of protesting this is to thank them for giving us a tool, for giving us a tool to protect this document.

I assure them—maybe I should not assure them—maybe I will ask the Senator from South Carolina, what do you think will happen now?

Mr. GRAHAM of South Carolina. Well, to the best I can, to the Senator from Pennsylvania, for the last year—this is my first year—I have seen a trend that seems to be getting worse and worse. I can assure you, as the Senator from Pennsylvania has indicated, that for every liberal special interest group there is a conservative special interest group that feels just as passionately as the People for the American Way.

The Senator is absolutely right. I have been trying to say this all night. We are in political quicksand. You have put us in a place we have never gone before, and the more we fight and the more we fuss, the quicksand takes you deeper and deeper, quicker and quicker.

The truth is, the Senate will never be the same if this stands because the Senator from Pennsylvania is exactly right. There will be so much pressure on people on our side to stand up against anybody who is perceived to be liberal—not just whether or not they can follow the law, but they may have written an article when they were in law school. They maybe made a speech somewhere about the philosophy of life. And it will be seized upon, it will be touted, and it will be shouted, and 41 of us may buy into that.

The advise and consent clause has stood the test of time. But the formula that you are imposing upon the Senate is a formula for disaster, and a big loser. Who loses? It is average, everyday people who will be shut out because of special interest politics on the left and the right. The real big loser is somebody who loves the law who wants to be a judge but has said: I am not going to put myself and my family through that.

So Senator SANTORUM is exactly right.

The PRESIDING OFFICER (Mr. BOND). The Senator's time has expired.

Mr. GRAHAM of South Carolina. There will be no turning back, and this will destroy us over time in terms of the rule of law.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Thank you, Mr. President.

Let's not forget what this is all about. Mr. President, 168 of President Bush's nominees have been approved by the Senate; 4 have not—168 to 4. That is the score. This President has 98 percent of his nominees approved. We have now consumed 36 hours of the time of the Senate railing about the four who were held back.

Those on the other side of the aisle believe the advise and consent clause of the Constitution is meaningless. They believe their President, their Republican President, should have every nominee, every judge. They really argue with the premise that these judges should be asked hard questions. They do not believe that a judge seeking a lifetime appointment to the bench should be asked, What do you believe? What values will motivate you if you were in a position of power, a position to decide cases and basically the position to decide the outcome of people's lives?

They do not believe in that. Frankly, they are arguing that this Constitution, that they have sworn to uphold, which provides for the advice and consent of the Senate before a Presidential nominee is appointed to the bench, should be tossed out.

Those of us on the Democratic side disagree. I think, frankly, in their heart of hearts a lot of the more moderate Republicans disagree. They understand that no President gets everything he wants 100 percent. No President should, Democrat or Republican. But they are loyalist, and their partisan loyalty is showing. It has shown for 36 hours.

Let me show you the judicial confirmation scorecard so you will understand what has happened to nominees sent by Presidents to the Senate.

President Clinton's nominees: 248 confirmed, 63 blocked. So 20 percent of the nominees, one out of five sent to the Senate by President Clinton, were blocked by the Republicans, Senator ORRIN HATCH, and the Senate Judiciary Committee.

President Bush's nominees: 2 percent have been blocked.

I listened to the Senator from Pennsylvania tell us, warning us that, frankly, stopping four judges will be remembered, and they will revisit this if the Democrats ever take control of the White House again.

Well, let me remind my colleague from Pennsylvania, those 63 Clinton nominees who were blocked, most of them were never even given the courtesy of a hearing. I know this personally. Three judges from Illinois, three good people seeking Federal appointments, were stopped because one Republican Senator—in the case of one of my nominees, former Republican Senator John Ashcroft of Missouri—personally stopped this nominee. This nominee, a good person, who would have been an excellent judge, was stopped because Senator Ashcroft objected to him. In objecting to him, he never got a hearing.

So for the Senator from Pennsylvania to come and warn us that if there is ever a Democratic President, you can count on nominees being stopped, we learned that lesson. We learned it when President Clinton offered nominees who were quality people, moderate people, and stopped because of some perceived slight, stopped because of some perceived position on issues that the right wing did not agree with.

Let me show you some of the photographs of some of these nominees. You can see that even this small gathering of nominees here represent a rich diversity of people across America. The Republicans would have us believe these people sent to the Senate Judiciary Committee by President Clinton were somehow radical people, people who did not share the views and opinions of America.

You can count on this: Within those people are excellent judges, people with the highest ratings from the American Bar Association, people who were rejected. It gets back to this, as shown on the next chart: The final score here is 168 to 4. So 168 of President Bush's nominees have been approved; only 4 have been held back. Ninety-eight percent have been approved.

I listened to the speech just given by the Senator from Kansas. I hope that those who are following this debate, even though I cannot imagine at 3 o'clock in the morning on the west coast a lot of people are tuned in, but if those who are following this debate heard what the Senator from Kansas said, I think it was chilling and troubling, if not alarming. It is a clear indication of what is at stake here in this debate. The Senator from Pennsylvania joined in the chorus because the Senator from Kansas said they were opposed to judges who were ''discovering the right of privacy in the Constitution.'' Those were his words, ''discovering the right of privacy in the Constitution.''

Well, the Senator from Kansas is correct. The word ''privacy'' does not appear in the Constitution of the United States. But those who have interpreted this document have come to the conclusion that Americans have a basic right of privacy. I suppose from what the Senator from Kansas said, that is judicial activism in his eyes.

But let's remember how that right of privacy first came to the Supreme Court and the decision made, the landmark decision of Griswold v. Connecticut, a Connecticut statute which said they would prohibit the right of married couples to buy birth control devices, contraception, an archaic statute from the 19th century that said that married couples could not buy birth control devices. We are talking about the ones most commonly known.

The Supreme Court said that is wrong. We believe that the people of Connecticut, the people of America, have the basic right of privacy and that married couples should be allowed to make that decision, and no State government should prohibit them from making that decision.

So in this case, the Supreme Court ''discovered'' the right of privacy in the Constitution. The Senator from Kansas believes, I suppose, that this is judicial activism, that the court went too far. How many people in America believe that? How many people in America believe that States or the Federal Government should prohibit the right of couples or even individuals to buy birth control devices, to buy birth control pills? Is that this discovered right of privacy at work? The same right of privacy, I might add,

that was at the core of the Roe v. Wade decision.

So there we have it. They are looking for judges who even question the right of privacy in the Constitution. You wonder why we would even stop four judges because given free rein, I am afraid that my Republican friends would turn the clock back, turn the calendar back to the 19th century, questioning the right of privacy of Americans.

I thought conservatives, by their nature, were opposed to the overreach of government. But what we hear this morning from the most conservative members of the Republican caucus is that we have to question the right of privacy. That is hard to believe.

They also went on to say, the Senator from Kansas agreed with the Senator from Pennsylvania that we need a check and balance on the courts. Think about that for a moment. Oh, it is a nice-sounding phrase. But think about the check and balance on the courts, and then think about the principle of an independent judiciary. Those two are inconsistent.

The check and balance on courts comes in the process when the President nominates a judge, and when we review that judge's credentials and decide whether that judge receives a lifetime appointment. Then there is the correct belief that short of impeachment, judges in America are independent to make decisions. It is one of the bedrocks of our democracy. That has been challenged on the floor of the Senate today by the most conservative members of the Republican caucus.

You wonder why we are here for 36 hours? You wonder why we are taking all this time. It is because of the views just expressed this morning by two members of the Republican caucus which indicate the extreme position they are prepared to take, indicate why 168 of President Bush's nominees being approved and 4 being stopped is unacceptable, and indicate that they want to change the profile and complexion of the judiciary across America in profound ways.

The Senator from Pennsylvania has political amnesia. He comes to the floor this morning and forgets that 63 of President Clinton's nominees never even received a hearing, not even the dignity of a hearing. And he warns us in a booming voice: We will remember this if there is ever a Democratic President.

I say to the Senator from Pennsylvania, he is suffering from political amnesia. He has failed to acknowledge that 63 of President Clinton's nominees were never even given the dignity of a hearing. That was a sad outcome for those nominees and their families. To think we are not going to stop this process at this point in time, that we are going to continue on for another 3 hours is, frankly, I think, unfortunate.

Yesterday, I went with a group of Senators out to Walter Reed Hospital to visit with some of our injured soldiers. Senator TIM JOHNSON from South Dakota was in that group, as well as Senator BYRON DORGAN of North Dakota. There were about a dozen of us who went out and visited with these soldiers. It is something I am not going to forget. These are some of the best we have who have given the most. They have been subject to injuries which are truly sad and tragic in a way, but their courage and their determination are going to stick with me.

Why aren't we talking about Iraq? Why aren't we talking about the veterans? Why aren't we talking about the need for this country's national security or its economy? Really, because there is another agenda in play here. We are involved in a made-for-TV filibuster. That is what this is all about. This isn't for real. Those cots were props on a stage. I walked around the Senate. Most of those cots are still cold as ice. They have never been warmed by a Senator's body. They were brought in here so Fox TV News and all the right wing talk shows could say: My goodness, we are staying up all night. There is a handful of Senators who have given a lot of hours here, no don't about it. This is a made-for-TV filibuster. Sadly, we are ignoring the agenda of this country.

My colleague from North Dakota is here, and I yield the floor to him.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I appreciate the comments of my colleague from Illinois. This is, in many ways, an interesting debate and certainly an important debate largely because it is alleged that we have embarked on something unusual, something unique. Of course, that is not the case.

The issue of filibusters is not a unique issue in the Senate. Let me talk just for a moment about something I listened to on the radio on the way in. C–SPAN is covering this by radio. I heard my colleagues, as my colleague from Illinois indicated, on the other side of the aisle talk about this issue of right to privacy. There is no right to privacy, they say. What is this right to privacy that somehow has been manufactured? They don't agree with the right to privacy. The American people don't have a right to privacy, they say; that is not in the U.S. Constitution.

Let me give an example of right to privacy issues that relate directly to the issue of judgeships. We have a nominee before us named Carolyn Kuhl who is a State judge. Carolyn Kuhl was involved in a case and dismissed a claim and then was overturned in her dismissal. Let me describe the claim. It was an egregious invasion of privacy.

An oncologist was giving a breast exam—in fact, a full examine, including a breast exam—to a woman in his examination room. Another person was in the room with a white coat, another male. That male turned out to be a pharmaceutical salesman. No, not a doctor, a pharmaceutical salesman observing the full physical, including the breast exam of this patient.

The patient sued. Judge Kuhl dismissed it, just threw it out. This woman had no right to privacy, no right to expect privacy. That is what the judge said.

That judge was overturned on appeal, and the court that unanimously overturned that said: The conduct was highly offensive—that is, allowing another male in the room to observe, and not even a doctor but a pharmaceutical salesman—that conduct was highly offensive and the patient had an ''objectively reasonable expectation of privacy.''

My colleagues suggest this is a manufacturing of some right that doesn't exist. This woman has no right no privacy in the Constitution. Judge Kuhl would have it right, they would say.

Judge Kuhl didn't have it right. This happens to be one of the judges who has been held up by the Senate—one of the 4; 168 approved, 4 not approved. This particular judge we decided does not merit approval by the Senate. The other side says there is no right to privacy, so don't be critical of this judge; there is no right to privacy for the American people.

I don't understand that argument. I hear it, but I don't understand it. That is rooted somewhere in the 1930s or the 1920s or perhaps the 1880s. It is certainly not what the American people would expect someone in the Senate to be asserting in the year 2003, that the American people have no right to privacy, or that Judge Kuhl's decision is the right decision, and that has already been determined. That was thrown out on appeal—unanimously, I might say. So Judge Kuhl is not advancing in the Senate. We make no apologies for that. This is someone far outside the mainstream whose record of decisions indicates to us we don't want to elevate this person to a lifetime on the Federal bench.

Let me just say with respect to the 168 approved, 4 not, 2 of those are North Dakota Federal judges, judges from my State. Both are Republican and both nominations I was proud to support. They are both now on the Federal bench in North Dakota. I played a role in getting them there, and I am pleased I did. I think they will be great Federal judges.

That happened the right way. The administration visited with Senator CONRAD and myself and selected from among some good candidates two judge candidates we supported who we think will do well on the Federal bench.

There are other approaches to this. One is, for example, saying to the two California Senators: It doesn't matter what you think, we are going to pick an ultraconservative in California whose record doesn't merit support by the Senate, and we are going to try to shove it down your throat because we believe we have a right to do that. That is the attitude. There is a kind of arrogance there, in my judgment.

When they wrote the U.S. Constitution, the Framers decided they were

going to have a couple of steps to this process. I am glad they did. In fact, they almost decided the President should not be involved in the process. That was part of the discussion because they didn't want to give that much power to one person in this country, but they finally made a compromise with respect to judges. They said the President will nominate and the Congress will have a role of advising and consenting. That is, the President will nominate and the Congress will say yes or no.

We have been extraordinarily cooperative with respect to this President. In almost all cases, we have said yes. In four, we have said no. For that, we now have a 30- or 39-hour extravaganza in which, when I was driving in this morning, I heard my colleagues talk about corruption and all the code words they have developed especially for this debate, especially for their political friends so the word will mean something and it becomes much more than actually exists. This is all a manufactured debate.

They say there has never been a filibuster. That is not true. But if you say it eight times an hour for 39 hours, maybe some people will believe it. I don't know.

This is the oft-repeated old story about the man who comes home at 2 o'clock in the morning, having been drinking and with lipstick on his collar. And his spouse angrily confronts him and says: Where have you been?

He says: Riding my bicycle.

She says: That can't be true, I took your bicycle to the shop yesterday.

He says: That's my story, and I'm going to stick to it.

That is what is happening here: It is my story, patently untrue, obviously false, but they stick to it. They say there has never been a filibuster. The fact is, when the Republicans were in the minority, they filibustered 16 nominations in 1 Congress alone. So if they say it eight times the next half hour, just understand, it is not true. They can say it, say it, and say it, but it is not true.

I guess debate is an opportunity to exchange views. It does not require someone to tell you the facts. The facts are, as my colleague from Illinois indicated, many of the nominees in the previous administration never even got a hearing—not even a hearing. But in addition to that, there have been numerous filibusters, and some of my colleagues, in fact, who are here this morning voted against cloture to sustain a filibuster, some of the same ones who are making this claim.

I don't understand, I guess, how they think it sticks just to stand up here and say something they believe to be the case when they know it is simply not true.

Let me, in the couple of minutes I have remaining, talk about some of the issues I wish they had passion to address. This, in many ways, relates to the right to privacy.

The President and my colleagues on the other side of the aisle have decided in recent days that this young lady—her name is Joni Scott, who went to Cuba to distribute free Bibles—will be fined $10,000 by the U.S. Department of the Treasury. Why? Because she exercised her right to travel and distributed free Bibles to the poor people of Cuba.

She now is subject to a $10,000 fine. I tried to change that the other night. I couldn't do it. The majority in this Congress and the President said: Absolutely not, we are going to maintain these travel restrictions that restrict the right of the American people to travel.

By the way, this woman is going to get no relief. A $10,000 fine for an American citizen who distributes free Bibles in Cuba—maybe we could be talking about that this morning and see if we can agree that it is a perversion to do this. It seems to me this woman has some rights. Yes, the right to travel, perhaps the right to privacy, the right to distribute free Bibles. But the majority party says: No, she has no such right, none at all.

Let me ask if we might not want to talk about another subject during these 39 hours. We have lost 3 million jobs in the last couple of years with a failed economic policy.

This is a picture of a Huffy bicycle. They used to be made in the United States. In fact, right here under the handlebar they used to have a decal that was the American flag decal. Mr. President, 850 workers in Ohio were fired because they were making $11 an hour, and they moved this bicycle manufacturing plant to China where they can pay 33 cents an hour, and they took this flag decal off the handlebar and put on a decal of the globe. Not an American flag, a globe. Why? Because they decided $11 an hour is an egregious wage, outrageous amount of money to pay people when you can make it for 33 cents an hour in China, working 16 hours a day, 7 days a week. So we lost 850 jobs. These 850 people went home and had to tell their families: I lost my job. I am a good worker. I tried hard, but I couldn't compete with 33 cents an hour.

I wonder if maybe we wouldn't have the same passion on this floor to talk about jobs that Americans had but don't have any longer. Could we have a few of our friends stand up and join us to have a 39-hour debate about jobs the American people need, want, and deserve but don't have because these jobs are moved to parts of the world where people are paid 33 cents an hour.

I could hold up another chart to show you 12-year-old kids working 12 hours a day, being paid 12 cents an hour, and they get the jobs and those jobs leave this country. Is there a passion on this floor to talk about that? Oh, no, we don't have time. This isn't a big issue.

The passion is to stand up here and say with respect to the four nominees to the court who have not advanced that we are engaged in a filibuster that has never before been done. That is absolutely, patently false, and the people who make that charge know it.

My hope is we can stop some of this and get on to the things that really matter to the American people and the economy and the future of this country.

My colleague from Illinois I know has additional comments.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I thank my colleague from North Dakota for reminding us that there are issues out there about which the American people really care. I dare say if you go to Missouri, Illinois, North Dakota, South Carolina, Georgia, or Minnesota and take the average person on the street and ask them: ''Where in the list of priorities in your life is the fact that 4 judges out of 172 nominated by President Bush have not been approved,'' my guess is they are going to say: I didn't even know that. Is that a big problem?

In fact, this morning's Washington Post has an interesting story about what we are doing here, this made-for-TV filibuster. They say:

> The greatest deliberative body shows what it does best—talk itself silly.

That is the Washington Post this morning. They refer to filibuster buttons—we have them on both sides of the aisle—filibuster T-shirts, and filibuster bingo games.

I am glad they didn't disclose the identity of this man, but they went out and asked one of our Capitol Police officers what he thought about this marathon debate. He probably would lose his job if his name were disclosed because of the Republican majority. Here is what this man said, a Capitol policeman who has been standing guard over the Capitol through the wee hours of the morning while we gassed on here on the floor about our favorite political issue: the lack of confirmation of four judges.

Incidentally, for those who are keeping score, I believe it cost us about a quarter of a million dollars in taxpayer money for additional pages to be printed in the CONGRESSIONAL RECORD and for additional Capitol Hill Police overtime protection because of this 39-hour marathon—a quarter of a million dollars.

Let me get to the quote from this Capitol policeman. They asked about the made-for-TV filibuster. He said:

> I can see it if it was something important, like the budget or Iraq, but who cares about judicial appointments. They should get a life.

There is a lot of wisdom out there standing in the hallways and in the streets in the cold wondering what in the world we are doing here. The Senator from North Dakota knows full well, if you go to his State or my State and talk about 3 million jobs lost under the Bush administration, those are the numbers they care about, not 168 to 4.

The Republican majority is out of touch. They just don't get it. They don't understand what real families and real businesses across America care about.

The cost of health insurance—for goodness' sake, how much time have we spent in the Senate talking about the cost of health insurance this year? Nada, zero, rien, not at all. No time to discuss the cost of health insurance, the biggest single issue facing families and businesses across America, but, boy, for four judges we are prepared to stand on this floor for 36 hours and grind red meat for Fox TV News and the right-wing radio boys. We will spend night and day. We will bring in our props such as cots and suitcases, and we will pretend this is a really serious filibuster and ignore the really serious issues that America really cares about.

You wonder why fewer and fewer people take the Senate seriously? You wonder why fewer and fewer people vote? It is because of this kind of charade.

Mr. DORGAN. Mr. President, will the Senator from Illinois yield?

Mr. DURBIN. I yield for a question.

Mr. DORGAN. In the previous administration, over 50 nominations were sent to the Congress in which there wasn't even 1 day of hearing—not even the courtesy of allowing someone to come to the Capitol for a hearing. Were any of the folks who are now on the floor of the Senate complaining about our holding up four judges who did get a hearing but we decided not to confirm—were any of the folks complaining back then that those 50 nominees never got a hearing?

Mr. DURBIN. I say to the Senator from North Dakota, their passion for justice did not apply to a Democratic justice. Their passion for justice did not apply to 63 nominees who were not given a chance to come to the Senate floor. Their passion for judges did not apply to those men and women whose lives were changed forever. But when it comes to these four, we take up the time of the Senate, take up the money of the taxpayers to divert us from issues that people really care about. It tells us what it is all about.

When the Senators from Kansas and Pennsylvania come to the floor and say, We want judges who don't discover the right of privacy in the Constitution, is that a conservative value, is that a family value—to reject the right of privacy? That is what they said, and I don't get it. If that is what they are for, they are clearly out of the mainstream, and we ought to take a closer look at every job.

I even think Robert Bork, when he was trying to get on the Supreme Court, said he agreed with Griswold v. Connecticut, a right to privacy case. What we heard this morning from the most extreme members of the Republican caucus is they will not even acknowledge a right of privacy for individuals and families across America. That is a sad outcome and one I think, frankly, should be challenged because if that is really the standard we are going to play to, I am going to look a lot harder on the Senate Judiciary Committee to make sure we don't have nominees given lifetime appointments to the bench who would have our Government raiding the bedrooms and private lives of Americans. That is what it is all about. It should not be allowable.

I see the majority leader on the floor and I respect him very much, but this is wrong. What we are doing is wrong. This made-for-TV filibuster over 4 judges after the President had 168 approved—why aren't we talking about issues people really care about, such as the cost of health care, the loss of jobs, the poor soldiers coming back injured who need help in veterans hospitals?

The Presiding Officer is chairman of the Veterans' Administration and HUD subcommittee on the Appropriations Committee. We had to pull his bill from the floor the other day. We did not have time to finish the bill, the 2 hours it would take to finish that bill—$62 billion, if I am not mistaken, or $68 billion for the Veterans' Administration—because we had to hurry on to this made-for-TV filibuster. That is sad. We should do the people's business. We should focus on things that Americans really care about.

I yield the floor.

The PRESIDING OFFICER (Mr. COLEMAN). The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, to be referred to as an extreme Member of the other side of the aisle, I would like to suggest that this extreme Member on the other side of the aisle never voted against cloture on a judicial nomination. How extreme is this Member versus the Member who just spoke, who has voted repeatedly and repeatedly and repeatedly and repeatedly and repeatedly against cloture? Who is the extremist?

I will posit that to the American people. Who is the extremist? The Senator from Pennsylvania, who never in his career voted, ever, against a cloture petition for a judicial nomination or the Senator from Illinois, who has led the effort, organized the posse, to filibuster, for the first time in American history, nominations for the court?

This is only 168 to 4. When the rules are changed, upon changing the rules you have to start with one. Then you do two. Then you do three. Then you do four. And today we do five. Today we do six. Next month it will be seven. Then it will be eight. Years from now, it will be 127, and then 3,455. It starts with one. It starts with the change.

There have been 2,372 nominations since the filibuster rule was put in place; zero blocked on the Senate floor. It has never been done in history.

Oh, it is only four, just a few. We are doing great. ''We just started,'' is what they are not saying—we have only just begun. We just started this, folks. Not the Senator from Pennsylvania, not the Senator from South Carolina, not the Senator from Missouri. The Senator from Missouri opposed a judge. He said, look, have an up-or-down vote and then I will vote no. That has been the way it has been done here. This idea that we have filibustered nominations by folks not getting a vote in committee, let us look at the record.

Fifty-four Bush nominees under the Democratic Senate got no hearing, did not get confirmed. Have we complained that they were filibustered? No, because they were not. Every President at the end of his term has judicial nominations in committee who have not gotten through, for a variety of reasons. It is just the flow of the Senate. In this case, 54 Bush nominations. How many Clinton nominations, after 8 years? Forty-one.

Let me repeat this again because we are saying this is different; Clinton was treated so unfairly. There were 377 nominations, 1 defeated on the floor, up-or-down vote. No filibuster.

I remember—the Senator from Missouri, I am sure, can remember this—Richard Paez. I do not know if the Senator from Missouri voted against him or not, but I sure did. I did not vote against cloture because the Senator from Mississippi, Mr. LOTT, and the chairman, Senator HATCH, said: Do not set this precedent. Do not change the rules. It is going to come back and bite us. We cannot do this. It is too important to the future of the Senate. It is going to undermine the judiciary. The Ruth Bader Ginsburgs of this world, the Antonin Scalias of this world will not have a prayer getting through this place. The best and the brightest are going to get knocked away or scared away if we raise this bar, if we allow the extreme elements of either party to start to run the Senate. We cannot let this happen.

As much as we may want to, as much as we did not want Richard Paez to be a Ninth Circuit Court judge, you have to hold back. You cannot let the passion of the moment completely destroy the precedent that has served this body and this country so well. Do not succumb to the special interest groups who are pleading with you. Come on.

The Senator from South Carolina said just in the last hour that for every one liberal special interest group there is one conservative one. Guess what. When the shoe is on the other foot, do you think we are going to say, oh, well, we are going to go back to the way it was; we are going to let you have all of your liberal judges; we are only going to require 51 votes? Fat chance. Fat chance.

Mr. GRAHAM of South Carolina. Will the Senator yield for a question?

Mr. SANTORUM. I will yield the floor to the Senator from South Carolina.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM of South Carolina. For something that is a waste of time, it

has been hard as heck to get to say anything around here because everybody is so fired up about talking, which I think is good. We have been in almost 39 hours, and if Senators get 15 minutes to express themselves they are lucky, which I think is a testament to how important this is to people.

I am very proud of what the Senator from Pennsylvania has tried to tell the body about what the future will be like. The Senator from Minnesota and the Senator from Georgia, my two good friends, my classmates, we were not here during a lot of these problems of the past. We are worried about the future.

I want to very quickly respond to my good friend from Illinois. Here is what I am willing to do—and I do not know who the Capitol Hill policeman was, God bless him for serving—I am willing to stand by a poll of all the cops in America and see whether they think appointing a judge is a big deal. It is my belief that most cops in America have had experiences in court that they really would like us to pick judges wisely. As a prosecutor, I can assure my colleagues who the judge is matters. I can assure my colleagues that most police officers do watch how the court operates, and they are concerned about the quality of judges because many of them have made cases risking their lives only to see it bounced.

So I totally disagree that this police officer is speaking for the mainstream of cops. Cops care about judges.

The Washington Post—I am not a great fan of the editorial page, but I read the Washington Post about what they think is going on here today. On February 5, 2003, the Washington Post said this filibustering of judges—Miguel Estrada—is really not a good thing. A world in which filibusters serve as an active instrument of nomination politics is not one either party should want.

Well, the extreme Senator from Pennsylvania shares the same views as the Washington Post, which begins to bother me a little bit. Maybe he should be a little more extreme. But what he is saying is what the Post said back in February. You do not have to be a rocket scientist to figure this out because I figured it out. I am not a rocket scientist.

This is about manufactured controversies. Judge Pickering, oh, this is no big deal. Why are the Senate Democrats sending out urgent e-mails saying send us money, my God, the country is about to blow up because the Bush administration is devoted to using the courts to its political advantage? If that does not get your blood boiling, what would? It would scare me if I got a memo from somebody who is a responsible member of the Senate Democratic leadership saying, send money quickly. The Bush people are taking over the courts, and they are going to put a guy on the court named Charles Pickering. While he was in law school, he wrote an article about making sure the ban on interracial marriage in Mississippi was not stricken down.

As a State senator in the 1970s, Pickering worked to repeal the important provisions of the Voter Rights Act. That ought to scare you to death if you believe in racial harmony and justice.

This e-mail is totally in contradiction of what has been said on the Senate floor. The e-mail says that Senate Democrats have launched an unprecedented effort. If you have listened to everybody for the last 33 hours, this is just business as usual. The e-mail is the best evidence of what is going on over there. They have picked a few judges, for whatever reason. They have manufactured controversies about who these people are, and they are ruining their lives.

Judge Pickering was approved by this body 12 years ago. I would daresay this body would not have unanimously put him on the district court as a Federal judge if they believed he was writing articles supporting interracial marriage bans and that while he was a State senator he actively undermined the rights of African Americans in Mississippi. That makes no sense. That means this place is totally asleep and worthless when it comes to screening, or they are manufacturing controversies about this judge.

Judge Pickering was voted well qualified, the highest rating one can get from the American Bar Association. I am convinced that the ABA is not putting people on the bench well qualified if they believe they are a bunch of racists. It goes on and on with all four of these people, and it soon will become 12. That is why I am so upset.

Special interest groups who do not live in Mississippi have declared war on the basic essence of who Charles Pickering is, defying all of the evidence out there by people who know him the best and what he has done with his life. That is a sad state. That will lead to chaos, and the Senator from Pennsylvania is absolutely right. You are going to have people applying for these jobs in the future who will have never uttered a word about anything because if they say anything that may get a liberal or a conservative special interest group mad at them, they will come and knock their head off. That is why we are here at 10 minutes after 7 and you have to really watch it to make sure you do not deny your colleagues a chance to speak because contrary to what they say over there, this is a big deal to everybody, and, my God, it ought to be. If it gets to be where it is not a big deal to how a judge is appointed and nominated, and whether you follow the Constitution, our problems with the economy pale in comparison with our problems as a nation. When politics enters the judicial arena and the judicial arena just becomes another form of politics, then we have drifted far astray from where our forefathers wanted us to be.

I will yield to my colleague from Missouri.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I could not agree more with my colleague from South Carolina. When I hear asked on this Senate floor, who cares about judicial appointments, who cares about the important judiciary that makes decisions that affect our everyday lives, I would join with him in saying that the people in Missouri care.

I have found all of the problems—and there are many problems, there are lots of concerns. People are concerned about Iraq. They want to see the President carry on the war against terrorism. They are concerned about jobs. They are very grateful, I might add, that the Republican Congress has given the economy such a boost with its good fiscal policy and gotten the economy growing, an economy that President Bush inherited that was in the tank, but it is starting to grow, and we want it to grow faster. They ask me more about this unprecedented filibuster of judges than anything else.

No matter where I go, in the rural areas, in the big cities, in the suburbs—my colleagues on the other side ask, who cares? Well, people in my State understand. They know how important the judiciary is. They know that appellate courts, the courts that oversee district courts usually in many States, make decisions that affect our everyday lives.

The Senator from South Carolina was right. The police officers, the sheriffs, these are the folks who go out and risk their lives and then they see appellate judges, people on appeals courts, making decisions that turn these criminals loose. And they say what is this all about? I am risking my life, I am out there getting shot at, trying to bring somebody in, and an appellate court judge misuses the law to set him free. Our police officers, our law enforcement officers today understand the constitutional rights. They know. They have to abide by the standard. They have to respect the rights of all citizens. But when they do that, when they go through all of the steps and do it right and then a criminal is turned loose, they, who have risked their lives, know how important these judges are.

My Democratic colleagues complain that we are taking time. Well, I have been waiting to get on the floor because this is something we need to talk about. We have listened to them all year long delay, filibuster. They bragged about they finally passed the Healthy Forests bill to stop the wildfires that have burned in California and threaten many States, and do my colleagues know what they are doing? They are filibustering the ability to take that bill to the conference so we can get it passed. They are filibustering that.

My colleague from Illinois was talking about how long it took us to get to the VA-HUD bill, a bill I am responsible for. Well, something may have

interfered with taking up that bill when the minority whip spent 8½ hours on the Senate floor on Monday complaining about filibusters. Excuse me, but what is that when he will not release the floor beginning at 1:30? I gave up. I heard he went 8½ hours, maybe it was 9½ hours. I decided to turn on the ball game about then. But we were blocked from doing anything. We were blocked by the same Democrats who complained, after they filibustered all year long, that we are talking too much.

There is a lot to be said, but the most important thing I can say is that the President has nominated 46 people to serve on the Federal circuit court, and the Senate has confirmed only 63 percent. This is what we are talking about, unprecedented. The President has made four nominations to the Court of Appeals for the DC Circuit, the second highest court in the land, and only one has been confirmed.

Despite the self-congratulations of the Democrats who say they have confirmed 168, they have not confirmed 37 percent of the circuit judges. What nominee has withdrawn his name? One of the most qualified people ever nominated for the judiciary. Three remain filibustered. Three more are being threatened with that fate. Numerous others are being blocked or delayed by the minority. The reason most cited is that these nominees are out of the mainstream.

The mainstream, it appears, is defined by a few of my colleagues and some of the most liberal interest groups in the country. I know the liberal interest groups, the Hollywood group, put in a lot of money, and they have strange ideas of what the mainstream is. When you talk about some of their mainstream Hollywood people or People for the American Way ideas, I tell my colleagues, that dog does not hunt in Missouri. I imagine it does not hunt in South Carolina, Georgia, and Pennsylvania either.

If that is the litmus test, let us talk about who is in the mainstream. For the Ninth Circuit, Judge Carolyn Kuhl, the American Bar Association says she is well qualified for the position. Oh, earlier on, that was going to be the gold standard. The Democrats said: We cannot appoint anybody who is not rated at least qualified by the American Bar Association.

She is rated well qualified, a distinguished career as an attorney with the Department of Justice, U.S. Solicitor General, a clerk for the United States Supreme Court. Twenty-three women judges on the Superior Court of Los Angeles, and nearly 100 judges who serve with her have spoken out on her outstanding abilities and professionalism. The litigation section of the L.A. County bar has also. Are those people out of the mainstream? Are they somehow different? Are they somehow unworthy?

Then Judge Janice Rogers Brown, she is the first African-American woman to serve on the State's highest court. She was retained by the support of 76 percent of the voters in her last election. That is in California. Is 76 percent of the California voters out of the mainstream? Academics from colleges across the State have written in to speak about her professionalism and evenhandedness. Sounds like mainstream to me.

They like to think that the panel of the Ninth Circuit, which is the most liberal, most overruled, most out of touch circuit court in the Nation, is mainstream, but this panel of Ninth Circuit judges tried to stay the recall election in California. The Ninth Circuit judges declared that the words ''under God'' in the Pledge of Allegiance are unconstitutional. Is that the mainstream? Two Democrats appointed to the Ninth Circuit ruled that convicted felons serving a life sentence have a fundamental right to procreate by artificial insemination. Are they in the mainstream? Where is that in the Constitution?

Mr. President, I have many colleagues who need to speak. I have a whole lot more to say. I will be sharing it with you. But most of all, I am hearing from the people in Missouri who know their lives could be affected by what the nominees of the appellate courts in the Nation can provide.

After 9/11, a Jordanian named Osama Awadallah was apprehended after material linking him to some of the hijackers was found in a car parked at Dulles by one of the hijackers. It was established that Awadallah knew two of the hijackers and had met with one of them up to forty times. But Clinton appointee Judge Shira Scheindlin dismissed his charges and in the process struck down a federal material witness statute long used by the Department of Justice to detain witnesses who are a flight risk. The fact that this was well-settled law used by the prosecution was no deterrent to the judge. Fortunately, she was overruled by the court of appeals.

Yesterday, we also heard about Clinton appointee Judge Jed Rakoff, who ruled that the federal death penalty is unconstitutional, again disregarding well established precedent. In his opinion, the judge likened the statute to murder. The judge seemed to have total disregard for the fact that the arguments he made were those that should be made in a legislative body, but that would require one to be responsive to the will of the voters—what an old fashioned notion! Even the Washington Post—which opposes the death penalty—condemned this blatant overreaching decision as entirely inappropriate for a judge.

Another recent Clinton appointee has ruled it necessary for the government to permit criminal illegal immigrants bail, rather than holding them for deportation—A very useful tool for our immigration services to ensure that criminal aliens are sent back to their native countries.

President Clinton nominated a New Jersey federal judge to the court of appeals who once ruled that a homeless man, despite the disturbance he was causing the patrons, had a right not to be removed from a public library. Of course, he was supported unanimously by the Democrats. On the circuit court, he went on to rule that prisoners had a constitutional right protecting their mail from searches and argued that the government could not go after the proceeds of drug forfeitures—fortunately for the war on drugs, he was unsuccessful.

Speaking of prisoner cases, one of the decisions issued by Judge Pickering that the Democrats have been critical of was a prisoner's rights case. A prisoner was dissatisfied with the prison issue typewriter because it was lacking a memory system—Judge Pickering ruled that this prisoner's typewriter was adequate and he did not have the right to one with memory. What a cruel decision. Is that what this debate has come down too? This hardly puts Judge Pickering out of the mainstream, in fact I would bet just about everyone listening to this debate would agree this decision is mainstream—It makes common sense.

I could stand here all morning reading decision after decision handed down by Democrat appointed judges that simply defy reason and bear no resemblance to what most people in this chamber or in their states would consider to be the ''mainstream''. Yet a few of our colleagues have taken it upon themselves to make this critical determination. By their history, they have no credibility on this question. In fact, all the nominees who have been labeled as such actually enjoy the majority support in this body and have the support of Republicans and Democrats alike.

Mr. President, it is time to give these extremely well-qualified, high-respected individuals an up or down vote. It is time for the minority to quit hiding behind this flimsy argument about being in the mainstream.

It is too late for Miguel Estrada, his nomination was withdrawn after 848 days and 7 cloture votes, unanimous rating of well qualified by the ABA, but it is time to give Justice Priscilla Owen a vote, her nomination has been pending for 917 days and there has been three cloture votes, unanimous rating of well qualified by the ABA, it is time to give Judge Charles Pickering a vote, his nomination has been pending for 901 days and he has an ABA rating of well qualified, it is time to give Attorney General William Pryor a vote, his nomination has been pending for 217 days and he received a qualified rating, it is time to give Judge Carolyn Kuhl a vote, her nomination has been pending for 873 days and the ABA has give her a well qualified rating, it is time to give Justice Janice Brown a vote, her nomination has been pending for 110 days, and it is time to give Judge Henry Saad a vote, his nomination has been pending for 743 days.

Mr. President, it is time for the body to give these candidates an up-or-down vote.

The PRESIDING OFFICER. The Senator from Georgia.

Mr. CHAMBLISS. Just like the Senator from Missouri, I want to talk for just a second about who cares about these judicial nominations because obviously the folks on the other side of the aisle who have been obstructionists in not allowing circuit court judges to come to a vote think the American public does not care about our Federal judicial system. Sure, our supporters understands it and they care. Sure, every Rotary Club I go to understands it and they care because they ask me about it. Every church where I go to speak, they care, they understand it, because they ask me about it. I have been walking down the street in my hometown and some stranger will come up to me. He understands it and he cares.

Obviously, the Senator from Illinois is totally insensitive to these kinds of people.

Let me tell you who else cares. That criminal defendant who is sitting in jail and who is having to wait longer than he ought to wait because we do not have Federal judges on the bench, he or she cares. That plaintiff or defendant in a civil lawsuit who is having to sit and wait and wait for justice, whatever that justice may be, on either side of the appellate case, he cares because he is not getting his case served.

Obviously, the folks on the other side of the aisle who are complaining about and conducting this filibuster think those people are OK and they do not care. They care.

I guess one of the major other differences between the Senator from Illinois and this Senator is that I don't go to the Washington Post to get my anecdotes. I don't go to any conservative newspaper to get my anecdotes.

Yesterday I drove to my office over in the Russell Senate Office Building, and as I pulled my car up to the gate, just like all of us—we stop, the Capitol Police have to come around and run the mirror under your car—the Capitol policeman came over to me and he knew I had been up except for an hour the night before, and I could tell he was dead tired, and he looked at me and he said: Senator how are you doing? And I said: I am tired. He said: Senator, you guys are doing the right thing. Make your point.

You know that guy cares because he is like every other law enforcement officer in America. They depend on us to make sure we provide them with good judges to take the bad guys off the street which makes their job easier.

There is one other point I want to make because I have heard this comment off and on for the last 38 hours. And that is, the fact that the score of 98 percent is a pretty good score. I don't care whether it is a math, English, or a reading test. They keep bringing this point up that we have confirmed 98 percent of the President's judicial nominees.

First of all, the numbers are not right, but I will not get into that. I want to talk about the 98 percent. On its face, that might sound fine. When you come to messing with the Constitution of the United States, when it comes to the confirmation of judges, 98 percent is not good enough. The reason is that every other President in the history of the United States of America—and we have had 43 of them now—every single one of the other 42 Presidents of the United States has had a score of 100 percent when it comes to the issue of not having their judges filibustered.

For these folks to stand up on the other side of the aisle and say 98 percent is pretty good, they don't care about the fact that they are the first in the history of the United States of America to filibuster a judge.

I repeat, if 98 percent is OK and they are smiling and happy about it, I would like to hear how many of them go home this afternoon and think they would get a good reception from their spouse if they said: You know, honey, I have been faithful to you 98 percent of the time. Or I wonder how many of them would feel good as they get on an airplane this afternoon and head home smiling and thinking, boy, we have done great work defending our judges and defending our filibuster of these judges but that airplane had a safety record of landing 98 percent of the time.

There is a difference. We live under this document that has served us so well for so many years and 100 percent of the judges who are nominated have been confirmed by every other Senate for every other President prior to this one as per the language of this great document.

I close by reading some comments out of a book written by a man of which I am a big fan. The Democrats in this Senate are not particularly a fan of his right now, but let me tell you, he is a great American. He is a great American who speaks the truth, and he is speaking the truth about what is going on in this body right now. ''The National Party No More, the Conscience of a Conservative Democrat.'' It is written by my colleague, my good friend from the State of Georgia, Senator Zell Miller.

I ask unanimous consent that the entire chapter, chapter 8, entitled ''41 Beats 59—That Strange Senate Math,'' be printed in the RECORD.

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

41 BEATS 59—THAT STRANGE SENATE MATH

The United States Senate is the only place on the planet where 59 votes out of 100 cannot pass anything because 41 votes out of 100 can defeat it. Try explaining that at your local Rotary Club or to someone in the Wal-Mart parking lot or, for that matter, to the college freshman in Political Science 101. You can't, because this strange Senate math stands democracy on its head.

By name, this incongruous, obstructionist procedure is known as a filibuster. The word filibuster comes from a Spanish word for ''pirate,'' and that is exactly what this procedure does. It hijacks the democratic process. Filibusters first caught the fancy of the nation after James Stewart, in Frank Capra's classic movie Mr. Smith Goes to Washington, made Mr. Smith a hero standing up to the Senate bosses on behalf of the people. But now, however, most Americans understand vaguely that in the Senate any member can stand up and talk endless drivel for hours in order to prevent legislation he or she opposes from coming to a vote. The process is so ridiculous that the filibuster, like that old comics-page blowhard Senator Claghorn, has unfortunately become, in the minds of many, just another caricature of the Senate, just another thing to laugh at, just more hot air from the Cave of the Winds.

Realizing that with the scrutiny of television, the people would not stand for such nonsense, the ''Old Bulls'' of the Senate fuzzed it up. They made it subtler. These verbal gunslingers can now be forced to shut up, and the process and the Senate move along toward a vote if sixty members remove the cotton from their ears and vote for cloture. A cloture shuts off what is called a debate but isn't because it takes two sides talking to constitute a debate. If this sounds confusing, it is meant to be. That is precisely the objective.

The short version of this debacle is that the way filibuster is being used in the Senate gives the minority an absolute veto on just about everything. In fact, the U.S. Senate has become similar to the Security Council of the United Nations where one country can veto the will of a clear majority and castrate the entire process.

Winston Churchill once said, ''Democracy is based on reason and fair play.'' Well, there's nothing reasonable or fair about what's been happening in this august body. It's not just that it's an expensive waste of time and taxpayer money, but it's also a flagrant abuse or majority rule, the principle that democracy operates on everywhere. Everywhere, that is, except in the U.S. Senate.

Rule XXII of the Senate is the reason for all this. It was adopted in 1917 and was meant to move things along. President Woodrow Wilson had lashed out at what he called a ''little group of willful men'' who had blocked his proposal to arm our merchant ships against German submarines. Sixteen senators could file a petition against a bill or an amendment and if two-thirds approved it within two days, debate was to be limited to one hour per member or one hundred hours. Later it was modified to sixty votes, not two-thirds, necessary to halt a filibuster. And in 2003, for the first time, it was used to prevent a vote on the presidential judicial nominees.

The longest filibuster in congressional history was waged against the Civil Rights Act in August 1957 by Senator Strom Thurmond of South Carolina, when he held the floor for twenty-four hours and eighteen minutes. Wayne Morse of Oregon comes in a close second with twenty-two hours and twenty-six minutes. Probably the most entertaining was the Kingfish, Huey P. Long of Louisiana, who in 1935 only went on for fifteen hours, thirty minutes against one of President Roosevelt's New Deal proposals. When asked how he kept from answering the call of nature for that long he answered, ''Why do you think I wore a navy blue suit?'' Strom Thurmond had dehydrated himself in a sauna before taking the floor for his record-setter and didn't worry about that problem.

James Madison, the Father of the Constitution, feared some future political leaders would pervert the legislative process in

just this way. He warned in Federalist Paper #58 that when it happened, ''The Fundamental principle of free government would be reversed. It would be no longer the majority that would rule. The power would be transformed to the minority.'' I'm sure the man who wrote the Constitution is spinning in his grave.

Alexander Hamilton may be taking a couple of revolutions as well, because he agreed with Madison. He pointed out in his Federalist Paper #68 that the vice president was given a tie-breaking vote for ''securing at all times the possibility of a definite resolution of that body.'' A ''definite resolution''; how well put. But no one has said it better than Senator Henry Cabot Lodge in 1893, when obstructionism was not nearly as bad as it is today: ''To vote without debating is perilous, but to debate and never vote is imbecile.''

Years ago, when I was teaching freshman political science at Young Harris College, I always repeated the old story about the origin of the Senate. Thomas Jefferson was in France when the Constitutional Convention was being held. Later, he asked his friend George Washington, who presided over the convention, about the purpose of this upper chamber, the Senate. Washington, so the anecdote goes, then asked Jefferson, ''Why do you pour coffee into your saucer?'' To cool it,'' Jefferson replied. Washington responded, ''Even so, we pour legislation into the senatorial saucer to cool it.''

Cool it, yes. but not freeze it into an ice cube. Truth is, there is nothing at all said in the Constitution about protecting Senate minorities. Our Founding Fathers, I believe, thought the smaller size, longer and staggered terms, as well as state legislation on the selection of senators, would provide more wisdom.

Some constitutional lawyers have argued that any kind of super-majority vote is unconstitutional, other than for the five areas specified in the Constitution: treaty ratification, impeachment, override of a presidential vote, constitutional amendments, and expelling a member of Congress. As I write this, Judicial Watch is doing just that. They have filed a lawsuit arguing that confirmation of judges is not specified in the Constitution and, hence, does not require a super majority.

That's one possible remedy. There are others. We could abolish Rule XXII that protects this travesty and let the U.S. Senate operate under rules like every other democratic legislative body in the world where a simple majority rules. That's about as likely as a day dawning in Washington without ten fund-raisers.

Or we could modify what I call the ''two-track trick'' or filibuster by stealth adopted a few years ago, where another piece of legislation is considered at the same time a filibuster goes its windy way. I call it ''filibuster-lite.'' It's a way to avoid the inconvenience and pain of a real filibuster as if we are using powder-puff, 16-ounce gloves instead of bare knuckles. I'd much rather just duke it out in a real debate and get it over than try to deceive the public that no blood is being spilled. Many veterans of the senate—not a newcomer like myself—have expressed dismay wit the process. Henry Clay, generally recognized as one of our greatest senators, condemned the first organized filibuster when it occurred in 1837. Even back then, he though there needed to be some workable limitation for endless debate. If only he could see what happened late in the twentieth century, Clay would be another grave-spinner. In the nineteenth century, there were twenty-there filibusters. In the last thirty years of the twentieth century, there were more than two hundred.

Two pieces of crucial legislation that filibusters have stymied over the years include the anti-lynching bill of the 1920s and abolishing the poll tax that was held up for twenty-two years from 1942–1964. The Civil Rights Act of 1964 was filibustered for ninety-three calendar days.

With Georgia's Senator Richard Russell as their leader and unlimited debate as their weapon of choice, a small band of Southern senators for years had managed to defeat or drastically weaken any civil rights legislation that came before the Senate. But it was different in 1964. The Senate membership had changed and President Johnson was pushing it with all his considerable power. He told the nation that passing the legislation would be the most fitting memorial that recently assassinated John F. Kennedy could be given. He also managed to peel off Minority Leader Everett Dirksen who often sided with Russell. In the end cloture was invoked 71–29 and the bill went on to pass by an overwhelming margin.

Obviously, both parties have used filibusters time and time again, one just as guilty at the other. In 1996, Democrats blocked a vote on a constitutional amendment on term limits and the Republicans blocked a vote to reform campaign finance. Many conservatives would disagree with me, but I happen to think the political process would have been improved if both those measures had passed. Certainly, it would have greatly weakened the current death-grip of the well-heeled special interest groups because electing their pet incumbents over and over with little or no opposition is what gives both the tremendous power they have. I call it ''the dance,'' and it's nothing like that Garth Brooks song by the same name. After the music of election year stops, it's the public that gets screwed.

In the mid-1990s there was a bipartisan group of distinguished citizens called ''Action, Not Gridlock'' that came together with great ballyhoo, intent on reform and majority rule. Republican Barry Goldwater was among them. Then in 1995, Democratic Senators Tom Harkin and Joe Lieberman introduced a rule change that I believe is the best that's been proposed.

Two years earlier, Harkin had let a committee hearing have it with both barrels: ''There comes a time when tradition has to meet the realities of the modern age. The minority's rights must be protected. The majority should not be able to run roughshod over them, but neither should a vexatious minority be able to thwart the will of the majority and not even permit legislation to come up for a meaningful vote.''

The Harkin-Lieberman plan called for a four-step process that kept sixty votes on the initial cloture vote, but decreased it by three votes with each of the next three cloture attempts until finally it got down to the majority of fifty-one. They argued, logically, that this would preserve the Senate tradition while giving the minority plenty of time to plead its case without blocking the majority forever. I liked this idea so well that in March 2003, I introduced an identical bill. In May I joined with Majority Leader Bill Frist in a modified version applying the process only to judicial nominees. That seems to have the best chance for any kind of change and I'm afraid that's not much. Both Harkin and Lieberman now oppose what they so eloquently promoted a few years earlier.

As far as the fate of the Harkin-Lieberman rule change, the New York Times celebrated New Year's Day 1995 with a lengthy editorial beginning, ''The U.S. Senate likes to call itself the world's greatest deliberative body. The greatest obstructive body is more like it.'' The article continued, ''Once a rarely-used tactic reserved for issues on which senators help passionate convictions, the filibuster has become the tool of the sore loser, dooming any measure that cannot command the sixty required votes.''

All of this came to naught, however, after the Republicans solidly opposed the amendment and Democratic Senator Robert Byrd who, like that mythical, hell-guarding, ferocious three-headed dog Cerberus, punctuated his opposition with the story of how Cato the Younger, in 60 BC, got the floor in the Roman Senate at midday and valiantly spoke until sundown, the time of adjournment, in order to thwart one of Julius Caesar's proposals. That story marked the end of the Harkin-Lieberman filibuster reform bill. Never mind that Byrd didn't tell the rest of the story, that Caesar was not thwarted and fourteen years later Cato committed suicide while Caesar was at the height of his power and still going strong.

Now, I must admit I greatly admire and respect this man, Cato the Younger. He was one of Rome's greatest statesmen, not at all like his great grandfather Cato the Elder, who exemplified the corruption and hypocrisy that later undermined the traditions of republican liberty. Cato the Younger was different. He was a moral man and a great defender of the Constitution and the dominant role of the Senate. That was his role and he always played it to the hilt. His reputation was such that our Founding Fathers admired him as a symbol of opposition to tyranny. In fact, George Washington ordered a play about Cato performed to inspire his soldiers at Valley Forge.

But, truth be told, Cato met an ignoble end. His reputation was greater than his ability. After he was defeated by Caesar at the Battle of Thapsus, rather than accept the generous offer of clemency from his old antagonist, he committed suicide. And he botched that; he didn't fall directly on his sword and it didn't kill him swiftly so he tore out his own intestines with his bare hands. It gave ''spilling your guts'' a new meaning and was a messy end for the First Filibusterer. While today we can find many good books on Caesar, I have yet to find one on Cato. So, you lovers of the filibuster, I say that is a history lesson worth thinking about.

For all the good stories that have come down through the centuries inspired by the filibuster, in the end, it has nothing to do with ancient history.

The filibuster has nothing to do with the British Parliament.

The filibuster has nothing to do with coffee cooling in a saucer.

The filibuster has nothing to do with freedom of speech.

The filibuster has nothing to do with tradition.

The filibuster has nothing to do with the Constitution.

The filibuster has nothing to do with protecting minority rights.

The filibuster has everything to do with personal political power. It's about Alpha dogs defending their turf in that great big kennel under the dome.

Mr. CHAMBLISS. Here is what he says:

The United States Senate is the only place on the planet where 59 votes out of 100 cannot pass anything because 41 votes out of 100 can defeat it. Try explaining that at your local Rotary Club or to someone in the Wal-Mart parking lot or, for that matter, to the college freshman in Political Science 101. You can't, because the strange Senate math stands democracy on its head.

He then talks about ''Mr. Smith Goes To Washington'' and the perception about a filibuster. And he continues:

Realizing that with the scrutiny of television, the people would not stand for such nonsense, the ''Old Bulls'' of the Senate fuzzed it up. They made it subtler. These verbal gunslingers can now be forced to shut up, and the process and the Senate move along toward a vote if sixty members remove the cotton from their ears and vote for cloture. A cloture shuts off what is called a debate but isn't because it takes two sides talking to constitute a debate. If this sounds confusing, it is meant to be. That is precisely the objective.

The short version of this debacle is that the way filibuster is being used in the Senate gives the minority an absolute veto on just about everything. In fact, the U.S. Senate has become similar to the Security Council of the United Nations where one country can veto the will of a clear majority and castrate the entire process.

He goes on and gives several anecdotes about the Constitution and what a great document it has been and cites Jefferson's comment to Washington about the function of the Senate and Washington's statement that has been mentioned several times about the function of the upper Chamber, the Senate. The story is told with Washington asking: Why do you pour coffee into your saucer? To cool it, Jefferson replied. And Washington said: Even as we pour legislation into the senatorial cup to cool it.

Here is what Senator MILLER says about that: Cool it, yes. But not freeze it into an ice cube.

There is a significant difference.

Again, he goes on talking about the history of the filibuster. In the history of Democratic Senators, Democratic Senators who are serving in this body today who in recent years have asked that this filibuster rule be changed so that we would not go through the process that we are experiencing today. All of a sudden those Democratic Senators have amnesia and are voting not to invoke cloture.

This is the way Senator MILLER winds up:

For all the good stories that have come down through the centuries inspired by the filibuster, in the end, it has nothing to do with ancient history.

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The filibuster has everything to do with personal political power. It's about Alpha dogs defending their turf in that great big kennel under the dome.

I agree with Senator MILLER.

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

The Senator from Louisiana.

Mr. BREAUX. Good morning, Mr. President and colleagues.

I was very interested in listening to the distinguished Senator from Georgia and the Senator from Pennsylvania. I am trying to keep track of what he was quoting from. We decided he was quoting from Miller, chapter 1, verses 6 through 12. I am sure it is considered a holy document. And of course, as most documents, there are two sides to every story. Indeed, on that I imagine you have at least two sides to Miller, chapter 1, verses 6 through 12.

I arrived in this institution over 30 years ago and remember quite well driving up from Washington 35 years ago in a U-Haul with two small children and my wife. I was in absolute awe of the Capitol. In fact, the first time I had ever had an opportunity to visit Washington was when I came here to work as a very young aide to a then-sitting Member of Congress on the House side.

Over those 35 years, I have come to love and respect and appreciate all of the good things that this institution, including the other body, as well as the Senate, stands for. It is a wonderful opportunity to engage in serious debate about the important issues of the day and to address the important issues and problems facing the people of this Nation. That is what this institution does best.

Unfortunately, every now and then the institution tends to break down and we spend an inordinate amount of time doing things that do not address the great issues of the day or contribute anything to solving the great problems of the day. This is one of those times. I have not lost my respect for this institution, and particularly the Senate, even though as in most things in the real world, sometimes things did not run quite as they should. We have now engaged in a couple of days of exhibiting how this institution does not work very well, although on very rare occasions. I still have the utmost respect for this institution and will continue to have that respect for as long as I live despite the fact that every now and then it breaks down.

The issue it has broken down on—I imagine most people in this country are probably watching the morning news show; some are probably watching cartoons with their children. I doubt very well most are watching what some would consider a cartoon-type of atmosphere in this debate which has been on longer than it should. The issue is quite simple: Are Democrats stopping Republicans from getting their judges approved? And are we doing it in a way that is somehow unconstitutional or outside the rules of the Senate?

If you look at the record of the judges, our side has pointed out we have approved 168 judges while only 4 have stopped. I was trying to say, how does that relate to the average American? If the Washington Redskins had a 98 percent win-loss record, people would think that is absolutely astounding, and Spurrier would be given a big raise if they had 98 percent win-loss. If Tiger Woods won 98 percent of the tournaments he entered, people would be writing in amazement about that incredible person capable of winning 98 percent of the time. I happen to play tennis, and if Andre Agassi won 98 percent of his matches, I would imagine people would say this is truly incredible, someone would be capable of winning 98 percent of the time. I guess I should throw in the New Orleans Saints because if they won 98 percent of the time, I cannot imagine what the State of Louisiana would do.

But that is, in fact, the record the President of the United States, President Bush, has established with regard to the judges he has submitted for confirmation. It is truly a remarkable record of having almost every person he has submitted to the Congress be considered by appropriate committees and considered on the floor and approved. A 98 percent record is truly a remarkable achievement by any measure, whether it is a sports metaphor or whether it is any other type of metaphor we can imagine.

I will bring it closer to home. Imagine any Member of this body getting 98 percent of the vote. Maybe the distinguished Senator from Georgia who is in the Chamber is capable of that, but I don't know if any of us would ever get 98 percent of the vote. Some have been fortunate to get over 50 percent every now and then, but no one ever gets 98 percent of the vote. Teams do not win 98 percent of their games, golfers do not win 98 percent of the tournaments, and neither do tennis players. It is unheard of.

If the average person starts looking at a record where 98 percent of the nominees have, in fact, been approved and are sitting on the bench and doing their duty, by any measure of any standard of operation in this country, people would say that is a pretty outstanding record. Yet the Senate has spent the last several days complaining about a 98 percent achievement record by the President of the United States, saying somehow that is not enough; somehow it should be 100 percent every time with every nominee.

Most American people would say: What are they talking about? Why are they spending so much time saying 98 percent achievement is not enough? That is where we are. That is what we are talking about.

Enough said about that. After 2 days of talking 24 hours a day, we have heard enough about the 98 percent record. Some I voted for cloture and some I decided not. But the record speaks for itself. It is an outstanding record.

Let me talk about one of the things we ought to be doing if we are going to be the greatest deliberative body in the history of the world, which I think the Senate truly is, something I have been working on for over 5 years as former chairman of the National Commission on Medicare Reform and now a member of the Senate Finance Committee working with our colleagues, trying, in a bipartisan fashion, to address one of the really important issues of this Nation.

We are at a health care crisis in America. We have literally millions and millions of Americans with no health insurance at all. They have to go to emergency rooms. They are in the poorhouse and get services under the State Medicaid Program. Many of these people work hard every day. Yet the companies they work for no longer provide health insurance. It is truly a national problem of monumental proportions, yet we are not talking about that in the Senate today.

Another issue is the fact that we have something over 40 million American citizens who have a health insurance plan that is inadequate, outdated, and in desperate need of reform in terms of how much money we spend on the program. The current program we have for seniors is unsustainable in terms of the money we spend and where it will come from.

All of the Members in this Chamber and all of our employees have health insurance that is significantly better than every single one of the 40 million Americans who do not have health insurance. Our health insurance covers hospitalization, our health insurance covers doctors, our health insurance covers emergencies, and our health insurance covers prescription drugs. Yet we have not been able to do for seniors what we have done for ourselves. That is something that challenges this institution and something to which this institution has to pay attention.

The simple fact is that Medicare today does not cover 47 percent of an average senior's health care costs. It is embarrassing that we, arguably the strongest Nation in the history of the world, have a system where the seniors of this country who have worked, earned, and paid into a fund to provide health insurance when they are old, now are covered by a policy that only covers 53 percent of the average senior's medical costs, and leaving 47 percent somewhere else.

We have been working very hard for a long period of time to reform Medicare. The groups that have been working together have reached an agreement that is a tentative agreement, and no one is bound by it until we see the final product, and that includes me.

The interesting thing about this is that if anything should not be political, it is health care. But I can think of no subject that has become more political than health care, and no subject that has become more political in health care than how we treat the Nation's seniors.

Republicans continue to talk about why Democrats will not do what is needed and necessary to pass a reform bill. And Democrats continue to say Republicans want to privatize it and end Medicare as we know it.

There are Republican political pundits in this city who have said we should pass a Republican-only bill in the House of Representatives and send it to the Senate so the Senate Democrats can kill it; it will be a terrific political issue for us. On the other hand, there are Democratic political pundits in this city who will say there is no way we can support and pass a Medicare bill. Why? Because it would give President Bush an opportunity to sign a bill in the Rose Garden and he might get credit doing so.

So we continue to play what I would call the political blame game. We are more concerned about ourselves and our political parties than we are about the 40 million seniors who desperately need the help in order to get prescription drugs under a reformed Medicare plan.

If we go along those lines, what we will have done is to say, once again: It is their fault it did not get done. And they will say: No, it is your fault it did not get done. But once again what we will give to America's seniors is a basket of excuses. And I have suggested many times that seniors cannot take an excuse to the drugstore and get their prescriptions filled. It is not possible.

What they need is both sides to act like grownups and both parties not just to look at their political base but to look at what is good for America, and join forces and say: Yes, it is going to be a compromise. No, it is not going to be everything I would like if I had an opportunity to write the bill, but we do not. Each of us is part of a larger body, and each of us is part of a body that is almost evenly politically divided.

So that is a challenge that is facing us. What we have tentatively agreed to is an insurance program under Medicare, for the first time since 1965, which will cover prescription drugs for America's seniors. They will pay a premium and have a small deductible and have some copayments, but every Member of the Senate has that type of a drug plan. The Federal Government will pay 75 percent of it, and the senior beneficiary will pay 25 percent.

We will spend $400 billion over the next 10 years trying to make that happen. We see seniors every day going to Mexico and going to Canada to buy drugs from foreign countries. Why? Because they do not have insurance that covers it. Hospitalization in Canada is cheaper than it is here. Doctor treatments and doctor visits are cheaper in Canada than they are here. Why do seniors not complain about that and say: ''I am going to have my doctor visit in Canada. I am going to go to a hospital in Canada''? It is a very simple reason. Because they have an insurance policy in this country that covers doctors, and it covers hospitalization. But it does not cover prescription drugs. There is no insurance. So they have to bear the burden of 100 percent of the costs of prescription drugs.

This legislation will be designed to say: All right, we are going to solve that problem. We are going to give you a prescription drug plan. We are going to take seniors who are now under the Medicaid Program for the poor and put all of them into the Medicare Program for all 40 million American seniors. I think that is good, solid, public policy. We are going to make sure all low-income seniors get a special rate by reduced premiums or no premiums at all to make sure we take care of the most vulnerable among us as far as the senior population is concerned.

It is important, as I conclude, when we look back on this session, that we will be able to say we have done more than create more excuses. The seniors can no longer live on political excuses coming out of Washington as to why we have not completed the job. There will be things in this bill that both sides will be able to pick and find and say, I can't be for it because of this. But I would just ask my colleagues to look at the broader picture, to look at the total package and say: When we have an opportunity, perhaps once in several decades, or once in a lifetime, to truly get something done to put in place a system that can be improved upon in the future, we will seize that unique opportunity and come together in a bipartisan fashion. And the American people will be able to say: Yes, they did it, and they did a good job.

I think that is what this body should be dealing with. That is one of the critical, important issues of this day. And I would suggest we get on to it just as soon as we possibly can.

With that, Mr. President, I yield to the distinguished Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Thank you very much, Mr. President.

Let me, first of all, commend my colleague from Louisiana, Senator BREAUX, for the hard work he has been doing to try to get us to a prescription drug bill for Medicare beneficiaries that will, in fact, preserve the Medicare system but will also meet this very real need that most seniors and all of us have, to be able to afford prescription drugs.

Let me say a few words about the issue of judicial appointments before I then talk about a couple of other issues I want to briefly visit as well.

As I approach this whole question about judicial nominations, I guess my starting point is to ask, how is the system supposed to work? How is this system of choosing and nominating and confirming of judges supposed to work when it involves Federal judges?

I think it is supposed to work the way it generally has worked with this President; and that is, it is supposed to work the way it has worked with regard to these 168 judges who have been confirmed. The truth is, these judges who were confirmed, they were nominated by the President, were confirmed by the Senate These are judges who are conservative in their political philosophy, in their legal philosophy. That is sort of a given with this President. We understand that. Everyone understands

that. Democrats understand it. Republicans understand it. I have no problem with that.

This President was elected as our President. He has the right to choose judges who have a conservative perspective, and clearly that is what he has done, and clearly that is the way the system is supposed to work. But as I think about how the process should work, it seems to me the very first step the President should take—and the President and his assistants, his general counsel have taken with regard to most of those 168 judges, maybe all of them, at least the ones I am familiar with—the first step is to go to the Senators from the State involved and ask those Senators if these are acceptable persons to be nominated.

That is exactly what has a happened in the case of judicial nominations from my home State of New Mexico. And I am very appreciative of the President and his counsel for including me in that discussion and in that decisionmaking. Essentially, what has happened is that my colleague, Senator DOMENICI, and the White House have identified a person—in the case of each vacancy we have had in New Mexico—they have identified a person who they thought should be nominated for that position, and they have asked me to talk to that person and give them a response as to whether that was someone I would support as well.

In each case, I had been very pleased to support those nominees. In each case, I have had the chance to sit with those people, talk to them, acquaint myself with their qualifications. And, as I say, I have been very pleased to support those nominations.

That is the way the system, in my opinion, is supposed to work. But once the President has determined that the Senators from a particular State—at least one of the Senators, but preferably both Senators from a particular State—will support the nomination of a judge or judicial candidate from that State, then, of course, it is much easier to get the full Senate to go along with that. Frankly, that is the way the system ought to work.

I have had circumstances where individual Senators have come to me, Democratic Senators have come to me and asked: Are you sure you want us to support this nominee for a judicial position in your State? because my staff tells me there are questions—and this and that. I am pleased at that point to be able to respond, yes, that I have checked out these nominees, I have determined that they are people I support, and I urge that the full Senate support them.

Now, we have two judicial nominations coming before us today that are coming up for a vote on cloture that have not come up before, but in both cases my understanding is they are being presented as nominees over the strenuous objection of both Senators from the State from which the judges come.

I have difficulty understanding why I should want to support a judicial nominee from a State if the Senators from that State oppose that nominee. I try to think of how I would feel if I were opposed to a nomination from my State and the President and a majority here in the Senate were trying to confirm that nomination over my strenuous objection.

I think we have some obligation to our colleagues to defer to their own understanding and their own knowledge and their own opinion on these issues, particularly as it affects their State. Now, not exclusively; we do not have to defer. But I am just saying that as a precondition for going forward and considering a judicial nominee, we ought to begin by asking: Do the Senators from the State the judge comes from support the nomination? That seems to me to be a threshold question.

In the case of Carolyn Kuhl, on whom we are having a cloture vote later today, as I understand it, and in the case of Janice Rogers Brown, about whom we are also having a cloture vote later today, I am informed that the Senators from California have determined they do not support these nominations. They are urging that the Senate not go forward with these nominations. They urge that the Judiciary Committee not report these nominations. And in spite of all of that, the President says we are going to do it any way.

We are doing this over the objection of the Senators from California. That, to me, is a cause for concern. We are talking about a breakdown in the traditions and a breakdown in the system that is supposed to be functioning. To me, that is a clear breakdown in the system for choosing and nominating and confirming Federal judges.

So I hope we can get back to a policy with regard to all the nominations that come from the White House and this President that is consistent with the experience I have had in my home State of New Mexico; and that is, that before a nomination is sent to the Senate for confirmation, Senators will be asked to give their opinion as to the appropriateness of the nominee.

One good thing about this country—it is certainly true in my State; I am sure it is true in every State in this country—we have a wealth of very capable, honest, hard-working members of the bar who would love to serve on the Federal courts. There is no shortage of good people for these positions. Accordingly, it is not difficult to find a person to serve in these key positions who has the strong support of Senators, Congressmen, and public officials in these States.

The list of organizations and public officials, and both California organizations and national organizations, that oppose the two nominees I have referred to here is extensive, and I have been given that list.

Twenty-two members of the California congressional delegation have indicated their opposition to our going forward with the nomination of Janice Rogers Brown. We have members of the Judiciary Committee of the California Assembly who have come out in opposition to our going forward with Carolyn Kuhl's nomination to the Ninth Circuit Court of Appeals. There is a very long list of individuals and organizations.

I know neither of these nominees personally myself, but, clearly, I have to give deference and some consideration to the opinions of those who have worked with them.

Mr. LEAHY. Will the Senator yield for a question?

Mr. BINGAMAN. I am very pleased to yield to my colleague.

Mr. LEAHY. Mr. President, the distinguished Senator from New Mexico had an exemplary career as attorney general of New Mexico and, obviously, is in a position probably to know more about the bar of New Mexico than anyone else in his State; and his service replicates that of other Senators on both sides of the aisle from their representing their States.

My question is this: The traditions of the Senate mean so much, and most of them are there for a reason. The tradition of having to get clearance from home State Senators—and, of course, every State is equal in the Senate. But Federal judges have an enormous impact on the States. The tradition has always been that the home State Senators have the best idea who the Federal judge is who is going to be making decisions that affect the men and women of that State. This has not always been perfect, but has it been the experience—I ask this of my friend and former attorney general of his State, a Senator of great respect and competence—has it been his experience that in the main, very much in the main, this has worked extremely well?

Mr. BINGAMAN. Mr. President, in response to the question, I certainly would say it has been my experience that this does work. In fact, when the name of someone is being considered for appointment to a Federal judgeship in my State of New Mexico, I have been getting calls. I get calls from lawyers who have worked with these individuals. I get calls from people who have tried cases against these individuals. Some of them, frankly, are favorable and some may not be as favorable.

I get a great deal of feedback on these individuals who are being considered by us for nomination. And, of course, I have the ability, as a Senator from New Mexico, to call people whose opinions I respect and to say: You have spent your lifetime practicing law in the courts in New Mexico. What do you think about the qualifications and the temperament and the appropriateness of this person for this kind of a judicial position? Based on that kind of feedback, then I am in a position to advise the President, advise my colleagues, advise anyone in the Senate that, in my opinion, this person would be well qualified.

I am sure that same process occurs with every Senator in every State, and it should. I think that is exactly what the Framers of the Constitution had in mind when they talked about advice and consent. I think they were talking about Senators being able to give their advice before the President made a final determination as to who would be elevated to a judicial position, and Senators being able to either give their consent or withhold their consent.

It is far preferable, in my view, if that advice and consent is requested and provided at an early stage in the process, not once the nominee has been sent up here, not once the President has had a press conference at the White House with the nominee in attendance. I think it is in many ways unfair to the people being nominated to have them pushed to that stage without the necessary advice and consent having been sought from the Senators in question.

I think that is the unfortunate circumstance we find ourselves in this morning, that there are individuals being pushed upon us as appropriate members to be elevated to court of appeals positions, and the nominations are being strongly opposed by the Senators from the States from which those individuals come.

So I think it would be unfortunate in the extreme if the Senate were to disregard the views of the Senators from those States and say: Regardless of their views, we are going to go forward here, regardless of the feedback they have provided; regardless of the numerous groups and individuals who have come forward to state objections here, we are going to push this nomination through the Senate.

I do think there is a very valuable purpose the Senate serves; and that is, to slow things down. That is what we have done here as to some of these nominees. These are nominees who, in my view, should have been better vetted with the Senators from the States involved.

If those Senators had been given an opportunity to make their case to the President and to his counsel at an early stage, perhaps we could have avoided some of the votes we are going to have to cast this morning. I think that would certainly be preferable.

Has my time expired, Mr. President?

The PRESIDING OFFICER. The Senator has 4 seconds.

Mr. BINGAMAN. I will yield back my time, Mr. President.

The PRESIDING OFFICER (Mr. CHAMBLISS). The Senator from Minnesota.

Mr. COLEMAN. Mr. President, I have great respect for the Senator from New Mexico and the principles he just talked about: his deep concern of the breakdown of the system, of the tradition of the Senate. It is important. This is a very special place. This is the greatest deliberative body in the world. I believe that. That is really what we are talking about today—the tradition of the Senate. That is part of why this debate is important.

This is not a game. This is not a charade. This is important. The past 11 Presidents' judicial nominees confirmed v. filibustered: 2,372 confirmed, 0 successfully filibustered until now—the traditions of the Senate, the traditions of this great institution.

We have been up all night. We have had a lot of conversation, a lot of debate. My colleagues across the aisle said it is absolutely, patently false to say we haven't successfully filibustered circuit court nominees. Read my charts. They are real. Here is the list. Judicial nominees subjected to cloture attempts 1968 to 2003 time after time: No. 1, Abe Fortas, rejected. The Senator from Michigan, who was part of that process had a letter saying, by the way, that was a bipartisan effort. The Republican leader supported cloture on that. Of all these, not a single partisan effort where the nomination was successfully blocked.

The folks involved in making those decisions who predated me reflect what the Senator from New Mexico talked about—a reverence for the tradition of this body, a tradition I believe that is reflected in the Constitution that says decisions about judges are done essentially by a majority—two-thirds for treaties.

As I listened, I understood what was happening here. Part of this tradition is any single Senator can stand up and say: I object. That is who we are. That is a great power for an individual Senator.

We talk about advice and consent. I think perhaps the concept now in people's minds is that we all should be part of this advice and consent process; we all should be heard. But the reality is, in the end, and again according to the Constitution, the decision is going to be made by a majority. It is not about the President being successful 98 percent of the time. It is about 100 percent of the time giving an opportunity for an up-or-down vote. That is what this is about, 100 percent of the time giving an up-or-down vote and then let the vote be what it may.

In fact, nominees may be rejected. It is not about guaranteeing the outcome, but it is following the Constitution to give people a right to a vote. That is the process, that is the tradition, and that is the history. We run such a terrible risk when we cast that aside.

This has been a very sharp debate. There has been a lot of discussion about all sorts of other issues about which we should be talking. I reiterate again, I am deeply concerned about jobs. I am deeply concerned about the economy. Some folks say it is hard, but we can actually multitask around here. We can absolutely uphold our constitutional responsibility to advise and consent and give a vote and do other business.

We passed the third largest tax cut in the history of the country, and we are seeing the impact of that now. The economy is moving forward. GDP is up 7.2 percent in the last report. There are over 250,000 jobs over the last couple of months. There is more to be done, but we can do more than one thing.

For those of my colleagues who protest, oh, we are spending all this time, we spent 10 or 11 hours on Monday talking about Searchlight, NV, talking about rabbits eating cactus and rocks. That is part of the process. People get frustrated. I understand that.

The bottom line is, we stand here after 30 hours of debate, now almost 38 hours, and what do we get out of that? What do we understand? We understand that the history of the Senate is one in which this body up to now has not used a partisan filibuster to block judicial nominees. We see that happening today. We see the record of that.

They talk about 168 to 4 and talk about all the judges. Clearly, when we talk about appellate judges, we have 29 confirmed and 6 who have been blocked and 6 who are threatened to be blocked. Now we are talking about 29 and 12. That is 30 percent. Not only is that nothing to be proud of, but it is in contravention to the constitutional direction the Framers and the Founders gave us.

The consequences of this are ones about which we should all be concerned. We are talking about our judicial system. This is not a game. This is one of the fundamental underpinnings of this constitutional democracy, and we have a solemn obligation and responsibility to choose men and women of good judgment and good character who bring a willingness to apply the law to the table and to make judgments.

The reality is that those candidates before us are folks their own peers have said are of the highest quality. The American Bar Association, the gold standard that my colleagues on the other side talked about so many times, say they are highly qualified. In some cases, the voters, those who have run for office—Priscilla Owen, Janice Rogers Brown—have received overwhelming shows of support. That tells you something about the mainstream, the bipartisan nature of the support.

Judge Carolyn Kuhl: A bipartisan group of nearly 100 of her colleagues said:

> We believe her elevation to the Ninth Circuit Court of Appeals will bring credit to all of us and the Senate that confirms her. As appellate judge, she will serve the people of our country with distinction, as she has done as a trial judge.

A bipartisan group of 23 women judges of the superior court who served with Judge Kuhl wrote:

> As sitting judges, we, more than anyone, appreciate the importance of an independent, fairminded, and principled judiciary. We believe Carolyn Kuhl represents the best values of such a judiciary.

The fact is, these judges hold strong opinions, there is no question about that, but to a person they said they will do what a judge needs to do and put those personal opinions aside and apply the law. Their colleagues who

know them have raised their hands and said: Yes, that is what they have done; that is what they will do. The voters who know them reaffirmed their positions by reelecting them by overwhelming majorities. That is what we should be looking at. That is mainstream. That is not extreme.

In the end, we are grasping for something simple: for every Senator on this floor to do what every Senator has the right to do—to be heard, to give your advice to the President of the United States, and if you don't agree with his nominees, do what has been done through the entire history of this country, for 214 years: Give your advice, give a vote; vote them up, vote them down, but give them a vote. It is what the Constitution requires. It is what I believe the future of this institution requires.

Let's get beyond the partisan politics. Let's put it aside. Let's do the right thing. Let's come together. Let's focus on getting things done. That is our opportunity, and I hope we don't squander it.

I yield to my colleague from South Carolina.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. GRAHAM of South Carolina. Mr. President, I thank the Senator for yielding. It has been a real pleasure to talk with him throughout the night. It has been a great debate. For something considered a waste of time, so many Senators have participated. It has not been a waste of your time or the country's time. We have a good record the people can look upon and make a decision about what we are doing here in this Senate.

If I had to boil it down to what all this means to me, which I have to do between now and a quarter after, here is what I think is the down side of what we are doing in the Senate: Special interest politics is being given a green light to go after people they may disagree with because they think the nominee doesn't share their philosophy or political persuasion.

You are giving them a green light to manufacture controversies, to go after people in a personal way, and we are going to rue the day we did that. The left is doing it today. The right will do it tomorrow. We are unleashing special interest forces. We should be deterring them. Right now we are emboldening them, and the country will be worse for the wear.

There are people at the end of the process. We are talking about individuals. Miguel Estrada has claimed to be outside the mainstream. All I can tell you is that the Washington Post on February 5, 2003, not exactly a right-wing rag, said:

> Estrada is well qualified for the bench. This should not be a tough case for confirmation. Democrats who disagree should vote against him.

I think that pretty well sums up the idea that he can't be that far out of the mainstream or the Washington Post would not have said that about him.

If you disagree with me and think he is out of the mainstream, vote against him. Please don't continue the process of filibustering people because we are going to change the Senate forever, for the worst, and the future nominees to come, whatever they said in law school, whatever letter they may have written to their wife, whatever decision they made about going on a trip, if they said something that offends the left or offends the right, people are going to come after them like gangbusters, knock their heads off, and you are going to keep good men and women from wanting to serve. That is going to happen, sure as I am standing here. It will be a great tragedy. Please let's turn this around.

Judge Brown will be No. 5. She sits on the Supreme Court of California. She is objected to. She is out of the mainstream allegedly. I would argue that 76 percent of the voters in California are not right-wing zealots, and that anybody who can get 76 percent of the vote in California has to have some sort of moderation about them. She has written the majority of the court's opinions. She is respected by her peers. You wouldn't get 76 percent of the vote in California if you were out of the mainstream in any real way.

Justice Owen from Texas, No. 1 in everything. She serves on the State supreme court. She received 84 percent of the vote. The only people left who didn't vote for her are probably the extreme people. I would argue that 84 percent of the people who chose to vote in Texas is probably our best evidence about who she is and the way she conducts herself.

Pryor: If you read in the paper today, the attorney general of Alabama has just successfully removed the chief justice of Alabama. It was his job to bring the case to the grievance committee in the State of Alabama, and the reason the chief justice was removed was that he defied a Federal court order to remove the Ten Commandments out of a courtroom in Alabama.

Whatever you want to say about Attorney General Pryor being out of the mainstream, let me tell you that the Ten Commandments are popular in Alabama. He chose the less traveled route for a politician. He chose to enforce the law against a rogue judge who is pandering to the political moment. He followed his constitutional duty, and I bet you he agrees the Ten Commandments have a right to be displayed, but he said: It is not about me; it is about the law.

Mr. SESSIONS. Mr. President, will the Senator yield?

Mr. GRAHAM of South Carolina. Yes.

Mr. SESSIONS. With regard to that matter, Attorney General Pryor did file a brief on behalf of Judge Moore and argued that the Ten Commandments were legitimate because there are three depictions of the Ten Commandments in the Supreme Court. And right on this wall are the words ''In God We Trust.'' He defended that.

When the case was lost, the judicial inquiry commission brought a charge against the chief justice because he did not comply with the court order, and it was the duty of the attorney general to bring that case under Alabama law. So he was required to present the case that had been brought by something akin to a grand jury.

Mr. SANTORUM. Will the Senator from Alabama say that is following the law?

Mr. SESSIONS. It is absolutely following the law. There are a host of other examples to a degree I have never seen before in America. Bill Pryor always does what he believes the law compels him to do. Many times it is something he does not personally like to do.

Mr. GRAHAM of South Carolina. Senator LEAHY said in 1998:

> [I]f we don't like somebody the President nominates, vote him or her down or up.

He was right then. I am very afraid that we are opening the darkest chapter in the history of the Senate when it comes to judges. I don't want to be a part of it. I reject the past. I embrace a better future. Please, for God's sake, let's not continue to do this because we will all regret it.

The PRESIDING OFFICER. The majority has 30 seconds remaining.

Mr. SANTORUM. Maybe what we are finding out here is the minority doesn't want someone who is going to follow the law. I think what they really want is someone who is going to make the law, make the law politically, exactly maybe as the Senator from Vermont would like it to be made. Maybe there are things he or other Members on his side can't accomplish in the legislative chamber, so they want judges who will make the law they want. That is why the litmus test. They want activist judges on the court not to follow the law but to make it the way they really want it. That is what is at issue here.

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

The Senator from Vermont.

Mr. LEAHY. Mr. President, I am glad to see my friend from South Carolina used a tiny part of a quote of mine. I am always glad when somebody quotes me, even when they don't do it accurately.

What I was referring to, if you look at the quote, was the one-person filibusters of 63 of President Clinton's nominees, where one person, one Republican, usually anonymously, would object to President Clinton's nominees and then those nominees would never get a vote at all. Those were filibusters by one person done anonymously, not in the open.

Here, of course, unlike what was done to President Clinton, the Democrats have cooperated to make sure that 168 of President Bush's nominees to the Federal judiciary have gone through and only 4 have not. We can see only 4 have been blocked. We have confirmed 168 and only blocked 4. That contrasts to the 63 anonymous filibusters done

by the Republicans—63 done by the Republicans when they were in charge.

As I walked over this morning, I thought: Finally, the Republican leadership is bringing to a conclusion three really ''Alice in Wonderland'' kind of days, really wasted days in the history of the Senate. During those days, as much as the Republican leadership wanted to waste the Senate's time, at a cost of hundreds of thousands of tax dollars, I am proud of our Democratic Senators who had to endure endless criticism for objecting to a handful of the President's most extreme, controversial, and divisive nominees.

What they have tried to do is get the Senate's attention back on the unfinished legislative business of this session that is of such concern to the lives of so many Americans. As I said, we have cooperated in the confirmation of 168 of this President's judicial nominees. We confirmed 100 in the 17 months I was chairman and confirmed another 68 in the 17 months my distinguished colleague from Utah was chairman. I am not going to criticize him that he didn't get as many confirmed as I did, but there are the numbers, 168 to 4. That is more judges than President Reagan, the ''all-time champ,'' appointed his entire first term in office when he had a Republican majority. So in less than three years, we have already eclipsed President Reagan's four year total.

Among the 168 confirmations are more circuit court confirmations than for any of the last three Presidents at this stage in their first terms. The scorecard is 168 to 4.

After this week, the total of those blocked could increase by two, but the number of confirmations will not have been increased. Rather than work with all Senators to confirm those nominees who can be confirmed after a vote or who may be confirmed after a reasonable debate and a vote, the Republican leadership has remained fixated on the most controversial and most divisive nominees.

During this 40-hour talkathon, the Republican leadership of the Senate has taken what could have been productive days at the end of this year's legislative session and decided to abandon work on the real priorities of the American people. I understand that the reason they have been spending so much of the taxpayers' dollars in doing this talkathon is that some of the Republican campaign committees have tried to use this to raise money. If they are, instead of charging the taxpayers for this, I wish they would do it themselves.

But what we have are our friends on the other side engaging in repetitive speeches about promoting a small handful of controversial nominees to lifetime positions as Federal judges. These are people who already have good well-paying jobs. They do not want to talk about the legislation that might help the more than 3 million Americans who have lost their jobs since President Bush assumed office.

Unlike President Clinton's term, where a million new jobs were created every year, in the 3 years of President Bush's term, 3 million jobs have been lost, but they do not want to talk about that.

The Republican leadership has already overshot the Senate's adjournment date by more than a month. We have already had to enact three continuing resolutions just to keep the Federal Government going because we have not passed our appropriations bills. The law says we have to enact our 13 appropriations bills by the end of September. The Republican Congress has enacted only 5 of the total 13. They ignore the law on that, but then they waste this time and hundreds of thousands of taxpayer dollars to have a campaign talkathon.

They do not want to vote on the appropriations bills and, instead, they want to waste time on this? They want to waste time giving lifetime jobs to three or four people but they do not want to do anything about the 3 million Americans who are out of jobs.

Here is what they are not talking about, here are the issues that are not being voted on, here are the bills that the Republican leadership will not bring up: Funds that go to improve our schools. Funds that NIH uses to advance our medical knowledge in fighting disease and illness. The resources used by EPA to enforce our clean air and water laws. They do not want to bring up appropriations for our veterans and for law enforcement. These are things that all people should be able to agree on, Republicans and Democrats, but we are told there is no time to bring up money for our law enforcement or for our veterans.

In fact, during the first evening of this exercise in the wind chambers, the senior Senator from West Virginia was trying to get the Senate to do its work. Senator BYRD, as the ranking Democrat on the Appropriations Committee, urged the Senate to complete its work on the appropriations bills that fund services for our military veterans. He said, Why do we not finish this? This administration has cut money for veterans benefits. It has cut money for veterans hospitals. It has cut money for disabled veterans. He said, Can we not at least take a couple of hours more—if you are going to spend 40 or so hours talking about four judges, can we do something, can we take 2 more hours to finish the bill that will affect millions of America's veterans?

He said we could do it in 2 hours. The Republican leadership objected. Those few minutes at the beginning of this debate may be the most telling of this entire so-called debate. Republicans chose to sacrifice the work of the Senate, the priorities of the American people and the interests of American veterans so they could pull a partisan political stunt.

In one of their many press conferences on this diversion, on November 6, the Republican leader committed to ''complete the appropriations process'' before beginning this charade. Even the junior Senator from Pennsylvania agreed with him and said: ''The leader's right. What we are about to embark in next week, after the appropriations process has run its course, is to enter into a debate. . . .'' Well, when given the chance to honor that commitment, the Republican caucus chose partisan theater over the work of the Senate.

We said can you not take 2 hours out of these 40 hours to at least do the appropriations bill for our veterans? I mean, you are not going to do the appropriations bills for our law enforcement. You are not going to do it for medical research. You are not going to do it for anything else. If you could just take 2 hours out of this, at a time when we are creating a lot more veterans, many of them horribly disabled and disfigured from the war in Iraq, we are told, no. We do not have 2 hours for that.

There is the unfinished business of the Nation's unemployment and lack of job opportunities that confound so many American families. With millions of Americans having lost their jobs in the last three years, the Republican Senate has, instead, insisting on spending these final days of this session on a handful of highly controversial judicial nominations that divide the Senate and the American people and ignoring the needs of the almost 10 million Americans who are out of work, including those more than three million Americans who have lost their jobs since President Bush took office.

Instead of working together on such important matters, we are being forced to repeat another cloture vote on the nomination of Priscilla Owen. The Senate has voted three times on this nomination, and three times, the Senate has decided against granting consent. Her nomination had been fairly and thoroughly considered by the Judiciary Committee last year, and her nomination was rejected on the merits. Never before has a President renominated a judicial nominee who was rejected on the merits by the Judiciary Committee.

She has shown herself to be a judicial activist and an extremist even on the very conservative Texas Supreme Court where her conservative colleagues have criticized her judging. All that has occurred since the cloture votes during the spring and summer is that Republican partisans have ratcheted up their name calling and Justice Owen has been made to serve as a political prop for the White House.

In fact, I commend to my colleagues an insightful article by David Margolick that appeared recently in Vanity Fair magazine entitled ''Bush Scored Advantage.''

The second in this series of votes is to be on Judge Carolyn Kuhl. This nomination to the 9th Circuit has been opposed by both the home-state Senators from California and for good reason. From her days seeking to change

federal policy and provide tax breaks to Bob Jones University, to her efforts to overturn Roe v. Wade, to her recent decisions seeking to excuse the invasions of the privacy of Ms. Sanchez-Scott, a breast cancer survivor, Carolyn Kuhl has been extreme.

Finally, the Senate will be required to vote in relation to a nomination that has been whisked through the Judiciary Committee in the last several days, that of Janice R. Brown. This controversial nomination is opposed by the Congressional Black Caucus, the National Bar Association, the California Association of Black Lawyers and a long list of African-American and civil rights leaders and organizations. Former Senator and former ambassador Carol Moseley Braun has recently written to us opposing this nomination. I ask that her November 12 letter be made part of the RECORD.

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

WOMEN'S ORGANIZATIONS OPPOSING NOMINATION OF PRISCILLA OWEN

National Organization for Women
National Organization for Women, Texas Chapter
NOW Legal Defense & Education Fund
Religious Coalition for Reproductive Rights
National Abortion Federation
National Women's Law Center
NARAL Pro-Choice America
National Council of Jewish Women
National Council of Jewish Women, Texas
American Association of University Women
American Association of University Women of Texas
National Family Planning and Reproductive Health Association
National Women's Political Caucus
Texas Women's Political Caucus
Texas Freedom Network
Women's Issues Network—Dallas
Women's Health and Family Planning Association of Texas
Republican Pro-Choice Coalition
Gender Justice Action Group
Feminist Majority
National Partnership for Women & Families
Greater Dallas Coalition for Reproductive Freedom
Texas Abortion and Reproductive Rights Action League
Planned Parenthood Federation of America
Planned Parenthood Association of Hidalgo County
Planned Parenthood Association of Lubbock
Planned Parenthood of Cameron and Willacy Counties
Planned Parenthood of Houston and Southeast Texas
Planned Parenthood of North Texas
Planned Parenthood of San Antonio & South Central Texas
Planned Parenthood of South Texas
Planned Parenthood of the Texas Capital Region
Planned Parenthood of West Texas

WOMEN'S ORGANIZATIONS OPPOSING NOMINATION OF JANICE RODGERS BROWN

National Organization for Women
California National Organization for Women
NOW Legal Defense & Education Fund
Religious Coalition for Reproductive Rights
National Abortion Federation
National Women's Law Center
NARAL Pro-Choice America
National Council of Jewish Women
National Council of Jewish Women, California
National Council of Jewish Women, Los Angeles
American Association of University Women
National Family Planning and Reproductive Health Association
National Partnership for Women and Families
Feminist Majority
Planned Parenthood Federation of America
Planned Parenthood of Golden Gate
Planned Parenthood of Los Angeles
Women Lawyers Association of Los Angeles
Women's Reproductive Rights Assistance Project
Pacifica Institute for Women's Health
Black Women Lawyers of Los Angeles
California Abortion and Reproductive Rights Action League
California Women's Law Center

WOMEN'S ORGANIZATIONS OPPOSING NOMINATION OF CAROLYN KUHL

American Association of University Women
Breast Cancer Action
Breast Cancer Fund
California Abortion and Reproductive Rights Action League
California National Organization for Women
California Women Lawyers
California Women's Law Center
Center for Reproductive Law and Policy
Coalition of Labor Union Women (CLUW)
Feminist Majority
Los Angeles African-American Women's Political Action Committee
NARAL Pro-Choice America
National Abortion Federation
National Council of Jewish Women
National Organization for Women
National Partnership for Women and Families
National Women's Law Center
National Women's Political Caucus—California
Pacific Institute for Women's Health
Planned Parenthood Federation of America
Planned Parenthood Affiliates of California
San Diego County National Organization for Women
Women's Committee, Labor Committee for Latin American Advancement
Women's Leadership Alliance Women's Political Committee
Women's International League for Peace and Freedom
Women's Reproductive Rights Assistance Project.

NOVEMBER 12, 2003.

Hon. BILL FRIST,
Majority Leader, U.S. Senate, Russell Senate Office Building, Washington, DC.
Hon. TOM DASCHLE,
Minority Leader, U.S. Senate, Hart Senate Office Building, Washington, DC.

GENTLEMEN: Respect for the rule of law, and the impartiality of the judiciary are almost synonymous concepts. It is out of concern for both that I want to convey my most serious concern about the State's consideration of the nomination of Justice Janice Rogers Brown for the United States Court of Appeals for the District of Columbia Circuit.

Justice Brown has not demonstrated the balance and judicial temperament and prudence that are central to a respected judiciary. Indeed, she has spoken to an organization of my own alma mater, the University of Chicago Federalist Society, in terms so radical as to bring into question her own regard for the position she currently occupies. The extremism of her views has been publicly demonstrated time and time again, particularly concerning matters of settled law regarding the national government's responsibility to protect civil and political rights of women and minorities. Such extremism undermines the confidence any citizen might have in the capacity of this nominee to fairly interpret and administer the law.

I am the only African American woman to have served in the United States Senate, or on its Judiciary committee. As such I have not only an appreciation for the gravity of the Senate's role and responsibility in regards to the appointment process, but I also have a keen appreciation for the diversity of opinion among African Americans. Not all black people think alike, and I have no doubt that there is a constituency that would be happy to see an African American of any political persuasion confirmed for such an important position as the D.C. Circuit Court of Appeals. However, it does both the black community as well as the courts a great disservice to confirm to such a position an individual who has so clearly demonstrated a disregard for the balance and impartiality required of the members of the bench.

I appeal to our President to exercise greater respect for the traditions of the judiciary in making future nominations. Justice Brown should be given an opportunity to mature in her demeanor and her judicial conduct, but not as a member of the Circuit Court. As such, I urge the members of the Committee to reject this nomination.

Sincerely,

CAROL MOSELEY-BRAUN.

Mr. LEAHY. The San Francisco Chronicle and the Washington Post editorialize against her as an example of the Bush Administration's efforts to pack the circuit courts with ideologues. In her decisions and her writings and speeches she has shown herself to be a consummate judicial activist who will disregard precedent when convenient to her ends. Her view of government is not consistent with the work of the D.C. Circuit in reviewing the environmental protections, workplace protections, consumer protections and other government regulations authorized by Congress to protect all Americans.

The obvious intent of these stacked votes is a partisan effort to paint opposition Senators as anti-woman. Women know better. Women leaders, women's rights organizations have opposed these nominations. I know the Republican partisan public relations machine will be cranking overtime to say we are anti-woman. Given that we are being led by Senator BARBARA MIKULSKI, Senator DIANNE FEINSTEIN, Senator BARBARA BOXER, Senator PATTY MURRAY, Senator MARY LANDRIEU, Senator BLANCHE LINCOLN, Senator MARIA CANTWELL, Senator HILLARY CLINTON, and Senator DEBBIE STABENOW, it is hard to see how Democrats can be subjected to such allegations with a straight face. I mean, tell them that they are anti-woman. These are all women who have the finest records of defending, upholding, and advancing women's rights. It is crazy.

When we were in charge, the Senate confirmed 100 of President Bush's judicial nominees, including 21 women, in just 17 months. They included 4 women to our Courts of Appeal. During the 107th Congress, President Bush nominated only 18 women to district court seats out of 98 district court nominees,

or 18 percent, and only 8 women to circuit courts out of 32 circuit court nominees, or 25 percent. Well, this year, Democrats have supported the confirmation of 12 additional women nominated to the Federal bench, including 3 more to our Courts of Appeal. The thirty-three women judges confirmed represent 20 percent of the 168 judges confirmed so far.

Perhaps, though, they are a little bit nervous about this. President Bush has nominated far fewer women to the Federal bench than President Clinton did. This President's nominees have included only one woman in each five judicial nominees. By contrast, nearly one of every three of President Clinton's judges are women. Of course, the Republicans who controlled the Senate and the Judiciary Committee during the Clinton administration also blocked 18 women nominated to Federal judgeships by President Clinton. They did it by their one-person anonymous filibuster. Do not give me this baloney that, oh, it is so terrible that we are standing out here in open session blocking four judges. They blocked 63 by anonymous filibuster, 18 of them women. The women who were blocked from getting Senate action on their judicial nominations by the Republicans include Kathleen McCree Lewis, Elena Kagan, Elizabeth Gibson, Helene White, Christine Arguello, Bonnie Campbell—all of whom were nominated to the circuit courts. Now, these six outstanding women lawyers and judges were not extreme or ideologues. They were blocked anonymously by Republican Senators. This was done without any explanation. This was done without a vote of any kind. We never had a debate on them.

These other judges, the 4 out of 168 of President Bush's who have been confirmed, at least there was a debate on them. We discussed the merits of their nominations. The 63 of President Clinton's nominees who were blocked by the Republican majority would have liked to have at least had a hearing or debate on the merits of their nominations. There was no debate. Nobody wanted to come to the floor and talk about them, not when they could do a one-person filibuster, and do it anonymously so the press in their hometown would never know who was holding them up, including some of the Senators from the States where they were nominated. They could do this anonymously, and they could do it in a way that they would never have their fingerprints on it.

Now, I have heard more crocodile tears shed on this Senate floor this week than I have heard in my 29 years. Why? Because 4 judges of President Bush's were stopped, out of 168 who were confirmed. He has had less nominees stopped than any President I can remember since I have served in the Senate.

I yield the floor.

(At the request of Mr. DASHLE, the following statement was ordered to be printed in the RECORD.)

• Mr. EDWARDS. Mr. President, my Republican colleagues are calling this 30-plus-hour marathon ''Justice for Judges.'' Now, I'm all for justice for judges. And that's exactly what every single one of President Bush's judicial nominees has gotten.

But I ask my colleagues, where is Justice for the American people? They seem more concerned about Justice for a handful of judges—the 2 percent of those Bush's nominee who haven't been confirmed—than justice, fair play and opportunity for the American people.

The Republican majority claims that we're facing a vacancy crisis in our Federal courts. Ninety eight percent of Bush's judges have been confirmed and this is a crisis? Two percent of Bush's judges have not been given lifetime appointments and we're in a crisis?

Under George W. Bush, the unemployment has risen to 6 percent the poverty rate has increased to 12.1 percent the percentage of Americans with no health insurance has gone up to 15.2 percent. And, during this time, the vacancy rate on the Federal courts has gone down to 4.5 percent its lowest point in over 13 years. In fact, there are more full-time Federal judges on the bench today than at any other time in U.S. history? The vacancy rate is now below the number that Senator HATCH called ''full-employment'' in the Federal judiciary during the Clinton administration.

Where is the concern for the 6 percent of the American people who can't find jobs? The same people who claim that 4.5 percent vacancy is a crisis think that 6 percent unemployment is great news, that a ''jobless recovery'' is a good thing. Why aren't they at least as concerned about Justice for the Jobless, Justice for Working People, Justice for the Poor, Justice for Families?

So, what does this marathon debate tell us about the priorities of the Republican majority? What does it tell us when they are more concerned about securing lifetime jobs for three sitting judges and a State attorney general than in securing jobs for the 9 million Americans who are out of work?

Why are they more interested in fighting for three judges and an attorney general—all of whom have received full and fair consideration—than fighting to bring hope back to the American people?

Why aren't we spending 30 hours debating how to help the 9 million Americans who no longer have the dignity and self-respect that comes from completing a hard day's work? Why doesn't the Republican majority schedule 30 hours of debate to figure out how to provide health care to the American people and prescription drug benefits to the elderly?

We should be figuring out how to bring back the 3 million jobs we've lost on George Bush's watch—one job lost for every minute he has been in office.

We should be addressing the anxiety of families who fear that by sundown they will be without a safe home. We should be working to find a way to lift the tax burdens on working families and provide real economic opportunities so they can provide food, clothing, and shelter for their families.

We should be debating about the best way to close the education gap and support and fund our public schools.

We should be working together to lift Americans out of poverty.

And we should be coming together, not to fight for justice for judges but to fight to end the injustice that still tugs on the soul of America.

In other words, we should be fighting for Justice for the American People.

But instead, my Republican colleagues have virtually shut down the Senate to force lifetime appointments for three judges and an attorney general.

This political stunt is getting lots of coverage, but it's not doing a thing to improve the life of one single American—except three sitting judges and an attorney general.

We have confirmed 168 of President Bush's nominees. I voted for the vast majority of these judges, even though many of these judges have held conservative ideologies with which I strongly differ, because I believed they would ultimately enforce the Constitution and the law.

But I cannot and will not vote for these four nominees, for good reason. These nominees not only do not represent the mainstream, but they have demonstrated an unwillingness to set aside their personal views to uphold the law and protect civil rights. We have good reason to oppose these nominees. And we not only have the right, we have a constitutional obligation to stand up to the President when he makes unacceptable nominations to the bench.

Our Founding Fathers did not give the President unilateral or unfettered power to select Article III judges. They wanted to ensure that the people—through their elected representatives—have a say in who will be appointed to the Federal bench. So they created a partnership between the President and the Senate by requiring the President to obtain the advice and consent of the Senate in nominating judges.

Every President—whether Republican or Democrat—must consult in a meaningful way with the Senate to appoint highly qualified judges to the Federal bench. The give and take that results makes it far more likely that we will have a judiciary that is not skewed too far to the right or too far to the left, a balanced judiciary that reflects the people it serves.

Meaningful consultation does not mean that the White House just sends us who they want and we rubberstamp them, without careful examination and consideration. Meaningful consultation often involves compromise and consensus.

This approach has worked reasonably well—with some exceptions—over the years. But now we find ourselves dealing with a White House that disdains

this longstanding principle of advice and consent. Instead, the President is appointing judges who are far out of the mainstream. Judges who are hostile to civil rights and equal justice. Judges who are not only willing but eager to put their personal views above the law. Judges he certainly knows are unacceptable to us and our constituents. These appointments are being made without our advice and without our consent. We have tried to work with the White House to find common ground, but most of our attempts to reach consensus with the administration have been dismissed. In some instances, our commitment to fairness and diversity has been attacked. This is not the way this process should work. It is wrong. It would be wrong, regardless what party the President belongs to.

Any honest observer must acknowledge that previous administrations of both parties attempted in good faith to work with the Senate in its appointments process. President Clinton put up numerous highly qualified mainstream nominees for Federal judgeships, only to have them blocked, denied hearings and denied votes by a Republican Senate. Twenty percent of Bill Clinton's judges were blocked by a Republican Senate. We heard nothing about justice for judges then.

This had a particular impact on my home State of North Carolina, which is part of the Fourth Circuit. North Carolina—the largest State in the circuit—until this year had not been represented on the court since 1994. President Clinton tried three times to put a North Carolinian on the court, only to have his nominees blocked for reasons other than their qualifications. In fact, during his last 6 years in office, President Clinton had eight nominees—four of them African American—blocked in the Fourth Circuit alone. These were well-qualified men and women, none of whom could be labeled ideologues, whose views were well within the mainstream of legal thought and practice. Nevertheless, they were blocked. I believe that this was part of a plan, a plan to keep these seats open for a Republican President who would fill them with right-wing judges outside of the mainstream.

We've seen what happens when the President meets us halfway. He's done it before—rarely, but he's done it. He reached out to us on Allyson Duncan, an outstanding North Carolinian who just last month was formally installed as a judge on the Fourth Circuit Court of Appeals, breaking a logjam that had held our State back for a decade.

In that case, President Bush did more than just pay lipservice to our constitutional obligation to a advise and consent. He reached out to us before he made his decision—he consulted with us—he sought our advice. And in making his decision, the President selected a nominee who represents the mainstream of our State.

Throughout Judge Duncan's confirmation process, I commended the President for consulting with us and making an excellent nomination. And I told him that if he takes this approach to future judicial nominations we have a real opportunity to find common ground in the search for excellence on the Federal bench. When we work together, we find outstanding nominees like Allyson Duncan, who represents the best of North Carolina and America.

In light of our efforts to cooperate with the President on nominations, I'm puzzled and troubled by the Republican attacks on us, the accusations that we are anti-women, anti-black, anti-Hispanic, anti-Southern, anti-Catholic. They're running attack ads against us that represent the worst forms of religious and racial McCarthyism. They're doing this even though the record shows that Democrats have voted to confirm 13 of President Bush's African-American nominees while Republicans blocked 12 of Clinton's African-American nominees. We have confirmed 33 of Bush's woman nominees. Nearly 40 percent of the Bush judges confirmed have been from southern States. So, not only are these accusations of bias flat-out wrong, they are outrageous and I must speak out against such demagoguery and race baiting.

We have gone the extra mile. We have demonstrated that we are willing to work with the White House to move forward on nominees who provide balance to the courts. We have confirmed 168 of President Bush's judicial nominees—98 percent. We have been more than cooperative.

It's really a shame that the majority doesn't spend a fraction of the time they've spent on the full employment program for judges on finding ways to improve the lives of the American people.

The American people deserve better than this. We owe it to them to call a halt to this marathon madness and get down to work to address the problems they sent us here to solve. It is time to fight for justice, jobs and opportunity for the American people.●

Mr. DODD. Mr. President, the majority has indicated that as part of this debate to invoke cloture on these three nominees to the Federal judiciary, they may move to consider S. Res. 138, a resolution introduced by the majority leader, Senator FRIST, which would amend the Senate rules to treat debate on Executive Calendar items differently than matters on the Legislative Calendar.

Nothing is more fundamental to the ability of the Senate to fully exercise its constitutional responsibility to provide advice and consent to the President's executive nominees than to subject such nominees to full and deliberative debate. And any move to amend the Senate rules to place additional limitations on that debate is tantamount to a ceding of legislative branch powers to the executive. I appreciate the opportunity to speak on the issue of proposed changes to Senate rule XXII.

The filibuster is widely viewed as one of the Senate's most characteristic procedural rules. I believe we can all agree that the best way to consider a change to Senate rules is to do so in accordance with existing Senate rules. I believe this 30-hour debate will follow Senate rules and precedent.

Any attempt to change Senate rules, particularly cloture rule XXII, should be in keeping with the deliberative rules, precedents and practices that have been the hallmark of this institution since it was conceived during a steamy summer in Philadelphia over 217 years ago.

Senate rules have endured the age-old test of time, people, places, and events. Senate rules delineate the constitutional responsibilities of the body and define the character of the institution. Making changes to the rules and the precedent of the Senate is not an action that should be taken lightly or for partisan purposes.

In the history of the institution, the rules of the Senate have been through general revision just seven times: 1806, 1820, 1828, 1868, 1877, 1884, and 1979. The architecture of our Senate rules and precedents is built on the foundation of the right to debate and amend, the two basic principles that make the Senate the upper House in all of the legislative bodies of the world. If you chip and change this keystone, then you chip and change the Senate as an institution.

Herein lies the central paradox and towering majesty of the Senate. What makes this institution so revered and unique is what can simultaneously gall us the most: the practice of extended debate.

But the Founders insulated the Senate from sanction for debate and explicitly left it to ''determine the rules of its proceedings.''

The rules of the Senate reflect the intent of the Framers that the Senate be the ''saucer into which the nation's passions may be poured to cool.'' The ability to fully examine and debate any matter of national importance is the hallmark of the Senate. Nowhere more than in the advice and consent responsibility of the Senate do we see the Framer's intent to balance the fear of a resulting tyranny of a majority against the principle of majority rule.

As Alexis de Tocqueville observed: ''. . . the main evil of the present democratic institutions of the United States. . . . [arises from] the very inadequate securities against tyranny. . . . if ever the free institutions of America are destroyed, that event may be attributed to the unlimited authority of the majorities, which at some future time may urge the minorities to desperation. . . .''

The President nominates, but his power is balanced, and checked, by the power of the Senate to provide advice and consent. Neither can act alone. And in the case of the judiciary, the creation of the third, separate and equal, branch of Government, the powers are deliberately counterposed.

This is not the first controversy over Senate rules, precedents and practices of the right to extended debate. Through our history, the right of extended debate has never been seriously questioned as other than a vital foundation of our Republic. This right has been a catalyst for achieving the most remarkable feature of our civilization: the degree to which we have been able to provide our citizens with, at one and the same time, both great freedom and great stability.

As Robert Caro, author of ''The Master of the Senate,'' for which he was awarded his second Pulitzer prize, has observed, and I quote him, ''in creating the new nation, its founding fathers, the framers of its constitution, gave its legislature not only its own powers specified and sweeping, but also powers designed to make the Congress independent of the President, and to restrain and to act as a check on his authority, including power to approve his appointments, even the appointments he made within his own administration. And the most potent of these restraining powers the framers gave to the Senate.''

The power to approve Presidential appointments was given to the Senate alone. A President could nominate and appoint Ambassadors, Supreme Court justices, and other officers of the United States, but only with the advice and consent of the United States Senate. This is the American way and it must remain the American way. While the Founding Fathers recognized the inherent dangers in granting a minority of Senators a veto over the will of the majority, the Constitution did just that.

But proposals to limit debate would change that.

S. Res. 138, a proposal by Majority Leader FRIST, would amend Senate rule XXII to provide for a declining number of votes required to invoke cloture on Executive Calendar items, such as judicial nominations.

I have deep reservations about Majority Leader FRIST's resolution to amend Senate rule XXII. I fully appreciate the majority leader's desire to expedite the business of the Senate. I fully understand the frustration with respect to the deep desire to invoke cloture on Executive Calendar items, including executive nominations such as judicial nominations.

But there is simply no crisis facing our judiciary today that necessitates the damage to the very fiber of this institution that such a rules change would render. The vacancy for the Federal judiciary is at its lowest level in 13 years.

Since President Bush came into office, the Senate has confirmed 168 of his nominees and has decided not to proceed with only 4. That is a 98 percent success rate for the President. In my view, this is a great success rate.

The Senate must not act to change its rules. To do so now would amount to a ''hijacking'' of the Senate's constitutional duty to provide advice and consent to the President's nomination authority. The supermajority requirement is consistent with the intent, spirit and language of the Constitution.

S. Res. 138 presents the question of whether rule XXII should be revised to accommodate a targeted remedy for filibusters of judicial nominations. The real question should be whether S. Res. 138 strikes the most appropriate balance between existing Senate rules and the advice and consent duties of the Senate. In the view of this Senator, it does not.

The cloture rule exists by virtue of the longstanding rules of the Senate enacted pursuant to authority under the Constitution, article I, section 5.

The Constitution expressly authorizes such procedural rules and sets no standard to limit the Senate's discretion in formulating such rules. Further, the Constitution does not compel the Senate to take any action, much less a final vote, on any matter, legislative or executive.

There is no argument to the fact that the Senate has plenary authority to devise its own rules. Nor is there any argument to the fact that there is no right to mandatory majority rule. Most importantly, the Senate tradition on filibuster offends no constitutional edict. In the words of Chief Justice Burger, ''there is nothing in the language of the Constitution or history or our cases that require a majority always prevail on every issue.''

At its most fundamental core, the Senate is a testament to the coexisting rights of the majority and the minority. Small states have an equal say in the Senate's tradition, and rules protect debate no matter whether it is a principled stand of one Senator or a chorus of the convinced. The Senate rules balance majority rule with minority right.

As a Senator in this body, I recall watching the Senate as a very determined minority insisted on their right to be heard on the issue of civil rights. Their position on civil rights was unfair, unpopular, and illegal. Yet the majority of Senators did not question the right of the minority Senators to assert their right under Senate rules and precedent to debate, delay, diminish or defeat civil rights legislation. And, the minority did so for years.

Ultimately, both the noble principles of racial equality and extended debate prevailed in the Senate. But the Senate rule that had been long thwarted was left essentially unchanged.

Prior to 1917, there was only a century old rule that required unanimous consent to cut off debate. This means that for 111 years, the Senate practice of extended debate was absolute in its scope. All Senators had to consent in order to bring consideration of a matter to a close. For the subsequent period of 58 years, two-thirds of the Senate were required to end debate. Currently, three-fifths are required. Until 1949, there was no procedure for limiting debate on nominations in the Senate. For the past 212 years, there has never been a Senate rule that permits a simple majority to force a vote on any matter up for consideration, including judicial nominations.

In this historical context, S. Res. 138 would be without precedent to require a simple majority to invoke cloture, in my view. S. Res. 138 would reduce to a majority vote that Senate procedural rule which girds the independence of the coequal judicial branch.

There is an irony to S. Res. 138 that cannot go unstated or unexamined. It would reform the cloture process only for nominations and leave cloture for the remainder of the Senate debate as it is. Arguably, it is precisely in the area of nominations, particularly judicial nominations, that the Framers intended these powers to be utilized.

S. Res. 138 would fundamentally alter the nature of the Senate and the balance of powers created by the Framers of the Constitution. It would undermine the Senate's role in our constitutional democracy, cede enormous power to the Executive and upset the deliberate system of checks and balances intended by the Framers.

S. Res. 138 would fundamentally diminish the Senate's power in relation to that of the Executive. And if the Senate cedes such power to the Executive, then I do not think the Senate will ever get that power back. Of all the issues that the Senate faces now and in future Congresses—such as war, the economy, health, education, election reform, jobs—none is more important than this one on Senate rule changes. Why? Because how we resolve this issue will, in many respects, determine how we resolve all others.

S. Res. 138 proffers change that is historically significant. However, S. Res. 138 does not proffer filibuster reform that will permit ample debate while rejecting delay in perpetuity. Nor does S. Res. 138 fit squarely within Senate tradition of balancing the right to debate with the responsibility to conclude the people's business.

Instead, S. Res. 138 would shift the balance of power on advise and consent to the executive branch. To accommodate this proposal means a profound change in the Senate as an institution and the character of the Senate as a body itself.

It reduces the constitutional advice and consent authority, indeed duty, to a mere rubber stamp of the President's prerogatives. We must always attempt to find the right checks and balances between a rubber stamp and a deliberative body on both legislation and nominations. This is what makes the Senate, as an institution, so powerful, so special, so unique.

We must remember that during the Constitutional Convention, only after lengthy debate, was the power to appoint judges committed to the President as well as to the Senate. Why? John Rutledge of South Carolina said

it best: ''the people will think we are leaning too much toward monarchy'' if the President is given free rein to appoint judges.

The final compromise was characterized by Governor Morris of Pennsylvania as giving the Senate the power to appoint judges nominated to them by the President. In Federalist 76, Hamilton explained, ''the Senate's review would prevent the President from appointing justices to be the obsequious instruments of his pleasure.''

Against this backdrop, I find it quite troubling that Majority Leader FRIST now suggests that we narrow deliberation, debate, and the rights of the minority with respect to the nomination process and thereby enhance the ability of the majority to turn the Senate into a rubber stamp of a President's nominee.

What is at stake in this debate is nothing less than the integrity of the Senate and the independence of the judicial branch—the deliberate intention of the Framers to ensure against the excess of the Executive.

In describing the role of the Senate to provide advice and consent to executive nominations, Roger Sherman noted: ''the Convention, who formed this Constitution, thought it would tend to secure the liberties of the people, if they prohibited the President from the sole appointment of all officers. They knew that the crown of Great Britain, by having that prerogative has been enabled to swallow up the whole administration . . . but this government is different, and intended by the people to be different.''

The real problem here is not constitutional, but rather it is institutional. Senators must think of themselves as part of an institution, held together by a common respect for its rules and traditions. We have a responsibility to the President, the people, and to the institution.

This is a moment for Senators, as Senators, to stand up for the Senate.

Those of us fortunate to serve in this body are but its temporary custodians. We are stewards of an institution governed by rules and practices that have withstood the test of more than two centuries of time. Now is not the time to retool the rules to achieve goals that are, in essence, transient and partisan in nature, no matter how deeply felt.

When in history has the will of a minority—through extended debate been able to stop anything that this Nation desired or that had the broad support of its people? The Senate works its will, extended debate and all, as it was intended to work—in the words of James Madison—''. . . to consist in its proceedings with more coolness, with more system, and with more wisdom, than the popular branch.''

The disagreements that we have over judicial appointments, and over some legislation, will likely be long forgotten, and of limited consequence, in years to come. But to change the rules and practices of the U.S. Senate in the manner that is here proposed, in my view, would do permanent and lasting damage, not only to this institution but to our democracy that has served us so long and so well.

I hope that cooler heads will prevail and that the majority leader will not bring up S. Res. 138 to amend the rules of the Senate.

But if that happens, I urge my colleagues, as Senators, to uphold the unique authority of the Senate to give equal voice to all States, indeed to all people, and to forego the political expedience of the moment in order to ensure the integrity of the Senate, and the functioning of this Republic, for generations to come.

Mr. LIEBERMAN. Mr. President, in the course of this debate, I have been deeply disturbed to hear the characterization my Republican colleagues have given to a filibuster reform proposal Senator HARKIN and I offered nearly a decade ago. They have referred to our proposal, and our statements in support of it, as precedent for their efforts here today. As I have said in the past, I believe that is deeply wrong. To make clear both what our proposal did, and why my Republican colleagues' characterizations of it are wrong, I thought it would be worthwhile to make sure the record included testimony I offered to the Senate Rules Committee this past June. I ask unanimous consent that the full text of that testimony be reprinted in the RECORD.

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

STATEMENT OF SENATOR JOE LIEBERMAN, SENATE RULES AND ADMINISTRATION COMMITTEE, JUNE 5, 2003

Chairman Lott, Senator Dodd and Members of the Committee. I greatly appreciate the opportunity to submit this statement for your hearing record, so that I can share with the Committee my thoughts on filibuster reform and my previous efforts on the topic.

In late 1994, I joined Senator Harkin in launching an effort to encourage Senate discussion of reforming the Senate's cloture rule. Like Senator Harkin, I had become increasingly frustrated at the way the Senate's cloture rule repeatedly allowed a minority of Members to prevent the Senate's majority from enacting legislation. I felt—and continue to feel—that the Senate rules should be changed to prevent a small minority of Senators from bringing legislation to a halt simply by saying that they will never end debate. Senator Harkin and I therefore offered a proposal under which an initial cloture vote would require 60 votes, but the requisite number to reach cloture would decline by three with each of the next three cloture attempts on the same matter. As of the fourth cloture vote, 51 votes—a simple majority—would suffice to invoke cloture.

This was not a partisan effort on our part. Indeed, Senator Harkin and I offered our proposal after the Democrats lost their majority status and at a time we therefore fully understood that our proposal would more often than not—in the short term, at least—inure to our party's detriment. Let me say that again: our proposal was not an effort to push through our own agenda or help our own party. Nor was it a proposal aimed at carving out special rules for one type of legislation or Senate action in order to ease enactment or Senate approval of one particular agenda.

In early January 1995, we offered our proposal on the Senate floor. After a good debate, the Senate voted on it and, unfortunately, we lost by a landslide. 76–19. Among those voting against our proposal were every Member of this Committee who was in the Senate at the time, including the current Majority Leader, whose proposal the Committee is considering today. I considered that an unfortunate result then, and I continue to consider it so today. Despite the often troubling ways in which the current Majority has sought to run the Senate, I still believe the filibuster rule should be changed so that once Members have had an opportunity to fully debate and seek to amend measures, the majority can have its say.

But that is unfortunately not what the Majority Leader's proposal seeks to do. Indeed, although I expect some will seek to characterize the proposal the Committee is considering as akin to the Harkin-Lieberman one, it most assuredly is not. Our proposal applied across the board—to legislation and nominations alike. As I already mentioned, it was the legislative gridlock that motivated us back then, and that continues to be the real problem caused by the cloture rules. But my Republican colleagues don't want an across-the-board reform. As they would have no choice but to acknowledge, they don't want to give up their own ability to filibuster legislation, even while they are in the Majority. That's because, whether it's the patients' bill of rights, campaign finance reform or a plethora of other issues, they have launched their own filibusters while in the Majority, and they just don't want to give up their ability to continue to do so. Majority rule apparently should only go so far in their view.

What the Majority Leader's proposal amounts to is a demand for unilateral disarmament. It is an effort to force the current minority party to swallow a rules change that allows this President and his party to carve an exception from the Senate rules for their out-of-the-mainstream judicial nominees, while keeping the parts of the cloture rule that they want to continue taking advantage of. But the issue of how the Senate operates should not be subjected to such one-sided demands. We all must work with the rules we have and seek to apply them fairly and impartially. That's why, as I said at the time I first made this proposal with Senator Harkin, even though I support filibuster reform, as long as the rules are what they are, I'm not going to be the only one to abandon them. I will continue, as a representative of the interests of the voters of my state, to live within them and support filibusters where I think it appropriate.

In short, in contrast to the serious reform effort we made, this proposal amounts to one party's effort to turn a Senate rule into a partisan tool—to cherry pick its favored issue in the name of democracy, while leaving themselves free to filibuster away on legislative proposals they don't like. I would welcome more company in the effort to engage in serious reform of the cloture rules so that we all—Republicans, Democrats and Independents alike—can make the Senate work better for the American people. But this unfortunately is not that effort.

Mr. SANTORUM. Mr. President, this is a very historic time for our country. Until this Congress there had never been a filibuster of a circuit court nominee in the history of this country. Thus far we have had four filibusters of highly qualified judicial nominees this year and may have two more by the

end of this week. It is not the intent of the Constitution to confirm a nominee with 60 votes but to confirm with a simple majority. Whether we vote a nominee up or we vote them down, it is our duty to bring them for a vote and to represent the will of the majority in the advice and consent role of the Senate in relation to the President's nominees. If the minority would like to create a 60-vote requirement, then they should respect the Constitution and introduce a constitutional amendment to do so—and build the necessary support for it around the Nation—rather than through this backdoor assault. The precedent that is being set through this abuse of the filibuster is a dangerous and destructive one for future Presidents, future nominees, and most importantly the future of the Judiciary.

As we look at the nominees that have faced obstruction, I ask what makes these nominees ripe for such unprecedented obstruction in our country's history? The most recent judicial nominee to experience this assault is California Supreme Court Justice Janice Rogers Brown. I spoke on the floor a few weeks ago of the cruel treatment that Justice Brown has had to endure. Ms. Brown was recently degraded by a stereotypical cartoon on blackcommentator.com. The cartoon has President Bush and Justice Brown walking into a room and the President saying, ''Welcome to the Federal bench, Ms. Clarence—I mean Ms. Rogers Brown, you'll fit right in.'' In the background are Justice Thomas, Colin Powell, and Condoleeza Rice. The bottom says, ''News item: Bush nominates Clarence-like conservative to the bench.'' Left oriented groups opposing the President's nominees did not condemn this distortion.

In Justice Brown's Judiciary Committee hearing, she responded to this cartoon saying, ''But while I've been having those meetings, people have said to me: 'Well, you know, it's not personal, it's just politics, it's not personal.' And I just want to say to you that it is personal, it's very personal—to the nominees, and to the people who care about them.'' It doesn't get more personal than this. Brown is a very intelligent woman who is a Supreme Court Justice in our Nation's largest State, was re-elected to her seat with 76 percent of the public vote, possesses a stellar educational record and has a great judicial reputation. However, in order to fulfill her dream and the President's wishes, she must subject herself to unfair personal attacks and embarrassing degradation.

Carolyn Kuhl, another female judicial nominee, also faces harsh and unwarranted criticism in her nomination for the Ninth Circuit Court of Appeals, a circuit court that even Senator SCHUMER admits is way too liberal and is the most overturned circuit of the 13 circuits. The Judicial Conference of the United States has declared this vacant seat a ''judicial emergency.'' But this is not even the main crisis for this court. This court gave us the notorious Pledge of Allegiance decision that Democrats joined Republicans in disavowing. Our friends on the other side of the aisle stress the importance of appropriate balance on the court. This court has 17 judges appointed by a Democratic President and 8 appointed by a Republican President. It seems apparent that Judge Kuhl would be a perfect candidate to better balance a court tipped extremely to the left. Judge Kuhl, like the overwhelming majority of President Bush's nominees, has received a ''Well Qualified'' rating from the ABA, the ''Gold Standard,'' previously deferred to by Democrats in the Judiciary Committee. However, Judge Kuhl has been receiving unfair treatment from leftist special interest groups seeking to control the nominations process through the historically unprecedented misuse of the filibuster. They criticize Kuhl's role in a 1986 case in which the Government filed a brief stating President Reagan's position that Roe v. Wade was wrongly decided.

Rather than be criticized, Judge Kuhl should be praised for fulfilling her ethical duty to her client. Her job was to represent the President's position before the Supreme Court. Rule 1.2b of the Model Rules of Professional Conduct state that ''[a] lawyer's representation of a client, including representation by appointment does not constitute an endorsement of the political, social, or moral views or activities.'' The hypocrisy of those opposing her nomination lies in the fact that they have not objected to past nominees who were attorneys on the same government brief. Furthermore, Judge Kuhl is supported by a wide range of pro-choice supporters who strongly believe that she will uphold the law. So, as I have asked before, what makes Judge Kuhl so special that warrants obstruction as a judicial appointee?

Then, there is Priscilla Owen. Justice Owen was nominated for the Fifth Circuit Court of Appeals by President Bush in May of 2001. Justice Owen was elected by 84 percent of the voters of Texas to the Texas Supreme Court. This vacancy has been declared a ''judicial emergency'' by the Judicial Conference of the United States. She has yet to have an up-or-down vote. She has significant bipartisan support, including from three former Democrat judges on the Texas Supreme Court and a bipartisan group of 15 past Presidents of the State Bar of Texas. Owen is yet another nominee who has received a unanimous ''Well Qualified Rating'' from the ABA. Critics argue that she has strong views on abortion, but she has always interpreted the law faithfully by applying statutes enacted by the Texas Legislature.

Abortion-rights activists claim that Owen's decision to uphold a new statute that requires girls under the age of 18 to notify their parents of an abortion is an example of judicial activism. Never mentioned by these organizations is that not only was Owen upholding a statute enacted by the Texas Legislature, the U.S. Supreme Court has long held that parental notification is permissible under the constitutional right of abortion as dictated by Roe v. Wade. The claims that Owen is a judge who has and will continue to practice judicial activism are not true and unwarranted. As of today it will be 917 days since President Bush nominated Justice Owen. You will not find a more qualified candidate.

Another nominee who has been waiting more than two years is Charles Pickering. A nominee for the Fifth Circuit of Appeals, another vacant seat declared a ''judicial emergency,'' Judge Pickering has been labeled by some of those across the aisle as ''racially insensitive'', and that his ''poor'' judicial record reflects this. How is it then that Pickering has received a ''Well Qualified'' rating by the ABA, the ''Gold Standard'' according to Democrats on the Judiciary Committee, to serve on the Fifth Circuit Court of Appeals? Many of Pickering's colleagues, civil rights leaders, and Democratic leaders from his own State attest to Pickering's remarkable record on race. James Charles Evers, brother of slain civil rights leader Medgar Evers, has endorsed Pickering by saying ''As someone who has spent all my adult life fighting for equal treatment of African Americans, I can tell you with certainty that Charles Pickering has an admirable record on civil rights issues. He has taken tough stands at tough times in the past, and the treatment he and his record are receiving at the hands of certain interest groups is shameful.'' Along with the false accusations of racial insensitivity, activists also accuse Pickering as not being fit to hear abortion cases. Pickering has testified that he is committed to following Supreme Court Precedent in Roe v. Wade and Planned Parenthood v. Casey.

Abortion rights activists in their assault on some of the President's nominees have especially focused their attacks on Alabama Attorney General William Pryor, nominee for the 11th Circuit Court of Appeals. General Pryor has been criticized by these organizations as well as from colleagues across the aisle for what they term ''deeply held beliefs.'' Earlier this year, I spoke on the floor about General Pryor's ''deeply held beliefs.'' Criticism of Pryor's beliefs stem from his views on abortion. These views are, in large part, due to his background as a devoted Catholic. Being a devoted Catholic requires one to oppose the practice of abortion, and General Pryor is indeed a devoted Catholic. As a practicing Catholic myself, I am disturbed at what is being conceived here. If the Catholic philosophy of having no leeway on the concept of abortion is preventing General Pryor from an up or down vote, then we have a constitutional crisis on our hands which would eliminate tens of millions of Americans from being considered for Federal

judgeships. General Pryor's record speaks for itself. Though he has criticized the Supreme Court's decisions on abortion, which is well within his rights as an American citizen, he has demonstrated a commitment over the years to enforce and uphold the law as one of the longest serving attorneys general in the Nation.

I fear for the future of the judicial nomination process. Good, decent people who have outstanding records of upholding the law are being put through unfair, unjust and unnecessary attacks by people do not agree with their conservative values. One must ask my colleagues, why they think the politicization of the Judiciary is in anyone's interests. At what price do we continue this unfair degradation of judicial nominees?

We all know the sad ending of Miguel Estrada's nomination. His qualifications remain outstanding. He came to the United States at age 17 after being born and raised in Honduras. He graduated magna cum laude from Harvard Law School where he was editor of Harvard Law Review. He is a former assistant to the Solicitor General and argued 15 cases before the U.S. Supreme Court. He clerked for Supreme Court Justice Anthony Kennedy, a Justice who does not share Estrada's conservative philosophies. He received strong support from prominent members of the Clinton administration whom he worked for.

Are we to believe that documents the administration is unwilling to share from the Solicitor General's Office are what blocked his nomination, when all previous living Solicitors General, Republican and Democrat, signed a letter saying such work products should not be required to be provided? To do so would only undermine the ability of the office to represent the Federal Government and the President and would negatively impact the ability to attract quality lawyers to the office. We have also discussed time and again the appropriateness of Estrada's reluctance to prejudge cases at committee hearings. Opponents knew that they had no basis to oppose his nomination so they chose to place the burden on the nominee to prove a negative or else to have the Office of the Solicitor General undermine its independence and effectiveness.

So what is the answer to why these nominees are receiving unprecedented unfair treatment? Why are we spending time here arguing for these candidates that are so well qualified for judgeships? I have voted for dozens of judicial nominees whose philosophies I do not share in deference to the President and to the Constitution. I fear the answer is the belief by a minority of Senators that there is short-term political gain in filibustering these nominees because some special interest groups are demanding this. But the long-term cost of this short-term thinking is tremendous. This unfair obstruction is setting a dangerous precedent and direction for the future of the Judiciary. The Constitution has given the Senate the responsibility to defend the judiciary there is no one else.

Mr. INOUYE. Mr. President, it is most unfortunate that we in the Senate found ourselves embroiled in a lengthy and costly debate over four of President George W. Bush's judicial nominations—and make no mistake: this debate will cost more than is readily apparent.

On a simple level, the preparation for 30 hours of debate on the Senate floor will translate into hundreds—possibly thousands of man hours of preparation. My fellow Senators, their staffs, and the myriad interested civic groups will toil ceaselessly to ensure that both Democrats and Republicans will be able to get their messages across to the American people. The media coverage and analysis are likely to be comprehensive and focused intensely down to the most minute details. Like a ravenous beast, this spectacle will devour our time, attention, and energy, until eventually, it consumes itself.

My Democratic colleagues and I are acutely aware of another cost of this debate: the cost of opportunities lost to the Senate and to the Nation. Thirty hours of sustained attention could have addressed the needs of the 3 million citizens who have lost their jobs since the President took the oath of office. Thirty hours of continuous inquiry could have finished our constitutionally mandated duty of providing funds for the Federal Government. Thirty hours of debate could have broken the logjam on Medicare and Medicaid reform. Any of these goals would have been worthy of America's time, but regrettably, our 30 hours of debate will purchase for us none of these noble ends.

Instead, our colleagues from across the aisle will have spent this time on four men and women—four men and women who have jobs. Four men and women who collectively make a million dollars every year. Four men and women who have already been the subject of countless hours of debate in the Senate, and whose records have already been displayed amply before the American people. Four prosperous men and women against the millions of American citizens who are unemployed.

By far the highest price of these 30 hours of debate, however, will be its contribution to the growing rift between people of different ideological bents. The Senate has always been a place where Senators—a group as diverse and varied as the people they represent—have been able to put aside their differences and work for the good of the country as a whole. As one Senator who has had the privilege of participating in the life of this institution for over 40 years, I cannot understand why the majority leadership has brought us to this point.

My grave concern is tempered only by my hope and confidence that we will rise above the divisive spirit that provoked today's debate, and begin to do the work of the Nation and its people.

The PRESIDING OFFICER. Under the previous order, the hour of 8:30 a.m. having arrived, the Senate will begin an hour of debate equally divided prior to the first cloture vote. Under the previous order, the last 20 minutes will be equally divided with the first 10 minutes under the control of the Democratic leader or his designee, and the last 10 minutes under the control of the majority leader or his designee.

Who seeks time?

The Senator from Utah.

Mr. HATCH. Mr. President, let me personally express gratitude and thanks to Senator SANTORUM of Pennsylvania, Senator NORMAN COLEMAN of Minnesota, Senator LINDSEY GRAHAM of South Carolina, and Senator JEFF SESSIONS of Alabama, all of whom stayed here all night last night to make the points they have made. I personally appreciate it.

Senator GRAHAM asked me to take time to read the full quote of Senator LEAHY that he was not given the benefit of. Senator LEAHY said he was misquoted, so I will read the full quote: This is Senator LEAHY in the CONGRESSIONAL RECORD of June 18, 1998, regarding delays in Senate action on judicial nominations:

> I have stated over and over again on this floor that I would refuse to put an anonymous hold on any judge; that I would object and fight against any filibuster on a judge, whether it is somebody I opposed or supported; that I felt the Senate should do its duty. If we don't like somebody the President nominates, vote him or her down.

Now, that is the correct full statement by the distinguished ranking member of the committee. Senator GRAHAM wanted me to make sure that the full statement was put in.

What is involved here is whether or not we are going to abide by the Constitution because the Constitution is pretty clear on this subject of advice and consent. This little book right here contains the Constitution of the United States. In article II, section 2, clause 2, speaking of the President, it says this:

> He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur, and he shall nominate, and by and with the Advice and Consent of the Senate—

It goes on to say appoint judges. Now, that is what the Constitution says. The Founding Fathers knew what a supermajority vote was. They put that requirement in here, where it was necessary for treaties. It is very clear to anybody who reads it, and I think any constitutional scholar, that advice and consent means a vote up or down, a majority vote up or down.

During the Clinton years, when Democrats were afraid the Republicans were going to filibuster their nominees, Democrat after Democrat got up and said we should not filibuster, vote up or down one way or another. If my colleagues do not like a judge, vote against him or her. A lot of those

quotes have been put in the record during this 40-hour debate. The fact is, when push comes to shove, when it becomes to their political advantage to stop people on the floor of the Senate, they start filibustering.

This business of one-man filibusters, that is pure bunk. The fact is, everybody who came to the floor got a vote up or down. Now, there were a few on our side who wanted to filibuster some of those judges because they were so liberal, but I personally stood up in our conference and in our caucuses, as did Senator LOTT, who was then the majority leader, and said that is not going to happen because that is constitutionally unsound. Plus, it is not right.

But it has happened, as our colleagues on the other side have not been able to stop themselves from taking political advantage.

Why are they doing this against these six people? I get a kick out of the use of 168 to 4. Today it is 6. What will it be tomorrow? I can tell my colleagues the number is going to go up continuously because they do not want anybody on these circuit courts of appeals who may be pro-life. That is what this is all about. It is about abortion. Otherwise, how could anyone find one fault with Priscilla Owen? I do not even know what her position is on abortion. I know that question is not asked by the White House or by us. I do not know what her position is.

What fault can my colleagues find with a woman who was No. 1 on the bar exam in that State and who broke through the glass ceiling for women? Now, women are partners in law firms, where before they could not get secretarial jobs half the time. It was terrible what women went through. She was one of the people who broke through that problem. She won 84 percent of the vote in Texas, which is not particularly a Republican State, although it is fast becoming one looking at what is going on up here, just like Alabama is becoming a Republican State when they see the injustice and unfairness going on here.

Priscilla Owen won 84 percent of the vote; every newspaper in that State ran editorials supporting her, and yet she is being treated like dirt here. Why? Because in a dissent she would have upheld the rights of a parent to have notification that those parents' child was about to have an abortion. Eighty-two percent of the American people believe that is the right thing to do. She was merely evaluating whether the lower court finder of fact in that parental notification case had made an error, and he hadn't, so she thought that the factfinding judge ought to be upheld. What is wrong with that?

Going to Janice Rogers Brown, Janice Rogers Brown won 76 percent of the vote in her reelection, more than the leading liberal then on the California Supreme Court, Stanley Mosk. Mosk was a liberal voice on the court. He got 68 percent. Janice Brown got 76 percent. Now, I know if this was reversed and Mosk was the one who was nominated by a Democrat President, the Democrats would be arguing that he got 68 percent of the vote and that we should just confirm him. And we, as Republicans, probably would if we concluded that he was competent, had a good temperament, was intelligent enough to do the job, was honest and a person of integrity, even though we disagree with him on many issues.

My contention is that the fact that a person may be pro-life is irrelevant, or the fact that a person is pro-choice is irrelevant if that person is otherwise qualified for these Federal judgeships. If we get to the point where we stop people because of one litmus test issue, Katie bar the door, it is going to politicize the Federal judiciary in a way that never should happen.

Janice Rogers Brown is the justice who wrote a majority of the majority opinions last year in the California Supreme Court. She also joined in unanimous opinions, I think around 73 times. There is no question she is in the mainstream. That just has become a bad redefining of terms by our friends on the other side. Since they do not have any real arguments against these people, they will say, well, they are outside the mainstream of American jurisprudence. Well, that is just pure bunk and everybody knows it.

What about Carolyn Kuhl? Carolyn Kuhl has 100 of her fellow judges on the California Superior Court, Democrats and Republicans, vociferously supporting her as somebody who would make an excellent judge on the Ninth Circuit Court of Appeals, which has a tremendous imbalance. Senator SCHUMER is constantly talking about imbalance, that we should balance up the courts, liberals and conservatives being equal. Well, there are 17 Clinton and Carter nominees and judges on the ninth Circuit Court of Appeals. I believe there may be eight judges on that court nominated by Republican Presidents.

If that is the case, if they really want balance, why oppose even voting on Carolyn Kuhl, one of the leading scholars in America? What do they hold against her? When she was a 28-year-old, a junior lawyer in the Department of Justice, doing the bidding of the then-President, Ronald Reagan, she actually helped write some of the briefs which she would do in the normal course of events—anyone would do, even if you do not agree, because that is your job—on some issues that our friends on the other side do not appreciate. Again, it comes down to abortion.

I was talking to one of the leading civil rights ministers who during the 1960s was threatened every day. He was head of the ACLU in Mississippi, a liberal Democrat who has been in some of the Democrats' meetings, during which they've plotted their mistreatment of the President's nominees. He said to me: Senator HATCH, you are absolutely right—he is pro-choice, by the way, but he sees the injustice of this as he came out in support of the judge. He said: Senator HATCH, you are absolutely right, this is all about abortion.

We do not know where these nominees stand on abortion, at least I don't. I have had discussions with all three of them and never asked the question. Whether pro-choice or pro-life is irrelevant if they are otherwise qualified to serve on the courts.

What is being done to these three women we are going to vote on today? We are not voting on their right to be a judge, we are voting on cloture, on the right to go forward and have a vote up and down on these judges. For the first time in history, the absolute first time in history, we now have filibusters against six incredibly qualified, well qualified candidates.

During the 8 years of the Clinton administration, time after time, the Democrats would say: We have a person who is qualified by the American Bar Association. That is the gold standard, the American gold standard. The imprimatur of the American Bar Association, that is all it takes. 377 Clinton nominees got through; one was rejected by a majority vote on the Senate floor. 377. Amazing how the statistics are distorting. This talk about 168—that was a hard fought battle on most of them. It was not at all simple to get them through. Democrats have politicized everything around here with regard to the judiciary. I would like to end that by having votes up and down on all judicial nominees.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. How much time is available to the Senator from Vermont?

The PRESIDING OFFICER. The Senator from Vermont has 30 minutes, and that includes time for the Democratic leader.

Mr. LEAHY. I obviously will not take that time.

Again, in 29 years here, I have been accustomed to some hyperbole and some interesting changes of statistics and even quotes. I have great respect for my dear friend from Utah, but, man, he has hit the trifecta of the hyperbole in the out-of-context quotes.

Of course, what he does not point out, when I spoke of filibusters on this floor, I was talking about the one-person anonymous hold filibuster on Sonia Sotomayor. It was only after a public outcry that she was allowed a vote and she had overwhelming support in this body—not somebody who was almost 50–50 or 52–48, she had overwhelming support. But she was not allowed to get a vote. And even that took 2 years of putting her life on hold. Editorial writers from the right to the left said: Give this woman a vote. This was a consensus candidate.

We hear about all the ones who got votes. For some reason, there seems to be a reluctance by my friends on the other side to talk about the 63 who were never allowed votes. They were

blocked because one Republican would anonymously say no.

I don't find the record of cooperation during the Clinton years to be anything to brag about. Sixty-three fine men and women were blocked and never given a vote. In fact, when President Bush took office, there was an unprecedented number of vacancies in a lot of the circuits. Why? As testimony before our committee showed, because the nominees were told by Republican Senators: We think you are great. We think you would make a good judge. But we have been told we are not allowed to move you forward, we are not allowed to give you a vote. We are not allowed to give you a hearing because someday there will be a Republican President and he will want to fill those vacancies.

Notwithstanding that, when I was chairman, even though it pained me to do it, I allowed those vacancies to be filled by President Reagan's nominees, by President Bush's nominees, even though in testimony before our committee the nominees said they were told by Republicans they would never be allowed to have a vote.

I don't hear the other side talk about the 63 who were given a one-person filibuster, anonymously, whether they were judges from Pennsylvania, Ohio, Missouri, Michigan, or elsewhere. They were blocked by these one-person anonymous holds. Sometimes it was not too difficult to realize who the hold was because it was usually from their own State.

Of course, there were many others. As the distinguished Senator from Utah has said in his own writings, the Democratic President would consult with him on different people and he would tell them no, do not even send this one up, they will not get a vote. So they never came forward. I guess on inaugural day that consultation stopped.

We have confirmed 168 and held back 4. Is anyone going to tell me with a straight face that in the Bush administration, with all the promises they have made to the far right, there are not a whole lot of pro-life judges in here? Of course there are. Many have been very clear, saying they were pro-life, but I voted for them because I believed they could be fair, they would be judicious, they would follow the law, they would follow the precedence and not their personal inclinations.

When I hear of the crocodile tears about Ms. Kuhl, saying she was a young person writing a memo for the Reagan administration, do not hold that against her—come on. She was not only writing a memo, she was a spear carrier for Bob Jones University.

Now I know Bob Jones University is kind of a pet of the other side, but this is a university where the founder and philosophies are anti-Catholic, anti-Mormon, anti-Black. Yet we are supposed to say, forget the fact she was anti-Catholic, anti-Mormon, anti-Black in her support of this, she was only doing her job. She was only doing her job.

A lawyer has a right to follow their conscience. If a lawyer has a client and says: Go out there and take a position that really should not be sustained—in this case, a position on Bob Jones University—you ought to say: No, I quit. I quit. We have seen many instances of that in the past.

Not counting the time for the leader, how much time remains to the Senator from Vermont?

The PRESIDING OFFICER. Thirteen minutes.

Mr. LEAHY. I yield 10 minutes to the distinguished Senator from California.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, I thank Senator LEAHY for so many things. He has been so strong on this whole issue of making sure we do not put on the bench folks who are so outside the mainstream that they would set us back. Because you have a very strong position as a top Democrat, you have allowed to be approved 168 of George Bush's nominees.

He has talked to us in depth, as well as other Members of the Judiciary Committee, about the four, up to now, who the Senator believes are far outside that mainstream. In order to protect the rights of our people, this is not some argument about a football game, that you are beating us 168 to 4. It is about protecting the people we represent, protecting their rights, protecting their health, making sure they are treated equally before the law. All the things that we as a great country, the greatest in the world, have given to our citizenry, could be overturned if we wind up having a court system that is radical and that moves away from those freedoms.

So if nothing else, I hope people in America understand that the Republicans in the Senate are complaining because they did not get all of their President's nominees. So we have made the point over and over.

Today, we are going to add two more, I believe, to this list and it will be 168 to 6, for a 97 percent success rate. Why are we doing that? Why do we think we are going to stop two of these candidates today—actually, we have stopped a third before and we will do that again. Because they do not reflect the values of this country in their decisions. I could go over them one by one; I don't have the time to do that. And they would be dangerous.

Here is the interesting thing. We have sitting in the committee two nominees who cleared the committee, Mark Filip and Gary Sharp, one from Illinois, one from New York, and all you have to do is bring those out. They have full support. You will be back up to 98 percent before the day's end.

I say to my friends, I do not deserve to be a Senator if I do not exercise the power our Founders gave us explicitly in the Constitution, the power of advice and consent. It does not say sometimes advice and consent. It does not say maybe advice and consent. It does not say if you feel like it. It does not say if there is a Democrat in power or Republican. It says the Senate has the power to advise and consent. This does not mean rolling over for any Member.

That is the key point. Do the people of America want a rubberstamp Senate or do they really want Senators who take their responsibility seriously and look at each nominee seriously?

The power we were given is a very important power. I will explain that to the people of my State. If they want a Senator who will be a rubberstamp for a President of either party, they need to think long and hard about Senator BOXER because I am not their girl. I am not going to do that. That is not why I am here.

So anyone reading the Constitution knows that Senator LEAHY and members of the Judiciary Committee—and I see the Senator from Illinois here—they are just doing their job.

The Republicans have spoken almost 40 hours. I lost track after 30 hours. They are telling us essentially: Don't do your job; be a rubberstamp. We are not going down that path.

I am happy to yield.

Mr. DURBIN. I know we are coming to the breathless close of this wonderful marathon, this made-for-TV filibuster.

I ask the Senator through the Chair the following question: Is the Senator aware in the early hours this morning Republican Senators from Kansas and Pennsylvania came before the Senate and raised the question of whether the Constitution includes the right to privacy? According to the Senator from Kansas, he referred to it as the discovered right of privacy in the Constitution.

I would like to ask through the Chair if the Senator from California could reflect on the right to privacy, particularly as it relates to one anomaly from her State, Carolyn Kuhl.

Mrs. BOXER. Absolutely. I will show the number of women's organizations who oppose Carolyn Kuhl. I am glad the Senator raised this question.

It is particularly interesting that today we have three women before the Senate. I say to my colleagues from both sides of the aisle, as a woman who has been in public life, actually elected to my first office in 1976, making sure that women have an equal opportunity, making sure that women move into positions of leadership has been one of the hallmarks of my career.

Now we hear people on the other side saying anyone who votes against these women is not in favor of women.

Let me state from the bottom of my heart—and I will get to that issue of privacy—the worst thing that can happen to the women of this country—to your daughters, to your nieces, to your aunts, to your grandmothers, for that matter, to your moms—the worst thing is to have a woman in power who rules against the interests of women. Carolyn Kuhl is one such woman. Janice Brown is one such woman. And Priscilla Owen. And those are the three

who come before the Senate today in a package. Each of them, if you look at their decisions, has been hostile to women.

I will talk about the Carolyn Kuhl case. Before Carolyn Kuhl, as a sitting State judge, comes a case in which a woman is explaining that she went to a physician for a followup mastectomy examination, a very humiliating, difficult, painful moment for that woman. That woman has written us and her story is in the RECORD. I have placed it in the RECORD.

The woman simply said to Judge Kuhl: My privacy was violated because I went to my doctor and the doctor allowed in the room a drug salesman. The doctor did not ask me, the doctor never told me.

This drug salesman was leaning over the table, was fanning this woman with a fan, was involved in this intimate exam.

Every woman in this country knows that if that happened to them, they would be humiliated beyond belief. This woman had the courage to sue. Carolyn Kuhl ruled against the woman, and the excuse is, she allowed the case against the doctor to go forward. Untrue. That particular case never was before her. The issue was breach of privacy. She ruled against the woman. Carolyn Kuhl had to write an apology to the committee for misstating what actually had happened.

Mr. LEAHY. Will the Senator yield?

Mrs. BOXER. Yes.

Mr. LEAHY. In other words, under this ruling, if the doctor had invited his auto mechanic because he might like to watch breast exams, put him in a white coat, it would be the patient's fault for saying: By the way, is this another doctor? Is this your auto mechanic?

Mrs. BOXER. My friend is right.

Mr. LEAHY. Frankly, I would hope I could say to my wife or my daughters, there would be a right of privacy issue here. For those who say there is no privacy in a case such as this, they have never been in a doctor's office for an examination.

I yield back to the Senator from California.

Mrs. BOXER. Let me say that, fortunately, her decision was overruled unanimously by the State appellate court. This is the State appellate court. There are lots of Republicans on that court. They saw this was a terrible decision.

Here is the list of women's groups against the nomination of Carolyn Kuhl. It includes Breast Cancer Action, Breast Cancer Fund—on and on—Women's Leadership Alliance. And the same list—actually a few different names, for Janice Brown and for Priscilla Owen. These women do not care about women advancing. They have not cared about the equal rights of women.

Let's have some backbone here and stand up when we think these nominees are good for the people and oppose them when we know they have been bad for the people and they will do worse yet.

The PRESIDING OFFICER (Mr. SMITH). The Senator's time has expired.

Who seeks time?

Mr. LEAHY. Mr. President, what is the time remaining?

The PRESIDING OFFICER. The Senator from Vermont has 2 minutes 13 seconds; the Senator from Utah has 8 minutes 12 seconds.

Mr. LEAHY. Well, and there is time reserved for the two leaders?

The PRESIDING OFFICER. There are 10 minutes each for the majority leader and the minority leader.

Mr. LEAHY. Mr. President, over these past 24 hours, the American public has heard a lot of what one could generously describe as wishful thinking from the other side of the aisle about the history of the Senate in considering nominations, especially recent history of Republican obstruction when a Democrat was in the White House. Their efforts to re-write American history and the history of this Senate remind me of the old Soviet Union, rewriting its history books to suit the ruling party and erasing photos that would reveal inconvenient facts. Their misleading and wrong assertions have been made over and over and over again, perhaps in the hope that repetition would turn those falsehoods into fact. I think it is important for posterity to set the record straight.

Last night, echoing Republican press conference, Republicans took to the floor to claim that no judicial nominee had ever been filibustered or blocked from getting a confirmation vote in the history of the Senate. They made these assertions repeatedly while pointing to signs with the number zero printed on them. They refused to acknowledge that any judicial nominee has ever been filibustered, that any has ever been denied a confirmation vote, that any nominee for even a short-term position has ever been filibustered on the floor or filibustered in Committee. The repeated the party line from GOPUSA that ''no federal judicial nominee by the past 42 presidents has been filibustered in the history of the U.S. Senate dating back to 1784.'' I ask unanimous consent to place the following excerpt from the New York Times from 1968 into the RECORD about the filibuster in the Senate over the nomination of Justice Abe Fortas to be Chief Justice of the Supreme Court, a letter signed by more than 60 law professors from across the country in support of the use of the filibuster of judicial nominees, and an important and outstanding letter from Professor Michael Gerhardt which thoroughly addresses the specious arguments being made about the use of the filibuster under our Constitution. I hope that this evidence would cause some of my colleagues to reconsider some of the false and misleading statements made by my colleagues on the other side of the aisle. One can always hope.

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

[From the New York Times, Sept. 25, 1968]

PRECEDENT FOR JUDICIAL FILIBUSTERS

CRITICS OF FORTAS BEGIN FILIBUSTER, CITING ''PROPRIETY''

GRIFFIN ATTACK LASTS 3 HOURS—MANSFIELD BACKS JUSTICE, BUT SCORES LECTURE FEE.

May 16, 2003.

Hon. BILL FRIST and TOM DASCHLE,
U.S. Capitol,
Washington, DC.

DEAR SENATORS FRIST AND DASCHLE: As law professors, we write to express our opinion that the Senate's use of the filibuster with respect to both legislation and nominations is constitutional. Both the text of the Constitution and historical practices strongly support the constitutionality of the filibuster. Article I, Section 5 expressly provides, ''Each House may determine the Rules of its Proceedings.'' Article I, Section 5 plainly authorizes the Senate to make procedural rules. It empowers the Senate as well to delegate what is sometimes final authority over the fate of legislation and nominations to committees and their chairs. The textual authority for the filibuster is precisely the same as those for these other measures. If these measures are constitutional, then so too is the filibuster.

The Supreme Court has repeatedly emphasized the relevance of historical practices for determining constitutionality. The filibuster, understood as protracted debate precluding final Senate consideration of a legislative matter, began early in the history of the Republic. It has been used frequently by senators from both parties with respect to nominations as well as legislation. In fact, it has been used effectively to defeat presidential nominations, including the nominations of Abe Fortas to be Chief Justice of the United States in 1968, Sam Brown to be Ambassador in 1994, and Henry Foster to be Surgeon General in 1995. This longstanding historical practice weighs heavily in support of the filibuster's constitutionality.

The filibuster reflects the Senate's longstanding respect for minority views and underscores the unique role of the Senate as a part of American democracy. It has the salutary effect of giving an incentive to all sides to seek compromise on issues where points of view are sharply divided. With regard to nominations to an independent branch of government such as the judiciary, the filibuster encourages the President to find common ground with the Senate by nominating individuals who can garner consensus.

For these and other reasons, we conclude the filibuster is constitutional.

Very truly yours,
(Signed by 60 Law Professors).

UNIVERSITY OF NORTH CAROLINA
SCHOOL OF LAW,
November 10, 2003.

Hon. PATRICK LEAHY,
Dirksen Senate Office Building,
Washington, DC.

DEAR SENATOR LEAHY: I understand that this week the Republican leadership will be coordinating thirty hours of debate about the legitimacy of the recent filibusters against three of President Bush's judicial nominees. To assist you (and the Senate) in this debate, I have taken the liberty of providing below a revised version of my testimony earlier this summer on behalf of the filibuster. The revised testimony reflects my thinking and research on the subject since my testimony in May and June. My continued thinking and research on the filibuster

have clarified further the solid constitutional foundations for filibustering judicial nominations. My hope is that this revised testimony may help to set the record straight on the Senate's longstanding commitments to allowing the filibuster (against all kinds of nominations) and to amending its rules in accordance with its rules.

EXECUTIVE SUMMARY

The filibuster derives its authority from the Senate's express power to design its own procedural rules to govern its internal affairs and the Senate's consistent support for its legitimacy. It is also one of many counter-majoritarian features of the Senate, including the committee system and unanimous consent requirements. If these practices are constitutional, then so too is the filibuster.

While there have been many criticisms directed against the filibuster in recent months, none has merit, in my opinion. First, the most popular arguments against the filibuster are circular, i.e., they simply assume their conclusion. The arguments presume that some constitutional principle, such as majority rule or anti-entrenchment, trumps the filibuster. Then, operating from this premise, they set out to demonstrate flaws in the arguments of the defenders of the filibuster. Yet, exposing flaws in the other side's arguments does not make an affirmative case for a constitutional principle of majority rule or anti-entrenchment; it merely shows imperfections in the defense of the filibuster. The absence of support for the other side does not establish the legitimacy of the case against the filibuster. Those maintaining that the filibuster is illegitimate must show the constitutional foundations for the principles on which they are relying. Second, the arguments against the filibuster—e.g., it violates majority rule—cannot be squared with the constitutional structure as it was designed or has evolved. Third, Article I of the Constitution contains no explicit or implicit anti-entrenchment principle that would preclude the Senate from adopting, for the sake of institutional stability and order, certain procedural rules that carry over from one session to the next and may only be altered with super-majority approval. In fact, entrenchment is far more consistent with our constitutional structure than anti-entrenchment is. Entrenchment is much more the rule rather than the exception in the legislative process. Even legislative bodies such as the House that formally reconstitute themselves as the outset of each new session have pre-set agendas in place prior to any vote as to how they should proceed to reconstitute themselves, what they should do once they have formally reconstituted themselves, the committees to which members need to be assigned, how those assignments may take place, the jurisdictions of those committees, and even the rules they may select under which to operate. Moreover, given that only a third of the Senate is up for re-election at any one time, there is no ''new'' majority that comes into power at the outset of a session who can credibly claim any entitlement to vote on the rules under which it would be operating throughout the session.

The filibuster is best understood as a classic example of a non-reviewable, legislative constitutional judgment. It is a practice that has the same claim to legitimacy as many countermajoritarian practices within the Senate, including the committee structure and unanimous consent requirements. The Constitution permits all of these practices, but it does not mandate any of them. These practices define the Senate's uniqueness as a political institution, particularly its historic commitments to various objectives—respecting the equality of its membership and to minority viewpoints; encouraging compromise on especially divisive matters; and facilitating stability, order, and collegiality in the long run. The principal checks on these practices, including the filibuster, are political. They include the Senate Rules, the need to maintain collegiality within the institution, and the political accountability of senators for their support for, or opposition to, filibusters.

I.

Neither the Constitution nor the Senate Rules expressly mention, or mandate, the filibuster. Nevertheless, the best starting place for understanding the authority for the filibuster is Article I of the Constitution, which governs and defines the powers of the Congress. In Article I, section 5, the Constitution provides, ''Each House [of the Congress] may determine the Rules of its Proceedings.'' This section plainly authorizes the Senate to make procedural rules, including but not limited to the length of debate in the Senate. This section further authorizes the Senate to delegate official responsibility to smaller units (and even individual members) within the Senate. Many of these delegations allow committees and their Chairs to have what is sometimes final say over the fates of legislation and nominations. This same authority provides the support for many informal senatorial practices such as senatorial courtesy—in which individual senators may make recommendations to the President on the people whom he should nominate to federal offices in their respective states—as well as the blue-slip process that has traditionally allowed individual senators with the means by which to nullify nominations to judgeships within their respective states. In addition, a single senator may place a ''hold'' on legislation or a nomination, postponing consideration to a later date. The filibuster derives its legitimacy from the same authority that allows for each of these other legislative practices—Article I, Section 5, which empowers the Senate to implement procedural rules, including the specific rule governing the procedure for cloture, Rule XXII. If these practices are constitutional, then so too is the filibuster.

The other, possible authority for the filibuster is historical practices. The filibuster has been employed, in one form or another, as extended debate in the Senate throughout the history of the Senate. In fact, ''the strategic use of delay in debate is as old as the Senate itself. The first recorded episode of dilatory debate occurred in 1790, when senators from Virginia and South Carolina filibustered to prevent the location of the first Congress in Philadelphia.'' While the First Congress allowed a so-called motion for the previous question which could not be debated, its name was misleading. In practice, ''the previous question motion was seldom used before the Senate abolished it in 1806;'' and it rarely succeeded in silencing those senators determined to continue the debate. Instead, the motion tended, once made, to end debate by requiring the removal of the matter being debated from the Senate agenda. Thus, it did not force a vote but rather forced the Senate to move onto other business. Moreover, the availability of this motion did not prevent the Senate from continuing to permit protracted debate to delay floor votes. The eminent biographer Robert Caro explains the history of the filibuster subsequent to the abolition of the previous question motion:

''For many years after 1806—for 111 years, to be precise—the only way a senator could be made to stop talking so that a vote could be taken on a proposed measure was if there were unanimous consent that he do so, an obvious impossibility. And there took place therefore so many 'extended discussions' of measures to keep them from coming to a vote that the device got a name, 'filibuster,' from the Dutch *vrijbuiter*, which means 'freebooter' or 'pirate,' and which passed into the Spanish as *filibustero*, because the sleek, swift ship used by the Caribbean pirates was called *filibote*, and into legislative parlance because the device was, after all, a pirating, or highjacking, of the very heart of the legislative process.''

In other words, the practice in the Senate from 1806 until 1917 allowed the smallest minority possible with the Senate—a single senator—to bar a floor vote on any legislative matter by engaging in an extended speech. During this period, every floor vote required unanimous consent.

The Senate first, formally curbed the practice of endless debate in 1917, after eleven senators had successfully filibustered President Woodrow Wilson's proposal to arm American merchantmen against German submarine attacks. At President Wilson's urging, the Senate passed Rule XXII, which allows debate upon a ''pending'' matter to be terminated when, after a petition for such ''cloture'' was presented by sixteen senators and approved by two-thirds of the senators present and voting. In subsequent years, senators from both parties have used the filibuster to block a floor vote on a wide range of legislation. From 1917 until 2000, cloture was invoked 193 times out of the 545 times it was attempted. During the period from 1927 through 1962, the Senate did not invoke cloture once. In this period, conservative senators repeatedly used the filibuster to block civil rights legislation, provoking liberal senators to denounce the filibuster as illegitimate and conservative senators to defend it. In the late 1960s and early 1970s, conservatives and liberals switched positions on the filibuster: Liberal senators used the filibuster to block centerpieces of President Nixon's social and economic agenda while many conservative senators questioned its legitimacy. After Bill Clinton became president, a series of Republican filibusters blocked by aspects of his legislative agenda, including a comprehensive bill providing for national health care reform. Nevertheless, the filibuster has endured, with the most recent reform occurring in 985 when a supermajority within the Senate approved an amendment to Rule XXII requiring only three-fifths, rather than two-thirds, of the Senate as the requisite number to invoke cloture.

Throughout the long history of its deployment in the Senate, the filibuster has not been restricted to delaying floor votes only on legislation. It has been often used to thwart presidential nominations. The first, recorded instance in which it was clearly and unambiguously employed to defeat a judicial nomination occurred in 1881. At the time, Republicans held a majority of the seats in the Senate but were unable to end the filibuster, which had been employed near the end of the legislative session, the preclude a floor vote on President Rutherford B. Hayes' nomination of Stanley Matthews to the Supreme Court. Though Matthews eventually served as an Associate Justice, it was only because Hayes' Republican successor, President James Garfield, re-nominated Matthews in the next legislative session. (There were also nine other occasions in the nineteenth century when the Senate held no floor votes on Supreme Court nominations.) A recent Congressional Research Service study shows that from 1949 through 2002, senators have employed the filibuster against 35 presidential nominations, on 21 of which senators had sought and invoked cloture. 17 of the 35 nominations filibustered were to Article III

courts. All 21 nominations on which cloture was invoked were eventually confirmed. Of the 14 nominations on which cloture was sought but not invoked, 11 were eventually confirmed. For instance, Republican senators filibustered President Clinton's nominations of Walter Dellinger to head the Office of Legal Counsel in the Justice Department and Janet Napolitano to be U.S. Attorney for Arizona, but eventually the Senate confirmed both nominees—Dellinger after Republican senators relinquished their opposition to his nomination and Napolitano after the Senate voted 72–26 on a cloture motion to end the filibuster against her nomination. Four of the 35 filibustered nominations failed altogether—then-Associate Justice Abe Fortas to be Chief Justice and Judge Homer Thornberry to be an Associate Justice in 1968, Sam Brown to be Ambassador in 1994, and Dr. Henry Foster to be Surgeon General in 1995. Other nominations have failed without having been formally filibustered, as Senator Jesse Helms' threat of a filibuster nullified President Clinton's intention to nominate then-Assistant Attorney General Walter Dellinger as Solicitor General. Another dramatic use of the filibuster occurred when Republican senators filibustered five of President Clinton's nominations to the State Department in order to gain leverage in a dispute over whether the State Department adequately investigated allegations that a former Clinton campaign worker who later served in the department had improperly searched the records of 160 former political appointees and publicly disclosed the contents of two of the files. As John McGinnis and Michael Rappaport concluded in their extended study of the Constitution's super-majority voting requirements, ''the continuous use of filibusters since the early Republic provides compelling support for their constitutionality.

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

Mr. LEAHY. I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I am highly offended, and I think anybody who is fairminded would be highly offended by this one-sided, partisan attack on Judge Kuhl, and bringing up that particular case because everybody knows that case was settled by the woman's doctor, the one who was at fault. And, frankly, that was hitting below the belt.

Carolyn Kuhl, she is a pioneer for women: cum laude graduate of Princeton University; Duke University Law School: Order of the Coif; law clerk to then-Judge Anthony Kennedy of the Ninth Circuit.

She worked at the Department of Justice: Special assistant to the Attorney General; Deputy Assistant Attorney General; Deputy Solicitor General.

She was 28 years old when she was asked to work on the Bob Jones case. I think it is slanderous to say that Republicans support Bob Jones University's attitudes about race. Give me a break. Nobody on this side does, and neither did she. The case she worked on was a tax issue, and she had an obligation to work with her senior people in the Department. She was very junior at the time. And, frankly, they had a reasonable argument about a certain IRS tax exemption relevant to private universities.

She was a partner in the Los Angeles firm of Munger, Tolles & Olson, one of the best law firms in the country. She is the first female supervising judge of the Civil Department of the Los Angeles County Superior Court.

This is a woman of tremendous abilities. They pick one case out of the hundreds or thousands she has heard and tried, and then distort that case. It drives you nuts around here.

''Both Democrats and Republicans . . . step up to the plate to support [Judge] Kuhl.'' This is Vilma Martinez—not known for conservative politics, by the way—who is one of the top leaders in the Mexican American Legal Defense and Education Foundation, if I recall it correctly. In the Daily Journal this is what Vilma Martinez had to say:

> [Judge Kuhl] stepped up to the plate. She wrote letters, made phone calls and exhorted her fellow Republicans to confirm [Judge] Paez and other Clinton nominees.

Judge Paez was a very controversial nominee. I know. I had to work it through to even give him a chance. But he got a vote up and down. And, unfortunately, some of my colleagues who were against him were right. He has become a very activist judge on the Ninth Circuit Court of Appeals, just stepping right in and becoming a member of the leftist majority on that court.

Vilma Martinez, this Hispanic-American leader, says:

> [Judge Kuhl's efforts are] characteristic of her sense of fairness and respect for an independent judiciary.

She goes on to say:

> [M]any of the groups that support Judge Paez, ironically, have turned their fire on Judge Kuhl, apparently to exact payback against Senate Republicans.

If you listen to those arguments, it is easy to conclude that.

Then, in the bottom paragraph, Vilma Martinez says this—and Vilma Martinez is a Democrat, not a Republican—she says:

> This turnabout is not fair play. It is the continuation of a vicious cycle that punishes worthy judicial candidates in a misguided effort to use the judiciary to further narrow political ends.

That is the type of stuff we are dealing with around here: distortions, distortions of the facts, maligning absolutely qualified people. Look at this. Carolyn Kuhl has the support of pro-choice women. Anne Egerton, judge on the LA Superior Court:

> I understand that some have raised concerns about Judge Kuhl's commitment to gender equality and reproductive rights. I do not share those concerns. . . . I have been a registered Democrat for thirty years, and I have supported—financially and otherwise—[Senator Feinstein], Senator Boxer, and other Democratic legislators and candidates. I have no reservations in recommending Judge Carolyn Kuhl . . . for appointment to the Ninth Circuit Court of Appeals.

Take Gretchen Nelson, pro-choice Democrat, plaintiff's attorney. On February 14 she had this to say:

> I am opposed to the appointment of any judicial nominee who is incapable of ruling based upon a considered and impartial analysis of all of the facts and legal issues presented in any manner. Judge Kuhl is not such a nominee and she is well-deserving of appointment to the Ninth Circuit.

Let's quit slandering these people. Let's quit distorting the facts. All because you think they might be pro-life.

My gosh, look at the women judges who support Judge Kuhl's confirmation. A bipartisan group of 23 women judges at the Los Angeles Superior Court, on February 22, said this:

> Judge Kuhl approaches her job with respect for the law and not a political agenda. Judge Kuhl has been a mentor to new women judges. . . . She has helped promote the careers of women, both Republican and Democrat. . . . As sitting Judges, we more than anyone appreciate the importance of an independent, fair-minded and principled judiciary. We believe that Carolyn Kuhl represents the best values of such a judiciary.

Let's get this out of this totally slanderous political debate and start talking about the real facts.

Democrats on this Floor have tried to confuse the issue, to pretend that what they are doing is no different than what happened to some of President Clinton's nominees. But they are dead wrong. They are comparing apples to oranges. They are different. We did not filibuster a single Clinton nominee who had majority support. Once on the floor, all of them received up or down votes. 377 confirmed for Clinton. Despite the Democrats, not because of them, we have confirmed 168 Bush nominees.

One Senator went so far as to call the four filibustered nominees, as of yesterday, lemons, if you can believe it, when all of them have well qualified ratings from the American Bar Association.

Look at the facts. President Bush has had 29 circuit court of appeals nominees confirmed, but another 12 of them, at least, are facing filibusters. I believe that number is really higher, about 17. It is an amazing, unprecedented series of filibusters of appellate nominees, what we are going through, and there are more to come.

Let me get the last chart up there. The real facts are that since we have had the filibuster rule, since the administration of Franklin Delano Roosevelt, we have had 2,372 judges confirmed and zero filibustered—until now.

Now, it is one thing to filibuster, it is another thing to slander these people. I have seen so much of that over the last 2 or 3 years that I am just sick of it. I am just sick of it.

Let's give these people votes up and down. The reason they will not is they know there are enough good-thinking people in this Senate on both sides who would—for all of these six people who are being filibustered—confirm them on a bipartisan majority.

So a tyrannical minority—which is in so many ways slandering these people, these honest, decent, good people—is preventing votes up and down on judicial nominees for the first time in the history of this country.

Mr. President, how much time do I have left?

The PRESIDING OFFICER. The Senator has 1 minute 15 seconds.

Mr. HATCH. I yield it to the distinguished Senator from Pennsylvania.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I plead with the Members on the other side of the aisle to stop this. I have folks on our side of the aisle saying: Don't plead with them. Don't plead with them. Let them do it. Because we will have our opportunity someday, and we will make sure there is not another liberal judge ever, ever, to get on that—no more Richard Paezes, no more Ruth Bader Ginsburgs—never, because what is good for the goose is good for the gander. Let them up the ante. We will take all those activist judges they send up and we will shoot them down.

Is that what they want? Anybody who gives a political opinion in America no longer will be eligible for the judiciary. We are going to sanitize the judiciary? We are going to send it to ''Mediocrityville''? Is that what we really want here?

Because let me assure you, as I live and breathe, that is what will happen. If we keep this up—it is 4 today; it will be 6—in 2 hours it will be 6. The Senator from Utah said pretty soon it will be 12. Why it is only 4? Because you just started. You always start with 1.

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

Mr. SANTORUM. Stop now. You have a chance to save this country and this judiciary. Stop now.

The PRESIDING OFFICER. The Democrat leader is recognized.

Mr. DASCHLE. Mr. President, as I understand it, I have 10 minutes.

The PRESIDING OFFICER. The Senator is correct.

Mr. DASCHLE. I would ask the Presiding Officer if he could notify me when I have used all but 3 minutes.

Mr. President, I find it remarkable that our colleagues can continue to come to the floor these past 40 hours and lament the fact that we have had votes on 172 judicial nominees and 4 of them have not been confirmed because they have not attained cloture. With passion and with emotion they scream out. Where is the fairness for those four nominees, they ask. Where is the fairness?

I find it remarkable that some of the very people who lament not getting a vote for those 4 nominees were participants in the effort to deny even a hearing to 63 nominees for the bench during the Clinton administration. Don't talk to me about the unfairness of a cloture vote on the Senate floor. Don't talk to me about cloture. Don't talk to me until you talk about those 63 who waited, in some cases 4 years, and never got a hearing—or a committee vote.

Denying consideration of judicial nominees is an ongoing practice that our Republican colleagues have been involved in for as long as they have been in the Senate. So this extraordinary outcry, this emotional fervor that we hear so often on the other side, with their misleading charts, does not bear up to the facts.

You tell those 63 people who have not had even a chance for a vote, who should have been confirmed, how it is right for them now not to have the jobs for which they work were nominated—you tell them about the fairness of those four votes.

We have done all we can to work with our colleagues to accommodate all nominees. We have now spent 40 hours talking about this matter. And we have actually spent over 20 days debating judicial nominations since the Bush administration has come to office, 20 days debating and largely confirming the nominees sent to us from the White House.

From the beginning of these last 40 hours, our message was really very simple: We have confirmed 168 of the 172 nominees to date. We have worked with our colleagues on the other side to do as much as we can to ensure that they get a fair debate and ultimately an opportunity to be voted on, whether it is a cloture vote or an up-or-down vote on this Senate floor—unlike what they did on 63 occasions during the Clinton administration.

What we have said over the course of these 40 hours, though, is that it is very unfortunate that while we are debating these four jobs, we are not debating what the American people care most about. We are not debating the fact that 3 million people have lost their jobs, or what to do about it. We are not debating the fact that we are not working on the things the American people care most about.

Several times we spoke about the need to pass the highway bill, and our Republican colleagues ignored our concerns. Several times we spoke about the need to pass the manufacturing jobs credit bill; our Republican colleagues ignored our concerns. These are bills that could truly provide the opportunity for the unemployed in this country to actually acquire a good job and be a little more confident that they will have a brighter future.

Several times we have asked for an increase in the minimum wage by unanimous consent so those who are working would get the pay they deserve.

Republicans objected.

We could have been spending our time a lot more effectively, a lot more in concert with the expectations of the American people, but that has not been the case.

We will continue to work with our colleagues, and in those cases where we can find agreement, we will continue to confirm most of the Bush nominees. But that will not be the case this morning.

We are now debating three justices who continue to insist on putting their own views above the law, to interpret law on their own and without regard to judicial precedent.

As a result, virtually every single women's organization and every single civil rights organization in the country has urged the Senate, pleaded with all 100 Senators to reject these nominations.

I am very grateful for the effort made by our Democratic colleagues on the Judiciary Committee who have put the time and effort they have into analyzing the record of these nominees and have concluded, as I have, that they do not warrant confirmation.

Mr. President, there will come a day, once again, when we can find nominees for whom there can be agreement. But until that happens, until we have the confidence that we can look upon them with an expectation that they will uphold the law, interpret law and not write the law, we have no other recourse but to oppose their nominations, as we will this morning.

I yield such time as he may require to the distinguished Senator from New York.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Thank you.

Mr. President, I thank my colleague from South Dakota for once again being our leader in every way. We are grateful to him, and I think I speak for every Member on this side of the aisle.

Mr. President, this debate ends as it began, with this one immutable fact: 168 to 4; 168 judges confirmed, 4 rejected.

The other side has spent 39 hours trying to come up with other signs, trying to come up with other ways. In reality, this debate has actually helped our side because this fact stands out above all others.

Are we being obstructionist when we approve 168 and reject 4? Everyone but the most extreme of Americans say absolutely not. Are we violating what the Founding Fathers wanted when they talked about advise and consent when we merely blocked 4, 2 percent of the 100 percent of the judges brought up? Every seventh grader who studies constitutional law knows that 168 to 4 is not obstructionist.

The bottom line is the other side has spent hours on sophistry, successful filibusters are wrong, but unsuccessful filibusters are OK because they engaged in filibusters on judicial candidates in 2000 and 1994 and previously. Filibusters of judges are unconstitutional, but filibusters of statutes, of laws, of bills are perfectly OK. What sophistry.

The bottom line is that the other side comes up first with the result and then tries to make the argument backward. I understand why. The small hard-right minority has a scorched earth policy in America. They have to get everything their way and then are pushing, pushing, pushing the other side. They are saying: Do something. But, frankly, because of the wisdom of the Founding Fathers, the Senate still is the cooling saucer, and there is nothing they can do.

This debate has degenerated. To try and get this to be 172 to 0, there is name-calling: anti-Hispanic, anti-Black, anti-Catholic. We know what low and cheap shots those are. We are opposing judges based on their being out of the mainstream, judges who would make law, not interpret law. I don't like judges far left or far right who do that.

Then last night we got from my good friend from Utah, whom I love, he says calling for rollcall votes was obstructionist. That is how absurd and how frustrated and how piqued the other side has been. Calling for rollcall votes on judges is obstructionist? I say to my colleagues, we on this side would have rather spent the time debating how to bring jobs back to America, how to bring health care to America, how to raise the minimum wage.

But at the end of the day, this exercise, come up in the mind of a few, has ended up benefiting us, and there is one solution, I say to my good friend from Pennsylvania, who pleads earnestly——

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

Mr. SCHUMER. To stop this, and that is come talk to us, work with us in a bipartisan way, nominate judges both sides can support. Don't say my way or the highway and this will stop. But that is the only way to stop it.

Thank you, Mr. President.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Mr. President, over the past 2 days, the Senate has sustained what has truly been an extraordinary, all-hours debate, a debate on judicial confirmations and on the very nature of each Senator's duty and right to give advice and consent on the nominations sent to us by the President of the United States, just as the Constitution requires.

We have placed our differences over the last 39 hours, to paraphrase Justice Brandeis, in the disinfectant sunshine of public opinion. This continuous debate has been framed by the bipartisan effort on a very simple principle; and that is, give us an opportunity for an up vote or a down vote, just give us that right to vote.

We have been focused on the Fifth Circuit Court nominee, Justice Priscilla Owen of Texas, who has already been denied that simple up-or-down vote on three previous occasions. It has been focused on two new circuit court nominees from California, Judge Carolyn Kuhl, nominated to the Ninth Circuit Court of Appeals, and Janice Rogers Brown nominated to the DC Circuit Court of Appeals.

We also debated the bipartisan proposal cosponsored by Democrat Senator ZELL MILLER of Georgia to limit the use of the filibuster as to all nominations, a proposal that I believe will change the all too rancorous way that Washington does business. Indeed, this proposal, although more narrow, was based on one previously supported by Senators KENNEDY, LIEBERMAN, KERRY, and other Democrats.

The minority has suggested again and again—we heard it just a few minutes ago—that we should not have spent this time on this issue of the Constitution of the United States of America; that we should not have spent this time discussing the unfair treatment of the President's nominees. They argue that we should not have spent this time on these new judicial nominees that we will be voting on in cloture in just a few minutes.

We simply don't believe that the Senate stewardship, our responsibility, that stewardship for the third branch of Government is the least of our duties, as is suggested that we should not be spending time focused on these issues.

It is almost as if the other side of the aisle said these issues are not important. On the contrary, the Senate stewardship of the independent judiciary is perhaps the Senate's most important task. Why? Because it is our responsibility. It is not the responsibility of the House of Representatives.

George Washington understood this. He believed the judiciary was the most important of the three branches because the courts would protect our liberties. But America's courts do much more than that.

We heard a lot about the economy. We heard a lot about jobs. It is our independent judiciary that provides the anchor for America's economic strength. It is the stability, and it is the confidence that our courts provide that make the United States of America the safest location, the best location for domestic investment, for foreign investment, whether in industry or commerce, and for the overall economy. Why? Because the courts protect those liberties. That means, what? More jobs. It means more prosperity for all Americans.

Our courts guard the rule of law, and to the extent they are free of results-oriented politics and other forms of corruption, they are the foundation stones that have allowed America's history to unfold differently than our sister republics to the south.

In this past year, Americans have come to understand the influence of the courts over our everyday lives, over our daily lives, over our national culture in ways that our Founding Fathers would have never imagined.

Of course, the Democrats' complaint that we are spending too much time on these issues is a little bit strained in that it is they who are filibustering, continuing to debate, denying that opportunity to vote yes or no on these nominees. The filibuster rule, when not abused, is intended to give the minority more time, to allow more time for debate.

Despite the complaints and the charges back and forth, I do give my Democratic colleagues real credit for collegially joining in this debate over the last 39 hours. I am enormously proud of my Republican colleagues. I believe that both sides should feel a certain degree of satisfaction as to how this historic debate has been conducted.

In the past 2 days, we have debated three nominees who the American Bar Association considers qualified to serve on the appellate court but who a Democrat minority considers out of the American mainstream. How many times have we heard that over the last 39 hours—''out of the mainstream.''

I can tell you I don't think the minority has argued effectively or persuasively how Justice Owen, who was elected to the Texas Supreme Court by 83 percent of Texas voters, is out of the mainstream. Out of the mainstream, Justice Brown. Out of the mainstream when she was retained to serve by 76 percent of California voters? Is that out of the mainstream?

They have certainly not convinced any fairminded person how it is that Judge Carolyn Kuhl—who has the support of over 100 California judges and labor unions across the political spectrum, and yes, even trial lawyers—cannot serve on that Ninth Circuit, that really worrisome Ninth Circuit Court that declared the Pledge of Allegiance unconstitutional.

What we have seen, and the reason this debate is historic is that it underscores and it lets the American people know, as well as restates the importance of the issue, that over the past year, the minority has used the filibuster to deny a bipartisan majority the opportunity to vote up or down, to give advice and consent. Let me say that again.

A minority, for the first time in history—it happened this year—for the first time in history, a minority in this body is using the filibuster to deny a bipartisan majority the opportunity to vote yes or no.

It has come up that while majorities have delayed judges in the past through the majority's delegation to the Judiciary Committee, votes on judges have never before been blocked by a minority. Of course, this debate has been more than about Senate procedure. In effect, what we have seen over the last year is the minority is, in effect, amending the people's Constitution without the people's assent. The reason for this is now well know.

Senate liberals have sought with increasing intensity to politicize not just the confirmation process, but the courts themselves. In pursuing this course, they are threatening the legitimacy of America's courts. That legitimacy comes from much more than just black robes or a high bench. It comes from the people's belief that judges will apply the law or the Constitution without regard to personal politics.

Rather than seeking to determine the judiciousness of a nominee and whether a nominee will be able to rule without bias, liberal Democrats are out to guarantee that our judges are, in fact, biased against some and in favor of others. In America, with that result,

citizens will have to worry about the personal politics of the judge before whom they come for justice. I say judiciousness, why?

Like other Senators this year faced with the question of what is required by the Constitution's mandate that the Senate give the President advice and consent, I have turned for guidance to the Founding Fathers and especially to the father of the independent judiciary, John Adams, to find that correct standard by which we give advice and consent on a judicial nominee.

President Adams, the father of our independent judiciary, memorialized for us what the standards should be for confirming our judges. He wrote that they should be ''men [and women] of experience on the laws, of exemplary morals, invincible patience, unruffled calmness, and indefatigable application who will be appointed for life and subservient to none.''

President Adams understood well enough the challenge of being judicious despite one's opinions and even in the face of unpopular opinion. Few people remember it was John Adams who defended the British soldiers who, on March 5, 1770, shot into a crowd on the streets of Boston. Our children study this episode today as the Boston massacre. It is a history lesson we can learn from in our work and on judicial nominations.

John Adams defended the British soldiers before a Boston court with angry mobs in the street.

I will close in a second. I will speak on leader time for the next minute.

I have to wonder, Mr. President, if today John Adams would be obstructed by filibuster because an out-of-touch minority, urged on by special interest groups, questions John Adams' qualifications based on his past advocacy simply for being a good lawyer defending a client, however politically unpopular.

In a few minutes, the filibustering minority will have another opportunity to stand in the light of the Senate floor and do the right thing. I say to the minority: Give these nominees a vote. Vote them up or vote them down, but just give them an honest up-or-down vote.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Mr. President, I will use leader time first to engage in a brief colloquy with the distinguished majority leader with regard to the schedule for the remainder of the day. I wonder if he can inform us as to what his intentions are with regard to schedule.

Mr. FRIST. Mr. President, I will be happy to talk during the votes with the leadership on the other side. My intent would be to have these three consecutive cloture votes and then after that have no other votes today. Before saying that with definitiveness, I would like to have a discussion with the minority leader, if there is other business he would like to bring to the floor as well.

We likely will have other business following that. Again, I expect no rollcall votes after these three votes.

Mr. DASCHLE. I thank the majority leader.

Mr. President, I also note at the end of this period of time, we have been here now for about 40 hours. It is probably not accurate to say we have all been here for 40 hours. Some of us had the luxury of coming and going, but there have been a lot of staff on the Senate floor, in our cloakrooms, in the Sergeant at Arms Office, our Capitol Police, all of our clerks—the extraordinary effort that they have made in these last 40 hours should be recognized.

I know I speak for all of our colleagues on both sides of the aisle in expressing our heartfelt gratitude to all of them. Once again, they have exceeded our expectations, and we are grateful for their dedication and professionalism during these difficult days.

I yield the floor.

NOMINATION OF PRISCILLA RICHMAN OWEN, TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIFTH CIRCUIT

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 report.

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 Executive Calendar No. 86, the nomination of Priscilla Richman Owen, of Texas, to be United States Circuit Judge for the Fifth Circuit.

Bill Frist, Orrin Hatch, Lindsey Graham, Mike Crapo, Jeff Sessions, Conrad Burns, Larry E. Craig, Saxby Chambliss, Mitch McConnell, Jim Bunning, Judd Gregg, John Cornyn, Jon Kyl, Trent Lott, Mike DeWine, Craig Thomas, Kay Bailey Hutchison.

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

The question is, Is it the sense of the Senate that debate on Executive Calendar No. 86, the nomination of Priscilla Richman Owen, of Texas, to be United States Circuit Judge for the Fifth Circuit, shall be brought to a close? The yeas and nays are mandatory under the rule. The clerk will call the roll.

Mr. REID. I announce that the Senator from Delaware (Mr. CARPER), the Senator from North Carolina (Mr. EDWARDS), the Senator from Hawaii (Mr. INOUYE), the Senator from Massachusetts (Mr. KERRY), and the Senator from Florida (Mr. NELSON) are necessarily absent.

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

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

The yeas and nays resulted—yeas 53, nays 42, as follows:

The result was announced—yeas 53, nays 42, as follows:

[Rollcall Vote No. 450 Ex.]

YEAS—53

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

NAYS—42

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

NOT VOTING—5

Carper	Inouye	Nelson (FL)
Edwards	Kerry	

The PRESIDING OFFICER. On this vote, the ayes are 53, the nays are 42. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is not agreed to.

NOMINATION OF CAROLYN B. KUHL TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the clerk will report the motion to invoke cloture.

The 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 Executive Calendar No. 169, the nomination of Carolyn B. Kuhl, of California, to be United States Circuit Judge for the Ninth Circuit.

Bill Frist, Orrin G. Hatch, Lindsey Graham, Mike Crapo, Jeff Sessions, Conrad Burns, Larry E. Craig, Saxby Chambliss, Mitch McConnell, Jim Bunning, Judd Gregg, John Cornyn, Jon Kyl, Trent Lott, Mike DeWine, Craig Thomas, Kay Bailey Hutchison.

Mr. LEAHY. Mr. President, I want to commend the Senators from California for their leadership in connection with this matter.

Today, the Senate is considering the nomination of California Judge Carolyn Kuhl to the U.S. Court of Appeals

for the Ninth Circuit. In accordance with Republican practices during the period 1995–2000, this nominee would have never come to the Judiciary Committee for a hearing in the first place and would never have been voted upon by the Judiciary Committee. This consideration on the Senate floor today underscores the President's refusal effectively to consult with the home-State Senators from California, both of whom oppose this nomination. In fact, this vote is the culmination of a year in which the President's disregard for home-State Senators and the Republican majority's disregard of past practices to achieve their partisan political objectives could not be more calculated.

Judge Kuhl's appearance before the Judiciary Committee, despite the clearly stated opposition of Senator BOXER, was only one in a string of transparently partisan actions taken by the Senate's Republican majority since the beginning of this Congress. In each of these actions, Republicans have done something they never did while in the majority from 1995 to 2000. Throughout the course of this year, they have continued to ratchet up their unprecedented partisanship and the use of judicial nominees for partisan political purposes.

The Republican majority took a step on the nomination of Judge Kuhl that was unprecedented for this Chairman. They scheduled a hearing for a nominee who did not have approval from both of her home-State Senators, a nominee for whom both blue slips were not returned positively. There is not a single example from 1995 through 2000, when the President was a Democratic President, and when Republican Senators were objecting, when the Judiciary Committee held a hearing on a judicial nominee over the objection of a home-state Senator.

Senate Republicans should remember that when the nomination of Ronnie White of Missouri was finally voted upon in 1999, all Republicans, in an unprecedented party-line vote, defeated that nomination. Several Republican Senators who had voted in favor of Justice White when he was considered by the Committee changed their positions and voted against his confirmation. The facts are that, at the time of his hearing, the senior Senator from Missouri supported the nomination and endorsed him at his hearing, and the junior Senator did not object to the hearing. Senator Ashcroft then chose to vote against the nomination. On the eve of the vote on the nomination, Senator BOND changed his position and decided to join Senator Ashcroft in opposing the nomination.

In connection with that vote, Senator HATCH said that if both home-State Senators had opposed the nomination earlier, it would never have proceeded. He told the Senate: ''[H]ad both home-State Senators been opposed to Judge White in committee, Judge White would never have come to the floor under our rules. I have to say, that would be true whether they are Democrat Senators or Republican Senators. That has just been the way the Judiciary Committee has been.''

The Ronnie White nomination is not an example of a previous time that the Committee and the Senate proceeded over the objections of home-state Senators. To the contrary, it is precisely the opposition, a clear precedent the other way.

While it is true that various Chairmen of the Judiciary Committee have used the blue-slip in different ways, some to maintain unfairness, and others to attempt to remedy it, it is also true that each of those Chairmen was consistent in his application of his own policy—that is, until the Kuhl hearing. That was the first time that this Chairman ever convened a hearing for a judicial nominee who did not have two blue slips acceding to a hearing.

This Republican President's choice of Carolyn Kuhl for a vacancy on the Ninth Circuit is a divisive and political choice. As a lawyer in the Reagan Administration, a lawyer in private practice, and as a state court judge, Judge Kuhl has demonstrated an extreme philosophy that threatens the rights and interests of Americans, particularly women's rights, other civil rights, and access to justice. Among other significant cases, Judge Kuhl spearheaded an effort to reverse the Reagan Administration's policy on tax-exempt status for racially discriminatory private schools, including Bob Jones University. She has also consistently advocated against women's rights and reproductive rights—from aggressively pushing the Justice Department to argue for a reversal of Roe v. Wade, to arguing for limits on the reach of sexual harassment laws, to rulings as a judge which raise concerns about her commitment to privacy rights.

This nomination has generated widespread opposition and requests that the Senate not consent to her confirmation. Among the many membership organizations that have written in opposition are: Seven members of the California Assembly Committee on the Judiciary, California Women Lawyers, the Japanese American Citizens League, the Leadership Conference on Civil Rights, People for the American Way, Planned Parenthood Federation of America, Taxpayers Against Fraud and many, many more.

I suspect we will hear these groups, and the others who oppose the President's nomination of Judge Kuhl, vilified as members of some left-wing conspiracy, intent on sinking each and every nominee, no matter what their views. But I would like to remind those who would raise that argument, as I have before, that these organizations represent millions of citizens with legitimate concerns about the direction of the judiciary in this country. I appreciate their willingness to participate in the process and their refusal to be intimidated into silence. The Washington Times has conceded that ''President Bush has seen more of his appeals court nominees confirmed by the Senate at this point in his term than any other president since at least the 1970s.'' When I was Chairman of the Judiciary Committee during the 107th Congress, the Senate confirmed 100 of this President's nominees. So far this year, the Senate has confirmed 68 additional judges nominated by President Bush. The Senate has now confirmed 168 of the Bush judicial nominees. That is more confirmations than in all of President Reagan's first term and more judges in one year than were confirmed during all of 2000, 1999, 1998, 1997, 1996 or 1995.

Among those 168 confirmations are 29 circuit judges. That is more circuit judges at this point in his presidency than were confirmed for President Reagan, President Bush or President Clinton. So far this year the Senate has confirmed 12 circuit court judges. In the comparable year of 1999, Republicans allowed only 7 circuit court judges to be confirmed all year.

Four of President Bush's nominees to the Ninth Circuit Court of Appeals have already been confirmed. Richard Clifton was given a hearing and confirmed under Democratic leadership. Just this year, the Senate has confirmed two additional Ninth Circuit nominees, one of whom, Jay Bybee, was quite controversial. Just before the Memorial Day recess, Democratic Senators expedited and encouraged the Majority Leader to allow a vote on the nomination of Judge Consuelo Maria Callahan, a consensus nominee with support from both home-State Senators. And, in September, Democratic Senators supported the nomination of Judge Carlos Bea, another nominee with support from both home-State Senators.

Unlike the divisive nomination of Judge Kuhl, both home-state Senators supported the nominations of Judge Callahan and Judge Bea. Rather than disregarding time-honored rules and Senate practices, my friends on the other side of the aisle should help us fill more judicial vacancies more quickly by bringing those nominations that have bipartisan support to the front of the line for Committee hearings and floor votes.

Republican Senators have been claiming that there have never been filibusters of nominees before and arguing that every nominee always gets a Senate up or down vote. That was certainly not the case for 63 of President Clinton's judicial nominees and for hundreds of his Executive Branch nominees. Such a claim is so contrary to history it is breathtaking in its boldness. On a single day in 2000, the Senate had to invoke cloture to stop Republican filibusters of the nominations of Judge Richard Paez and Marsha Berzon. Republicans also unsuccessfully filibustered Judge Rosemary Barkett and Judge H. Lee Sarokin in

1994. They successfully filibustered Executive Branch nominees such as ambassadorial nominees and the nomination of a Surgeon General, and the list goes on and on. I have spoken about them before.

This White House has been the most aggressive in recent history in its efforts to pack the federal courts and tilt it sharply toward a narrow ideology. The most extreme of the Administration's nominees are not being approved. We are seeking to maintain the independence of the Federal judiciary and to protect the rights of Americans in so doing. The Administration and its supporters have taken to using these nominations as partisan matters and to drive wedges between Americans. I have urged that the President be a uniter rather than a divider on this important lifetime nominations, but my voice has been ignored.

The provocative steps taken by the White House and Senate Republicans have broken new grounds in politicizing the Federal judiciary. The Republican majority has shown a corrosive and raw-edged willingness to change, bend and even break the very same rules that they took advantage of when the judicial nominees involved were a Democratic President's choices.

One of Carolyn Kuhl's most notorious decisions as a lawyer in the Reagan Justice Department is among her most troubling. As a political appointee serving directly under the Attorney General of the United States, she spearheaded an effort in the Reagan Administration to reverse position in the Bob Jones University case. This was the case challenging IRS rules denying tax-exempt status to schools that racially discriminate.

In 1981, the IRS rules were challenged by Bob Jones University, which wanted to keep avoiding their tax responsibilities despite a policy prohibited interracial dating. When the school took this issue to the Supreme Court in 1981, the Reagan Justice Department was prepared to defend the rules, as is its duty. But in January 1982, the government suddenly changed its position, and argued that the IRS had no legal authority to deny tax-exempt status and agreed to give Bob Jones, despite its blatant policies of racial discrimination, the tax exemption.

Then-Congressman TRENT LOTT, supported by Senator Strom Thurmond, was pivotal in the lobbying effort to change the government's position, and then-Special Assistant to the Attorney General Carolyn Kuhl concurred. This decision was so outrageous that more than 200 career lawyers in the Justice Department's Civil Rights Division objected to the change of position in a letter to their Assistant Attorney General.

According to records of Congressional hearings on the topic and a New York Times article written at the time, Carolyn Kuhl was one of three people characterized as ''a band of young zealots'' at work as political appointees at the Department of Justice, and part of the ''Bob Jones team'' who opposed the overwhelming sentiment and ''pressed for the legal switch to give Bob Jones its tax exemption.'' Indeed, Carolyn Kuhl and Charles Cooper, then-Special Assistant to Attorney General William French Smith, co-authored a 40-page memorandum to Civil Rights Division Head William Bradford Reynolds strenuously arguing that ''the [IRS] Commissioner's Ruling denying tax-exempt status to racially discriminatory private educational institutions is supported by neither the language nor the legislative history of Section 501(c)(3)'' and that the IRS should therefore ''reverse its position'' in the case and ''accord tax-exempt status'' to Bob Jones.

The Supreme Court, in an 8–1 ruling, repudiated Carolyn Kuhl's position and denied the school tax-exempt status. Chief Justice Warren Burger wrote for the majority, ''[a]n unbroken line of cases following Brown v. Board of Education establishes beyond doubt this Court's view that racial discrimination in education violates a most fundamental national public policy, as well as rights of individuals.''

It is interesting to note that the reason we know so much about Judge Kuhl's advocacy on behalf of schools like Bob Jones is because of internal Justice Department documents turned over to the Senate Finance Committee in February of 1982. At that time, in the wake of the Reagan Administration's switch in position, the Committee held a hearing to consider a legislative fix to the problem. A number of Justice Department memoranda as well as communications between high-level officials were turned over to the Committee in connection with the hearing, just months after the documents were first written. The House Ways and Means Committee held a similar hearing on February 4, 1982. Among the documents turned over to these Congressional committees was a memo written by Carolyn Kuhl on December 8, 1981 to Ken Starr noting Reagan/Bush campaign statements on private schools and a memorandum written by Carolyn Kuhl and Charles Cooper, one of the other members of the ''Bob Jones team,'' to Civil Rights Division Head Reynolds regarding the Bob Jones case.

At her hearing, Judge Kuhl conveniently told us that she regretted having taken the position she did at the time. Although it was the first time she had ever said so publicly, at her hearing, she claimed that in 1982 she had been concerned about the implications the Bob Jones policy would have on all-girls' schools. This concern was not reflected in her memos at the time, and has not been heard in any other context. But, taking her at her word that this was truly a concern, the explanation she gave at her hearing is still very interesting. She said, and I'll quote her, ''I had attended an all-girls' school and I did not want to see a precedent created that would have meant that tax exemptions could be taken away from all-girls' schools because they discriminated against men.'' In other words, she advocated helping a school that was racially discriminatory because of her personal affinity for her alma mater. Either way, whether or not you believe her newly articulated explanation, her responses on this issue raise as many questions as they answer.

Judge Kuhl also contended at her hearing that her advocacy on behalf of Bob Jones University should be excused because of her relative youth and inexperience. This too seems a convenient explanation. She describes herself as someone two and a half, maybe three years out of law school with no decision making authority, painting the picture of a naive young attorney with no influence over such important decisions. But this was 1982, five years after her graduation from law school, and she had proven herself enough to have landed one of the most prized jobs for a political appointee with a law degree: Special Assistant to the Attorney General of the United States. She doubtless had daily personal contact with the nation's highest law enforcement officer, and as his protégé represented his position to the very influential people serving under him, including Solicitor General Charles Fried and Head of the Civil Rights Division William Bradford Reynolds. While I accept the contention that she was not the final decision maker on the Bob Jones matter, the facts lead me to believe that her arguments were taken seriously and held more than a little weight. I think Judge Kuhl underestimated the esteem in which her legal abilities were held. Indeed, only a few years later, she became the Deputy Assistant Attorney General in the Civil Rights Division, with managerial responsibilities for hundreds of attorneys.

I would argue that Judge Kuhl's participation in this case exceeded an attorney's obligation to be a zealous advocate. Rather, her aggressive involvement surely helped build momentum behind the drastic change in position the Justice Department would take. But the substantive weakness of her argument in the face of legal precedent only underscores how political and results-oriented it was. So thin was her case that it caused the New York Times to wonder ''How could any president be given such incompetent legal advice? How could lawyers for the U.S. Government stray so far from the mainstream of the Country's understanding on the racial issue? How could a president at this stage in our history play with the issue for political reasons?'' Judge Kuhl cannot so easily explain this away.

When she was Deputy Solicitor General in the Reagan Justice Department, Carolyn Kuhl tried to persuade the U.S. Supreme Court to eliminate its ''associational standing'' doctrine in

United Automobile Workers Union v. Brock, 477 U.S. 274 (1986). In this case, the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) challenged the Secretary of Labor's interpretation of provisions of the Trade Act which would have deprived the union members of certain benefits—benefits available to assist workers laid off because of competition from imports. The issue on appeal to the U.S. Supreme Court was whether the UAW had standing to sue in federal court on behalf of its affected members.

Although Judge Kuhl stated at her hearing that she was not on the brief in this case, she later revised her testimony in written answers, saying that she had confused this case with another. Although she was still not completely forthcoming in her responses, I discovered that she was in fact one of five high level officials on the brief and that she argued the case before the U.S. Supreme Court in March 1986.

In her arguments, she urged the Supreme Court to eliminate the doctrine of representative standing in favor of requiring organizations to meet the requirements for class certification under Rule 23 of the Federal Rules of Civil Procedure. But, she then also admitted that the government would oppose a request for class certification in this case. She stated in her brief that the Supreme Court should ''reconsider the doctrine in light of the practical and analytical difficulties it presents'', and that the doctrine was not of that ''longstanding effect.'' A significant portion of her brief was devoted to the more far-reaching arguments of why the doctrine of representative standing should ''not be recognized'' and why the class action provisions should be applied instead.

The majority of the Supreme Court rejected her arguments and concluded that the government's presentation ''has fallen far short of meeting the heavy burden of persuading us to abandon settled principles of associational standing.'' Id. at 290.

The doctrine of representative standing allows unions, environmental organizations, business groups, and others to protect the interests of their members in court. Elimination of the doctrine would greatly impede the ability of organizations to represent their members. For this reason, a diverse group of organizations, including the U.S. Chamber of Commerce and the AFL–CIO filed an amicus brief opposing Kuhl's position in the case.

Judge Kuhl's arguments in this case raise concerns about whether she would protect the rights of working men and women or curtail access to the courts for such individuals. In addition to this case, as a judge on the state court, she has issued troubling decisions with regard to the rights of working Americans and access to justice, such as a case in which she found that a woman target of a SLAPP (Strategic Lawsuit Against Public Participation) suit was not entitled to recover attorneys' fees for successfully defending against the suit—a decision which was unanimously reversed by the appellate court.

Other cases in which Judge Kuhl was involved with while at Justice demonstrate that on issues related to privacy and women's rights she clearly has an ideological agenda. As Deputy Solicitor General, Kuhl co-authored the Reagan Administration's amicus brief in Thornburgh v. American College of Obstetricians and Gynecologists, urging the Supreme Court to uphold Pennsylvania's severe restrictions on abortion, including prosecution of doctors. Her view on the matter is documented not only in the brief, but also by her boss at the time, Charles Fried, then-Solicitor General, who recounts in his memoirs that, ''[t]he most aggressive memo [about Roe v. Wade] came from my friends Richard Willard and Carolyn Kuhl, who recommended that we urge outright reversal of Roe.''

In that brief, Kuhl argued that the courts below placed too much emphasis on the woman's right to privacy. Moreover, the brief discusses issues beyond the merits of the particular case and urged the Supreme Court to abandon its principles of stare decisis and overturn settled law. In a 6–3 decision, the Supreme Court also rejected that call.

As Deputy Solicitor General, Carolyn Kuhl argued for an extremely narrow legal definition of sexual harassment in the landmark case of Meritor Savings Bank v. Vinson. A female employee, Mechelle Vinson, filed suit against her supervisor and the bank that employed her, alleging that the supervisor had sexually harassed her and that she had been terminated when she refused him, violating her rights under Title VII of the Civil Rights Act. Kuhl's brief for the Reagan Administration argued that Ms. Vinson's claim should be dismissed because her conduct had been found by the trial court to be voluntary. The Supreme Court found the opposite, and held that the claim could go forward no matter the characterization of Ms. Vinson's conduct, as long as the sexual attention she was getting, described by the court as ''appalling'' and ''especially egregious,'' was unwelcome.

It would have been bad enough that Judge Kuhl had taken this position as a political lawyer at the Justice Department, trying to narrow the rights of victims of sexual harassment as part of the Reagan agenda, but even worse and more puzzling, was her explanation of the case at her hearing.

Just as she articulated a never-before heard explanation for her position in the Bob Jones case, Judge Kuhl told us at her hearing that she was ''very happy'' with the decision, and that the Supreme Court's reasoning ''tracked'' the brief she wrote. She dismissed Senator FEINSTEIN's concerns that the Justice Department had declined to accept the unwelcomeness standard adopted by the Supreme Court, brushing her off with a vague mention of the question of the voluntary nature of Ms. Vinson's behavior. This explanation is mystifying, and sounds to me like an attempt to put a positive spin on an issue she knew Democratic Senators would view with suspicion. She knew that those of us concerned with allowing victims of discrimination an opportunity for redress would have problems with her brief in Meritor Savings, and she fudged an answer to try to look like she agreed with us. Such obfuscation should not be allowed to succeed. I would have preferred it if she had been up front with us about her brief and its relationship to the Court's decision.

Judge Kuhl's record on the state bench offers another example of her troubling views on privacy. In the recent case of Sanchez-Scott v. Alza Pharmaceuticals, et al., Judge Kuhl's decision to dismiss a claim for invasion of privacy brought by a cancer patient against her doctor and a pharmaceutical company was reversed by the appellate court. The plaintiff, a patient undergoing chemotherapy for breast cancer, was examined by her oncologist, Dr. Monty Polonsky, in the presence of an unidentified man who turned out to be a representative of a pharmaceutical company.

The complaint stated that the doctor introduced the man, a Mr. Martinez, as, ''a person . . . who was looking at Dr. Polonsky's work,'' but no further details about his identity were provided. During the course of the physical, Ms. Sanchez-Scott felt warm and began to use a pocket fan to cool herself. The doctor took the fan from the plaintiff and gave it to Mr. Martinez so he could fan the plaintiff because, as he told her, ''[i]t would give him something to do.'' Then, the doctor and Mr. Martinez began to laugh at the plaintiff, who became very uncomfortable and asked for the fan back, saying she could fan herself. Mr. Martinez refused and continued to fan her. Dr. Polonsky examined Ms. Sanchez-Scott while she was undressed from the waist up, while Mr. Martinez sat beside the examining table and watched. Only when she went to the reception desk after her exam was over did Ms. Sanchez-Scott learn that Mr. Martinez was a drug salesman, and not a trained medical professional. Ms. Sanchez-Scott explained that she felt uncomfortable and embarrassed and cried from shame and anger once she left the doctor's office.

Judge Kuhl found that the plaintiff could not sustain an action for an invasion of privacy against the doctor because what happened to her did not meet the test of being ''highly offensive to a reasonable person.'' She reasoned that Ms. Sanchez-Scott had been introduced to Mr. Martinez, knew he was there and could have made further inquiry about who he was or object to his presence. She also found relevant that there was no touching, and that

nobody else found out about the presence of the drug salesman in the exam room. She also explained that because the patient would not have a reasonable expectation that a medical procedure would only be observed by a doctor, there could be no expectation of privacy. The appellate court ridiculed her reasoning and allowed the plaintiff to continue with her invasion of privacy claims against her doctor.

Again, at her hearing, Judge Kuhl's answers were misleading. When questioned about this case by Senator DURBIN, Judge Kuhl tried to make herself seem sympathetic to Ms. Sanchez-Scott's plight. She told Senator DURBIN that she could understand why the plaintiff was upset, that she had good reason to be upset. But Judge Kuhl misstated crucial facts about the case that would have shed a clearer light on her legal ruling. She told Senator DURBIN that the plaintiff's claim for invasion of privacy against the doctor was permitted to go forward, an assertion that is simply not true. Later, in a letter to Senator HATCH, she did correct herself, but the impression she tried to leave at the hearing was contrary to the facts. If her ruling in the Sanchez-Scott case had been allowed to stand, the case against the doctor for an invasion of privacy would not have been able to go forward. I know this sounds like nitpicking about a minor procedural issue, but it is more than that. It is about her sensitivity to privacy issues, her ability to follow the law, and her pattern of trying to spin her negative positions to her benefit at her hearing.

Ms. Sanchez-Scott does not see it as nitpicking either. In a letter she wrote to the Committee about her experience in Judge Kuhl's court, she expresses her opposition to rewarding the judge with a promotion to the federal court. She tells us that, ''[a]s a cancer survivor, I trusted that my doctor would make decisions in my best interest . . . I was . . . shocked and dismayed that Judge Kuhl determined that I, not the doctor, had the obligation to protect my privacy in his exam room.''

This President talked about being a uniter, not a divider, yet he has failed to work with all home-State Senators to identify qualified candidates who can be supported by both sides. A recent opinion piece in the Washington Post had it right when it said that rather than promoting ''bipartisanship,'' which this President said he wanted, he has instead promoted ''hyper-partisanship.'' I hope—for the sake of our country and the independence of the judiciary—that the White House and the Senate majority decide to work with Democratic Senators to identify qualified, mainstream nominees who can be supported by all sides and to abandon their quest to pack the circuit courts with activists and ideologues.

I ask unanimous consent that several letters in opposition be printed in the RECORD.

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

CALIFORNIA LEGISLATURE,
Sacramento, CA, February 11, 2003.

Re Oppose the nomination of Carolyn Kuhl to the Ninth Circuit Court of Appeals.

Hon. DIANNE FEINSTEIN,
U.S. Senate, Hart Office Building, Washington, DC.

DEAR SENATOR FEINSTEIN: We are writing as members of the Judiciary Committee of the California Assembly to urge you to oppose the nomination of Judge Carolyn Kuhl to serve on the Ninth Circuit Court of Appeals. We believe that Judge Kuhl's record indicates that her opinions would potentially threaten laws protecting California's environment and civil rights, and the rights of our citizens to privacy and reproductive choice. As part of President Bush's effort to nominate numerous ultra conservative judges to lifetime positions on the federal bench, this nomination represents an unacceptable risk to our state and the nation.

Judge Kuhl's nomination is opposed by more than 40 organizations representing civil rights, religious, environmental, reproductive rights and labor organizations, including the Sierra Club, National Organization for Women, California Abortion Rights Action League, National Women's Law Center, People for the American Way, and the Alliance for Justice among others. Their concerns run the gamut from Judge Kuhl attempting to close off access to the courts by overturning the doctrine of associational standing (the right of organizations to file suit on behalf of their members), to convincing the Reagan administration during her tenure with the Justice Department of attempt overturning Roe v. Wade. As a private attorney she argued in support of regulations prohibiting doctors and health care professionals at federally-funded clinics from counseling women about abortion, or even informing them that abortion was a legal medical option.

Still other of Judge Kuhl's positions show just how far she is from the mainstream of legal thought on issues of concern to most Californians. For example, Judge Kuhl was one of two Justice Department officials who convinced the Attorney General to reinstate the tax exempt status for the segregationist Bob Jones University. This position was opposed—in writing by more than 200 lawyers in the Justice Department's civil rights division, and was even opposed by President Reagan's Solicitor General, Ted Olson.

As a California state trial court judge, Judge Kuhl has not generally written published decisions. However, several published cases cause us concern about her willingness to protect the basic rights of individuals. For example, in one case Judge Kuhl dismissed a breast cancer patient's claim of invasion of privacy after her doctor brought drug company representative into the room during a breast exam. This ruling was reversed on appeal. In still another controversial decision, Judge Kuhl dismissed a case brought under California law enacted to prevent suits against whistleblowers and others acting in the public interest. The California appellate court again reversed Judge Kuhl's decision calling it ''a nullification of an important part of California's anti (abusive lawsuit) legislation.''

Finally, in her career Judge Kuhl has been aligned with some of the most ideologically intransigent and far-right elements of the Republican Party. She is a member of the Federalist Society, which seeks to establish an ultra-conservative federal bench. We believe that placing Judge Kuhl on the Ninth Circuit Court of Appeals would be a grave error that would threaten California law and place a relatively young and ultra-conservative jurist in a lifetime position on one of the most important courts (after the Supreme Court) for our state. We urge you to oppose her nomination as forcefully as possible.

I thank you for considering our views.

Sincerely yours,

ELLEN CORBETT,
Chair, Assembly Committee on Judiciary.

CALIFORNIA WOMEN LAWYERS,
Sacramento, CA, March 26, 2003.

Re opposition—Carolyn Kuhl appointment.

Senator DIANNE FEINSTEIN,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR FEINSTEIN: I am writing on behalf of California Women Lawyers (CWL) to inform you of CWL's opposition to the confirmation of the nomination of Los Angeles Superior Court Judge Carolyn Kuhl to the Ninth Circuit Court of Appeals. As you may know, CWL is a statewide organization of women attorneys dedicated to advancing the interests of women, both in the legal profession, and in society, through education, legislation and advocacy. CWL supports a fair and balanced judicial nominating process and process and opposes an extreme right-wing federal bench engaged in ultra-conservative judicial activism.

CWL supports the appointment of federal judges who are open-minded, view the constitution as a living document and who are committed to the role of federal courts in protecting civil rights and individual liberties, and in guaranteeing due process, equal protection of the law, the right of privacy and access to justice. We believe that Judge Kuhl's record indicates she is unsuited for a position on the Ninth Circuit bench.

Judge Kuhl is a longtime member of The Federalist Society and adheres to the ultra-conservative philosophy espoused by that group. While working at the Department of Justice, Ms. Kuhl vigorously supported tax-exempt status for Bob Jones University, despite its history of racial discrimination. Ms. Kuhl has also argued in favor of overturning Roe v. Wade, as well as onerous regulations burdening abortion rights. While on the Superior Court bench, her decisions have been reversed by the California Courts of Appeal for restricting the rights of individuals to sue to protect their privacy and to protect themselves from harassment suits under California law decisions which she based on her narrow interpretation of statutes which clearly favor such individual rights.

Ms. Kuhl's record reveals that she is wedded to an extremist philosophy that is far removed from the beliefs of most Americans. Our nation deserves a federal court pledged to upholding constitutional rights secured through Supreme Court precedents and embodied in civil rights statutes. CWL therefore urges you to not support Ms. Kuhl's nomination.

Sincerely,

ANDREA CARLISE,
CWL President.

LEADERSHIP CONFERENCE ON CIVIL RIGHTS,
Washington, DC, May 7, 2003.

Re Oppose the confirmation of Carolyn Kuhl.

Hon. ORRIN G. HATCH,
Chair, Senate Judiciary Committee, Hart Senate Office Building, Washington, DC.

DEAR SENATOR HATCH: On behalf of the Leadership Conference on Civil Rights (LCCR), the nation's oldest, largest, and most diverse civil and human rights coalition, we write to express our opposition to

the confirmation of Carolyn Kuhl to the United States Court of Appeals for the Ninth Circuit. Our review of Judge Kuhl's record indicates that her positions, opinions, and legal activities in the areas of civil rights and equal opportunity, and the rights of women, workers, and consumers, are troublesome and raise serious questions about her commitment to equal justice and civil rights for all Americans.

First, we are very concerned about Judge Kuhl's record on civil rights and equal opportunity, particularly on the issue of whether the federal government should subsidize institutions that practice racial discrimination. Judge Kuhl was one of three Reagan Justice Department officials who persuaded the Attorney General to reverse prior policy and support the granting of tax-exempt status to Bob Jones University, despite its racially discriminatory policies, in its brief in Bob Jones University v. United States, 461 U.S. 574 (1983). More than 200 Justice Department lawyers, the solicitor general, and the Treasury Department general counsel objected to the change of position that Kuhl advocated. According to the New York Times (May 1983), Kuhl was one of three characterized as a ''band of young zealots'' who urged the change in policy. By an 8–1 vote, the Supreme Court rejected Kuhl's position and upheld the IRS denial of tax exempt status to Bob Jones University.

In addition, we are troubled by Judge Kuhl's work urging the Supreme Court to overrule its precedent on ''associational standing.'' In International Union, United Automobile, Aerospace and Agricultural Implement Workers of America v. Brock, 477 U.S. 274 (1986), Kuhl not only argued that the requirement for associational standing had not been met in the particular case, but went on to urge the Supreme Court to overturn the doctrine of associational standing altogether, except in the most extraordinary circumstances. This view, if adopted, would have had a catastrophic affect on the ability of civil rights and other groups to file lawsuits on behalf of their members in order to vindicate their legal rights.

While at the Justice Department, Kuhl was also involved in a troubling effort to limit the reach of sexual harassment doctrine. As Deputy Solicitor General, she co-authored an amicus curiae brief in the landmark sexual harassment case of Meritor Savings Bank v. Vinson, 477 U.S. 57 (1986), asserting a position on sexual harassment which, had it been adopted, would have made it more difficult for women to prove sexual harassment in the workplace. In a unanimous opinion authored by then-Justice William Rehnquist, the Court rejected as incorrect the focus in Kuhl's brief of the ''voluntariness'' of the alleged sexual conduct, instead making clear that the test is whether the sexual conduct was ''unwelcome.'' Kuhl was also part of the Reagan Administration's effort to restrict the remedies that courts can order in the case of employment-related discrimination in violation of Title VII. In Local 28 of the Sheet Metal Workers' International Ass'n v. EEOC, 478 U.S. 421 (1986), Kuhl co-authored a brief on behalf of the EEOC advocating the extreme theory that relief in Title VII cases can be granted only to identifiable victims of discrimination. This theory, rejected by the Supreme Court, would have significantly limited the ability of the courts to provide effective remedies for past and persistent discrimination.

Kuhl's record also reveals a troubling tendency to favor corporate interests, at the expense of workers and consumers. As a lawyer in private practice, Kuhl argued on behalf of two major defense contractors that the qui tam provision of the False Claims Act, which allows private individuals to sue corporations that committed fraud against federal government programs, was unconstitutional. See United States ex rel. Rohan v. Litton Industries, Inc., No. 92–55546 (9th Cir.). As a judge, she dismissed a case brought under a California law enacted to prevent suits against whistleblowers and others acting in the public interest. The California appellate court reversed Kuhl's decision in unusually strong terms, calling it ''a nullification of an important part of California's anti-[abusive lawsuit] legislation.'' Liu v. Moore, 69 Cal. App. 4th 745, 748 (1999). Kuhl also dismissed a claim brought by a breast cancer patient whose privacy was invaded when a drug salesman who misrepresented his identity participated in her doctor's examination of her breasts. On appeal, the Court of Appeals unanimously found in favor of the plaintiff, reversing Kuhl's decision. See Sanchez-Scott v. Alza Pharmaceuticals, 86 Cal. App. 4th 365 (2001).

In sum, Judge Carolyn Kuhl's views on important civil rights issues, particularly with regard to equal opportunity and the rights of workers and consumers, are outside the mainstream. Her work as a Justice Department official, in private practice, and as a California judge reflects a lack of commitment to core constitutional values and to upholding equal rights for all Americans. Therefore, we urge the Judiciary Committee to reject the confirmation of Carolyn Kuhl to the Ninth Circuit Court of Appeals. If you have any questions or need further information, please contact Nancy Zirkin, LCCR Deputy Director/Director of Public Policy at (202) 263–2880, or Julie Fernandes, LCCR Senior Policy Analyst, at (202) 263–2856.

Sincerely,

WADE HENDERSON.
Dr. DOROTHY L. HEIGHT.

PLANNED PARENTHOOD FEDERATION OF AMERICA—STATEMENT REGARDING THE NOMINATION OF CAROLYN KUHL TO THE NINTH CIRCUIT COURT OF APPEALS

The Planned Parenthood Federation of America (PPFA), the world's largest and most trusted voluntary family planning organization, has a long-standing history of working to ensure the protection of reproductive rights as well as working to advance the social, economic, and political rights of women. Because lower federal courts exercise enormous power in deciding cases involving women's rights, the right to privacy, reproductive freedoms, and other basic civil rights, PPFA believes that judges appointed to these courts must demonstrate a commitment to safeguarding these fundamental rights. PPFA will oppose confirmation of nominees who fail to do so.

We believe that California Superior Court Judge Carolyn Kuhl's record demonstrates that she is not committed to protecting these rights. Therefore, PPFA opposes her nomination to the United States Court of Appeals for the Ninth Circuit.

Judge Kuhl held various positions in the U.S. Department of Justice during the Reagan administration. From 1982 to 1985, Kuhl held the appointment of Deputy Assistant Attorney General for the Civil Division. During her tenure in that position, the Supreme Court agreed to hear Thornburgh v. American College of Obstetricians and Gynecologists, 476 U.S. 747 (1986), a challenge to several Pennsylvania abortion restrictions. The Reagan administration filed a brief in Thornburgh that not only supported the Pennsylvania restrictions, but also called for an outright reversal of Roe v. Wade: ''Indeed, the textual, doctrinal and historical basis for Roe v. Wade is so far flawed, and . . . is a source of such instability in the law that this Court should reconsider that decision and on reconsideration abandon it.''

The Acting Solicitor General at the time the Thornburgh brief was filed, Charles Fried, wrote, in his book, Order and Law, that when he was considering what position to take in the case, ''[t]he most aggressive memo came from my friends Richard Willard and Carolyn Kuhl in Civil, who recommended that we urge outright reversal of Roe.''

In addition, when in private practice, Kuhl chose to serve as counsel for the American Academy of Medical Ethics in Rust v. Sullivan, 500 U.S. 173 (1991), the case challenging the ''gag rule''—federal regulations promulgated by the Bush I administration that prohibited health care professionals at family planning clinics that receive funding from the Title X program from counseling women about abortion—or even providing non-directive counseling that informed them of abortion as an option. Kuhl's brief argued that this prohibition did not violate the rights of the health care providers and their patients.

Given Kuhl's record demonstrating animosity towards reproductive rights, PPFA joins other organizations concerned with women's rights and civil rights in opposing her nomination to the Ninth Circuit Court of Appeals.

TAXPAYERS AGAINST FRAUD,
THE FALSE CLAIMS ACT LEGAL CENTER,
Washington, DC, April 3, 2003.

Re Judge Carolyn Kuhl.

Chairman ORRIN G. HATCH,
Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building, Washington, DC
Senator PATRICK J. LEAHY,
Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building, Washington, DC

DEAR CHAIRMAN HATCH AND SENATOR LEAHY: Taxpayers Against Fraud, the False Claims Act Legal Center (''TAF''), opposes the appointment of Judge Carolyn Kuhl to a position on the United States Court of Appeals for the Ninth Circuit. TAF's opposition is based on Judge Kuhl's apparent effort to deceive the Ninth Circuit in U.S. ex rel. Rohan v. Newbert (No. 92–55546). Judge Kuhl is effect represented to the Court that the Justice Department had questioned the constitutionality of the whistleblower (''qui tam'') provisions of the False Claims Act (''FCA''), when in fact this was untrue.

In 1989, a memorandum was prepared in the Office of Legal Counsel of the Department of Justice questioning the constitutionality of the FCA. However, the views are set forth in that memorandum (''OLC Memo'') were not adopted by the Department or advanced by the Department in FCA cases.

Despite the fact that the OLC Memo did not represent the views of the Justice Department, Kuhl, in her capacity as counsel for Litton Systems, Inc., submitted it to the Ninth Circuit, citing it in support of her arguments that the qui tam provisions of the FCA are unconstitutional and implied that the OLC Memo set forth the views of the Justice Department. The Department was not a party in the case, but learned of the misrepresentation of its views and submitted a letter to the Clerk of the Ninth Circuit setting the record straight.

We at TAF are deeply disturbed that Judge Kuhl would attempt to mislead the Ninth Circuit, the court to which she now aspires, about the views of the Department of Justice, regarding the constitutionality of an act of Congress. TAF believes her stunning lack of candor disqualifies her from service on that court.

JAMES W. MOORMAN,
President.

Mr. FRIST. Mr. President, I ask unanimous consent that the next two votes be 10-minute votes.

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

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

The question is, Is it the sense of the Senate that debate on Executive Calendar No. 169, the nomination of Carolyn B. Kuhl, of California, to be United States Circuit Judge for the Ninth Circuit, shall be brought to a close.

The yeas and nays are required 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), the Senator from Hawaii (Mr. INOUYE), the Senator from Massachusetts (Mr. KERRY), and the Senator from Florida (Mr. NELSON) are necessarily absent.

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

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

The yeas and nays resulted—yeas 53, nays 43, as follows:

[Rollcall Vote No. 451 Ex.]

YEAS—53

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

NAYS—43

Akaka	Dodd	Levin
Baucus	Dorgan	Lieberman
Bayh	Durbin	Lincoln
Biden	Feingold	Mikulski
Bingaman	Feinstein	Murray
Boxer	Graham (FL)	Pryor
Breaux	Harkin	Reed
Byrd	Hollings	Reid
Cantwell	Jeffords	Rockefeller
Carper	Johnson	Sarbanes
Clinton	Kennedy	Schumer
Conrad	Kohl	Stabenow
Corzine	Landrieu	Wyden
Daschle	Lautenberg	
Dayton	Leahy	

NOT VOTING—4

Edwards	Kerry
Inouye	Nelson (FL)

The PRESIDING OFFICER. On this vote, the yeas are 53, the nays are 43. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

NOMINATION OF JANICE R. BROWN, OF CALIFORNIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE DISTRICT OF COLUMBIA CIRCUIT

CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the clerk will report the motion to invoke cloture.

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 Executive Calendar No. 455, the nomination of Janice R. Brown, of California, to be United States Circuit Judge for the District of Columbia Circuit.

Bill Frist, Orrin G. Hatch, Lindsey Graham, Mike Crapo, Jeff Sessions, Conrad R. Burns, Larry E. Craig, Saxby Chambliss, Mitch McConnell, Jim Bunning, Judd Gregg, John Cornyn, Jon Kyl, Trent Lott, Mike DeWine, Craig Thomas, Kay Bailey Hutchison.

Mr. LEAHY. Mr. President, the opposition to Justice Brown for a lifetime position on the D.C. Circuit is deep and wide and is based on her record, both on and off the bench. As anyone who was watching C–SPAN last night and the night before would know, the Republicans are using the judicial nomination process in a manner that divides rather than unites. As the San Francisco Chronicle wrote, ''Presidents typically shape the judiciary to reflect their own views. But with Charles Pickering, Priscilla Owens, William Pryor, Miguel Estrada and now Brown, Bush seems bent on stacking the bench with ideologues.''

For this particular nominee, Janice Rogers Brown, the White House political operatives and ideologically driven selection staff reached out 3,000 miles to find a nominee who has repeatedly received negative ratings, who has been criticized by her Republican colleagues on the bench, and who has emerged from the Senate Judiciary Committee on a party-line vote. As Justice Brown's home State newspaper, the San Francisco Chronicle, wrote: ''naming Janice Rogers Brown to the U.S. Circuit Court of Appeals for the D.C. Circuit, President Bush has again chosen a contrarian with a judicial philosophy that lies well outside the bounds of the mainstream.'' Even the Washington Post, which has been very sympathetic to this Administration and, in particular, to its court-packing efforts on the D.C. Circuit, has written that Janice Rogers Brown ''is one of the most unapologetically ideological nominees'' in many years.

As the nominee herself conceded at the end of her confirmation hearing, she was ''treated with great courtesy'' by the Members of the Judiciary Committee. Thereafter, this was a nomination rushed out of the Committee last week before the ink was dry on nonresponsive answers to Senators' questions, and during Senate floor debate on another highly divisive judicial nominee, before a full Committee debate could be held. The District of Columbia Circuit is too important to the rights of all Americans to be left to judges whose ideological bias would lead them to gut the environmental protections, workplace protections, consumer protections and other government regulations authorized by Congress to protect all Americans.

In my statement at the outset of her confirmation hearing less than one month ago, I urged partisans to end the ugly game of contending that any criticism of the record of a Bush judicial nominee had to be motivated by bigotry. I asked that the right-wing tactic of smears and name calling subside and that we not see the race card dealt from the shameful deck of unfounded charges that stalwarts of this President's most extreme nominees have come to rely upon as they further inject partisanship and politics into the appointment of Federal judges. I noted that I expected that those who ultimately decided to support Justice Brown, even though they oppose affirmative action, would do so because they believed she would be a fair Federal judge. I suggested that those who opposed her because they retained serious doubt about her nomination and are concerned that she was selected on ideological grounds, could oppose her nomination for principled reasons having nothing to do with race. I urged that we focus on substance at the hearing and in this process.

My plea went unheeded, so that, first, I must, again, briefly respond to the partisan smears and name-calling that I have been hearing from the other side of the aisle. We have heard the ridiculous charges that we are opposing Justice Brown because of her gender or her race. My opposition to this nominee has nothing to do with her race; it is has nothing to do with her gender. It is about what kind of a lifetime appointment to the District of Columbia Circuit I fear she would be.

If Democrats were making decisions based on the gender of the nominee, would we have confirmed 33 judges nominated by President Bush who are women, including seven to the Courts of Appeal? Would we have worked so hard during the Clinton years to increase gender diversity on the bench and fight for votes for Bonnie Campbell, Elena Kagan and the scores of women nominees who were blocked and delayed by anonymous Republican holds? Would we be urging President Bush to work with us to find outstanding women judges and lawyers to increase gender diversity on the Federal bench? Do our critics really contend that Senators MIKULSKI, FEINSTEIN, BOXER, MURRAY, LANDRIEU, LINCOLN, CANTWELL, CLINTON, and STABENOW are anti-woman, or that Senators KENNEDY, BIDEN, HARKIN, REID or any other Democratic Senators would discriminate against women? This is a smokescreen, intended to obscure this nominee's stark record.

If Democrats were making decisions based on the race of the nominee, why would we have voted to confirm 13 African-American judges nominated by President Bush, including all four of the other African Americans nominated by President Bush to the appellate courts? Would we have confirmed Lavenski Smith to the 8th Circuit? Would we have fought so hard for two

Congresses to confirm Roger Gregory and integrate the 4th Circuit? Would we have worked with Senator EDWARDS to confirm Allyson Duncan to the 4th Circuit? For that matter, would we have been so outraged at the Republicans' treatment of Justice Ronnie White, Judge Beatty, Judge Wynn, Kathleen McCree Lewis and so many outstanding African-American judges and lawyers who the Republicans blocked from confirmation during the Clinton years? These claims of racism are irresponsible and false. These ploys are wrong, and they should stop.

In fact, the list of the African-American organizations and individuals who oppose Justice Rogers Brown's nomination is one of the most troubling indications that this is another divisive, ideologically driven nomination. Are we to believe that the 39 members of the Congressional Black Caucus are racist? Members of the Congressional Black Caucus include the respected congressional delegate from the District of Columbia ELEANOR HOLMES NORTON, the chair of the Congressional Black Caucus, the Honorable ELIJAH CUMMINGS, and such distinguished Americans as Representatives CHARLES RANGEL and JOHN CONYERS. In addition the Nation's oldest and largest association of predominantly African-American lawyers and judges, the National Bar Association, and its State counterpart, the California Association of Black Lawyers both oppose this nomination.

The foremost national civil rights organization, the Leadership Conference on Civil Rights opposes this nomination. The women of Delta Sigma Theta oppose this nomination. Dr. Dorothy Height, Dr. Joseph Lowery and Julian Bond have spoken out against this nomination.

Justice Brown has a lengthy record, of opinions, of speeches and of writings. She has very strong opinions, and there is little mystery about her views, even though she sought to moderate them when she appeared before the Judiciary Committee.

I come to my decision after reviewing Justice Brown's record—her judicial opinions, her speeches and writings—and considering her testimony and oral and written answers provided to the Senate Judiciary Committee.

Now, Justice Brown's supporters will say we are opposing Justice Brown because her viewpoint is different than ours on social issues. But my opposition is not about whether Justice Brown would vote like me if she were a member of the United States Senate on issues of importance. This is not about her position on choice. This is not about one dissent or one speech. This is about Justice Brown's approach to the law—an approach which she has consistently used to promote her own ideological agenda, an extreme agenda that is out of the mainstream. Her approach does not entitle her to a lifetime appointment to this very important appellate court.

Janice Rogers Brown's approach to the law can be best described as a ''jurisprudence of convenience.'' What do I mean by that? Justice Brown has proven herself to be a results-oriented, agenda-driven judge whose respect for precedent and rules of judicial interpretation change depending on the subject matter before her and the results she wants to reach.

While Justice Brown's approach to the law has been inconsistent—she has taken whatever approach she needs to in order to get to a result she desires—the results which she has worked toward have been very consistent—throughout her public record. Some of Brown's supporters, and in fact Justice Brown herself, have tried to detract attention from the ideas she has expressed in speeches—while she was a member of the bench—claiming they are ''just speeches.'' Well, that is a hard distinction to follow when Justice Brown's comments to groups across the country over the last 10 years repeated the same themes—in fact, sometimes even the same words—as she has written in her opinions.

In Santa Monica Beach v. Superior Court of L.A. County, Justice Brown wrote of the demise of the Lochner era, claiming ''the 'revolution of 1937' ended the era of economic substantive due process but it did not dampen the court's penchant for rewriting the Constitution.'' Similarly, in a speech to the Federalist Society, she said of the year 1937—it ''marks the triumph of our own socialist revolution.''

In San Remo Hotel v. City and County of San Francisco, Justice Brown wrote, ''(t)urning a democracy into a kleptocracy does not enhance the stature of the thieves; it only diminishes the legitimacy of the government.'' Similarly, two years earlier, she told an audience at the Institute for Justice, ''If we can invoke no ultimate limits on the power of government, a democracy is inevitably transformed into a kleptocracy—a license to steal, a warrant for oppression.''

As Berkeley Law School Professor Stephen Barnett pointed out about Justice Brown's ''apparent claim that these are 'just speeches' that exist in an entirely different world from her judicial opinions,'' ''that defense not only is implausible but trivializes the judicial role.'' I agree with Professor Barnett on this and understand his determination to oppose her nomination. Justice Brown's provocative speeches are disturbing in their own right, and they are made more so by their reprise in her opinions.

Justice Brown now says that she will ''follow the law.'' However, in a judicial dissent, she wrote, ''We cannot simply cloak ourselves in the doctrine of stare decisis.''

One of the examples of Justice Brown's results-oriented jurisprudence can be seen in the way she has disregarded precedent in her opinions in order to expand the rights of corporations and property owners, at the expense of workers and individuals who have been the victims of discrimination. In several dissents, Justice Brown called for overturning an exception to at-will employment, long recognized by the California Supreme Court, that was created to protect workers from discrimination. She has repeatedly argued for overturning precedent to provide more leeway for corporations against attempts to stop the sale of cigarettes to minors, prevent consumer fraud, and prevent the exclusion of women and homosexuals.

Justice Brown has also been inconsistent in the application of rules of judicial interpretation—again depending on the result that she wants to reach in order to fulfill her extremist ideological agenda.

These legal trends—her disregard for precedent, her inconsistency in judicial interpretation, and her tendency to inject her personal opinions into her judicial opinions—lead to no other conclusion but that Janice Rogers Brown is—in the true sense of the words—a judicial activist.

When it is needed to reach a conclusion that meets her own ideological beliefs, Justice Brown stresses the need for deference to the legislature and the electorate. However, when the laws—as passed by legislators and voters—are different than laws she believes are necessary, she has advocated for judicial activism.

One stark example springs to mind: In order to support her view that judges should be able to limit damages in employment discrimination cases, she concluded that ''creativity'' was a permissible judicial practice and that all judges ''make law.''

Justice Brown's approach to the law has led to many opinions which are very disturbing. She has repeatedly and consistently advocated turning back the clock 100 years to return to an era where worker protection laws were found unconstitutional. She has attacked the New Deal, an era which created Social Security and labor standards, by saying it ''inoculated the Federal Constitution with a kind of underground collectivist mentality.''

And she has repeatedly opposed protections against discrimination of individuals—in their jobs and in their homes. Justice Brown's recent claims that her words do not mean what they say are simply unconvincing.

There is one more aspect of Justice Brown's nomination which is extremely disturbing. That has to do with the court for which she was nominated. She is being considered for a position on the premier administrative law court in the Nation—a court that is charged with overseeing the actions of Federal agencies that are responsible for worker protections, environmental protections, consumer safeguards, and civil rights protections.

I am concerned about her ability to be a fair arbitrator on this court. Justice Brown has made no secret of her disdain for government. She has said,

''where government moves in, community retreats, civil society disintegrates, and our ability to control our own destiny atrophies.''

How can someone who believes it is not the ''job of government to take care of'' the American people be entrusted to make fair and neutral decisions when faced with the responsibility of interpreting the powers of the Federal Government and the breadth of regulatory statutes? Justice Brown responded to this question at her hearing by calling on us to review her record as a judge to see that she does not ''hate Government.'' Well, I did review her record. And, what I found was disturbing: She has used her position on and off the bench to argue for the dismantling of government from the inside out.

It is no small irony that this President, who spoke of being a uniter but has used his position to send judicial nominations that divide the Senate and the country, and who spoke with disdain of ''judicial activism,'' has nominated several of the most consummate judicial activists ever chosen by any President. None of the President's nominees is more in the mold of judicial activist than this nominee, Janice Rogers Brown.

I am voting against Justice Borwn's nomination today because the American people deserve judges who will interpret the law fairly and objectively. Janice Rogers Brown is a confirmed and committed judicial activist who has a consistent record of using her position as a member of the court to advocate for her personal belief. We must not enable her to bring her ''jurisprudence of convenience'' to one of the most important courts in the Nation.

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 nomination of Janice R. Brown, of California, to be United States Circuit Judge for the District of Columbia Circuit, shall be brought to a close?

The yeas and nays are mandatory under the rule. The clerk will call the roll.

The legislative clerk called the roll.

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

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

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

The yeas and nays resulted—yeas 53, nays 43, as follows:

[Rollcall Vote No. 452 Ex.]

YEAS—53

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

NAYS—43

Akaka	Dodd	Levin
Baucus	Dorgan	Lieberman
Bayh	Durbin	Lincoln
Biden	Feingold	Mikulski
Bingaman	Feinstein	Murray
Boxer	Graham (FL)	Pryor
Breaux	Harkin	Reed
Byrd	Hollings	Reid
Cantwell	Jeffords	Rockefeller
Carper	Johnson	Sarbanes
Clinton	Kennedy	Schumer
Conrad	Kohl	Stabenow
Corzine	Landrieu	Wyden
Daschle	Lautenberg	
Dayton	Leahy	

NOT VOTING—4

Edwards	Kerry
Inouye	Nelson (FL)

The motion was rejected.

The PRESIDING OFFICER. On this vote, the yeas are 53, the nays are 43. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

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

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

The motion to lay on the table was agreed to.

LEGISLATIVE SESSION

Mr. STEVENS. Mr. President, I ask unanimous consent the Senate return to legislative session.

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

MORNING BUSINESS

Mr. STEVENS. Mr. President, I ask unanimous consent we proceed to a period for morning business with Senators permitted to speak therein for up to 10 minutes.

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

The PRESIDING OFFICER. The Senator from Washington.

THE UNEMPLOYMENT PROBLEM IN AMERICA

Ms. CANTWELL. Mr. President, we just completed 30 hours of debate on judicial nominees, an obviously important debate for all Members who participated. But it is time for us to address the unemployment problem in America, and the fact that this body cannot adjourn for the year without passing an unemployment benefit extension.

Many of my colleagues will remember last year we were at this same point, when unemployment benefits were going to expire in December. We had a debate about whether that was necessary to do by the time we adjourned. I can tell you that not a lot has changed in Washington State. We still have 7.6-percent unemployment and a very high level at the national level, at 6 percent. Americans want to know whether they are going to have an extension of those benefits.

During the Bush and Clinton administrations we extended unemployment benefits for an extension of over 30 weeks during that time period because we thought it was important to make sure people were covered. During the economic downturn, unemployment benefits are a stimulus. For every dollar spent on unemployment benefits it generates $2.15 as far as the economy—that is mortgage payments that can be made, health care benefits that can be extended.

While my colleagues think last year's solution of coming back in January and fixing this unemployment benefit problem was a solution, I guarantee it was not. Adjourning from here without expanding unemployment benefits is like putting a lump of coal in the stockings of Americans at Christmastime.

There were individuals in my State who, because of the failure of us acting, really did make economic choices about their future. I had a constituent who took a big chunk out of her pension program at a 30-percent penalty, basically trading her long-term economic future off for short-term returns because we hadn't given her a commitment on unemployment benefits.

UNANIMOUS CONSENT REQUEST—S. 1853

I ask unanimous consent the Senate proceed to legislative session and the Finance Committee be discharged from further consideration of S. 1853, a bill to extend unemployment benefit insurance for displaced workers, and that the Senate proceed to its immediate consideration, that the bill be read a third time and passed, and the motion to reconsider be laid on the table.

The PRESIDING OFFICER. Is there objection? The Senator from Nevada.

Mr. ENSIGN. Reserving the right to object, I ask unanimous consent that I may ask the Senator from Washington a question while reserving my right to object.

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

Mr. ENSIGN. Mr. President, in asking this question, is the Senator from Washington aware, back in 1993 when the Democrats controlled the House, the Senate, and the White House the rate of unemployment was higher than it is today and that every Democrat in the House and the Senate and the President signed a bill to terminate the program when the unemployment rate

was higher? Is the Senator from Washington aware of that fact?

Ms. CANTWELL. I am not aware to what the Senator from Nevada is referring. I know during the Bush and Clinton administrations, with a richer package of 20 weeks after a Federal program on extension, richer than the 13 weeks that we have now, we extended that over a 30-month period of time.

So far this administration has only done that over a 22-month period of time. While we all want the economy to recover, and we all want to put Americans back to work—I guarantee these individuals would rather have a paycheck than an unemployment check—we need to do a better job making sure that we are making a commitment to unemployment benefits before we adjourn for the session.

We just spent all this time debating judicial nominees. I think it was a hardy debate on both sides. But let's give the American people and those who are suffering from unemployment the benefit of knowing that they will get this benefit extension before we adjourn.

Mr. ENSIGN. Mr. President, the fact is, when the Democrats were in control of all three bodies, the Democrats terminated the program of extending unemployment benefits at the Federal level. They terminated the program.

More people were unemployed at that time when they terminated the program. It is good enough today. The economy is recovering. It is producing jobs. Therefore, I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Pennsylvania.

JUDICIAL NOMINATIONS

Mr. SANTORUM. Mr. President, I just want to thank all of the Members, particularly on this side of the aisle, for the terrific level of debate we have seen over the past 40 hours. I was amazed, yesterday, sitting both here and in my office, and seeing Member after Member come to the Senate floor. I have never seen a debate where more of our Members came to the floor to let their views be known to the American public, of how important this issue is to the future of our country, the issue we just voted on, the issue of judicial nominations.

I was stunned. I thought we would have to scurry around and have sort of a core of people who were willing to come to the floor and fill up the time. But for 40 hours, 39-plus hours, we had no problem. In fact, at 5 o'clock in the morning, Senator CHAMBLISS and I were arguing over 5 minutes, who was going to get the extra 5 minutes because there was such enthusiasm for a cause that we felt was just. It was not a small group.

Some in the media suggested that there was some division over here as to whether to take on this strategy. I would say, just look at the response of our membership. They came to the floor. They came with passion. They came with a conviction that what we were arguing for was the right thing for the country. Maybe it was not the right thing for us politically. We had that debate about having a higher standard for judges, higher than a simple majority, a three-fifths majority, which is now the rule. I think this debate and the votes today have cemented that.

Now the standard will be that you have to have 60 percent of the Senate in order to be a Federal judge. We have made that the rule. So the 214-year history is now gone.

We had a great debate about it. The rule has changed. I thank all who participated on both sides. I thank the staff, the pages, the staff here on the floor—the floor staff, which has been rotating, but even rotating these jobs were not made for three shifts. We don't have three-shift jobs. This is a one-shift operation and they had to work three shifts. They did a great job—the folks in the cloakroom, the Judiciary Committee, all the leadership staff. I particularly thank the staff of the Republican conference—Mark Rogers and Barbara Leeden and Elizabeth Keys, Robert Traynham, Melissa Seckora—all the staff who have worked so hard, holding press conferences in the middle of the night.

Gosh, we had press conferences, 1:30, 2:30, 3:30, 4:30, 5:30, 6:30 in the morning, every hour.

All the outside groups who were concerned about the future of our country and concerned about the future of the judiciary came to Washington. I remember walking in late in the evening on Wednesday evening, and in the rain, in the wind, people lined up outside the Capitol to get into the Capitol to be here on Wednesday night because they knew this was a debate that had real significance because they knew this was a debate that is going to have a place in history.

By affirming what has happened four times before today, now five, now six—that 168-to-4 chart, that 98 percent chart—that is now history; 168 to 6. That is not even accurate because there are 6 more they have said they will filibuster.

Obviously, when the minority leader says there is going to be a filibuster, you get the ducks in a row. They have been able to do that and do it successfully.

So it is now 168 to 12. Of course, we just started that this year. There have only been four, they say. This is the first time it has been done.

It is like a little ball, like dropping a pebble at the top of a large mountain. It shakes lose a couple of other pebbles. Pretty soon, over time this gets to be a boulder, an avalanche that is coming down and is going to hit the judicial branch of our Government.

I predict, if nothing is done to change the rule, the number will be in the hundreds within a couple of years, in the thousands and the tens of thousands as this country goes forward. Why? Because we have changed the way we consider nominations.

I am going to repeat what I said at the close of the debate because I still hope there is a chance that some Members will reconsider. There are Members on our side who have smiles on their faces, Members who care deeply about issues that are before the court today who have smiles on their faces because they say: Now we have the tool to stop activist judges. Now we have the tools we didn't have before. Now they have to get 60 percent of the vote for the judges, the Richard Paezes of this world and the Marsha Berzons of this world, and those who could come on and replace the document I hold in my hand, the Constitution, with their own view of the world.

What an activist judge is, is a little James Madison, just someone who thinks they can write their own Constitution. Madison didn't have the privilege of having all the knowledge that we have today about what is right and wrong. He didn't have the understanding that so many of our learned jurists have in doing what is right for the American people. So this guy, Madison—it was a pretty good first draft. There are many activist judges who think they can write a better Constitution, and they do so on a regular basis. What Madison thought would change the Constitution is something that is actually in the Constitution, and that is a procedure for amending the Constitution. But a lot of Members on the other side of the aisle don't believe we should have to bother with that rather cumbersome process in this fast-changing world in which we live. It just takes too much time. It is far too much effort. It involves having to convince the American public. Why should we bother with such folly?

We, the enlightened, the intellectuals, those who have reached the pinnacles of our professional occupations, we in the judiciary, we are the ones who should be able to lay out for future generations what should have been done for them.

So this elitist, activist corps—elitist in the most pejorative sense of the word ''elitist''—are activist judges who take this document, light a match to it, and throw it away and say: We are a country of people, we are a country of people, not of laws.

That is what we are going to get more of. So what my colleagues believe we can do now is apply the same standard they have applied to Janice Rogers Brown, elected by 76 percent of the vote in the State of California; Priscilla Owen, elected by 84 percent of the people of the State of Texas; Carolyn Kuhl, William Pryor, Charles Pickering, Miguel Estrada—the list goes on and will go on. It will go on.

This is a huge tragedy, what happened here today. The point is, as the Senator from Iowa, Mr. HARKIN, when we came in the Chamber just 40-some

hours ago had a sign held up: ''I am going to watch 'The Bachelor'.'' That was funny. I chuckled. But true humor, good humor, really good and biting humor, always has an element of truth to it, doesn't it? It always has an element of truth. The element of truth here is that the other side does not want you to hear what is going on. They want you to go and watch ''The Bachelor,'' tending to your business. We will take care of the business here. You need not mind what we do here. No, don't bother with us; we'll handle it. You could watch ''The Bachelor.'' We will take care of the people's business here and don't bother with us.

Hopefully, some Americans paid attention. Hopefully, some Americans heard the debate that went on here in the Senate Chamber for the past 40 hours and heard very clearly that we have changed, potentially forever, the standard by which we will confirm judicial nominees. In so doing we eliminate those, not just from the right.

Let me assure you, my colleagues on the other side of the aisle, let me assure you we are not just eliminating those on the right, because what is good for the goose is good for the gander. When you twist and contort the law, it becomes the law for everybody. It is twisted and contorted in its ugliest sense, but it is there for all to see and there for all to use. Rest assured, it will be used. Whether it is by the Senator from Pennsylvania—I hope not because I hope never to be in the minority, and I hope never to have to serve under a Democrat President. That is obviously my objective. I hope I don't have the opportunity or the desire to ever use it. But I suspect someday, someone—either myself or someone who shares my philosophy and ideas of how this Government should be run and how the judiciary should behave—will take this tortured process that has been cemented today and use it against the very people you believe are mainstream, who the Democrats of the left believe represent the deep and wide channel that is the mainstream of American thought; people who believe that ''under God'' should not be in the Pledge of Allegiance, that deep, wide mainstream; people who believe this is a living document.

Let me interpret what that means. That is what you will hear a lot from those on the other side, that this is a living, breathing document. A living, breathing document? Yes. It is living and breathing, but it is not a document. It is a judge. When you hear ''living and breathing,'' documents don't live and breathe. They say exactly what they mean. Documents written 214 years ago don't change by themselves. They don't breathe. They do not live. They were put there and put on paper for a reason—to provide stability to this country and certainty for those here in America who know their rights and who understand those rights throughout time. If we are to change these words, we do so through the process where the people of America—not some unelected few—have input into that process. It is called the amendment process to the Constitution which requires the Congress to act and three-quarters of States to affirm and ratify. That is how we change this document—not by appointing and confirming living, breathing judges to make it their own. That is what they have done.

They think now that they have a sufficient number of these folks on the court that they don't want any conservative judges. What is a conservative judge? A conservative judge is not someone who changes this document to reflect their ideology. I would not call that a conservative judge. I would not call that a judge for whom I would vote. That is not a conservative judge. I don't want a judge who is going to come in and contort the Constitution to my thinking. I want a judge who is going to live by what this Constitution says. It reflects the will of the people. That is what a conservative judge is. A conservative judge is someone who abides by the Constitution—not someone who sees it as a living, breathing document. Judges who are conservative are called ''strict constructionists''—to strictly and narrowly construe controversies that are before them and decide cases in the narrowest sense—not to use a dispute between parties as an opportunity to legislate.

The Senator from Kansas, Mr. BROWNBACK, said at about 4:15 in the morning that what is really happening here is this new test is being introduced by Senators on the other side of the aisle—this ideological test.

Your job as a judge is to look at the disputes between parties, see the applicable law that has been passed by Congress, the State legislatures, or provisions in the Constitution and apply those to the factual circumstances before you. That is your job. If that is your job, then why should we be concerned about your ideology? That is a pretty fair question. If all you are supposed to do is look at the statutes and use the rules and the statutory constructions which are laid out, or look at the Constitution and refer to the interpretations of the Supreme Court with respect to that area of the law, then why at the district court or on the appellate court level should we be concerned about your ideology? It should not be a factor because you are simply applying the law. A liberal can apply the law just as easily as a conservative can apply the law and look at ideology.

Why should your political ideology have anything to do with it if that is all your job is? I don't mean to demean by saying ''if that is all your job is.'' It is a very important job. It is an adjudicatory process. It is a very important process in our country. It is one of the three branches of Government. It is their responsibility to do that. It is not the responsibility of the Senator from Arkansas or Nevada to settle disputes and make decisions. We give that to people who study the law, understand it, and then make the decisions based upon it. We are the ones who create the law. We are the ones who have the great debates on what the law should be that they apply.

The President is the one who executes the law, and in the case of the judiciary appoints those who prosecute it.

I will say in conclusion that what is happening now with this political test is a recognition by the other side—an admission by the other side—that no longer are judges just there to try facts and apply the law, but they are there—in fact, the other side wants them to be there to change the law—not to apply the law but to change the law to reflect the ideology that is dominant on their side of the aisle. They do not want judges who will apply the law. They want judges who will make the law. You would think they would not want to give up their legislative prerogative. That is our prerogative. It is our job to make the law.

What they have found over the years is that the public will not buy a lot of stuff they want to sell. They can't get it done. What they have figured out is a way to avoid having to go through this cumbersome process of writing the laws, getting the public to go along with it, and having to stand for things that are unpopular, which is to just find people who will do it for them and they don't have to stand for election. We can get them in there and they are there for life. They can do our bidding because we can't get it done.

A very dangerous thing happened here today. It will not serve this country well. It will politicize the branch of the Government that heretofore has stayed fairly apolitical. It is a mistake.

I hope and pray that Americans will write and talk to their Members of the Senate, ask them, plead with them to stop this. Put this genie back in the bottle and put it away—throw it away. It is not good for America. It is not right for America. It has never been America. For 214 years we have kept politics out of the judiciary. Let us not politicize it. People are so tired of politics. They complain and rail about it all the time. What have we done here today? We have now injected a healthy dose of it into the judicial system.

May God help this country for what we have done today.

I yield the floor.

The PRESIDING OFFICER (Mr. ENSIGN). The Senator from Arkansas is recognized.

NOMINATION OF J. LEON HOLMES

Mr. PRYOR. Mr. President, I want to again remind this Senate and my colleagues on both sides of the aisle about one of the judicial nominees who happens to be from my State of Arkansas, Mr. Leon Holmes.

Leon and I practiced law together in Little Rock for a few years in the late

1980s or early 1990s. He is a very fine person, a very fine man, and a very fine lawyer. I am proud to count him as a friend.

Let me emphasis that Leon Holmes and I don't agree on every single issue. There is no doubt that there are some things he and I disagree on. But I am very respectful of his views because I know that he has arrived at those views through long consideration. He is a man of great integrity and great judgment. President Bush nominated him in January of this year to be a district judge for the Eastern District of Arkansas.

Mr. Holmes is a practicing lawyer in Little Rock, and has been with a number of very prestigious law firms in his legal career. He is considered probably by most people one of the best lawyers in Arkansas, and certainly on certain types of cases would be considered among the best, if not the best. But at any rate, President Bush nominated him in January—if my memory is correct, January 25—and his nomination went to the Judiciary Committee. He came out of the Judiciary Committee on May 1.

For over 6 months now, Mr. Holmes has been languishing on the Executive Calendar. I am troubled as to why he has been languishing like that. I have talked to the Republican leader many times, to the Republican chairman of the Judiciary many times, and I have talked to my colleagues many times. Both Senators from Arkansas are quite puzzled as to why. We have had 30-plus hours of filibuster led by the Republican Party on some of these judicial nominations, and here we have a nomination that we want to proceed on. We want to move forward on that today. To date, there has not been anything scheduled.

UNANIMOUS CONSENT REQUEST

With that in mind, I would like to ask unanimous consent—I know that we will need a moment to allow someone to come out on the Senate floor—that at a time to be determined by the two leaders, the Senate proceed to executive session to consider Executive Calendar No. 165, the nomination of J. Leon Holmes of Arkansas to be U.S. district judge, that it be considered under the following time limitation: 5 hours for debate equally divided between the chairman and the ranking member, or their designees; that when the time is used or yielded, the Senate without any intervening action or debate vote on confirmation of the nomination; that the President be immediately notified of the Senate's action, and the Senate return to legislative session.

The PRESIDING OFFICER. The Chair informs the Senator from Arkansas that the leaders are trying to work out an agreement to bring this nominee to the floor, and at the current time, unfortunately, I will have to object in my capacity as a Senator from Nevada.

Mr. PRYOR. Thank you, Mr. President.

I have worked for months on this nomination.

Let me emphasis that Mr. Holmes was not my nomination. He is President Bush's nomination. I wasn't consulted in any form or fashion before the nomination was put forward. I wasn't brought into the loop at all. The nomination was handed to me. Unfortunately, I continue to work on this and for whatever reason my efforts seem to be falling on deaf ears on the Republican side.

Mr. DASCHLE. Mr. President, will the Senator from Arkansas yield for just a moment?

Mr. PRYOR. Absolutely.

Mr. DASCHLE. Mr. President, I appreciate the request made by the distinguished Senator from Arkansas. This is a matter that he and his colleague from Arkansas, Senator LINCOLN, have been involved in and supported for a long period of time. He and I have had a number of conversations.

I want to make sure that the record is clear there will be no objection on this side to having votes on the nomination. We have had now 40 hours of debate where one Republican after another has come to the floor in an outcry that we haven't been able to have a vote on a judge, that we are denied the opportunity to have an up-or-down vote on a judge.

As we have said on 168 occasions, let us have the up-or-down vote. This one would be the 169th.

We are prepared this afternoon within the next hour to have a vote on the judge referenced by the distinguished Senator from Arkansas.

I appreciate very much his request. I certainly understand his frustration after all of the outcry that we have heard from our colleagues on the other side. It is amazingly ironic after all of that on a nominee for which there is absolutely no objection to moving to. I will oppose the nominee. I will vote against the nominee when it is presented to the Senate, but there is certainly no opposition within our caucus.

I want the record to be clear with regard to that point. Again, as I have on other occasions, I want to work with the majority leader for a very short time and have a vote. Let us have the vote. After all of this, you would think that the Republican caucus and the majority leader and others responsible for these decisions would jump at the chance of having a vote on the Holmes nomination.

We are ready. We will certainly not object to a time limit or to ultimately have an up-or-down vote, as the Senator from Arkansas has proposed.

Mr. PRYOR. Mr. President, I would like to reiterate what the minority leader has just said. There is no hold on the Democratic side on this nomination. All systems are go on this side. I have talked to my Democratic colleagues and we are ready to vote Mr. Holmes up or down.

Quite frankly, I know on a personal level that Mr. Holmes is ready to be voted up or down.

Again, thank you, Mr. President, for the time. I yield the remainder of my time. 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. SESSIONS. 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. SESSIONS. Mr. President, we have had a good 39 hours, I guess, of debate. It is great to see my friend from Texas here, Senator CORNYN, who served on the Texas Supreme Court and understands these issues and chairs the constitutional law subcommittee of the Judiciary Committee. I say it is good because we have had a very bad and very historic change in the procedures of the Senate.

After all this debate, I think it is doubtful anyone could maintain today that in previous years we did not have filibusters. And I don't think anyone could doubt that we now have sustained filibusters as an organized, systematic way to change the number of votes necessary to confirm a President's nomination from a majority of 51 to 60 votes. This is a big deal. It is not a good deal. It is not good for the Senate. It changes the historic balance of power. It enhances of power of the Senate.

Now the Senate can block a nomination with only 40 votes. It weakens the President, and it weakens the courts. It is a classical alteration of the balance of power established by our Founders when this country was created. It is not good. It was driven by politics. It is a further decline in civility and debate, and it is a greater increase in the influence of politics in the confirmation process. This Senate is not and should not be proud of what has occurred to date.

I am glad it was brought about with some pain. I am glad it just didn't slide in a banal way without any thought. I am glad there are Senators who stayed here all night last night. I was here past midnight. Some stayed here all night because they wanted to be sure they were on record and Americans understood what we have done. I think it ought to be seared on our souls what occurred here. Every Member of this body needs to think about it. We need to realize that this was not lightly done. There is no doubt that in the spring after the election of President Bush, Democratic Senators met in retreat and they had a conference with some liberal law professors. And as the New York Times reported on that retreat, the Senators decided to change the ground rules for confirmation. We have absolutely seen that.

We had nominees blocked in committee on a party-line vote in the Judiciary Committee when the Democrats had their brief period of majority. JIM JEFFORDS switched parties. We had

nominees not brought up for hearing in committee. And we had filibusters on the floor to a remarkable degree.

I will just say that this is unhealthy. One of the things we had in the Judiciary Committee, in the courts subcommittee that I chaired and then Senator SCHUMER chaired after JIM JEFFORDS switched parties, and he began to have hearings on a number of things. He said the burden of proof should be on the nominee. That has not been the issue. So we had a hearing on the fact that the burden of proof should be on the nominee. We had a hearing that the Supreme Court was an extremist, activist, conservative court, which is so far from the truth, it is hard to believe it. That was the agenda of that.

The third thing most threatening to us and to our classical understanding of law was a hearing to say: Well, politics is involved in everything. We ought to ask judges all about their ideology, their politics. That should be openly a part of the confirmation process.

I felt so strongly against that. Lloyd Cutler, the White House counsel under President Carter and President Clinton, clearly and unequivocally rejected that. He said it would lead to the politicization of the courts. I practiced before Federal judges for nearly 15 years as a Federal prosecutor. I will just say that we have to believe—criminal defenders, civil litigants, prosecutors have to believe—that the judge who sits on their case will be able to set aside his or her personal political biases and ideas and beliefs, faithful beliefs, whatever; he will set them aside. When they go to that court, there will be a fair and objective trial, and they will be judged on the merits of the law and the facts and not what the judge thinks, not the politics of the judge.

Lloyd Cutler was correct, as every other witness was who testified at that hearing. We do not need to politicize the courts. We are heading in that way.

Senators are so political. They are driven so much by the special interest groups that they think and believe everything can be settled by political deal. They think courts operate that way. That is not the way they do. I practiced in court. You go to court. You offer to put evidence. Somebody objects. The judge reads the law, and he decides, well, if it meets the standard to come in or it is excluded. You don't admit half of it. It is either admitted or it is not admitted, as Judge Cornyn so ably knew, both as attorney general and as a member of the Texas Supreme Court. Those are things that go to the core of the heritage of law we have been given.

The whole world knows that America and the British have a magnificent legal system. The average citizen can borrow $100,000, buy a house, a $200,000 house, pay it back at 6 percent interest over 30 years. The money, the guy who loaned them $100,000 can believe he is going to collect it. If he doesn't pay it, he can foreclose, and there are procedures, and he pays off the debts and gets out and gets himself paid off. That is why he can afford to loan the man the money at this incredibly low rate.

You go to undeveloped countries around the world, and you see houses half built and you say: Why? They say, well, they saved up enough money to put up the walls and roof, but not enough for the insides. There is no way for them to borrow money. They don't have a legal system that works like ours. We need to cherish and protect the system.

Investors come from all over the world to America because they believe if they have to go to court, they will get a fair shake even though they are a company from Japan or South Korea or Singapore or China or Germany or France. That is something we need to protect. We do not need to allow it to be politicized. We need judges who follow the law as written, who will not impose their personal agendas in the decisionmaking process.

All of these things are matters that President Bush talked about in his election campaign. He believes them deeply. The American people share those beliefs by a substantial number. But they are not shared to the degree they should be by others in this Chamber who are blocking these nominations.

I hope that somehow, some way, this filibuster procedure can end. I hope that somehow, some way, we can avoid the collision we are engaged in now, the obstruction and the delay we are facing today, and get on with the classical way we have always handled judicial nominations in America. It is just unfortunate.

So it has been good that we have had a painful, tough 39 hours. A lot of things have been said. I hope that as we go forward, we can work our way through it. It may take litigation. It may take rules changes. It may take other things. I hope we will continue to back an independent judiciary of men and women of quality and integrity.

The PRESIDING OFFICER. The Senator from Texas.

Mr. CORNYN. Mr. President, I express my gratitude to the Senator from Alabama for his leadership on these issues. He and I share an experience in common, having been attorneys general of our respective States, I in Texas and he in Alabama. I guess that experience, together with the fundamental values we have all come to believe in, ensconced in the Constitution, that elevate the rule of law over the political maneuverings of men and women, is something about which we feel very strongly. I know he does, and I appreciate his eloquence and his passion and his commitment to those values and that ideal.

I know after this lengthy debate there will be those who will want to make a judgment on who won and who lost. That is what I want to talk about for a few minutes because, frankly, I think the battle is not over. With the failure to achieve the necessary votes for cloture of these three nominees this morning, three highly qualified and distinguished individuals who, frankly, don't deserve the shabby treatment they have received during this confirmation process, there will be some who will say: Well, the majority was unable to get the minority to change their mind and so the majority must have lost. The stubborn, recalcitrant minority must have won.

I would say this is a case of perhaps having lost the battle but the war is still raging. The war is still going on. Frankly, it is a war, a battle, a metaphor for a war that has been going on since the inception of this country. It is a debate about what kind of country this is, what kind of country America is.

Indeed, it is also a question of what kind of country we will become. I believe that if our judicial confirmation process becomes so politicized, as it appears to have become, and the test for confirmation is political correctness and licking your finger and putting it in the wind to test which way public opinion is going, and to make sure that if you are a lawyer or a judge or an attorney general you have made decisions in a way that is consistent with public opinion polls rather than the law, I think we will risk losing that war because it is fundamentally a war of words, of ideas, about what kind of Nation we are and what kind of Nation we will become, whether we will become one ruled by politics and polls and special interest groups or whether we are a nation of laws and not men and women.

There is more to be said. There is more to be done in this ongoing war. Of course, we all know those who have followed this debate are aware that the majority leader and Senator ZELL MILLER from Georgia, a Democrat colleague of ours, have filed a rule change proposal which would allow for sufficient debate in the Chamber on nominees but ultimately allow what the Constitution itself commands, and that is that majorities ultimately rule. This is about a fundamental precept of our democratic form of government which says that after the debate, after everybody has had their say, after we have learned from each other in the give and take, ultimately there has to be a vote, and that when those votes are counted, majorities will rule and they will determine the outcome.

Of course, that is the rule everywhere where democracy is respected and practiced except, I am sad to say, in the Senate, when it comes to these judicial nominees, because what we have experienced here with this unprecedented obstruction is a tyranny of the minority. It is, frankly, a shame. I think we are poorer for it.

We could talk about this ongoing war of ideas and debate. We can talk about the battle we fought here this last day

and a half and how it is just one battle in this ongoing conflict of ideas and really debate about the nature of our country that we have had since the beginning of this country. But there is a judgment day. There is a judgment day under our form of government, and that is when ordinary citizens exercise their right to go to the polls and to say whether they approve or disapprove of what we are doing here in this Chamber.

Whether you are a city councilman, county commissioner, Governor, Senator, Congressman, President of the United States, we are subject to the ultimate judgment of those voters, of those citizens, because we are a country that believes in the sovereignty of the people. And it is the people who will have the last word.

I believe our friends on the other side of the aisle who have exercised this tyranny of the minority have made a very dangerous gamble. Their gamble is, what they are betting is, that not enough people are really paying attention. Of course, that is part of what we have been trying to do, to make sure that people who are interested have an opportunity to understand what is going on here and what is at stake.

But ultimately, under our form of government, there can be no division in this body or anywhere else in this country about the fact that, ultimately, the American people will exercise the final judgment and determine who wins and who loses. That has not been decided today on this issue.

This is just one battle in that ongoing war leading up to that day of judgment. Ultimately, for those of us who run for public office, that is what determines whether we will continue to serve here in this body or in any other elected office in this Nation or not; whether we maintain the confidence of the people; whether the people believe that what we are doing here represents their interests as opposed to special interests. And if, in fact, they have confidence in our judgment, our honesty, integrity, and what it is we are trying to accomplish here, then they will say so by returning us to this place, or any other office of public service. So, ultimately, this battle has really been a skirmish in this ongoing conflict.

There is an important difference between those who would obstruct a bipartisan majority who want to confirm these fine nominees, and that is really the nature of the judicial branch of our Government.

I have had the honor for 13 years to serve my State in the judiciary before I was attorney general, and now in the Senate. I believe fervently that what the Framers intended by creating the judicial branch was not one where we had ideologues on the bench, or even politicians who were trying to advance a political or personal agenda. What they conceived and what has helped maintain the rule of law by determining the independence of the judiciary is that we will have rules that will govern all of us, and there will be disputes about those rules and the facts will be decided by independent judges, not ideologues, not those politicians on the bench, not somebody who has run for a particular platform to be nominated and confirmed to lifetime tenure.

The Framers' genius really was that that is a role they left to the representative branches of Government, the Congress and the executive branch, represented by the President. They conceived of a judiciary that would interpret the law and not make the law; that would interpret what the legislature's intent was, not promulgate public policy from the bench, or legislate from the bench. The legislation, they said, should come from the Congress. Once the Congress has determined the laws, then the President has a responsibility to execute the law.

It is a judiciary that serves as the impartial ''umpire.'' We all know that, in any sporting activity, an umpire who takes sides before the contest is inconsistent with the whole idea of fair play. We are talking about more than fair play here. We are talking about what kind of nation America is and what kind of nation America will become, whether we preserve this concept of an independent judiciary, unaffected by politics, that determines the law, not makes the law.

I believe James Madison, Alexander Hamilton, and others of the Founding Fathers, who so wisely conceived of this form of government, would literally roll in their graves if they heard some of the suggestions we have heard during this debate and elsewhere—that judges can, and perhaps should, be ideologues; and really what we are trying to do is achieve some sort of mythical balance to make sure we have enough conservatives and liberals and moderates on a multijudge bench, and somehow in this ''witch's brew'' we are going to come out with justice, with fairness; that people will know what the rules are ahead of time and be able to conform our conduct to what the rules are, so they can go about their business unafraid of being interfered with, molested, or sued.

Indeed, that is what we depend on, the knowledge of what the rules are, and that they will be administered by those who do not have a stake in the outcome, or have an ax to grind, or have a political or personal agenda. That is what our judges are supposed to be, not those who participate in a game of political football.

We do not want, as this process has seemed to degenerate into, judges who will precommit to the outcome of cases that may come before them before they have even heard the facts. In the Judiciary Committee, on which I serve, I have heard judicial nominees questioned about: How would you rule if such and so happened? What is your view of the 14th amendment or the 5th amendment? Assuming this given set of facts, how would you rule in that case?

Those questions are entirely inappropriate. We don't want judges, and we should not confirm judges, who would prejudge a hypothetical set of facts. We want judges who have an open mind and a commitment to the rule of law, and who will enforce that law impartially, without regard to who wins or loses.

If what we are doing here jeopardizes the rule of law, we will have done great damage not only to this body but to our country.

Mr. President, I thank my colleagues for patiently listening after this long debate. But I believed it was important to make some of these points.

I yield the floor and 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. ENSIGN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDENT pro tempore. Without objection, it is so ordered.

PRAYER

The PRESIDENT pro tempore. The hour of 12 noon having arrived and the Senate having been in continuous session since Wednesday, pursuant to the order of the Senate on February 29, 1960, the Senate will suspend while the Chaplain offers a prayer.

Today's prayer will be offered by our guest Chaplain, Rev. Leroy Gilbert, Pastor of Mount Gilead Baptist Church in Washington, DC.

The guest Chaplain offered the following prayer:

Eternal God, the God of grace and glory, the God whose giving knows no ending, the God who stretched the spangled heavens and made us speechless at the sight of His magnificent handiworks, we pause to invoke Your blessing upon our Nation, our Senators, and all those who serve them.

Lord, we pray that the work of this Body will equip every household in America with the resources to build strong and stable families. We pray that the Senators' tireless efforts will enable the people of America to stand strong for the principles that undergird our rights, liberties, and the pursuit of happiness. We pray, when citizens observe how this Senate conducts the business of our Nation, they will be inspired by how those from different political parties can work together to achieve a common purpose for the good of America.

As one Nation under God, may we always be protected by Your divine promises as recorded in Chapter 54 of Isaiah, which declares: ''This is the heritage of the servants of God . . . no weapon formed against you shall prosper . . . tyranny and terror will be far from you . . . whoever attacks you will surrender to you.'' To You, Almighty God who assures the faithful, ''I will make your way prosperous and you shall have good success,'' we pray. Amen.

The PRESIDENT pro tempore. In my capacity as the Senator from Alaska, I suggest the absence of a quorum.

The clerk will call the roll.

The assistant 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.

ANIMAL DRUG USER FEE ACT OF 2003

Mr. GREGG. Mr. President, on November 7, 2003, the Senate passed the Animal Drug User Fee Act of 2003 which authorizes animal drug user fees.

Performance goals, existing outside of the statute, accompany the authorization of animal drug user fees. These goals represent a realistic projection of what the Food and Drug Administration's Center for Veterinary Medicine can accomplish with industry cooperation. The Secretary of Health and Human Services forwarded these goals to the chairmen of the Senate Committee on Health, Education, Labor, and Pensions, and the House Committee on Energy and Commerce, in a document entitled ''Animal Drug User Fee Act Performance Goals and Procedures.'' According to Section 2 of ADUFA, ''The fees authorized by this Act will be dedicated toward expediting the animal drug development process and the review of new and supplemental animal drug applications and investigational animal drug submissions . . . as set forth in the CONGRESSIONAL RECORD.''

Today, I am submitting for the RECORD this document, which was forwarded to the Committee on Health, Education, Labor, and Pensions on November 13, 2003, as well as the letter from Secretary Thompson that accompanied the transmittal of this document.

I ask unanimous consent they be printed in the RECORD.

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

THE SECRETARY OF HEALTH AND HUMAN SERVICES,
Washington, DC, November 13, 2003.

Hon. JUDD GREGG,
Chairman, Committee on Health, Education, Labor and Pension,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: As you are aware, the Food and Drug Administration has been working with representatives of the veterinary pharmaceutical industry and staff of your Committee to design a new animal drug ''user fee'' proposal. Under this proposal, the additional revenues generated from fees paid by this industry would be dedicated for use in expediting the process for the review of animal drug applications, in accordance with performance goals that have been developed by FDA in consultation with the industry. S. 313, the ''Animal Drug User Fee Act of 2003'' reflects the fee mechanisms developed in these discussions. The performance goals are specific in the enclosure to this letter entitled, ''Animal Drug Under Fee Act Performance Goals and Procedures.'' I believe they represent a realistic projection of what FDA can accomplish with industry cooperation and the additional resources that would be provided by the bill and annual FDA appropriations that fully cover the costs of pay and inflation increases for the animal drug review process each year.

I appreciate the support of you and your staffs, and the assistance of other Members of the Committee.

Sincerely,

TOMMY G. THOMPSON.

ANIMAL DRUG USER FEE ACT PERFORMANCE GOALS AND PROCEDURES

The goals and procedures of the FDA Center for Veterinary Medicine (CVM) as agreed to under the ''Animal Drug User Fee Act of 2003'' are summarized as follows:

FIVE-YEAR GOALS (TO BE IMPLEMENTED BY SEPTEMBER 30, 2008)

1. Review and act on 90 percent of complete animal drug applications (NADAs) and reactivations of such applications within 180 days after submission date.

2. Review and act on 90 percent of non-manufacturing supplemental animal drug applications (i.e., supplemental animal drug applications for which safety or effectiveness data are required) and reactivations of such supplemental applications within 180 days after submission date.

3. Review and act on 90 percent of manufacturing supplemental animal drug applications and reactivations of such supplemental applications within 120 days after submission date.

4. Review and act on 90 percent of investigational animal drug study submissions within 180 days after submission date.

5. Review and act on 90 percent of investigational animal drug submissions consisting of protocols, that the Agency and the sponsor consider to be an essential part of the basis for making the decision to approve or not approve an animal drug application or supplemental animal drug application, without substantial data within 50 days after submission date.

6. Review and act on 90 percent of administrative animal drug applications (NADAs submitted after all scientific decisions have been made in the investigational animal drug process, i.e., prior to submission of the NADA) within 60 days after submission date.

The term ''review and act on'' is understood to mean the issuance of a complete action letter after the complete review of an animal drug application, supplemental animal drug application, or investigational animal drug submission which either (1) approves an animal drug application or supplemental animal drug application or notifies a sponsor that an investigational new animal drug submission is complete or (2) sets forth in detail the specific deficiencies in such animal drug application, supplemental animal drug application, or investigational animal drug submission and, where appropriate, the actions necessary to place such an application, supplemental application, or submission in condition for approval. Within 30 days of submission, FDA shall refuse to file an animal drug application, supplemental animal drug application, or their reactivation, which is determined to be insufficient on its face or otherwise of unacceptable quality for review upon initial inspection as per 21 CFR 514.110. Thus, the agency will refuse to file an application containing numbers or types of errors, or flaws in the development plan, sufficient to cause the quality of the entire submission to be questioned to the extent that it cannot reasonably be reviewed. Within 60 days of submission, FDA will refuse to review an investigational animal drug submission which is determined to be insufficient on its face or otherwise of unacceptable quality upon initial inspection using criteria and procedures similar to those found in 21 CFR 514.110. A decision to refuse to file an application or to refuse to review a submission as described above will result in the application or submission not being entered into the cohort upon which the relevant user fee goal is based. The Agency will keep a record of the numbers and types of such refusals and include them in its annual performance report.

FDA may request minor amendments to animal drug applications, supplemental animal drug applications, and investigational animal drug submissions. At its discretion, the Agency may extend an internal due date (but not a user fee goal) to allow for the complete review of an application or submission for which a minor amendment is requested. If a pending application is amended with significant changes, the amended application may be considered resubmitted, thereby effectively resetting the clock to the date FDA received the amendment. The Agency intends to establish the same policy for investigational animal drug submissions.

Sponsors are not required to submit study protocols for review. However, for each voluntarily submitted protocol for a study that the Agency and the sponsor consider to be an essential part of the basis for making the decision to approve or not approve an animal drug application or supplemental animal drug application, the Agency will issue an acknowledgement letter providing comments resulting from a complete review of the protocol. The acknowledgment letter will be as detailed as possible considering the quality and level of detail of the protocol submission, will include a succinct assessment of the protocol; and will state whether the Agency agrees, disagrees, or lacks sufficient information to reach a decision that the protocol design, execution plans and data analyses are adequate to achieve the objectives of the study. If the Agency determines that a protocol is acceptable, this represents an agreement that the data generated by the protocol can be used to support a safety or effectiveness decision regarding the subject animal drug. The fundamental agreement is that having agreed to the design, execution, or analyses proposed in protocols reviewed under this process, the Agency will not later alter its perspectives on the issues of design, execution or analyses unless public or animal health concerns unrecognized at the time of protocol assessment under this process are evident.

INTERIM BACKLOG GOALS

1. Review and act on pending animal drug applications, supplemental animal drug applications, and investigational animal drug submissions within 24 months of initiation of user fee payments.

ADDITIONAL INTERIM GOALS

1. Fifty percent of FDA incremental review staff recruited and on-board by first quarter of FY 2006. Total staff increment on-board by end of FY 2008.

2. FDA will review all submissions in accordance with procedures for working within a queue. An application/submission that is not reviewed within the applicable Interim Application/Submission Goal time frame (noted below) will be reviewed with the highest possible priority among those pending.

INTERIM APPLICATION/SUBMISSION GOALS

FY 04—90 percent of:

Animal drug applications (NADAs) and reactivations of such applications received during FY 2003 are reviewed within 259 days.

Non-manufacturing supplemental animal drug applications and reactivations of such

supplemental applications received during FY 2004 are reviewed within 320 days.

Manufacturing supplemental animal drug applications and reactivations of such supplemental applications received during FY 2004 are reviewed within 225 days.

Investigational animal study submissions received during FY 2004 are reviewed within 320 days.

Investigational animal drug submissions of protocols, that the Agency and the sponsor consider to be an essential part of the basis for making the decision to approve or not approve an animal drug application or supplemental animal drug application, without substantial data received during FY 2004 are reviewed within 125 days.

Administrative animal drug applications (administrative NADAs) received during FY 2004 are reviewed within 90 days.

FY 05—90 percent of:

NADAs and reactivations of NADAs received during FY 2005 are reviewed within 270 days.

Non-manufacturing supplemental animal drug applications and reactivations of such supplemental applications received during FY 2005 are reviewed within 285 days.

Manufacturing supplemental animal drug applications and reactivations of such supplemental application received during FY 2005 are reviewed within 190 days.

Investigational animal drug study submissions received during FY 2005 are reviewed within 285 days.

Investigational animal drug submissions consisting of protocols, that the Agency and the sponsor consider to be an essential part of the basis for making the decision to approve or not approve an animal drug application or supplemental animal drug application, without substantial data submissions received during FY 2005 are reviewed within 100 days.

Administrative NADAs received during FY 2005 are reviewed within 85 days.

FY 06—90 percent of :

NADAs and reactivations of NADAs received during FY 2006 are reviewed within 230 days.

Non-manufacturing supplemental animal drug applications and reactivations of such supplemental applications received during FY 2006 are reviewed within 235 days.

Manufacturing supplemental animal drug applications and reactivations of such supplemental applications received during FY 2006 are reviewed within 140 days.

Investigational animal drug study submissions received during FY 2006 are reviewed within 235 days.

Investigational animal drug submissions consisting of protocols, that the Agency and the sponsor consider to be an essential part of the basis for making the decision to approve or not approve an animal drug application or supplemental animal drug application, without substantial data submissions received during FY 2006 are reviewed within 80 days.

Adminstrative NADAs received during FY 2006 are reviewed within 80 days.

FY 07—90 percent of:

NADAs and reactivations of NADAs received during FY 2007 are reviewed within 200 days.

Non-manufacturing supplemental animal drug applications and reactivations of such supplemental application received during FY 2007 are reviewed within 200 days.

Manufacturing supplemental animal drug applications and reactivations of such supplemental applications received during FY 2007 are reviewed within 120 days.

Investigational animal drug study submissions received during FY 2007 are reviewed within 200 days.

Investigational animal drug submissions consisting of protocols, that the Agency and the sponsor consider to be an essential part of the basis for making the decision to approve or not approve an animal drug application or supplemental animal drug application, without substantial data submissions received during FY 2007 are reviewed within 60 days.

Administrative NADAs received during FY 2007 are reviewed within 70 days.

FY 08—90 percent of:

NADAs and reactivations of NADAs received during FY 2008 are reviewed within 120 days.

Non-manufacturing supplemental animal drug applications and reactivations of such supplemental applications received during FY 2008 are reviewed within 180 days.

Manufacturing supplemental animal drug applications and reactivations of such supplemental applications received during FY 2008 are reviewed within 120 days.

Investigational animal drug study submissions received during FY 2008 are reviewed within 180 days.

Investigational animal drug submissions consisting of protocols, that the Agency and the sponsor consider to be an essential part of the basis for making the decision to approve or not approve an animal drug application or supplemental animal drug application, without substantial data submissions received during FY 2008 are reviewed within 50 days.

Administrative NADAs received during FY 2008 are reviewed within 60 days.

WORKLOAD ADJUSTMENT

The Animal Drug User Fee Act of 2003, requires FDA to annually adjust fee revenues after FY 2004 to reflect changes in review workload utilizing a weighted average of animal drug applications, supplemental animal drug applications for which data with respect to safety or effectiveness are required, manufacturing supplemental animal drug applications, investigational animal drug study submissions, and investigational animal drug protocol submissions. The Agency currently intends to utilize the method detailed below to calculate the workload adjustment, and the percent increase in fees will be the amount of the sum of the output from the workload adjuster that is greater than one (1.0). However, the weighting of the specific factors may change in light of discussions with the animal drug industry and the results of ongoing activity based costing analyses within the Center for Veterinary Medicine.

The term ''workload adjuster'' applicable to a fiscal year consists of the sum of the following 5 components:

(A) The percent of change in the total number of original and reactivated animal drug applications submitted (comparing the three-year average number of such submissions for fiscal year 2001–2003 to the three-year average for the most recent three year period ending June 30 before the start of the fiscal year) times 3 percent.

(B) The percent of change in the total number of original and reactivated supplemental animal drug applications for which data with respect to safety or effectiveness are required (comparing the three-year average number of such submissions for fiscal year 2001–2003 to the three-year average for the most recent three year period ending June 30 before the start of the fiscal year) times 12 percent.

(C) The percent of change in the total number of original and reactivated manufacturing supplemental animal drug applications (comparing the three-year average number of such submissions for fiscal year 2001–2003 to the three-year average for the most recent three year period ending June 30 before the start of the fiscal year) times 25 percent.

(D) The percent of change in the total number of investigational animal drug study submissions (comparing the three-year average number of such submissions for fiscal year 2001–2003 to the three-year average for the most recent three year period ending June 30 before the start of the fiscal year) times 46 percent.

(E) The percent of change in the total number of reviewed investigational animal drug protocol submissions (comparing the three-year average number of such submissions for fiscal year 2001–2003 to the three-year average for the most recent three year period ending June 30 before the start of the fiscal year) times 14 percent.

THE VA–HUD APPROPRIATIONS BILL AND THE DEFENSE AUTHORIZATION CONFERENCE REPORT

Mr. JEFFORDS. Mr. President, hardly a day goes by without an announcement of new casualties in Iraq, a news story about the family of a fallen service member, or the profile of a heroic soldier learning to cope with the aftermath of wounds suffered in Iraq. While the conflict is Iraq prompts quick approval of the defense spending bills, there is less appreciation for mounting costs to the Department of Veterans Affairs.

I was most distressed at last month's refusal by the White House to support the Senate's addition to the Iraq-Afghanistan emergency supplemental of $1.3 billion in funding for veterans' health care. Most Senators understand that military activities in Iraq are significantly increasing the burden on the VA, and supported the addition of $1.3 billion to the Iraq supplemental. Seeing that this amendment was poised for inclusion in the final bill, the White House sent notice to Congress that it would veto the entire package if money for the VA were included. Sadly, Congress gave in to administration pressure and removed this critical funding.

I am pleased that the Senate leadership finally saw fit to bring the VA–HUD appropriations bill to the Senate floor this week. This critical legislation, setting funding levels for fiscal year 2004, which actually began 6 weeks ago, is long overdue. This legislation provides $62 billion for the Veterans Administration, $27 billion of which goes to the Veterans Health Administration, an increase of $3.9 billion over last year's spending level and $1.3 billion over the President's request. Because of budget constraints and the unwillingness of the administration to endorse additional funding for the VA, the Senate Appropriations Committee designated the additional $1.3 billion as emergency spending so as not to count against the annual spending caps. However, this also made the increase subject to the President's approval, and it risked meeting the same fate as other increases rejected by President Bush.

I am very pleased that during debate on the VA–HUD appropriations bill, the

managers successfully offered an amendment to remove the emergency designation and incorporate the $1.3 billion into the bill, thereby greatly increasing the chances that this money will actually get to veterans this year. It seems that a majority of Senators have been listening to the few of us who have been decrying the state of VA funding for some time, and they are now coming to understand that even these modest increases do not make up for the continual shortfall experienced by the VA in recent years. It's long past time that this trend be reversed.

The Senate VA–HUD appropriations bill also supports the Rural Health Initiative, RHI, a successful examination of innovative methods of delivering health care to veterans in rural areas. The VA must become more adept at spreading its health care dollars further across rural America. I am encouraged that the RHI will help improve the VA's performance in this area.

After making significant progress on this legislation, I was discouraged that the Senate leadership decided to pull this VA–HUD bill off the floor prior to its completion in order to begin a 30-hour discussion of the status of judicial nominations. While I agree that judicial nominations are important, I was most disappointed that a largely partisan political debate took precedence over the completion of much needed funding for veterans. I urge the leadership to quickly bring us back to the people's business—the work we were sent here to accomplish.

I would like to mention another issue of concern to veterans that came before the Senate this week. For years I have been a primary promoter of concurrent receipt—the payment to disabled veterans of the full disability and retirement benefits to which they are entitled. For many years, disabled military retirees have been forced to choose between receiving their full retirement pay or their disability benefits. This injustice has finally been recognized by a majority of the Congress, in large part due to the unflagging commitment of Senator HARRY REID. In recent years, Congress has moved to partially restore these benefits. The fiscal year 2004 Defense authorization conference report contains legislation allowing combat disabled veterans with a disability greater than 10 percent to receive their full disability and retirement benefits. It also provides for a 10-year phase-in of full disability and retirement benefits for those with a noncombat related disability rating of over 50 percent.

While I am pleased to see this important improvement in benefit payments, I am concerned that some might view this as the end of the road for this issue. I intend to work closely with Senator REID to continue to press the administration and the Congress to fully fund concurrent receipt for all disabled veterans. This is a basic principle of fairness that is not rectified by halfway measures.

I regret that, for a number of reasons, I was unable to support passage of the Defense authorization conference report, despite its progress on concurrent receipt. Unfortunately, the legislation included unacceptable environmental provisions. As a former Navy Officer and 30-year reservist. I understand the need for the best possible military training. As the ranking member of the Environment and Public Works, EPW, Committee, I was quite concerned by a request from the Bush administration to exempt the Department of Defense, DoD, from five of our Nation's most important and effective environmental laws. After careful review by the EPW Committee, I was convinced that the waivers contained in current law are quite sufficient to provide flexibility for DoD if it needs greater leeway to conduct military readiness exercises.

In an effort to forge a reasonable compromise between DoD's request and sound environmental policy, Senator LAUTENBERG and I authorzed as amendment to the defense authorization bill that was supported by a majority of Senators. While this amendment carefully balanced the Defense Department's need for training with the Interior Department's mandate to protect endangered species, it was dropped in conference with the House of Representatives. In its place, the conferees added language providing DoD with broad authority to sidestep the Endangered Species Act and the Marine Mammal Protection Act, even dropping requirements that any waivers be related to military readiness. I cannot in good conscience support legislation that undermines such critical environmental legislation. Therefore, I had no choice but to vote against the defense authorization conference agreement in spite of its improvement on concurrent receipt.

Mr. President, we have a long way to go before our veterans health system is fully funded and before veterans receive the full compensation they deserve for their years of service to the Nation. I hope that the daily stories of herosim coming out of Iraq will compel more Members of Congress to stand with the veterans and not to rest until justice is done.

VETERANS DAY

Mr. GRAHAM of Florida. Mr. President, I rise to recognize the significance of Veterans Day and to honor the Americans it celebrates. On Veterans Day we pay tribute to the men and women who have fought for our freedom and those who continue to do so right now—they are far from their homes and families, striving to keep us safe from terrorism. These service-members exemplify what it means to be an American—courage, selflessness, and a deep love of and commitment to his or her fellow countrymen.

First proclaimed by President Wilson in 1919, Veterans Day was initially known as Armistice Day and was intended to commemorate the armistice between the Allies and Central Powers that ended the fighting of World War I. In 1953, a Kansas citizen named Alvin King lobbied to change the holiday's name to honor all veterans, not just those from World War I. On June 1, 1954, President Eisenhower signed into law an act proclaiming November 11 to be Veterans Day. Yesterday, we celebrated the 50th anniversary of that celebration.

There are currently 25 million American veterans. Every day more and more service-members return home from Iraq and Afghanistan becoming new members of that elite group of citizens. These heroic Americans freely offer their lives to protect those they leave behind, and those they've never even met. For this sacrifice, we owe them our continued support and care.

Unfortunately, the Bush administration has established a disturbing pattern of behavior that seriously undercuts this long-held ideal. In the past 2 years, the President has been full of patriotic words and speeches—rhetoric that has proven hollow. At a time when 133,000 service-members celebrated their Veterans Day in the deserts of Iraq, the Administration continues to undermine our veterans' ability to receive the quality health care they have earned. With the recent Iraq supplemental spending bill, the administration took an opportunity to demonstrate its commitment to our troops and twisted it into another way to short-change our veterans.

In that appropriations bill, my Senate colleagues and I worked hard to secure an additional $1.3 billion for VA healthcare. These desperately needed funds were subsequently removed at the insistence of the Bush Administration. Nationwide, 80,000 veterans—including more than 10,000 in my home State of Florida alone—are forced to wait longer than 6 months to see a VA doctor. When the service-members currently serving in Iraq return home and become veterans, they will be entitled to 2 years of priority VA health care after they have separated from military service. This added influx of patients, when coupled with the administration's refusal to give VA the money it needs to care for them, will only strain the system further.

During debates on that same supplemental spending bill, my fellow Democrats and I joined together to offer an amendment that would have helped rectify a longstanding inequity in the retirement pay our veterans receive—or, should I say, don't receive. Currently, the earned retirement pay of veterans who are both disabled and eligible for military pensions is reduced simply because they receive disability benefits as well. This practice of denying concurrent receipt does not apply to other Federal workers, only to the courageous men and women like the ones currently serving overseas, who made the armed services their careers.

I spent Veterans Day working alongside employees at the Miami VA Healthcare System and saw first-hand the number of veterans turning to VA for health care. As part of my duties there, I assisted the nursing staff on a patient floor and enrolled veterans for health care in the admissions area. This workday gave me an opportunity to see the numerous challenges facing VA. I stand in awe of both the VA staff and the heroic men and women they serve.

As we honor our veterans this week, we must not follow the administration's lead of making empty promises. We must fight to ensure quality health care for all of veterans, just as they have fought to ensure our quality of life. We must pay this nation's servicemembers, past and present, the highest tribute we can and finally give them what they have so bravely earned.

INTELLIGENCE FAILURES

Mr. JOHNSON. Mr. President, I rise today to discuss an article entitled ''The Stovepipe'' by Seymour Hersh that appeared in a recent edition of The New Yorker magazine.

The article outlines a series of disturbing intelligence failures within the Bush administration leading up to the war in Iraq. From ignoring career intelligence analysts to relying on unreliable raw data, the article makes the case that senior members of the Bush administration often ignored information that did not fit their preconceived view of the situation in Iraq and pushed the intelligence community to come up with information that would support their position, regardless of its accuracy. In particular, the article outlines the practice of ''stovepiping'' information in which intelligence was passed up through the administration without subjecting it to a thorough review by intelligence professionals.

The bad intelligence that resulted from this process was then used to convince our Nation of the need to engage in a near-unilateral, pre-emptive war in Iraq to protect the American people from what was described as an imminent threat from Iraq's weapons of mass destruction.

As a result of this go it alone approach in Iraq, the Bush administration has alienated much of the world, told U.S. taxpayers that they are financially responsible for rebuilding Iraq, and ordered more than a hundred thousand U.S. troops to stay in Iraq for the foreseeable future—yet no evidence of Iraq's weapons of mass destruction have been found.

Mr. President, there is no doubt that at one time Iraq possessed chemical weapons. We know that Saddam Hussein used these weapons during the Iran-Iraq war and on his own people. There is also no doubt that at one point Saddam Hussein pursued a nuclear weapons program. However, the Iraq Survey Group—the group charged with finding Iraqi weapons of mass destruction—has yet to turn up any proof of the huge WMD stockpiles and nuclear weapons program of which the Bush administration repeatedly told us they had evidence.

It is clear that the world and the Iraqi people are better off without Saddam Hussein. He was a brutal dictator who terrorized his own people and destabilized the entire Middle East. I am extremely proud of the men and women of our Armed Forces for their actions during the war and the ongoing efforts to stabilize the country. Now that we are there, we cannot ''cut and run'' and we must provide our troops with the resources they need to complete their mission and to return home as soon as possible.

However, I am deeply concerned that we sent our sons and daughters to war based largely on what turns out to be faulty intelligence. The ends of the war do not justify the means by which the Bush administration convinced the American people that this war was necessary. That is why I believe we need to have an independent investigation into the acquisition and use of intelligence leading up to the decision to go to war in Iraq, not as a political attack, but as a way to make sure that future decisions about whether or not our country goes to war based on the best possible intelligence.

Mr. President, I encourage all of my colleagues to read this important Hersh article from The New Yorker of October 21, 2003.

21ST CENTURY NANOTECHNOLOGY RESEARCH & DEVELOPMENT ACT

Mr. ALLEN. Mr. President, I rise today to thank my colleagues for their support of S. 189, the 21st Century Nanotechnology Research and Development Act.

Especially I want to thank my colleague from Oregon, Senator RON WYDEN, for his leadership. I have enjoyed working with Senator WYDEN on nanotechnology for the past several years on this important issue for America's future. I would also like to thank the other cosponsors on this legislation: Commerce Committee Chairman and Commodore JOHN MCCAIN, the senior Senator from Virginia, Mr. WARNER, and Senators LIEBERMAN, MIKULSKI, HOLLINGS, LANDRIEU, CLINTON, LEVIN, and BAYH.

I have made America's competitiveness in nanotechnology a priority, and working with Senator WYDEN and the chairman of the Commerce, Science, and Transportation Committee, Senator MCCAIN, we held the first hearings in Congress on this emerging science, a field that promises to forever change the way we approach scientific and engineering challenges. Nanotechnology is a ''bottom-up'' approach much like building a sculpture atom by atom and molecule by molecule instead of cutting it from a larger rock. Nanotechnology on the dimensional scale is one nanometer; that is, one-billionth of a meter or 100,000 times smaller than the width of a human hair.

Far-reaching outcomes for the 21st century are envisioned in both scientific knowledge and technological advancement for nanotechnology. The potential for nanotechnology and the exciting work taking place in nanoscience are by all accounts revolutionary, and as the technology matures it will undoubtedly have a tremendous impact on our daily lives.

S. 189 is a truly historic piece of legislation, because, for the first time, it creates a comprehensive national plan to advance and develop the field of nanoscience, nanoengineering, and nanotechnology. This field of science is quickly transforming almost every aspect of our modern world and is already significantly improving our quality of life. Nanotechnology is also showing promise of new applications that we can only imagine at this time. Let me highlight several important examples, such as the use of iron nanoparticles in the cleanup of Superfund sites; nanometer-size minerals in the efficient production of gasoline from crude oil; nanoscale designer molecules to create bone structure for bone repair; nanolasers for super-precision surgery; and gold nanoshells with attached antibodies introduced to targeted cancer tumor sites to destroy tumor growth while leaving healthy tissue unharmed.

As a Senator, my top priority is to advocate and support policies that create jobs, investment, and improvement of America's ability to compete in the global marketplace.

I earnestly believe there is a link between research and development and job creation, which ultimately leads to prosperity for all Americans. Therefore, I believe one of our most important goals should be to create the conditions precedent to positioning researchers and innovators to compete, contribute, and succeed both domestically and internationally. From materials to electronic devices, computers, biotechnology, healthcare systems, pharmaceuticals, environmental improvement, agriculture, efficient energy conversion and storage, space exploration, economical transportation, and national defense, nanotechnology will be the foundation of many of the revolutionary advances and discoveries in the decades to come and will soon occupy a major portion of the technology economy. The annual global impact of products where nanotechnology will play a key role has been estimated to exceed $1 trillion a year by 2015, requiring about 2 million nanotechnology workers.

To remain competitive in this global market we must commit ourselves to ensuring that the United States keeps its edge in this field. This Nation has been the leader of virtually every important and transformative technology since the Industrial Revolution, and this legislation assures that the United

States will continue to lead the world at the new frontier of the nanotechnology revolution.

Specifically, the legislation authorizes a total of $3.63 billion in appropriations over 4 years from fiscal year 2005 through fiscal year 2008.

The goals of the legislation are to provide support for fundamental research and to catalyze synergistic interdisciplinary science and engineering research and education in emerging areas of nanoscience by: providing research grants to individuals and interdisciplinary teams of investigators; establishing a network of advanced technology user facilities and collaborative research centers; accelerating nanotechnology research and development in the private sector including startup companies; encouraging participation of colleges and universities; and guaranteeing United States international leadership in the development and application of nanotechnology.

This historic legislation not only helps ensure America's economic competitiveness in the global marketplace, but spurs innovation and research in a field of science and technology that can touch every human life. I thank my colleagues for working with Senator WYDEN and me to pass this truly vital legislation for America's future.

HONORING OUR ARMED FORCES

Mr. LIEBERMAN. Mr. President, I rise today to pay tribute to Private First Class Anthony D. D'Agostino, U.S. Army, of Waterbury, CT. It is with great sadness of heart that rather than celebrating his birthday, which would have been November 6, we are instead mourning his death. He is the sixth member of the military from Connecticut to die in Iraq.

Even as we mourn his passing, however, we can celebrate his life. His father served in the military, and PFC D'Agostino continue that great tradition. He lived as a true patriot and defender of our great Nation's principles of freedom and justice. He was a member of the 313th Signal Company, 3rd Signal Brigade, Fort Hood, TX. No doubt, PFC D'Agostino was looking forward to some well-deserved rest and recuperation as the CH–47 helicopter he was traveling in was shot down by a shoulder-type missile, forcing it to crash land. He was killed along with 15 others on what has been characterized as one of the bloodiest days in Iraq.

PFC D'Agostino's mission was clear, as was his resolve. He served as a messenger of high justice and idealism in the best tradition of American principles and patriotism. I am both proud and grateful that we have the kind of fighting force he so exemplified.

Our Nation extends its heartfelt condolences to his family. We extend our appreciation for sharing this outstanding soldier with us, and we offer our prayers and support. You may be justifiably proud of his contributions.

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 one such crime today. At a well-known Atlanta college, Aaron Price left a dormitory bathroom after suspecting that one of his classmates had made an unwanted sexually suggestive gesture toward him. Mr. Price returned to the bathroom, with a baseball bat from his bedroom closet, and proceeded to beat his classmate in the head. Mr. Price did not stop until he had fractured the student's skull, chipped many of his teeth, and caused a life-threatening blood clot to develop in his classmate's brain.

Also, I would like to recall two crimes that occurred in a 90-minute span on September 2, 1998, in Huntington, WV. There, two men were berated with anti-gay slurs, then beaten by the same trio of attackers. The first of the two anti-gay attacks occurred as a 31-year-old New Jersey man, who was headed to the PATH train from a local bar, was attacked by three men. The man was kicked and punched, then thrown down a flight of stairs.

The victim of the second attack was a 48-year-old man who left a different bar. He was grabbed from behind and thrown to the ground by three men fitting the description given by the first victim. The men made anti-gay remarks, then took his wallet. One of the men pulled out a knife, and the victim suffered a cut on his arm and a broken wrist during the fight. Police believe the two victims were targeted because they are gay.

In conclusion, I would like to describe a terrible crime today. Guinn ''Richie'' Phillips of Rineyville, KY, disappeared on June 17, 2003. His body was found one week later. Josh Cottrell, the man accused of the murder, is believed to have killed the victim because he dislikes homosexuals. Mr. Cottrell had earlier told his aunt and cousin that he planned to kill Mr. Phillips after Mr. Phillips made an unwanted advance in a local hotel. Mr. Cottrell allegedly strangled Mr. Phillips and stuffed his body into a suitcase, later dropping it in a lake.

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.

CBO ESTIMATE ON S. 1248

Mr. GREGG. Mr. President, on November 3, 2003, I filed Report 108–185 to accompany S. 1248, a bill to reauthorize the Individuals with Disabilities Education Act, and for other purposes. At the time the report was filed, the estimates by the Congressional Budget Office were not available. I ask unanimous consent that a complete copy of the CBO estimate be printed in the RECORD.

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

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 11, 2003.

Hon. JUDD GREGG,
Chairman, Committee on Health, Education, Labor, and Pensions, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1248, the Individuals with Disabilities Education Improvement Act of 2003.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Donna Wong.

Sincerely,

DOUGLAS HOLTZ-EAKIN,
Director.

Enclosure.

S. 1248—Individuals with Disabilities Education Improvement Act of 2003

Summary: S. 1248 would reauthorize the Individuals with Disabilities Education Act (IDEA) through 2009. The bill also would amend two programs that are permanently authorized by IDEA, create four new programs, and amend the Rehabilitation Act of 1973.

CBO estimates that the bill would authorize additional appropriations of $841 million in 2004, for a total of about $10.2 billion in that year (including the two programs that are permanently authorized). CBO estimates that the new authorizations under S. 1248 would total about $5.3 billion over the 2004–2009 period, assuming that annual levels are adjusted for inflation. CBO estimates that appropriations of those authorized levels would result in additional outlays of $4.0 billion over the 2004–2009 period.

Enacting S. 1248 would affect direct spending. CBO estimates that the new state grants for rehabilitation services for students with disabilities would increase mandatory outlays by $139 million in 2004 and $1.8 billion over the 2004–2013 period.

S. 1248 contains no intergovernmental or private-sector mandates as defined by the Unfunded Mandates Reform Act (UMRA). Any requirements on states or educational institutions would be conditions for receiving federal grants; the bill would authorize more than $4 billion over the 2004–2009 period in additional funding for such grants.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1248 is shown in Table 1. The costs of this legislation fall within budget function 500 (education, training, employment, and social services).

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF S. 1248, THE INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT OF 2003

	By fiscal year, in millions of dollars—						
	2003	2004	2005	2006	2007	2008	2009
SPENDING SUBJECT TO APPROPRIATION							
Baseline Spending Under Current Law:							
Estimated Authorization Level [1]	9,434	9,323	9,506	9,708	9,910	10,130	10,350
Estimated Outlays	8,152	9,484	9,580	9,595	9,755	9,963	10,180
Proposed Changes:							
Estimated Authorization Level	0	841	857	875	893	913	933
Estimated Outlays	0	17	547	809	868	886	905
Spending Under S. 1248:							
Estimated Authorization Level	9,434	10,164	10,364	10,583	10,803	11,042	11,282
Estimated Outlays	8,152	9,501	10,127	10,404	10623	10,849	11,086
DIRECT SPENDING							
Baseline Spending Under Current Law: [2]							
Estimated Budget Authority	2,533	2,587	2,645	2,706	2,772	2,840	2,911
Estimated Outlays	2,515	2,569	2,626	2,686	2,750	2,818	2,888
Proposed Changes:							
Estimated Budget Authority	0	198	205	212	220	228	236
Estimated Outlays	0	139	197	210	218	225	233
Spending Under S. 1248:							
Estimated Budget Authority	2,533	2,785	2,850	2,918	2,992	3,068	3,147
Estimated Outlays	2,515	2,708	2,823	2,896	2,968	3,043	3,121

[1] The 2003 level is the amount appropriated for that year for all IDEA programs. The 2004–2009 levels are the baseline amounts for the Grants to States and the Preschool state grants programs, which are permanently authorized under IDEA. The 2004 level includes an advance appropriation of $5.7 billion in the Grants to States program.

[2] Projected spending is CBO's baseline for state grants for rehabilitation services and handicapped research.

Note.—Components may not sum to totals because of rounding.

Basis of estimate: S. 1248 would reauthorize the Individuals with Disabilities Education Act through 2009. All IDEA programs were authorized in 2003 by the General Education Provisions Act (GEPA), and the two largest programs—Grants to States and Preschool state grants—are permanently authorized. S. 1248 would amend those two programs, create four new programs, and amend the Rehabilitation Act of 1973.

Most programs authorized under IDEA would be reauthorized at such sums as may be necessary for 2004 through 2009. For existing programs, the estimated authorization level is the 2003 appropriated amount inflated (i.e., a baseline projection). For new programs, if amounts are not specified, the estimated authorization level is CBO's projection of what it would cost to implement the new program. If funding is specified, CBO's estimate for authorized levels is the authorized amount for 2004 with that amount inflated in later years. As noted above, funding for the Grants to States and Preschool state grants programs is already permanently authorized at such sums as may be necessary, so the estimate assumes that funding would continue at the baseline level.

State grants for rehabilitation services are classified as mandatory or direct spending under the Budget Enforcement Act of 1990. Although the specific authorization for the grants expired in 2002, automatic one-year extensions under the Rehabilitation Act of 1973 and GEPA authorize the grants through 2004. Under section 257 of the Balanced Budget and Emergency Deficit Control Act, CBO is required to assume a permanent continuation of the program for baseline purposes. The estimated costs for the bill's authorization of state grants for students with disabilities are projected to increase with inflation and with the number of students with disabilities ages 14 to 21.

The current-law levels for 2003 shown in tables 1 and 2 are the amounts appropriated that year for all programs. Amounts authorized under current law for years 2004 through 2009 are CBO's baseline projections for the two programs that are permanently authorized and include an advance appropriation of $5.7 billion in 2004 for the Grants to States program.

CBO estimates that S. 1248 would authorize additional appropriations of $841 million in 2004 and additional funding of $5.3 billion over the 2004–2009 period assuming that ''such sums'' amounts are adjusted for inflation. If the authorized amounts are appropriated, outlays would increase by $17 million in the first year and by $4.0 billion over the six-year period. In addition, if S. 1248 were enacted, CBO estimates that direct spending (for the new state grants for rehabilitation services) would increase by $139 million in 2004 and by $1.8 billion over the 2004–2013 period.

Spending subject to appropriation

Table 2 presents CBO's estimates of spending subject to appropriation with inflation adjustments for the various components of each title under S. 1248. The estimated outlays reflect historical rates of spending for the affected programs or for similar programs.

TABLE 2.—DETAILED EFFECTS OF S. 1248, THE INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT OF 2003, WITH ADJUSTMENTS FOR INFLATION

	By fiscal year, in millions of dollars—						
	2003	2004	2005	2006	2007	2008	2009
SPENDING SUBJECT TO APPROPRIATION							
IDEA Spending Under Current Law:							
Budget Authority/Authorization Level [1]	9,434	9,323	9,506	9,708	9,910	10,130	10,350
Estimated Outlays	8,152	9,484	9,580	9,595	9,755	9,963	10,180
Proposed Changes:							
Title I: Amendments to the Individuals with Disabilities Education Act:							
Infants and Toddlers State Grants:							
Estimated Authorization Level	0	442	450	460	469	480	490
Estimated Outlays	0	9	287	425	456	466	476
State Professional Development Grants and Personnel Preparation:							
Estimated Authorization Level	0	52	53	54	56	57	58
Estimated Outlays	0	1	34	50	54	55	56
Personnel Development:							
Estimated Authorization Level	0	93	95	97	99	102	104
Estimated Outlays	0	2	61	90	97	99	101
Technology Development, Demonstration and Utilization; Media Services:							
Estimated Authorization Level	0	39	39	40	41	42	43
Estimated Outlays	0	1	25	37	40	41	42
Access of Instructional Materials:							
Estimated Authorization Level	0	5	5	5	5	5	6
Estimated Outlays	0	*	3	5	5	5	5
Parent Training and Information Centers, Community Parent Resource Centers, and other activities:							
Estimated Authorization Level	0	81	82	84	86	88	90
Estimated Outlays	0	2	53	78	83	85	87
Interim Alternative Education Settings, Behavioral Supports and Whole School Interventions:							
Estimated Authorization Level	0	50	51	52	53	54	56
Estimated Outlays	0	1	33	48	52	53	54
Title III: National Center for Special Education Research:							
Estimated Authorization Level	0	79	80	82	83	85	87
Estimated Outlays	0	2	51	76	81	83	85
Title IV: Commission on Universal Design and the Accessibility of Curriculum and Instructional Materials:							
Estimated Authorization Level	0	1	1	0	0	0	0
Estimated Outlays	0	1	1	*	0	0	0
Total Proposed Changes:							
Estimated Authorization Level	0	841	857	875	893	913	933
Estimated Outlays	0	17	547	809	868	886	905
Total Discretionary Spending Under S. 1248:							
Estimated Authorization Level	9,434	10,164	10,364	10,583	10,803	11,042	11,282

TABLE 2.—DETAILED EFFECTS OF S. 1248, THE INDIVIDUALS WITH DISABILITIES EDUCATION IMPROVEMENT ACT OF 2003, WITH ADJUSTMENTS FOR INFLATION—Continued

	By fiscal year, in millions of dollars—						
	2003	2004	2005	2006	2007	2008	2009
Estimated Outlays	8,152	9,501	10,127	10,404	10,623	10,849	11,086

[1] The 2003 level is the amount appropriated for that year for all IDEA programs. The 2004 through 2009 levels are the baseline amounts for the Grants to States and the Preschool state grants programs which are permanently authorized under IDEA. The 2004 level includes an advance appropriation of $5.7 billion for the Grants to States program.

Notes. Components may not sum to totals because of rounding. * = Less than $500,000.

Title I: Amendments to the Individuals with Disabilities Education Act. Title I of the bill would amend programs authorized under the IDEA. CBO estimates that this title's additional IDEA authorizations would total $762 million in 2004 and $4.8 billion over the 2004–2009 period. We estimate that the resulting outlays would be about $15 million in 2004 and $3.7 billion over the 2004–2009 period.

Grants to States. S. 1248 would authorize such sums as may be necessary for the Grants to States program. Because the program is already permanently authorized at such sums, we assume that funding would continue to be authorized at the current baseline level.

The state grant program provides formula grants to states to assist them in covering the excess costs of providing special education services to children with disabilities. Funding for this program currently is provided on an academic-year basis through appropriations in two separate fiscal years: a forward-funded appropriation which is available July 1 of the current fiscal year, and an advance appropriation available October 1 of the next fiscal year. Although the program has been funded by two separate appropriations since 2001, funding does not need to be authorized separately because all of the funds for an academic year could be provided in one appropriation. The program is funded at just under $8.9 billion in academic year 2003–2004 ($3.2 billion in 2003 and $5.7 billion in 2004).

Preschool State Grants. S. 1248 would authorize such sums as may be necessary for the Preschool grants program. The Preschool state grants program is already permanently authorized at such sums as may be necessary so the bill would not change current authorizations for this program. The Preschool program provides additional grants to states for providing special education services to children with ages 3 through 5. The program is funded at 4387 million in 2003.

Infants and Toddlers with Disabilities. S. 1248 would reauthorize the infants and toddlers state grant program at such sums as may be necessary in years 2004 through 2009. The infants and toddlers program provides funds to states for early intervention and identification activities. The program is funded at $434 million in 2003 and CBO estimates that the authorization for 2004 would be about $442 million under S. 1248. Assuming annual adjustments for inflation, we estimate a six-year total authorization of $2.8 billion.

State Professional Development Grants. The bill would authorize such sums as may be necessary for years 2004 through 2009 for state professional development grants. The state professional development grant program provides grants to states to help them improve their systems for professional development and providing special education services. Funds can be used for personnel preparation, in-service training, and other activities. Grants are distributed on a competitive basis in years that the appropriation is less than $100 million and would be distributed partly based on a formula if the appropriation exceeds that amount. The current state improvement program is funded at $51 million in 2003 and CBO estimates that the bill would authorize the appropriation of $52 million for 2004 and $330 million over the next six years.

Personnel Development to Improve Services and Results for Children with Disabilities. The bill would authorize such sums as may be necessary in years 2004 through 2009 for competitive awards to institutions of higher education and other organizations to fund programs that help address needs for highly qualified personnel in special education, and other activities. Comparable activities are funded at $92 million in 2003 and CBO estimates that the bill would authorize funding of $93 million for 2004 and $590 million over the 2004–2009 period.

Technology Development, Demonstration and Utilization, and Media Services. S. 1248 would authorize such sums as may be necessary for programs that provide funds for activities that increase access to the classroom for children with disabilities. These programs focus on services for individuals who are deaf or blind such as video and closed captioned television. Comparable activities are funded at $38 million in 2003 and CBO estimates that the authorization would be $39 million of 2004 and $244 million over the 2004–2009 period.

Access of Instructional Materials. S. 1248 would create a National Instructional Materials Access center to coordinate the acquisition and distribution of materials for the blind. The center would collect electronic files by book publishers and catalogue, store and distribute the electronic files to authorized entities free of charge. The department would award a contract to a nonprofit organization to administer the center. The bill would permanently authorize funding at such sums as may be necessary and based on discussions with Congressional staff and the Department of Education on the intent and scope of the center, CBO estimates that the annual cost to create and operate the center would be between $5 million and $6 million over the next six years.

Parent Training and Information Centers, Community Parent Resource Centers, Technical Assistance for Parent Training and Information Centers, Technical Assistance and Demonstration, Dissemination of Information, and Implementation of Scientifically Based Research. The bill would authorize such sums as may be necessary in years 2004 through 2009 for parent training and information centers, community parent resource centers, technical assistance, and activities that support scientifically based research. The regional centers provide information, training, and referral services to parents of children with disabilities. Comparable activities are funded at $79 million in 2003 and CBO estimates that the bill would authorize funding of $81 million for 2004 and $511 million over the 2004–2009 period.

Interim Alternative Educational Settings, Behavioral Support, and Whole School Interventions. S. 1248 would create a new competitive grant program to provide grants to organizations to establish practices related to student behavior. Practices could include early screening efforts, training for school staff on positive behavioral interventions, and on-site counseling services. The bill would authorize $50 million in 2004 and such sums as may be necessary for the next five years. Assuming adjustments for inflation, we estimate that the bill would authorize the appropriation of $316 million for this purpose over the 2004–2009 period.

Title III: National Center for Special Education Research. Title III of the bill would create a National Center for Special Education Research within the Institute of Education Sciences and authorize such sums as may be necessary for each of the fiscal years 2004 through 2009. The new center would replace the current special education research and innovation program and would conduct research and evaluation related to the needs of children with disabilities. The current research program is funded at $77 million in 2003 and CBO estimates that the authorization would be about $79 million in 2004 and $496 million over the 2004–2009 period. Resulting outlays would be about $2 million in 2004 and $377 million over the 2004–2009 period.

Title IV: Commission on Universal Design and the Accessibility of Curriculum and Instructional Materials. Title IV of the bill would establish a commission to study, evaluate, and make recommendations to the Congress and the Secretary of Education on design and accessibility of curriculum for children with disabilities. The bill would authorize $750,000 for 2004 and such sums as may be necessary for 2005 for the Commission. CBO estimates that the resulting outlays would be less than $1 million in 2004 and about $1.5 million over the 2004–2009 period.

Direct spending

Table 3 displays the changes in direct spending over the 2003–2013 period. S. 1248 would have no impact on governmental receipts (i.e., revenues).

TABLE 3.—ESTIMATED DIRECT SPENDING AND REVENUE EFFECTS OF S. 1248

	By fiscal year, in millions of dollars—										
	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Changes in outlays	0	139	197	210	218	225	233	241	249	75	8
Changes in receipts	Not applicable										

Title II of the bill expands the scope of the Rehabilitation Act of 1973 to cover certain services provided to students with disabilities for ages 14 through 21 designed to prepare the students for post-secondary education or employment. These services may include but are not limited to needs assessment, counseling, and training. The bill would directly authorize these grants through 2009, but automatic one-year extensions under the Rehabilitation Act and under

the General Education Provisions Act would authorize the grants through 2011.

State grants for vocational rehabilitation services have been classified as direct spending under the Budget Enforcement Act of 1990. S. 1248 creates separate funding for services to be provided to students with disabilities, but there are strong linkages between the delivery of services under the two authorizations. In CBO's view, the delivery of services to the students and nonstudents constitutes a single program for which the funding is mandatory.

CBO estimates that the services authorized by title II would cost about $1.8 billion over the 2004–2013 period. The potential costs of the expansions could be significantly higher or lower than CBO currently estimates, as caseloads and types of services that would be delivered are highly uncertain at this time.

CBO's estimate assumes that 2.0 million to 2.2 million disabled students per year would be in the age range recovered by S. 1248. CBO assumes that, as under the existing program, the students would be screened to determine as to whether they are likely to benefit from receiving the proposed services. This screening would mean that a significant portion—perhaps 25 percent to 30 percent—would receive few or no services. Of those deemed likely to benefit, CBO assumes an annual cost of $171 per student in 2004 rising to around $200 by 2009. This average cost figure is based on program data for 1999, and reflects the assumption that many students would not need services each year and that, for a significant portion of the services, the services would be largely needs assessment including advice about postsecondary educational opportunities. For the purposes of this estimate, CBO assumes that states will supply the necessary matching funds (21.3 percent of the total spending) costing them $54 million in 2004 rising to $64 million in 2009.

Intergovernmental and private-sector impact: The provisions of IDEA apply to states and educational institutions as recipients of federal grants. Consequently, any requirements that would be created or extended by S. 1248, would be conditions of federal aid and not intergovernmental or private-sector mandates as defined by UMRA. (Any mandate for the provision of special education results from other federal statutes). Under current law, states are receiving about $8.9 billion in academic year 2003 from IDEA, which CBO estimates equals about 18 percent of the average per pupil expenditure for all children. Title I would authorize $3 billion for state professional development grants and infant and toddler programs over the 2004–2009 period. Over the same time period, title II would make available an additional $1 billion to states for programs directed at 14 to 21-year-olds. Other sections of the bill would authorize additional grants—some of which would be available to state and local entities. Any costs to match such funds or administer programs would be voluntary.

Previous CBO estimate: On April 28, 2003, CBO transmitted a cost estimate for H.R. 1350, the Improving Results for Children with Disabilities Act of 2003, as ordered reported by the House Committee on Education and the Workforce on April 10, 2003. H.R. 1350 would authorize different amounts of funding for most programs, would not create new programs, and would not amend the Rehabilitation Act of 1973.

Estimate prepared by: Federal Costs: Titles I, II, and IV: Donna Wong (226–2820) and Title II: Deborah Kalcevic and Paul Cullinan (226–2820). Impact on State, Local, and Tribal Governments: Sarah Puro (225–3320). Impact on the Private Sector: Nabeel Alsalam (226–2666).

Estimated approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

TRIBUTE TO DR. DON DUGI

Mr. MCCONNELL. Mr. President, I rise today to honor a noted and dedicated educator, Dr. Don Dugi. Dr. Dugi has been named the 2003 Kentucky Professor of the Year, awarded by the Council for Advancement and Support of Education. Criteria for the award includes support from colleagues and extraordinary dedication to teaching demonstrated by involvement with undergraduate students.

Dr. Dugi is a professor of political science at Transylvania University in Lexington, KY. He joined the faculty of Transylvania in 1975 after earning his master's degree in political science from St. Mary's College in Texas. After his master's degree, he earned his Ph.D. in political science from Purdue University in 1981 where he wrote his dissertation on the ''Political Ideology of Kentucky Coal Producers.''

During his tenure at Transylvania, Dr. Dugi has gained respect from both his colleagues and, more importantly, the students to whom he has dedicated his time and energy. In fact, the Student Government Association recognized his talent and love for teaching and honored him with its Teacher of the Year award. Dr. Dugi became the faculty advisor to both the Student Government Association and pre-law students in 1975, roles he continues today. Each May, he teaches a class to prepare students for the law school admissions test. He receives no compensation and continues to teach his regular classes. This is but one example of Dr. Dugi's selfless commitment to the students at Transylvania.

Colleagues also benefit from Dr. Dugi's commitment to excellence. The administration at Transylvania recognized Dr. Dugi's talents and awarded him a Bingham Fellowship for Excellence in Teaching in 1989. In 1998, he became the first recipient of the prestigious Bingham-Young Professorship. With this honor, Dr. Dugi developed a program that allowed his colleagues to investigate the concept of race as both an intellectual and an instructive concern. For this purpose, he organized a variety of events including a film series, lecturers, performers, and artists. The entire Transylvania campus benefited from Dr. Dugi's hard work.

An accomplished political scientist and educator, Dr. Dugi is a true leader in the field of political science and education, more generally, and should be commended for his unwavering dedication to Transylvania University, its faculty, staff, and its students. I ask each of my colleagues to join me in paying tribute to Dr. Don Dugi, not only for the 2003 Kentucky Professor of the Year Award, but for all that he gives to his students, his community, and his Nation.

ADDITIONAL STATEMENTS

OREGON HEALTH CARE HERO

• Mr. SMITH. Mr. President, today I rise to honor a tireless advocate for Oregonians with disabilities. Cynthia Owens has committed herself to helping ensure, whether through grassroots organization or legislative activism, that individuals with disabilities are granted equal access and opportunity. Today, I recognize Cynthia Owens as an Oregon Health Care Hero.

Twenty-one years ago, Cynthia and David Owens' youngest son, Andy, nearly drowned. The accident left Andy with severe physical disabilities. With the realization that she would need to be her son's advocate, Cynthia began working to protect and expand critical services that allow individuals with disabilities to live independently in their communities. Although her son's new disability served as her impetus, Cynthia's work with countless boards, commissions and organizations has had an impact far beyond her own son; her efforts have been felt throughout the disabled community in Oregon.

United Cerebral Palsy was the first to benefit from Cynthia's commitment to the disabled community. She served for 13 years as a volunteer, working with families to help identify resources and services for their disabled loved ones. After becoming a legislative advocate at the federal and state level, she began working for The Arc of Oregon as the coordinator of a campaign to extend services to all those eligible for disability assistance.

With the experience she gained helping her son find a job in the community, Cynthia became involved in larger efforts to find employment for individuals with disabilities. She now works with the Oregon Health Sciences University Center on Self Determination, the National Coalition on Self Determination, and Self Determination Resources, Inc. Cynthia works with groups around the state to train others in the disability employment field, as well as maintaining a database for families and other interested in employment opportunities. Cynthia was recently honored with an appointment to the State Rehabilitation Council by Governor Kulongoski. The Council works to ensure that Oregon Vocational Rehabilitation Division assists Oregonians with disabilities achieve meaningful employment and independence.

I have had the distinct pleasure of meeting both Cynthia and Andy. I am repeatedly amazed by the strong will, warmth and goodwill of the Owen's family, and honored to help support Cynthia and her work on behalf of the disabled community in Oregon. Cynthia and her husband, David, have faced many challenges raising their son. However, Cynthia has turned those challenges into opportunities for Andy and others like him.

For being an outstanding mother and advocate. I salute Cynthia Owens and

thank her for being a true Oregon Health Care Hero.●

HONORING DR. WILLIAM P. FOSTER

● Mr. GRAHAM of Florida. Mr. President, today I pay tribute to an innovative musician and Floridian, Dr. William P. Foster. For over 50 years, Dr. Foster was conductor of the internationally acclaimed Florida A&M University Marching ''100'' Band. Throughout his musical career at FAMU, Dr. Foster has been credited with revolutionizing marching band techniques and redefining the marching band as an art form. Dr. Foster's dedication to excellence in education through the arts has enriched the lives of Floridians and Americans.

In June of 1946, Dr. Foster came to Florida A&M University to establish the Marching ''100'' Band. Since its inception, the band has participated in more than 200 half-time pageants, has appeared in three films, three commercials, and numerous magazine and newspaper articles. The band has appeared on 60 Minutes, 20/20 and PM Magazine telecasts and thirty-four nationally televised performances on all networks with a viewing audience of over five billion people. On October 26, 1984, the FAMU Marching Band was presented the prestigious Sudler Intercollegiate Marching Band Trophy. In 1989, the band was selected by the French government, to serve as America's official representative in the Bastille Day Parade, celebrating the Bicentennial of the French Revolution. The band also appeared in both of President Bill Clinton's inaugural parades, in January of 1993 and 1997. This list of band appearances and honors is by no means exhaustive.

Dr. Foster's contributions to FAMU have earned him State and national recognition as well. He is a member of the Hall of Fame for several organizations including the National Association for Distinguished Band Conductors, the Florida Music Educators Association and the Afro-American Hall of Fame, to name a few. In 1994, he was elected president of the American Bandmasters Association and in 1996, President Bill Clinton nominated, and the U.S. Congress approved Dr. Foster's presidential appointment to serve on the National Council on the Arts. In August of 2003, Dr. Foster's efforts were recognized again by the State of Florida, when he was inducted into the Florida Artists Hall of Fame. This award acknowledges individuals who contribute to Florida's national and international reputation as a State with a strong and sustained commitment toward the development of cultural excellence.

Dr. Foster has taken an active role to ensure the continued musical involvement of the FAMU student body. As an inspired bandleader and advisor, Dr. Foster sought financial support to aid his undergraduate students in the Marching ''100'' Band. Initially, Dr. Foster gave thousands of dollars of his own money, and started to work with large and small corporations, and private citizens. However, Dr. Foster was never satisfied with the level of support he received for the students. When Dr. Foster stepped down as Director of Bands and Department Chairman, he set forth to dedicate his attention the creation of a foundation. To this end, and with the assistance of Mr. Harold E. Byrd, Sr., on April 22, 1998 the William P. Foster Foundation was established.

Mr. President, I commend Dr. William P. Foster for his commitment to education, music and philanthropy. His commitment to education and philanthropy is an example to us all. For his many years of public service, I am proud to acknowledge the work of Dr. William P. Foster.●

HONORING DR. OSWALD P. BRONSON, SR.

● Mr. GRAHAM of Florida. Mr. President, today I pay tribute to a fine humanitarian and Floridian, Dr. Oswald P. Bronson, Sr., who will be retiring in June 2004. An educator and spiritual leader, Dr. Bronson has spent his life building bridges between the college and the community. Throughout his 28-year career as President of Bethune-Cookman College, Dr. Bronson has overseen tremendous growth and improvements on campus. Dr. Bronson's dedication to excellence in education and community advocacy has enriched the lives of Floridians and Americans.

Dr. Bronson's leadership and achievements at Bethune-Cookman College are a benchmark in higher education. Under his guidance, the college has nearly doubled its enrollment to 2,500. It has raised its community economic impact to $250 million, boosted endowments from $1.2 million to $25 million, and increased its total operating budget from $6 million to more than $45 million. His vibrant personality, genuine concern for the growth of the institution, and commitment to the founder's vision, enable him to bring unprecedented private, corporate and governmental support to the institution.

Active on campus and off, Dr. Bronson's belief in service to the community is evident in his numerous outside activities, including his appointment to an advisory post by former President Bill Clinton. He has served as chairman and president of prestigious educational and religious organizations nationwide, including his most recent appointment to the Board of Directors for the National Association of Independent Colleges and Universities.

Dr. Bronson is an ordained United Methodist Church minister, and former president of the Interdenominational Theological Seminary. He has served as a pastor in Florida, Georgia and Illinois for 16 years, and has lectured and taught in numerous mission schools, clinics, pastoral institutes and leadership training seminars.

Dr. Bronson has fostered and strengthened Bethune-Cookman College's relationship with the local community and the world. A thoughtful and well-respected member of the Bethune-Cookman College family, Dr. Bronson has advocated for increased diversity and understanding on campus and off. I am pleased that outstanding Floridians like Dr. Bronson are setting an example for communities across our Nation, and I want to thank him for his service.●

SQUAW VALLEY PARK DEDICATION

● Mrs. BOXER. Mr. President, I am pleased to announce the dedication of Squaw Valley Park in Placer County, CA.

Two decades ago, the Placer County Board of Supervisors and local community partners began their search for an ideal site for a community park. Their final choice was Squaw Valley, located within the Tahoe National Forest. Squaw Valley, which is internationally renowned as the site of the 1960 VIII Winter Olympic Games, is one of the crown jewels of the Sierra Nevada.

This park is also significant because its creation is the result of historic legislation, signed by President Clinton on July 29, 1998, allowing the U.S. Forest Service to conduct land transactions through sale rather than land exchange. I was proud to support this new approach because it saves taxpayers money through a much expedited transaction process.

When completed next spring, Squaw Valley Park will provide an exceptional recreational environment in which local residents and visitors will be able to enjoy this breathtaking region of California. I commend all those who have made the dream of Squaw Valley Park a reality.●

IPS CHARITY DYE ELEMENTARY SCHOOL 27: WINNER OF THE NATIONAL BLUE RIBBON SCHOOLS AWARD

● Mr. LUGAR. Mr. President, I rise today to recognize and congratulate Indianapolis Public School Charity Dye Elementary 27 as a recent recipient of the prestigious No Child Left Behind Blue Ribbon Schools Award.

The Blue Ribbon Schools Program was established in 1982 to identify and recognize outstanding public and private schools across the United States. In keeping with the principles of the No Child Left Behind Act—the education reform bill signed into law in 2002—the requirements for this award have been strengthened and now focus more intently on student achievement results.

Charity Dye Elementary School is an Indianapolis inner-city school, and is the first IPS school to receive this award in nearly 20 years. While the

school faces all the same challenges as most inner-city schools, Charity Dye has shown that challenges can be overcome with hard work and dedication to the cause.

Five years ago, the percentage of third grade students who passed the Indiana Statewide Testing for Educational Progress exam at Charity Dye was 30 percent. Last year, this number was 83 percent a gain of 50 percentage points, and nearly 13 percentage points over the statewide average. This is an extraordinary turn around.

Charity Dye has made this progress by internalizing the philosophy of the No Child Left Behind Act and operating under the assumption that every child can learn, and that every child will learn.

I am very pleased to take this opportunity to applaud all the students, teachers, and administrators of Charity Dye Elementary School for their hard work and dedication to learning. I hope that the early love of learning will stay with each of the students of Charity Dye as they progress through school. And I encourage each and every one of Charity Dye's teachers, students, and administrators to keep up the excellent work.

As a former mayor of Indianapolis, I am very proud of IPS Charity Dye Elementary 27 and offer this school as a model of excellence for other schools in Indiana and across the Nation.●

HONORING DR. MARIA ALICIA GARZA

● Mr. CRAPO. Mr. President, I rise today to honor Dr. María Alicia Garza, associate professor in the Department of Modern Languages and Literatures at Boise State University. Dr. Garza has been chosen as the Idaho Professor of the Year by the Council for the Advancement and Support of Education and the Carnegie Foundation for the Advancement of Teaching. This prestigious honor is a tribute to Dr. Garza's outstanding teaching, which touches, motivates, and inspires.

Dr. Garza has been with Boise State since 1996 and has received excellent reviews from Day One. She is recognized by both faculty and students for her knowledge of the subject matter, her infectious enthusiasm, and her thorough preparation. As a result of this dedication, Dr. Garza's students have been motivated to succeed, as they have graduated from BSU and moved into the workforce.

Not surprisingly, this is not the first time Dr. Garza has been recognized for her outstanding efforts. She has also received the Associated Students of Boise State University Faculty Recognition Award, as well as the College of Arts Distinguished Teaching Award during her time at Boise State. The Idaho Professor of the Year award is another example of Dr. Garza's commitment to high quality education in Idaho. I offer my congratulations and highest praise to Dr. Garza, Idaho's Professor of the Year.●

TRIBUTE TO DR. DON DUGI

● Mr. BUNNING. Mr. President, I pay tribute to Dr. Don Dugi professor of political science at Transylvania University located in Lexington, KY on being named the Kentucky Professor of the Year.

The Professor of the Year Awards are the only national awards that recognize college and university professors for their teaching. Since 1981, the Professor of the Year awards have been given to professors who exhibit dedication to teaching and commitment to their students.

Dr. Dugi has exhibited great commitment to his students at Transylvania University. As a professor for political science, Dr. Dugi is tasked to mold our Nation's future leaders. Being honored with this award Dr. Dugi sets an example of excellence for the rest of the faculty and for his students.

Mr. President, I now ask my fellow colleagues join me in thanking Dr. Dugi for his dedication and commitment to the education of America's future. In order for our society to continue to advance in the right direction, we must have professors like Dr. Dugi in our colleges and universities.●

PROFESSOR CAROLE GAVIN

● Mr. LAUTENBERG. Mr. President, I would like to take this opportunity to recognize Dr. Carole Gavin, my constituent who was recently named the New Jersey Professor of the Year by the Carnegie Foundation for the Advancement of Teaching and the Council for Advancement and Support of Education. This award is given to professors who demonstrate a high level of dedication to teaching and a commitment to students, and who use innovative instructional methods. Dr. Gavin's dedication to teaching non-English speakers and academic accomplishments make her an outstanding recipient of this award.

As a professor of French and English as a Second Language at Burlington County College in New Jersey, Dr. Gavin has spent the past 22 years devoted to her students. I think she describes her teaching philosophy best: ''my primary objective as a professor here at Burlington County College since 1971 has been to help students understand that language, whether it be a foreign language or English, plays a critical role in their success as human beings and professionals.''

Dr. Gavin's professional accomplishments include expanding the college's English as a Second Language program into a multi-level, nine-course program that serves over one hundred students from many different countries. Last year, Dr. Gavin received the Association of Community College Teachers', ACCT, Northeast Regional Award. The ACCT describes her as ''a stellar member of the Burlington County College faculty,'' and calls her commitment to her students ''exemplary.''

In addition to her role as teacher, Dr. Gavin recently underwent one of the most difficult personal challenges an individual can face. Emerging victorious from a battle with breast cancer, Dr. Gavin used her struggle to help others by working with the Phi Theta Kappa honor society to launch the Carole Gavin Scholarship initiative. This scholarship provides active Phi Theta Kappa members, who have been touched by cancer, with financial resources to help defray educational expenses for the Academic Year 2003—2004 while enrolled in either two or four-year institutions.

It has become something of a cliché to describe someone as an inspiration. Nevertheless, the work that Carole Gavin has done both professionally and personally is truly inspirational, and I offer her my deepest congratulations.●

TRIBUTE TO VICKY MROCZEK

● Mr. DeWINE. Mr. President, today I pay tribute to a remarkable woman—a woman who devoted herself to improving the lives of those often overlooked in our society—the elderly and the poor. The State of Ohio lost one of its most dynamic and compassionate public servants with the passing of Vicky Mroczek on September 28, 2003.

Vicky Mroczek dedicated over 20 years of her career to public service in Ohio, most recently serving as the Chief of the Office of Community Services in the Ohio Department of Development. Since 1985, she administered Ohio's Home Energy Assistance Program, a federally funded program that helps low-income households manage their energy bills. Earlier in her career, she worked for the Ohio Consumer's counsel, representing Ohio's residential customers in utility matters. She also served on the Board of the Central Ohio Transit Authority.

Vicky was also a prominent figure at the national level, working on creative and innovative approaches to helping low-income households afford essential energy services. She served as Chair of the National Low-Income Energy Consortium from 1993 until her death. She also served as Chair of the National Energy Assistance Directors Association from 1990 through 1992.

Vicky Mroczek was an engaging and dynamic public speaker, someone who could engage audiences from the cities to the farms, in local settings to national forums, reaching utility clients, utility executives, and everyone in between. She led with grace, fairness, and most of all, compassion. Her service and dedication to the citizens of Ohio and to low-income families across our Nation is a model to us all. She will be missed.

Vicky's husband of 24 years, George Diehl; her mother Phyllis Mroczek; and her sister, Michelle Mroczek, remain in our thoughts and prayers.●

TRIBUTE TO LARRY GAMMON

● Mr. SUNUNU. Mr. President, I wish to pay tribute to the President of Easter Seals New Hampshire, Larry Gammon, whose leadership has been crucial to the ability of Easter Seals to do so much for so many in our State. He is a man of remarkable character, who has devoted his life to community service, beginning his career in public education and then joining Easter Seals, where he is currently in his thirty-second year with the organization.

Mr. Gammon shares the dedication, enthusiasm, and vision of the founders of Easter Seals to increase the independence and improve the quality of life for individuals with special needs. As a result, Easter Seals New Hampshire has grown significantly to meet the needs of communities throughout the State, as well as in Maine, New York, and Vermont.

In New Hampshire, Easter Seals provides services to more than 20,000 residents each year, addressing a wide range of physical and emotional concerns including cerebral palsy, autism, muscular dystrophy, and Alzheimers disease.

And each day, an average of 125 New Hampshire children are served through Easter Seals' youth programs including families in need, family mediation, parenting workshops, and 24-hour emergency support. For those who needed, but could not afford, assistance in the past year, Easter Seals New Hampshire provided $2 million in free and reduced-cost services.

New Hampshire's elderly population is well served by senior programs offered by Easter Seals including: a medical day rehabilitation program for individuals requiring light nursing monitoring; an ambulatory program for those with light medical and mental health needs; and an Alzheimer's day program for elders with dementia and memory loss.

Equally impressive as the quantity of services provided by Easter Seals New Hampshire is their variety. Deaf or hard of hearing clients are fitted with hearing aids, and vocational training is provided to the visually impaired. Additionally, rehabilitation therapy is available for those who have sustained traumatic injuries.

For 22 consecutive years, Easter Seals has ranked number one among National Health Council members for the percentage of program dollars spent on direct client services, allocating over 90 cents of every dollar for this purpose. Larry Gammon has provided prudent financial stewardship to Easter Seals New Hampshire with the organization earning numerous accolades for its fiscal management and services.

Mr. Gammon is an individual of remarkable character who leads by example, with an impressive record of community service that extends beyond his work at Easter Seals and includes active roles in a number of other community organizations. This effort has made him successful in recruiting individuals of similar dedication to the board of directors and staff of Easter Seals, which now totals 1,200.

The contributions of Larry Gammon and Easter Seals New Hampshire on behalf of individuals with special needs are an example of America's community spirit and a role model for the rest of us. I thank the Senate for the opportunity to honor this extraordinary individual and organization.●

TRIBUTE TO WORLD OF CHILDREN AWARD HONOREES

● Mr. DEWINE. Mr. President, today I recognize the honorees for the 2003 Hannah Neil World of Children Awards presented in Columbus, OH, on November 20, 2003. These awards recognize people from around the world who have devoted their lives to making the world a better place for children. The awards are very prestigious, commensurate to the Pulitzer and Noble Prizes for those who dedicate their lives to improving the lives of children.

Since the inception of the awards, 500 nominations have been received from 50 countries. An international Advisory Council, headed by three-time heavyweight boxing champion Muhammad Ali and composed of 35 members from 15 different countries, selects the award recipients.

I would like to recognize each of this year's honorees and thank them for their selfless commitment to helping children across the globe:

First, the Kellogg's Child Development Award honors an individual who has made a significant lifetime contribution to children's futures by greatly improving their opporuntities to learn and grow. The honorees for this award are:

Fani Lerner from Parana, Brazil; Claudia Gonzales Moreno from Murillo, Bolivia; and Jetsun Pema from Himachal Pradesh, India.

The Cardinal Health Children's Care Award recognizes an individual who has made a significant lifetime contribution to the health and well-being of children. The honorees for this award are:

Dr. Martin Eichelberger from Washington, DC; Dr. Elizabeth Jones from California; and Mehendra G. Mehta from Mumbai, India.

The Founder's Award honors an individual youth who has made significant contributions to enhancing the lives of other youth. The honorees for this award are:

Ryan Hreljac from Ontario, Canada and Dayro Javier Reyes Acosta from Santander, Colombia.

I extend my most sincere thanks to these honorees for their dedication and commitment to our world's children. Their efforts, indeed, are deserving of the highest praise and recognition, as they give voice and hope to children in need across the globe.●

GUNNERY SERGEANT THOMAS S. HOGDAHL, UNITED STATES MARINE CORPS

● Mr. THOMAS. Mr. President, as a veteran marine and friend, I rise today to pay tribute to Gy Sgt Thomas S. Hogdahl, who will retire from the U.S. Marine Corps on March 1, 2004. I have had the pleasure to work with Hogdahl on many occasions. In addition to his professionalism and planning expertise he will be missed for his intensity, integrity, and unique sense of humor. But mostly he will be missed for his dedication to the Members and staff of the Senate.

Thomas Hogdahl was born in Teaneck, and was raised in Bergenfield NJ. There he played basketball and soccer and graduated from Bergenfield High School in 1983. In 1984 he enlisted in the Marine Corps, and subsequently reported to Parris Island, SC, to take on the challenge of becoming a US marine.

Upon earning the title of marine, Gunnery Sergeant Hogdahl completed his followon training at Camp Lejeune, NC, where he received formal training as a Marine Corps Administrator, graduating as the honor graduate. He was then ordered cross-country to Camp Pendleton, CA, to serve as an administrative clerk to the hundreds of marines assigned to the historic 1st Marine Division. From 1986 to 1994, his service would take him to Okinawa, Japan, with the 3rd Marine Amphibious Force; Marine Corps Base Quantico, VA, with Security Battalion, and eventually to Dover, NJ, with the inspector and instructor staff for the 25th Marines, 4th Marine Division.

In 1994, Gunnery Sergeant Hogdahl was selected for one of the most demanding billets in the Marine Corps, a Marine Corps Drill instructor (DI). I, as well as every person who has worn the Eagle, Globe, and Anchor will remember their drill instructor for the rest of their lives. He is the one person who has the greatest impact in transforming trainees into U.S. marines. After graduating in the top 10 percent of his DI School, Gunnery Sergeant Hogdahl returned to the legendary yellow footprints where he started his journey 10 years before, only this time it would be in Recruit Depot San Diego, and this time he would be wearing the traditional ''Smokey'' cover of a drill instructor. For the next 2 years his leadership and example would transform hundreds of young men into U.S. marines.

In 1996, after leaving the drill field, Gunnery Sergeant Hogdahl attended the Advanced Personnel Admin Chief's Course, graduating again as the honor graduate. Thereafter he reported for duty at Marine Corps Base Quantico, VA, where he served as Administration Chief for headquarters and Service Battalion. Just over a year later Gunnery Sergeant Hogdahl was selected to attend the Staff Non-Commissioned Officer Career Course, from which he graduated in the top 10 percent amongst his

fellow senior marines. Following school, Gunnery Sergeant Hogdahl was handpicked to fill a senior SNCO position as administrative assistant in the Office of the Under Secretary of the Navy. Based on his exemplary performance over the next year and a half, Gunnery Sergeant Hogdahl was once again selected for another position of great responsibility—the Staff Non-Commissioned Officer for the Marine Corps' U.S. Senate Liaison Office.

In May 1999, Gunnery Sergeant Hogdahl began his tour with the Marine Corps' Senate Liaison Office, and since that time, he has been a key player in helping to maintain positive and productive relationships between the Marine Corps, my colleagues in the Senate, professional committee staff, and personal staff. He was responsible for responding to thousands of congressional inquiries ranging from such sensitive issues as notification of combat casualties during Operations Enduring Freedom and Iraqi Freedom to providing important, timely information on the operation and organization of the Marine Corps. Through his efforts, Gunnery Sergeant Hogdahl developed a sterling reputation for honesty, punctuality, and accuracy. His efforts not only communicated the Commandant's message to the Senate, but also upheld and added to the Marine Corps' image and reputation on Capitol Hill.

While a member of the Marine Corps Senate Liaison Office, Gunnery Sergeant Hogdahl successfully planned and executed 28 international congressional delegations. I had the pleasure of traveling on three of these congressional delegations with Gunnery Sergeant Hogdahl, and was greatly impressed with his professionalism, attention to detail, and resourcefulness. His acumen for planning and coordination carried over into Gunnery Sergeant Hogdahl's ability to plan and organize numerous Marine Corps and Joint Service social events on Capitol Hill. These events included among others, the Marine Corps Birthday Commemoration, Joint Services Reception, and Marine Corps fall and spring receptions—all very important in enabling myself, and my Senate colleagues to maintain important relationships with the Corps' senior leadership.

Throughout his career as a U.S. marine, GySgt Thomas S. Hogdahl has demonstrated outstanding character, discerning judgment, and a deep sense of duty to his Country and Corps. On behalf of the U.S. Senate, I thank Gunnery Sergeant Hogdahl for his 21 years of service to the Nation and the U.S. Marine Corps. His wife Barbara, and their three sons—Thomas, Stephen, and Brandon—have reason to be proud of ''Gunny'' Hogdahl as we are here in the U.S. Senate and I wish them all the best as Tom tackles new challenges in his certain to be successful civilian career.●

MESSAGE 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.)

PERIODIC REPORT RELATIVE TO THE NATIONAL EMERGENCY WITH RESPECT TO IRAN WHICH WAS DECLARED IN EXECUTIVE ORDER NO. 12170—PM 56

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs:

CONTINUATION OF THE NATIONAL EMERGENCY WITH RESPECT TO IRAN

On November 14, 1979, by Executive Order 12170, the President declared a national emergency with respect to Iran pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the situation in Iran. Because our relations with Iran have not yet returned to normal, and the process of implementing the January 19, 1981, agreements with Iran is still underway, the national emergency declared on November 14, 1979, must continue in effect beyond November 14, 2003. Therefore, consistent with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year this national emergency with respect to Iran.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

GEORGE W. BUSH.

THE WHITE HOUSE, *November 12, 2003.*

MESSAGES FROM THE HOUSE

At 2:17 p.m., on November 12, 2003, a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

S. 313. An act to amend the Federal Food, Drug, and Cosmetic Act to establish a program of fees relating to animal drugs.

H.R. 274. An act to authorize the Secretary of the Interior to acquire the property in Cecil County, Maryland, known as Garrett Island for inclusion in the Blackwater National Wildlife Refuge; and

H.R. 3232. An act to reauthorize certain school lunch and child nutrition programs through March 31, 2004.

The enrolled bills were subsequently signed by the President pro tempore (Mr. STEVENS).

At 3:47 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that pursuant to 10 U.S.C. 9355(a), and the order of the House of January 8, 2003, the Speaker appoints the following Members of the House of Representatives to the Board of Visitors to the United States Air Force Academy: Mr. THOMPSON of California, and Ms. KILPATRICK of Michigan.

ENROLLED BILLS SIGNED

On November 13, 2003, a message from the House of Representatives, delivered by one of its clerks, announced that the Speaker has signed the following enrolled bills:

H.R. 2559. An act making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2004, and for other purposes; and

H.R. 3054. An act to amend the Policemen and Firemen's Retirement and Disability Act to permit military service previously performed by members and former members of the Metropolitan Police Department of the District of Columbia, the Fire Department of the District of Columbia, the United States Park Police, and the United States Secret Service Uniformed Division to count as creditable service for purposes of calculating retirement annuities payable to such members upon payment of a contribution by such members, and for other purposes.

The enrolled bills were subsequently signed by the President pro tempore (Mr. STEVENS).

MEASURES PLACED ON THE CALENDAR

The following bills were read the first time:

S. 1862. A bill to provide certain exceptions from requirements for bilateral agreements with Australia and the United Kingdom for exemptions from the International Traffic in Arms Regulations.

S. 1863. A bill to authorize the transfer of certain naval vessels.

S. 1864. A bill to enhance the security of the United States and United States allies.

S. 1865. A bill to enhance the security of the United States and United States allies.

S. 1866. A bill to enhance the security of the United States and United States allies.

ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on today, November 12, 2003, she had presented to the President of the United States the following enrolled bill:

S. 313. An act to amend the Federal Food, Drug, and Cosmetic Act to establish a program of fees relating to animal drugs.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communication was laid before the Senate, together with

accompanying papers, reports, and documents, and was referred as indicated:

EC–5202. A communication from the Secretary of the Senate , transmitting, pursuant to law, the report of the receipts and expenditures of the Senate for the period April 1, 2003 through September 30, 2003; ordered to lie on the table.

EC–5203. A communication from the Director, Regulatory Review Group, Farm Service Agency, transmitting, pursuant to law, the report of a rule entitled ''Prompt Disaster Set-Aside Consideration and Primary Loan Servicing Facilitation'' (RIN0560-AG56) received on November 6, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5204. A communication from the Director, Regulatory Review Group, Farm Service Agency, transmitting, pursuant to law, the report of a rule entitled ''Removal of Obsolete Regulations'' (RIN0560-AH04) received on November 6, 2003; to the Committee on Agriculture, Nutrition, and Forestry.

EC–5205. A communication from the Principal Deputy, Office of the Under Secretary of Defense for Personnel and Readiness, transmitting, pursuant to law, a report relative to the impact of compensation initiatives on recruiting and retention; to the Committee on Armed Services.

EC–5206. A communication from the Assistant Director, Executive and Political Personnel, Department of the Navy, transmitting, pursuant to law, the report of a nomination confirmed for the position of Secretary of the Navy, received on November 6, 2003; to the Committee on Armed Services.

EC–5207. A communication from the Chief, Regulations and Administrative Law, Coast Guard, transmitting, pursuant to law, the report of a rule entitled ''Notification of Arrival in U.S. Ports; Correction (USCG-2002-11865)'' (RIN1625-AA41) received on November 10, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5208. A communication from the Chief, Regulations and Administrative Law, Coast Guard, transmitting, pursuant to law, the report of a rule entitled ''Regulated Navigation Area: [CGD08-03-029], Reporting Requirements for Barges Loaded with Certain Dangerous Cargoes; Inland Rivers, Eighth Coast Guard District; Correction'' (RIN1625-AA11) received on November 19, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5209. A communication from the Chief, Regulations and Administrative Law, Coast Guard, transmitting, pursuant to law, the report of a rule entitled ''Regatta and Marine Parade Regulation; Special Local Reg.: [CGD07-03-099], World Championship Super Boat Race, Deerfield Beach, FL'' (RIN1625-AA08) received on November 19, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5210. A communication from the Chief, Regulations and Administrative Law, Coast Guard, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations: [CGD08-03-043] St. Croix, Hudson, Wisconsin'' (RIN1625-AA09) received on November 19, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5211. A communication from the Attorney Advisor, Department of Transportation, transmitting, pursuant to law, the report of a nomination for the position of General Counsel, Department of Transportation, received on November 6, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5212. A communication from the Attorney Advisor, Department of Transportation, transmitting, pursuant to law, the report of a vacancy and designation of acting officer for the position of General Counsel, Department of Transportation; to the Committee on Commerce, Science, and Transportation.

EC–5213. A communication from the Acting Division Chief, Marine Mammal Division, Office of Protected Resources, transmitting, pursuant to law, the report of a rule entitled ''Dolphin-Safe Tuna Labeling; Official Mark'' (RIN0648-AN37) received on November 6, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5214. A communication from the Acting Division Chief, Marine Mammal Division, Office of Protected Resources, transmitting, pursuant to law, the report of a rule entitled ''Taking of Marine Mammals Incidental to Commercial Fishing Operations; Tuna Purse Seine Vessels in the Eastern Tropical Pacific Ocean'' (RIN0648-AI85) received on November 6, 2003; to the Committee on Commerce, Science, and Transportation.

EC–5215. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to Section 344 of the Trade Act of 2002 ; to the Committee on Finance.

EC–5216. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; Delaware; Revisions to State I and Stage II Vapor Recovery at Gasoline Dispensing Facilities'' (FRL#7586-2) received on November 6, 2003; to the Committee on Environment and Public Works.

EC–5217. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Air Quality Implementation Plans; Kansas Update to Materials Incorporated by Reference'' (FRL#7580-6) received on November 6, 2003; to the Committee on Environment and Public Works.

EC–5218. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; Texas; Revisions to Regulations for Permits by Rule, Control of Air Pollution by Permits for New Construction or Modification, and Federal Operating Permits'' (FRL#7585-8) received on November 6, 2003; to the Committee on Environment and Public Works.

EC–5219. A communication from the Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Revisions to the California State Implementation Plans, San Diego County Air Pollution Control District; San Joaquin Valley Unified Air Pollution Control District'' (FRL#7582-2) received on November 6, 2003; to the Committee on Environment and Public Works.

EC–5220. A communication from the Executive Director for Operations, Nuclear Regulatory Commission, transmitting, pursuant to law, the Commission's Year 2001 Commercial Activities Inventory; to the Committee on Environment and Public Works.

EC–5221. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more to Japan; to the Committee on Foreign Relations.

EC–5222. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles or defense services in the amount of $100,000 ,000 or more to the United Kingdom, Germany, and France; to the Committee on Foreign Relations.

EC–5223. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more to The Netherlands; to the Committee on Foreign Relations.

EC–5224. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to the Arms Export Control Act, the report of the certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more to Japan; to the Committee on Foreign Relations.

EC–5225. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, a report relative to Parts 120, 123, 124, and 125 of the International Traffic in Arms Regulations; to the Committee on Foreign Relations.

EC–5226. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, the report of the texts and background statements of international agreements, other than treaties; to the Committee on Foreign Relations.

EC–5227. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to the American Servicemembers' Protection Act of 2002, the report of an extension of Presidential Determination 2004-03 relative to Colombia; to the Committee on Foreign Relations.

EC–5228. A communication from the Secretary, American Battle Monuments Commission, transmitting, pursuant to law, the Commission's Fiscal Year 2003 annual report; to the Committee on Governmental Affairs.

EC–5229. A communication from the Chairman, Federal Maritime Commission, transmitting, pursuant to law, the report of the office of Inspector General for the period April 1, 2001 through September 30, 2001; to the Committee on Governmental Affairs.

EC–5230. A communication from the Acting Inspector General, Selective Service System, transmitting, a report relative to the Selective Service System's compliance with the Inspector General Act of 1978; to the Committee on Governmental Affairs.

EC–5231. A communication from the Secretary of Agriculture, transmitting, pursuant to law, the report of the Office of Inspector General for the six-month period ending September 30, 2001; to the Committee on Governmental Affairs.

EC–5232. A communication from the Deputy Secretary, Division of Market Regulation, Securities and Exchange Commission, transmitting, pursuant to law, the report of a rule entitled ''Rule 10b-18'' (RIN3235-AH37) received on November 10, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–5233. A communication from the Senior Paralegal for Regulations, Office of Thrift Supervision, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Savings Associations—Transactions with Affiliates'' (RIN1550-AB55) received on November 10, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–5234. A communication from the Senior Paralegal for Regulations, Office of Thrift

Supervision, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ''Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Interim Capital Treatment of Consolidated Asset-Backed Commercial Paper Program Assets'' (RIN1550-AB79) received on November 10, 2003; to the Committee on Banking, Housing, and Urban Affairs.

EC–5235. A communication from the Regulations Coordinator, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Privacy Act; Implementation'' received on November 7, 2003; to the Committee on Health, Education, Labor, and Pensions.

EC–5236. A communication from the Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation, transmitting, pursuant to law, the report of a rule entitled ''Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits'' received on November 6, 2003; to the Committee on Health, Education, Labor, and Pensions.

EC–5237. A communication from the Secretary of Health and Human Services and the Attorney General, transmitting, pursuant to law, a report relative to the Health Care Fraud and Abuse Control Program for Fiscal Year 2002; to the Committee on Health, Education, Labor, and Pensions.

EC–5238. A communication from the Vice Chairman, Office of the General Counsel, Federal Election Commission, transmitting, pursuant to law, the report of a rule entitled ''Party Committee Telephone Banks'' received on November 7, 2003; to the Committee on Rules and Administration.

EC–5239. A communication from the Vice Chairman, Office of the General Counsel, Federal Election Commission, transmitting, pursuant to law, the report of a rule entitled ''Multicandidate Committees and Biennial Contribution Limits'' received on November 7, 2003; to the Committee on Rules and Administration.

REPORTS OF COMMITTEES

The following reports of committees were submitted on November 12, 2003:

By Mr. STEVENS, from the Committee on Appropriations:

Special Report entitled ''Further Revised Allocation to Subcommittees of Budget Totals for Fiscal Year 2004'' (Rept. No. 108–195).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. INHOFE for the Committee on Environment and Public Works.

*Rixio Enrique Medina, of Oklahoma, to be a Member of the Chemical Safety and Hazard Investigation Board for a term of five years.

By Mr. GRASSLEY for the Committee on Finance.

*Bradley D. Belt, of the District of Columbia, to be a Member of the Social Security Advisory Board for a term expiring September 30, 2008.

*Jennifer Young, of Ohio, to be an Assistant Secretary of Health and Human Services.

*Michael O'Grady, of Maryland, to be an Assistant Secretary of Health and Human Services.

*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.

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 Ms. STABENOW (for herself and Mr. LEVIN):

S. 1850. A bill to direct the Secretary of the Interior to conduct a study of maritime sites in the State of Michigan; to the Committee on Energy and Natural Resources.

By Ms. MURKOWSKI:

S. 1851. A bill to raise the minimum state allocation under section 217(b)(2) of the Cranston-Gonzalez National Affordable Housing Act; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. SPECTER (for himself and Mr. SANTORUM):

S. 1852. A bill to provide financial assistance for the rehabilitation of the Benjamin Franklin National Memorial in Philadelphia, Pennsylvania, and the development of an exhibit to commemorate the 300th anniversary of the birth of Benjamin Franklin; to the Committee on Energy and Natural Resources.

By Mr. KENNEDY (for himself, Mrs. CLINTON, Mr. DASCHLE, Mr. DURBIN, Mrs. MURRAY, Ms. CANTWELL, Mr. SARBANES, Mr. LEVIN, Mr. BINGAMAN, Mr. SCHUMER, Mr. BAUCUS, Mr. REED, Mr. ROCKEFELLER, and Mr. KERRY):

S. 1853. A bill to provide extended unemployment benefits to displaced workers; to the Committee on Finance.

By Mr. DODD (for himself, Ms. SNOWE, and Mr. DURBIN):

S. 1854. A bill entitled the ''Digital Opportunity Investment Trust Act''; to the Committee on Commerce, Science, and Transportation.

By Mr. ALLEN:

S. 1855. A bill to authorize the Administrator of the National Aeronautics and Space Administration to establish an awards program in honor of Charles ''Pete'' Conrad, astronaut and space scientist, for recognizing the discoveries made by amateur astronomers of asteroids with near-Earth orbit trajectories; to the Committee on Commerce, Science, and Transportation.

By Mrs. CLINTON:

S. 1856. A bill to designate the Department of Veterans Affairs outpatient clinic in Sunnyside, Queens, New York, as the ''Thomas P. Noonan, Jr., Department of Veterans Affairs Outpatient Clinic''; to the Committee on Veterans' Affairs.

By Mr. LOTT (for himself and Mr. SMITH):

S. 1857. A bill to amend the Internal Revenue Code of 1986 to provide procedural fairness in the application of the controlled group provisions to employers who contribute to multiemployer pension plans and who engage in bona fide corporate transactions; to the Committee on Finance.

By Mr. COCHRAN (for himself, Mr. HARKIN, Mr. COLEMAN, Mr. ALLARD, Mr. ENSIGN, and Mr. CRAPO):

S. 1858. A bill to authorize the Secretary of Agriculture to conduct a loan repayment program to encourage the provision of veterinary services in shortage and emergency situations; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. DURBIN:

S. 1859. A bill to amend title 10, United States Code, to revise the age and service requirements for eligibility to receive retired pay for non-regular service; to the Committee on Armed Services.

By Mr. HATCH (for himself, Mr. BIDEN, and Mr. GRASSLEY):

S. 1860. A bill to reauthorize the Office of National Drug Control Policy; to the Committee on the Judiciary.

By Mr. LUGAR:

S. 1861. A bill to provide a framework for consideration by the legislative and executive branches of proposed unilateral economic sanctions in order to ensure coordination of United States policy with respect to trade, security, and human rights; to the Committee on Foreign Relations.

By Mr. LUGAR:

S. 1862. A bill to provide certain exceptions from requirements for bilateral agreements with Australia and the United Kingdom for exemptions from the International Traffic in Arms Regulations; read the first time.

By Mr. LUGAR (for himself and Mr. BIDEN):

S. 1863. A bill to authorize the transfer of certain naval vessels; read the first time.

By Mr. LUGAR (for himself and Mr. BIDEN):

S. 1864. A bill to enhance the security of the United States and United States allies; read the first time.

By Mr. LUGAR (for himself and Mr. BIDEN):

S. 1865. A bill to enhance the security of the United States and United States allies; read the first time.

By Mr. LUGAR (for himself and Mr. BIDEN):

S. 1866. A bill to enhance the security of the United States and United States allies; read the first time.

By Mr. JEFFORDS (for himself, Mr. LEAHY, Mr. KERRY, Mr. LIEBERMAN, and Mr. AKAKA):

S. 1867. A bill to amend the Solid Waste Disposal Act to encourage greater recycling of certain beverage containers through the use of deposit refund incentives; to the Committee on Environment and Public Works.

By Mr. BROWNBACK (for himself, Mr. CRAPO, Mr. SMITH, and Mr. SANTORUM):

S.J. Res. 24. A joint resolution providing for the recognition of Jerusalem as the undivided capital of Israel before the United States recognizes a Palestinian state, and for other purposes; to the Committee on Foreign Relations.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. FEINGOLD:

S. Res. 266. A resolution expressing the sense of the Senate with respect to polio; to the Committee on Health, Education, Labor, and Pensions.

By Mrs. FEINSTEIN (for herself, Mr. KYL, Mr. LIEBERMAN, Mr. COLEMAN, Mr. LAUTENBERG, Mr. SANTORUM, Mr. FITZGERALD, and Mr. COCHRAN):

S. Con. Res. 81. 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; to the Committee on Foreign Relations.

ADDITIONAL COSPONSORS

S. 50

At the request of Mr. JOHNSON, the name of the Senator from New York

(Mr. SCHUMER) was added as a cosponsor of S. 50, a bill to amend title 38, United States Code, to provide for a guaranteed adequate level of funding for veterans health care, and for other purposes.

S. 344

At the request of Mr. AKAKA, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of S. 344, a bill expressing the policy of the United States regarding the United States relationship with Native Hawaiians and to provide a process for the recognition by the United States of the Native Hawaiian governing entity, and for other purposes.

S. 420

At the request of Mrs. DOLE, the name of the Senator from Mississippi (Mr. LOTT) was added as a cosponsor of S. 420, a bill to provide for the acknowledgement of the Lumbee Tribe of North Carolina, and for other purposes.

S. 451

At the request of Ms. SNOWE, the name of the Senator from West Virginia (Mr. ROCKEFELLER) was added as a cosponsor of S. 451, a bill to amend title 10, United States Code, to increase the minimum Survivor Benefit Plan basic annuity for surviving spouses age 62 and older, to provide for a one-year open season under that plan, and for other purposes.

S. 486

At the request of Mr. DOMENICI, the name of the Senator from Montana (Mr. BURNS) was added as a cosponsor of S. 486, a bill to provide for equal coverage of mental health benefits with respect to health insurance coverage unless comparable limitations are imposed on medical and surgical benefits.

S. 557

At the request of Ms. COLLINS, the name of the Senator from Utah (Mr. HATCH) was added as a cosponsor of S. 557, a bill to amend the Internal Revenue Code of 1986 to exclude from gross income amounts received on account of claims based on certain unlawful discrimination and to allow income averaging for backpay and frontpay awards received on account of such claims, and for other purposes.

S. 569

At the request of Mr. ENSIGN, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 569, a bill to amend title XVIII of the Social Security Act to repeal the medicare outpatient rehabilitation therapy caps.

S. 596

At the request of Mr. ENSIGN, the names of the Senator from Washington (Mrs. MURRAY) and the Senator from Idaho (Mr. CRAIG) were added as cosponsors of S. 596, a bill to amend the Internal Revenue Code of 1986 to encourage the investment of foreign earnings within the United States for productive business investments and job creation.

S. 710

At the request of Mr. LEAHY, the name of the Senator from Kansas (Mr. BROWNBACK) was added as a cosponsor of S. 710, a bill to amend the Immigration and Nationality Act to provide that aliens who commit acts of torture, extrajudicial killings, or other specified atrocities abroad are inadmissible and removable and to establish within the Criminal Division of the Department of Justice an Office of Special Investigations having responsibilities under that Act with respect to all alien participants in war crimes, genocide, and the commission of acts of torture and extrajudicial killings abroad.

S. 780

At the request of Mr. LOTT, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 780, a bill to award a congressional gold medal to Chief Phillip Martin of the Mississippi Band of Choctaw Indians.

S. 856

At the request of Mr. ROCKEFELLER, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 856, a bill to amend the Internal Revenue Code of 1986 to expand the incentives for the construction and renovation of public schools.

S. 864

At the request of Mr. EDWARDS, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 864, a bill to amend the Child Care and Development Block Grant Act of 1990 to provide for grants to parents and guardians of certain military dependents, in order to assist the parent and guardians in paying for the cost of child care services provided to the dependents, and for other purposes.

S. 902

At the request of Ms. LANDRIEU, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S . 902, a bill to declare, under the authority of Congress under Article I, section 8, of the Constitution to ''provide and maintain a Navy'', a national policy for the naval force structure required in order to ''provide for the common defense'' of the United States throughout the 21st century.

S. 950

At the request of Mr. ENZI, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 950, a bill to allow travel between the United States and Cuba.

S. 971

At the request of Mr. HARKIN, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 971, a bill to amend title XIX of the Social Security Act to provide individuals with disabilities and older Americans with equal access to community-based attendant services and supports, and for other purposes.

S. 976

At the request of Mr. WARNER, the name of the Senator from Indiana (Mr. BAYH) 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. 1006

At the request of Mr. BURNS, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 1006, a bill to reduce temporarily the duty on certain articles of natural cork.

S. 1140

At the request of Mr. LAUTENBERG, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. 1140, a bill to amend titles 23 and 49, United States Code, concerning length and weight limitations for vehicles operating on Federal-aid highways, and for other purposes.

S. 1143

At the request of Mrs. HUTCHISON, the name of the Senator from Missouri (Mr. BOND) 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. 1246

At the request of Mr. ROBERTS, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of S. 1246, a bill to amend the Internal Revenue Code of 1986 to provide for collegiate housing and infrastructure grants.

S. 1353

At the request of Mr. BROWNBACK, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 1353, a bill to establish new special immigrant categories.

S. 1358

At the request of Mr. AKAKA, the name of the Senator from Arkansas (Mr. PRYOR) was added as a cosponsor of S. 1358, a bill to amend chapter 23 of title 5, United States Code, to clarify the disclosure of information protected from prohibited personnel practices, require a statement in non-disclosure policies, forms, and agreements that such policies, forms, and agreements conform with certain disclosure protections, provide certain authority for the Special Counsel, and for other purposes.

S. 1392

At the request of Mr. HARKIN, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 1392, a bill to amend the Richard B. Russell National School Lunch Act to improve the nutrition of students served under child nutrition programs.

S. 1393

At the request of Mr. HARKIN, the names of the Senator from Nebraska (Mr. NELSON), the Senator from Michigan (Mr. LEVIN) and the Senator from Georgia (Mr. CHAMBLISS) were added as cosponsors of S. 1393, a bill to amend the Richard B. Russell National School Lunch Act to reauthorize and expand the fruit and vegetable pilot program.

S. 1394

At the request of Mr. HARKIN, the name of the Senator from New York

(Mrs. CLINTON) was added as a cosponsor of S. 1394, a bill to establish a demonstration project under the medicaid program to encourage the provision of community-based services to individuals with disabilities.

S. 1460

At the request of Mr. KENNEDY, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 1460, a bill to amend the Federal Food, Drug, and Cosmetic Act to preserve the effectiveness of medically important antibiotics used in the treatment of human and animal diseases.

S. 1513

At the request of Mr. SCHUMER, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 1513, a bill to amend the National Labor Relations Act to establish an efficient system to enable employees to form or become members of labor organizations, and for other purposes.

S. 1531

At the request of Mr. HATCH, the names of the Senator from Illinois (Mr. DURBIN) and the Senator from North Dakota (Mr. CONRAD) were added as cosponsors of S. 1531, a bill to require the Secretary of the Treasury to mint coins in commemoration of Chief Justice John Marshall.

S. 1538

At the request of Mr. HARKIN, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 1538, a bill to ensure that the goals of the Dietary Supplement Health and Education Act of 1994 are met by authorizing appropriations to fully enforce and implement such Act and the amendments made by such Act, and for other purposes.

S. 1545

At the request of Mr. CAMPBELL, his name was withdrawn as a cosponsor of S. 1545, a bill to amend the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 to permit States to determine State residency for higher education purposes and to authorize the cancellation of removal and adjustment of status of certain alien students who are long-term United States residents.

S. 1570

At the request of Mr. SANTORUM, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 1570, a bill to amend the Internal Revenue Code of 1986 to allow individuals a refundable credit against income tax for the purchase of private health insurance, and to establish State health insurance safety-net programs.

S. 1619

At the request of Mrs. MURRAY, the name of the Senator from New York (Mrs. CLINTON) 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. 1630

At the request of Mrs. CLINTON, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a cosponsor of S. 1630, a bill to facilitate nationwide availability of 2–1–-1 telephone service for information and referral services, and for other purposes.

S. 1645

At the request of Mr. CRAIG, the name of the Senator from Wisconsin (Mr. KOHL) was added as a cosponsor of S. 1645, a bill to provide for the adjustment of status of certain foreign agricultural workers, to amend the Immigration and Nationality Act to reform the H–2A worker program under that Act, to provide a stable, legal agricultural workforce, to extend basic legal protections and better working conditions to more workers, and for other purposes.

S. 1686

At the request of Ms. MURKOWSKI, her name 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.

At the request of Mr. GRASSLEY, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 1686, supra.

S. 1700

At the request of Mr. LEAHY, the names of the Senator from Hawaii (Mr. AKAKA), the Senator from New Jersey (Mr. CORZINE), the Senator from Hawaii (Mr. INOUYE) and the Senator from Vermont (Mr. JEFFORDS) were added as cosponsors of S. 1700, a bill to eliminate the substantial backlog of DNA samples collected from crime scenes and convicted offenders, to improve and expand the DNA testing capacity of Federal, State, and local crime laboratories, to increase research and development of new DNA testing technologies, to develop new training programs regarding the collection and use of DNA evidence, to provide post-conviction testing of DNA evidence to exonerate the innocent, to improve the performance of counsel in State capital cases, and for other purposes.

S. 1702

At the request of Mr. SMITH, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 1702, a bill to amend the Internal Revenue Code of 1986 to extend the exclusion from gross income for employer-provided health coverage to designated plan beneficiaries of employees, and for other purposes.

S. 1704

At the request of Ms. COLLINS, the name of the Senator from West Virginia (Mr. ROCKEFELLER) was added as a cosponsor of S. 1704, a bill to amend the Public Health Service Act to establish a State family support grant program to end the practice of parents giving legal custody of their seriously emotionally disturbed children to State agencies for the purpose of obtaining mental health services for those children.

S. 1721

At the request of Mr. CAMPBELL, the name of the Senator from Wyoming (Mr. THOMAS) was added as a cosponsor of S. 1721, a bill to amend the Indian Land Consolidation Act to improve provisions relating to probate of trust and restricted land, and for other purposes.

S. 1734

At the request of Mrs. LINCOLN, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 1734, a bill to amend titles XIX and XXI of the Social Security Act to provide States with the option to expand or add coverage of pregnant women under the Medicaid and State children's health insurance programs, and for other purposes.

S. 1736

At the request of Mr. ENZI, the name of the Senator from Arkansas (Mrs. LINCOLN) was added as a cosponsor of S. 1736, a bill to promote simplification and fairness in the administration and collection of sales and use taxes.

S. 1737

At the request of Mr. WYDEN, the names of the Senator from Illinois (Mr. DURBIN) and the Senator from Washington (Mrs. MURRAY) were added as cosponsors of S. 1737, a bill to amend the Clayton Act to enhance the authority of the Federal Trade Commission or the Attorney General to prevent anticompetitive practices in tightly concentrated gasoline markets.

S. 1741

At the request of Ms. COLLINS, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 1741, a bill to provide a site for the National Women's History Museum in the District of Columbia.

S. 1765

At the request of Mr. LOTT, the name of the Senator from South Carolina (Mr. GRAHAM) was added as a cosponsor of S. 1765, a bill to preserve and protect the free choice of individual employees to form, join, or assist labor organizations, or to refrain from such activities.

S. 1792

At the request of Mr. DOMENICI, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S . 1792, a bill to amend the Internal Revenue Code of 1986 to provide the same capital gains treatment for art and collectibles as for other investment property and to provide that a deduction equal to fair market value shall be allowed for charitable contributions of literary, musical, artistic, or scholarly compositions created by the donor.

S. 1833

At the request of Mr. DASCHLE, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 1833, a bill to improve the health of minority individuals.

S. 1834

At the request of Ms. STABENOW, the name of the Senator from Ohio (Mr.

VOINOVICH) was added as a cosponsor of S. 1834, a bill to waive time limitations in order to allow the Medal of Honor to be awarded to Gary Lee McKiddy, of Miamisburg, Ohio, for acts of valor while a helicopter crew chief and door gunner with the 1st Cavalry Division during the Vietnam War.

S. 1853

At the request of Mr. KENNEDY, the names of the Senator from New Jersey (Mr. CORZINE) and the Senator from Connecticut (Mr. DODD) were added as cosponsors of S. 1853, a bill to provide extended unemployment benefits to displaced workers.

S. CON. RES. 81

At the request of Mrs. FEINSTEIN, the name of the Senator from Kansas (Mr. BROWNBACK) was added as a cosponsor of S. Con. Res. 81, 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. 164

At the request of Mr. ENSIGN, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. Res. 164, a resolution reaffirming support of the Convention on the Prevention and Punishment of the Crime of Genocide and anticipating the commemoration of the 15th anniversary of the enactment of the Genocide Convention Implementation Act of 1987 (the Proxmire Act) on November 4, 2003.

S. RES. 202

At the request of Mr. CAMPBELL, the name of the Senator from Minnesota (Mr. DAYTON) 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.

S. RES. 248

At the request of Mr. CAMPBELL, the name of the Senator from Oregon (Mr. SMITH) was added as a cosponsor of S. Res. 248, a resolution expressing the sense of the Senate concerning the individual Indian money account trust fund lawsuit.

S. RES. 253

At the request of Mr. CAMPBELL, the names of the Senator from North Carolina (Mrs. DOLE), the Senator from Alabama (Mr. SESSIONS), the Senator from Pennsylvania (Mr. SANTORUM), the Senator from Nebraska (Mr. HAGEL) and the Senator from Kentucky (Mr. BUNNING) were added as cosponsors of S. Res. 253, a resolution to recognize the evolution and importance of motorsports.

At the request of Mr. NELSON of Florida, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. Res. 253, supra.

At the request of Mr. KYL, the names of the Senator from Tennessee (Mr. ALEXANDER), the Senator from Virginia (Mr. ALLEN), the Senator from New Mexico (Mr. DOMENICI), the Senator from Nevada (Mr. ENSIGN), the Senator from New Hampshire (Mr. SUNUNU), the Senator from Oklahoma (Mr. NICKLES), the Senator from Idaho (Mr. CRAIG), the Senator from Virginia (Mr. WARNER), the Senator from Colorado (Mr. ALLARD) and the Senator from Georgia (Mr. CHAMBLISS) were added as cosponsors of S. Res. 253, supra.

S. RES. 260

At the request of Mr. DURBIN, the names of the Senator from Louisiana (Ms. LANDRIEU) and the Senator from California (Mrs. FEINSTEIN) were added as cosponsors of S. Res. 260, a resolution expressing the sense of the Senate that the Secretary of Health and Human Services should take action to remove dietary supplements containing ephedrine alkaloids from the market.

AMENDMENT NO. 2160

At the request of Mr. DEWINE, the names of the Senator from Alabama (Mr. SESSIONS) and the Senator from Alabama (Mr. SHELBY) were added as cosponsors of amendment No. 2160 intended to be proposed to H.R. 2861, a bill making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Ms. STABENOW (for herself and Mr. LEVIN):

S. 1850. A bill to direct the Secretary of the Interior to conduct a study of maritime sites in the State of Michigan; to the Committee on Energy and Natural Resources.

Ms. STABENOW. Mr. President, I rise today to introduce the Michigan Lighthouse and Maritime Heritage Act, a bill to promote and protect Michigan's Great Lakes history including its lighthouses and maritime museums.

Before I discuss this bill, I want to say that it is extremely fitting that we are discussing the importance of Michigan's Great Lakes history, because today is an important day in that long history. Two years ago today, President Bush signed into law the FY 2003 Energy and Water Appropriations bill, which included a provision which I authored to place a two year ban on oil and gas drilling in the Great Lakes and protect them from the imminent threat of drilling.

At the time, Governor Engler's administration was moving forward with plans to issue permits for oil and gas drilling in the Great Lakes despite the overwhelming opposition of the citizens of Michigan and the Great Lakes region. The Great Lakes drilling ban had overwhelming bipartisan support of the Great Lakes Senators and House members; so much so, that Senator VOINOVICH and I worked together to reextend the drilling ban for an additional two years, through the end of FY 2005, in last year's Omnibus Appropriations bill.

One of the reasons the Great Lakes drilling ban had such broad support is that as the elected stewards of this precious natural resource, we all understood how important the Great Lakes are to our region and the Nation. The Great Lakes make up 20 percent of the world's fresh water supply, and thirty-three million people rely on the Great Lakes for their drinking water, including 10 million for Lake Michigan alone. The Great Lakes' coastlines also are home to wetlands, dunes and endangered species and plants. Lake Michigan alone contains over 417 coastal wetlands, the most of any Great Lake.

The Great Lakes are not just an important natural resource, but they are a critical part of Michigan's economy and quality of life. Millions of people use the Great Lakes each year to enjoy their beaches, good fishing and boating. The latest U.S. Fish and Wildlife estimate shows that recreational fishing totals an $839 million boost to Michigan's tourist economy alone. Michigan has over one million registered boaters on file, more than any other State.

The Michigan Lighthouse and Maritime Heritage Act would help preserve the history of this precious natural resource for generations to come. The bill would require the National Park Service (NPS) to study and make recommendations as to the best way to promote and protect Michigan's lighthouses and maritime resources. After 18 months, the NPS would submit the study to Congress with its recommendations to link these wonderful resources such as establishing a lighthouse and maritime heritage trail, and to identify financial resources for Michigan's communities to preserve and restore their lighthouses, museums and other maritime resources. Congress could then move forward with establishing the lighthouse and maritime heritage trail, and implementing the NPS's recommendations. Hopefully, a Michigan lighthouse and maritime heritage trail would lead to increased visitors and tourism to these wonderful sites, which also would help bolster the local economy in these communities.

The Great Lakes are an inseparable part of Michigan's identity and cultural history, and Michigan's landscape reflects that bond. Michigan is home to over 120 lighthouses, more than any other state in the U.S. The oldest Michigan lighthouses are over 180 years, dating back to the 1820's. Michigan is also home to the country's only fresh water marine sanctuary, the Thunder Bay National Marine Sanctuary. This marine sanctuary is designated to protect over 100 shipwrecks through an area of Lake Huron known as shipwreck alley. Michigan is also home to numerous maritime museums and lighthouse museums which are located throughout the State.

The Michigan Lighthouse and Maritime Heritage Act will help protect these precious Great Lakes resources for future generations of Michiganians, and promote the wonderful history of the Great Lakes for all who visit Michigan to enjoy.

By Ms. MURKOWSKI:

S. 1851. A bill to raise the minimum state allocation under section 217(b)(2) of the Cranston-Gonzalez National Affordable Housing Act; to the Committee on Banking, Housing, and Urban Affairs.

Ms. MURKOWSKI. Mr. President, I rise to introduce a bill that will increase the minimum funding level for low population States for the U.S. Department of Housing and Urban Development's HOME Investment Partnerships Program.

The HOME program was created when the Cranston-Gonzalez National Affordable Housing bill was signed into law in 1990. Funds were first appropriated for this program in 1992. HOME program funds are disbursed to State and local governments for the purpose of assisting with the expansion of housing for low-income families. These governmental entities have a great deal of flexibility when using these funds to implement the program's purpose.

When this program was created, a minimum funding level of $3 million was created for States that would normally receive a small amount of HOME funds under the allocation formula, which is based on a State's population, among other parameters. Three States—Alaska, Delaware, and Nevada—received this level of funding for this program in fiscal year 2003. Assuming a three percent inflation rate per year between 1992—when this program was first funded—and 2003, a $3 million allocation in 1992 dollars decreased in value to $2,145,904 in 2003.

This is unacceptable. My State is one of the most expensive areas in the country to develop housing, especially when one takes into account the cost to transport building materials to extremely remote areas of my State.

This legislation increases the minimum State funding level for the HOME program to $5 million. Based on fiscal year 2003 allocations for this program, ten States received less than $5 million. Those States are: Alaska, Delaware, Nevada, Hawaii, Montana, North Dakota, South Dakota, Utah, Vermont, and Wyoming. My proposed increase in funding would be offset by an overall decrease in allocations to other States. If a $5 million minimum funding level had been in place by fiscal year 2003, the other 40 States would only have experienced an overall decrease of less than $15 million. Bearing in mind that the amount appropriated in fiscal year 2003 for this program is just under $2 billion, such a decrease in funds seems reasonable considering no changes have been made to the minimum State funding level since the HOME program was first funded in 1992.

In addition, the congressionally-appointed, bipartisan Millennium Housing Commission recommended increasing the minimum State funding level for the HOME program to $5 million in their May 30, 2002, report to Congress.

It is imperative that we address this important issue so that we can address the housing needs of a greater amount of low-income families in low-population States.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1851

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 ''Small State HOME Program Equity Act of 2003''.

SEC. 2. ALLOCATION OF RESOURCES.

Section 217(b)(2)(A) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12747(b)(2)(A)) is amended by striking ''$3,000,000'' each place it occurs and inserting ''$5,000,000''.

By Mr. SPECTER (for himself and Mr. SANTORUM):

S. 1852. A bill to provide financial assistance for the rehabilitation of the Benjamin Franklin National Memorial in Philadelphia, Pennsylvania, and the development of an exhibit to commemorate the 300th anniversary of the birth of Benjamin Franklin; to the Committee on Energy and Natural Resources.

Mr. SPECTER. Mr. President, I have sought recognition today to introduce a bill to authorize Federal funding for the rehabilitation of the Benjamin Franklin National Memorial. This memorial, an attraction for some 1 million visitors annually, is truly a national treasure and it has come under significant deterioration—threatening its very existence. I, along with my distinguished colleague from Pennsylvania, Senator SANTORUM, are introducing this bill to ensure that Federal funding is made available to preserve and protect our Nation's memorial to Benjamin Franklin, America's distinguished scientist, statesman, inventor, and diplomat.

Unveiled in 1938, the memorial is located in the Memorial Hall of the Franklin Institute Science Museum of Philadelphia, PA—one of the Nation's premier science and technology museums. The Institute became custodian of the memorial in 1972 when Public Law 92–511 designated the Memorial Hall as the Benjamin Franklin National Memorial. In 1973, a Memorandum of Agreement was executed by the U.S. Department of the Interior and the Franklin Institute and directed the Department to cooperate with the Institute in ''all appropriate and mutually agreeable ways in the preservation and presentation of the Benjamin Franklin National Memorial Hall as a national memorial.'' To date, the Department has not provided any Federal funding to the Franklin Institute other than $300,000, which Senator SANTORUM and I secured from the ''Save America's Treasures'' program in the Fiscal Year 2000 Interior Appropriations Act to help improve accessibility to the memorial.

Unlike other national memorials, the Benjamin Franklin National Memorial does not receive an annual allocation of Federal funds that provides for preventative maintenance or other important activities. The significant burden of maintaining this national memorial has become a challenge to the Franklin Institute. For example, under the terms of the 1973 Agreement, the Institute is required to admit the public to Memorial Hall free of charge. Accordingly, the Institute—a non-profit organization—has absorbed the sole responsibility for providing the funds necessary to preserve and maintain the memorial.

The legislation that Senator SANTORUM and I are introducing today finally provides the Franklin Institute with the Federal support necessary to ease the financial burden of maintaining a national memorial—enabling the Institute to continue its duties as its custodian. The bill authorizes up to $10 million in Federal funds to provide needed rehabilitation and to help enhance the experience at the memorial through the addition of exhibition space for the proper display of the finest existing collection of Franklin artifacts.

The Benjamin Franklin National Memorial at the Franklin Institute serves as the Nation's primary location honoring Franklin's life, legacy, and ideals. This was further solidified in July 2002, when President George W. Bush signed into law House Resolution 2362, which created the Benjamin Franklin Tercentenary Commission.

This commission, which I chair, is charged with studying and recommending activities appropriate for the 300th anniversary of Franklin's birth in 2006. As we expect visitors to the memorial from throughout the world for this celebration, it is important that the Franklin Institute, as custodian of the memorial, begin the meticulous restoration and enhancement of it promptly. I urge my colleagues to support this legislation to preserve this national tribute to Benjamin Franklin for years to come.

By Mr. LOTT (for himself and Mr. SMITH):

S. 1857. A bill to amend the internal revenue Code of 1986 to provide procedural fairness in the application of the controlled group provisions to employers who contribute to multiemployer pension plans and who engage in bona fide corporate transactions; to the Committee on Finance.

Mr. LOTT. Mr. President, I rise today to introduce, along with my colleagues Senator SMITH from Oregon,

the multiemployer Pension Plan Procedural Fairness Act of 2003. The purpose of this legislation is to provide a modest amount of procedural fairness with respect to claims filed against former employers under the multiemployer pension plan (MEPPA) rules.

By way of background, MEPPA makes an employer that completely or partially withdraws from participation in a multiemployer pension fund liable for the employer's share of the plans' unfunded vested benefits. That liability is referred to as ''withdrawal liability'' and can be collected from any member of the controlled group of employers that included the withdrawing employer. The process of collecting withdrawal liability can become quite unfair when the pension fund attempts to assert liability against a former employer or a former member of a controlled group of employers that, as a result of a legitimate business separation, such as a sale or spin-off transaction, ceased to be associated with the withdrawing employer several years before the compete or partial withdrawal occurred.

MEPPA provides that a former employer or former member of a controlled group can still be liable if ''a principal purpose'' of the business separation transaction was ''to evade or avoid'' withdrawal liability. The legislative history indicates that the ''evade or avoid'' provision was designed to prevent unscrupulous employers from dumping a distressed subsidiary in order to evade or avoid withdrawal liability. I firmly believe that unscrupulous companies that attempt to evade withdrawal liability should be held liable. However, companies that engage in legitimate transactions should be able to defend against withdrawal liability claims that arose from events which occurred many years after the business separation.

The simplest way to understand the issue is with an illustration. Assume that a parent company operates a subsidiary that makes contributions to a multiemployer plan. Assume further that, for valid business reasons, the parent company disposes of the subsidiary via a bona fide ''spin-off'' transaction. At the time of the spin-off, the subsidiary was current on all of its required contributions to the multiemployer pension fund, and the subsidiary continues to make contributions to the multiemployer plan after the spin-off. To complete the example, assume that several years after the spin-off, the spun-off subsidiary goes out of business and ceases to make contributions to the multiemployer pension fund. Under this scenario, the MEPPA rules allow the pension fund to claim that a principal purpose of the transaction was to evade or avoid withdrawal liability. Because the MEPPA rules do not provide any time restrictions for making these claims, a former parent company may be forced to defend against such a claim years, if not decades after the transaction in question. By contrast, the single-employer plan rules provide a 5-year safe harbor rule that protects employers against such claims.

While multiemployer plans should certainly be able to pursue claims against unscrupulous employers, there are two procedural rules in MEPPA that severely and unfairly hinder an employer's ability to defend itself against a claim for withdrawal liability under the evade or avoid standard when the transaction in question occurred several years before the date of a complete or partial withdrawal. The first rule is referred to as the ''pay to play'' rule, and the second rule involves the burden of proof borne by the employer.

Under MEPPA, if the pension fund makes a claim for withdrawal liability against the former parent company under the ''evade or avoid'' standard, the claim is sent to arbitration. However, the parent company must begin making payments to the multiemployer pension plan within 60 days after receiving a demand solely based upon the plan's unilateral decision to assert a withdrawal liability claim and long before any neutral third party finds that ''a principal purpose'' of the challenged transaction was to ''evade or avoid'' withdrawal liability. As a result, a company that engaged in a bona fide business transaction many years before the withdrawal occurred is forced to begin paying on the claim based on nothing more than the plan's demand.

According to the legislative history, this unique ''pay to play'' rule was enacted in response to what Congress perceived to be inefficient, cumbersome and costly procedures for collecting delinquent contributions from employers. Simple collection actions were converted into complex litigation through defenses that were unrelated to the multiemployer plan's entitlement to the contribution. However, the relevant MEPPA language is not limited to collection actions. While it may be appropriate to require a contesting employer to commence payments while the claim is being litigated, it is not fair to require prepayment in the case of an ''evade or avoid'' claim when the transaction in question occurred many years before the complete or partial withdrawal occurred.

The second procedural unfairness involves the burden of proof that an employer faces in rebutting a claim under the ''evade or avoid'' standard. MEPPA provides that a plan sponsor's determination is presumed correct, unless the contesting party shows by a preponderance of evidence that the determination is incorrect. The impetus behind Congress's decision to include such a presumption was the need to avoid a perceived potential for conflict and delay over the soundness of actuarial determinations of liability. Specifically, the presumption was crafted in order to prevent ''the likelihood of dispute and delay over technical actuarial matters with respect to which there are often several equally 'correct' approaches. Without such a presumption, a plan would be helpless to resist dilatory tactics by a withdrawing employer—tactics that could, and could be intended to, result in prohibitive collection costs to the plan.'' However, the MEPPA presumption language is not limited to actuarial determinations, but reaches liability determinations as well.

Even if this presumption is appropriate when withdrawal liability is triggered shortly after a transaction occurs, it is unfair to apply the presumption when the transaction in question occurred several years before the withdrawal took place. In this situation, a company that engages in a bona fide transaction may be forced to prove a negative—namely that a principal purpose of a transaction that occurred many years ago was not to evade or avoid withdrawal liability.

To summarize, under the MEPPA rules, an employer may find itself in a position where it has to respond to claims regarding a legitimate business transaction that occurred many years earlier. Furthermore, in defending against the claim, the employer must 1. prove that a principal purpose of the transaction was not to evade or avoid withdrawal liability, and 2. prepay the contested amount of the liability well in advance of any final determination of liability. This is patently unfair. Our legislation is a modest attempt to inject some notions of procedural fairness in this situation.

Our bill does not change the present-law rules regarding the determination of liability with respect to a complete or partial withdrawal from a multiemployer pension plan. However, it does change the procedural rules applicable to such a determination, but only with respect to a transaction that occurred five years or more before the date of the complete or partial withdrawal.

Under our bill, when a determination of an employer's withdrawal liability is based on a finding by the plan sponsor that a principal purpose of a transaction was to evade or avoid liability, and the transaction in question occurred five years or more before the date of the complete or partial withdrawal, the following rules would apply: 1. the determination by the plan sponsor is not presumed to be correct, and the plan sponsor has the burden to establish, by a preponderance of the evidence, each and every element of the claim for withdrawal liability, and 2. if an employer contests the plan sponsor's determination either through arbitration or through a claim brought in court, the employer is not obligated to make any withdrawal liability payments until a final decision in the arbitration, or in court, upholds the plan sponsor's determination. Our bill would apply to any employer that receives a notification after October 31, 2003.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1857

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 ''Multiemployer Pension Plan Procedural Fairness Act of 2003''.

SEC. 2. AMENDMENT TO THE INTERNAL REVENUE CODE OF 1986.

(a) IN GENERAL.—Section 414(f) of the Internal Revenue Code of 1986 is amended—

(1) by striking paragraph (2) and inserting the following:

''(2) COMMON CONTROL.—

''(A) IN GENERAL.—For purposes of this subsection and subtitle E of title IV of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1381 et seq.), all trades or businesses (whether or not incorporated) which are under common control within the meaning of subsection (c) are considered a single employer.

''(B) PRINCIPAL PURPOSE TEST.—If a principal purpose of any transaction is to evade or avoid liability under subtitle E of title IV of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1381 et seq.), then, subject to paragraph (6), the determination of whether one or more trades or businesses are under common control for purposes of such subtitle shall be made without regard to such transaction.'', and

(2) by adding at the end the following:

''(6) DETERMINATION OF COMMON CONTROL MORE THAN 5 YEARS FOLLOWING A TRANSACTION.—

''(A) IN GENERAL.—If—

''(i) a plan sponsor of a plan determines that—

''(I) a complete or partial withdrawal of an employer has occurred, or

''(II) an employer is liable for withdrawal liability payments with respect to the complete or partial withdrawal of an employer from the plan,

''(ii) such determination is based in whole or in part on a finding by the plan sponsor that a principal purpose of any transaction was to evade or avoid liability under subtitle E of title IV of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1381 et seq.), and

''(iii) such transaction occurred at least 5 years before the date of the complete or partial withdrawal,

then the special rules under subparagraph (B) shall be used in applying section 4219(c) and section 4221(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1399(c) and 1401(a)) to the employer.

''(B) SPECIAL RULES.—

''(i) DETERMINATION.—Notwithstanding section 4221(a)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1401(a)(3))—

''(I) a determination by the plan sponsor under subparagraph (A)(i) shall not be presumed to be correct, and

''(II) the plan sponsor shall have the burden to establish, by a preponderance of the evidence, each and every element of the claim for withdrawal liability.

''(ii) PROCEDURE.—Notwithstanding section 4219(c) and section 4221(d) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1399(c) and 1401(d)), if an employer contests the plan sponsor's determination under subparagraph (A)(i) through an arbitration proceeding pursuant to section 4221(a) of such Act (29 U.S.C. 1401(a)), or through a claim brought in a court of competent jurisdiction, the employer shall not be obligated to make any withdrawal liability payments until a final decision in the arbitration, or in court, upholds the plan sponsor's determination.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any employer that receives a notification under section 4219(b)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1399(b)(1)) after October 31, 2003.

By Mr. COCHRAN (for himself, Mr. HARKIN, Mr. COLEMAN, Mr. ALLARD, Mr. ENSIGN, and Mr. CRAPO):

S. 1858. A bill to authorize the Secretary of Agriculture to conduct a loan repayment program to encourage the provision of veterinary services in shortage and emergency situations; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. COCHRAN. Mr. President, the United States is experiencing a serious shortage of veterinarians in rural agricultural and inner-city areas. Veterinarians are needed in these areas to support our Nation's defense against bioterrorism, improve food safety, and prevent disease outbreaks. Unfortunately, the financial constraints of loan repayment obligations prevent many new veterinary graduates from working in these underserved areas.

Today, I am pleased to introduce, along with the distinguished Senator from Iowa, Mr. HARKIN, legislation that addresses these challenges. The bill authorizes the Secretary of Agriculture to assist veterinarians in repaying their educational loans if they agree to provide veterinary medical services in areas where the Secretary has determined that a shortage of qualified veterinarians exist.

In addition, at the request of the United States Department of Agriculture, the bill authorizes the Secretary to provide additional loan repayment for those veterinarians in this program who agree to provide services to the Federal Government in emergency situations. When epidemics of animal diseases break out in specific locations in the United States, there is often a serious shortage of trained veterinarians available to respond. Examples include the Exotic Newcastle Disease outbreak in California and an outbreak of low pathogenic Avian Influenza in Virginia in 2002. This legislation would enable the Department of Agriculture to locate trained veterinarians where they are needed in an emergency situation.

This legislation has the support of the Department of Agriculture and the American Veterinary Medical Association which have worked together to develop this legislation to ensure that we have the veterinary health professionals available to protect our food supply. This is an important step in resolving the serious shortage of veterinarians.

Mr. HARKIN. Mr. President, I am pleased to join the chairman of the Committee on Agriculture, Nutrition and Forestry, Senator COCHRAN, to introduce the National Veterinary Medical Service Act. This bill will offer veterinarians a valuable opportunity to serve where they are needed most, while receiving help in paying off their often burdensome student loans.

The cost of becoming a veterinarian is tremendous. Unless aspiring veterinarians come from a wealthy background, they will have accumulated substantial debt by the time they leave school. Because of this debt, their postgraduate opportunities for employment are greatly limited to the geographical areas and types of jobs where incomes meet the burden of student loan repayment. By defraying some of this debt, this bill will help veterinarians to take jobs where there are shortages of veterinarians—such as meat and poultry inspectors in the Federal Government, or in rural areas where large animal practitioners are needed.

Many of these unfilled positions are essential to ensuring the health and food security of Americans. We need to keep the Federal Government staffed with skilled veterinarians in order to maintain a safe food supply and the health of our livestock and poultry. We have all seen the devastating effects diseases such as E. coli O157:H7, Salmonella and Foot and Mouth Disease can have on the livestock and poultry industries and the human and economic toll they can take.

I have worked on many initiatives to address the uneven distribution of medical professionals. Although it often can require extra incentives to get these professionals where they are needed, they often transform these shortage areas by providing critically important services. I have been very happy with the ability of past bills to enable medical professionals to go where they are needed, and I am confident the National Veterinary Medical Service Act will be as successful for veterinarians. I am proud to cosponsor this bill, and I urge my colleagues to support it.

By Mr. DURBIN:

S. 1859. A bill to amend title 10, United States Code, to revise the age and service requirements for eligibility to receive retired pay for non-regular service; to the Committee on Armed Services.

Mr. DURBIN. Mr. President, today, I am introducing a bill that would not only lower the retirement age for reservists but offer incentives for members of the National Guard and Reserves to remain longer in the service of their country.

The bill, the Reservists Retention Act of 2003, lowers the age at which reservists could draw full retirement benefits. Under current law, reservists must complete 20 qualifying years, ''good years'', or more in order to retire at age 60. A number of bills have been introduced during this Congress that would lower the reserve retirement age in various ways: to age 55; or with immediate eligibility as soon as

the reservist completes 20 qualifying years; or with a two-for-one formula where for every two years served beyond 20, the reservist will earn a one-year drop in the retirement age.

These bills are all serious attempts to address the growing recognition that our Reserve Forces are overburdened and under-compensated. The Reservists Retention Act of 2003 aims to balance key provisions from these bills by allowing reservists who serve beyond the requisite 20 qualifying years to retire one year earlier for each year of service beyond 20, down to the age of 55. For example, a reservist who completes 23 qualifying years would be able to retire at 57; one who completes 25 or more years would be able to retire at 55, but no earlier than 55.

In the face of frequent and increasingly long deployments, offering this ''one-for-one'' retirement formula for extended service will aid in retaining experienced reservists in both the National Guard and Reserves beyond the 20-year mark.

I believe this bill is fair and recognizes the drastically changed nature of Reserve service. Since the end of the Cold War, employment of our Reserve Forces has shifted profoundly, from being primarily an expansion force to augment Active Forces during a major war, to the situation today where DoD admits that no significant operation can be undertaken without the Reserve Components.

Right now there are 155,000 National Guard and Reserves who are mobilized and on active duty. Another 43,000 reservists have been alerted that they can expect to be called up early next year. Those who are assigned to Iraq can expect to be away from their families for 18 months, with 12 months of that time in Iraq.

We need to clearly demonstrate our commitment to the well being of America's reservists and their families. The Reservists Retention Act of 2003 acknowledges the increasing stress associated with reserve service by providing an incentive to experienced personnel to remain in the Reserves or National Guard until retirement.

They are doing so much for us; we should do no less for them.

I hope my colleagues will join me in supporting this important measure. I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1859

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

SECTION 1. ELIGIBILITY FOR RETIRED PAY FOR NON-REGULAR SERVICE.

(a) AGE AND SERVICE REQUIREMENTS.—Subsection (a) of section 12731 of title 10, United States Code, is amended to read as follows:

''(a)(1) Except as provided in subsection (c), a person is entitled, upon application, to retired pay computed under section 12739 of this title, if the person—

''(A) satisfies one of the combinations of requirements for minimum age and minimum number of years of service (computed under section 12732 of this title) that are specified in the table in paragraph (2);

''(B) performed the last six years of qualifying service while a member of any category named in section 12732(a)(1) of this title, but not while a member of a regular component, the Fleet Reserve, or the Fleet Marine Corps Reserve, except that in the case of a person who completed 20 years of service computed under section 12732 of this title before October 5, 1994, the number of years of qualifying service under this subparagraph shall be eight; and

''(C) is not entitled, under any other provision of law, to retired pay from an armed force or retainer pay as a member of the Fleet Reserve or the Fleet Marine Corps Reserve.

''(2) The combinations of minimum age and minimum years of service required of a person under subparagraph (A) of paragraph (1) for entitlement to retired pay as provided in such paragraph are as follows:

''Age, in years, is at least:	The minimum years of service required for that age is:
55	25
56	24
57	23
58	22
59	21
60	20.''.

(b) 20-YEAR LETTER.—Subsection (d) of such section is amended by striking ''the years of service required for eligibility for retired pay under this chapter'' in the first sentence and inserting ''20 years of service computed under section 12732 of this title.''.

(c) EFFECTIVE DATE.—This section and the amendments made by this subsection (a) shall take effect on the first day of the first month beginning on or after the date of the enactment of this Act and shall apply with respect to retired pay payable for that month and subsequent months.

By Mr. HATCH (for himself, Mr. BIDEN, and Mr. GRASSLEY):

S. 1860. A bill to reauthorize the Office of National Drug Control Policy; to the Committee on the Judiciary.

Mr. HATCH. Mr. President. I rise to introduce with my colleagues, Senators BIDEN and GRASSLEY, ''The Office of National Drug Control Policy Reauthorization Act of 2003.'' This bill is a forward-looking measure which will strengthen the Office of National Drug Control Policy as we face the new challenges posed by illegal drugs.

I want to thank my colleagues Senators BIDEN and GRASSLEY for working with me to draft this important legislation. Senator BIDEN has a long and impressive record in addressing the problem of illegal drugs. He is considered the father of ONDCP. He had the vision, the commitment, and the dedication to make it a reality. I thank him again for his work on this proposal that we are introducing today.

I also want to thank Senator GRASSLEY for his work on this important legislation. Senator GRASSLEY has been a tireless advocate in fighting illegal drugs. As the chair of the Senate Caucus on International Narcotics Control, Senator GRASSLEY has demonstrated leadership and commitment in addressing issues relating to domestic and international drug trafficking.

The bipartisan legislation we are introducing today reauthorizes ONDCP for 5 years and provides ONDCP with the necessary tools and resources to: Develop national drug control policy; coordinate and oversee the implementation of the national drug control policy; assess and certify the adequacy of national drug control programs and the budget for those programs; evaluate the effectiveness of National Drug Control Program agencies' programs; and develop specific goals and performance measurements needed to assess the effectiveness of the national drug control policy and the programs of the national drug control program agencies.

The legislation includes a number of reforms which will enhance ONDCP's ability to serve as the coordinator of Federal, State, and local policies aimed at reducing the availability of, and demand for, illegal drugs. The bill: 1. expands ONDCP's role and authority in overseeing the performance of federal agencies' drug control programs, and requires ONDCP to develop specific goals and measurements to assess the performance of Federal agencies; 2. requires ONDCP to develop a new performance measurement system which includes annual and 5-year objectives for assessing the National Drug Control Strategy; 3. expands and increases authorized funding for the High Intensity Drug Trafficking Areas Program designed to reduce illegal Drug trafficking and drug production activities in designated areas; 4. creates a new emerging threat fund for ONDCP to allocated to individual HIDTAs to respond to emerging drug trafficking threats in specific HIDTAs; 5. improves the Counter-Drug Technology Transfer program to provide increased technologies for State and local law enforcement agencies, and reforms the program to ensure timely delivery of such technologies; and 6. reauthorizes and enacts reforms to the National Youth Anti-Drug Media Campaign to ensure responsible use of Federal funds used to support the campaign.

I want to take a moment to address several specific issues. First, I am a strong supporter of the HIDTA program. The HIDTA program brings together Federal, State, and local law enforcement, promotes intelligence sharing among these law enforcement agencies, and ensures coordinated and effective law enforcement strategies. The HIDTA program has proven successful, and is even more important today because of the FBI's need to reallocate resources from drug enforcement to terrorism. Given this reality, it is critical that we support the HIDTA program as an important resource in the fight against illegal drug traffickers.

Second, I want to express my continued support for the National Youth Anti-Drug Medical Campaign. While I know the campaign has suffered from some management problems in the last few years, I am confident that the campaign is on the right track. I want to commend ONDCP Director John Walters and The Partnership for a Drug-Free America President Roy Bostock

for their commitment to working together, and for the steps they have taken to ensure that the campaign operates effectively.

The legislation includes specific reforms which will support the campaign and make sure that it operates in a cost-effective manner. Specifically, the bill: 1. Delineates the specific roles and responsibilities of ONDCP, the Partnership and a media buying contractor; 2. restricts the use of funds for creative development of advertisements, except for advertisements intended to reach a minority, ethnic or other special audience that cannot be otherwise obtained from the Partnership; 3. requires the Director to obtain no-cost matches of advertising broadcast times, print space or in-kind contributions which directly relate to substance abuse prevention and specially promote the purposes of the campaign; 4. disqualifies any corporation, partnership or individual from bidding on a media buying contract if such entity, within the last 10 years, in connection with the national media campaign has been convicted of any Federal criminal offense, subject to any Federal civil judgment or penalty in a civil proceeding involving the United States; or settled any Federal civil proceeding or potential proceeding; and 5. provides financial and performance accountability requirements for the campaign.

I also wanted to highlight title VII of the bill—Drug Abuse Education, Prevention, and Treatment. These provisions, which Senators BIDEN, GRASSLEY, LEAHY and I authored in the 107th Congress as part of S. 304, provide much-needed education, prevention and treatment resources which are so critical to reducing the demand for illegal drugs. As I have said before, our national drug strategy must embrace a comprehensive policy that reduces the demand for, as well as the supply of, drugs. To reduce the demand for drugs, we must redouble our efforts at prevention and treatment. This Nation's battle with substance abuse can be successful only through a balanced approach—one that supports law enforcement but at the same time promotes education, prevention and treatment.

Title VII of the bill includes a proposal to establish residential drug treatment facilities for drug-addicted women who have young children. Such facilities are in short supply in this the country, and the problem has grown worse with an ever increasing number of women with children who are abusing drugs.

Treatment is even more imperative for our troubled juveniles, the vast majority of whom will go on to lead productive lives if we can just break the addiction cycle. This bill provides substantial resources to States for juvenile residential treatment facilities and to Federal, State, and local agencies and private service providers to coordinate the delivery of mental health and substance abuse services to children at risk.

Finally, the bill eliminates a restriction in the Controlled Substances Act and will permit medical practitioners to provide drug addiction treatment in group practices. This provision will expand treatment options for thousands of patients who have been denied access to critical addiction treatments.

The proposed legislation we are introducing today will ensure that Congress provides the required oversight—and support of—ONDCP as it continues its critical role of coordinating our National Drug Control Strategy to ensure that we reduce the availability of, and demand for, illegal drugs in our country. I urge my colleagues to support this important legislation.

I ask unanimous consent that a section-by-section analysis be printed in the RECORD.

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

OFFICE OF NATIONAL DRUG CONTROL POLICY REAUTHORIZATION ACT OF 2003 SECTION-BY-SECTION ANALYSIS

TITLE I—ORGANIZATION OF OFFICE OF NATIONAL DRUG CONTROL POLICY AND ROLES AND RESPONSIBILITIES

Sec. 101. Amendments to Definitions. This section updates the definitions for ''Demand Reduction'', ''Office'', ''State and Local Affairs'', and ''Supply Reduction'', and adds a definition for ''Appropriate Congressional Committees''.

Sec. 102. Establishment of the Office of National Drug Control Policy. This section expands the responsibilities of ONDCP to require ONDCP to evaluate the effectiveness of National Drug Control Program Agencies' programs, and to develop specific goals and performance measurements relevant to assessing these programs. This section also defines the responsibilities of the Director, and four Deputy Directors.

Sec. 103. Appointment and Responsibilities of the Director. This section clarifies succession of the Director and Deputy Directors when vacancies occur; specifies additional responsibilities for the Director and ONDCP; clarifies ONDCP's fund control notice authority and requires appropriate reporting to Congress of such notices; creates a United States Interdiction Coordinator; and requires ONDCP to submit to Congress a comprehensive strategy to address the increased threat from South American heroin.

Sec. 104. Amendments to Ensure Coordination With Other Agencies. This section requires the secretaries of the Interior and Agriculture, Homeland Security, and Defense to submit to ONDCP and Congress reports relating to their agencies' efforts to reduce the cultivation and supply of illegal drugs relevant to the preparation and implementation of the National Drug Control Strategy.

TITLE II—THE NATIONAL DRUG CONTROL STRATEGY

Sec. 201. Annual Preparation and Submission of the National Drug Control Strategy. This section retains the requirement that the President submit to Congress by February 1st of each year a National Drug Control Strategy which sets forth a comprehensive plan for the year to reduce abuse and the consequences of drug abuse by limiting the availability of and demand for illegal drugs. The section also sets forth the required contents of the strategy, and the process for developing the strategy.

Sec. 202. Performance Measures. This section requires that ONDCP submit with the National Drug Control Strategy a new performance measurement system that includes annual and 5-year targets for each of the National Drug Control Strategy goals and objectives.

TITLE III—HIGH INTENSITY DRUG TRAFFICKING AREAS PROGRAM AND COUNTER-DRUG TECHNOLOGY ASSESSMENT CENTER

Sec. 301. Purposes of High Intensity Drug Trafficking Areas Program. This section establishes the purposes of the HIDTA program—to reduce drug trafficking and drug production in designated areas in the United States by: (1) facilitating cooperation among federal, state and local law enforcement agencies to share information and implement coordinated enforcement activities; (2) enhancing intelligence sharing among Federal, state and local law enforcement agencies; (3) providing reliable intelligence to law enforcement agencies needed to design effective enforcement strategies and operations; and (4) supporting coordinated law enforcement strategies which maximize use of available resources to reduce the supply of drugs in HIDTA designated areas.

Sec. 302. Designations of HIDTAs and Evaluation of HIDTA Performance. This section includes minor changes to existing law regarding factors for consideration in designating HIDTAs and consultation with appropriate officials. In addition, the section sets out specific requirements for an initial evaluation of all existing HIDTAs and a requirement for continuing evaluation of HIDTAs as part of the National Drug Control Strategy.

Sec. 303. Organization of HIDTAs. This section established minimum requirements for organization of HIDTAs, and specifically requires that each HIDTA have an Executive Board responsible for managing the HIDTA comprised of an equal number of representatives from Federal law enforcement and State and local law enforcement agencies.

Sec. 304. HIDTA Funding. This section authorizes funding for HIDTAs: $280 million for FY 2004; $290 million for FY 2005 and 2006; and $300 million for FY 2007 and 2008; requires the Director to submit to Congress a budget justification document each year to support the funding request for each HIDTA; and authorizes the Director to set aside up to 10 percent of the total HIDTA funding request for grants to respond to emerging drug trafficking threats.

Sec. 305. Assessment of Task Forces in HIDTA Areas. This section requires the Director to submit to Congress, not later than 180 days after the enactment of the Act, a report assessing the number and operation of all task forces within each HIDTA.

Sec. 306. Funding for Certain HIDTA Areas. This provision dedicates $1 million of High Intensity Drug Trafficking Area money to (1) prevent intimidation of potential witnesses in drug cases and (2) combat drug trafficking by creating a toll-free telephone hotline for use by the public to provide information about drug activity.

Sec. 307. Report on Intelligence Sharing. This section requires the Director to submit to Congress, not later than 180 days after the enactment of the Act, a report evaluating existing and planned intelligence systems in order to ensure effective information sharing among Federal, State and local law enforcement agencies responsible for drug trafficking and drug production enforcement.

Sec. 308. Counter-Drug Technology Assessment Center. This section revised the title of the Director of Technology to Chief Scientist for Technology; reauthorizes the Technology Transfer Program; establishes procedures and reporting requirements to ensure prompt transfer to technologies to State and local law enforcement agencies; and authorizes use of such technologies for homeland security purposes.

TITLE IV—REAUTHORIZAITON AND IMPROVEMENT OF THE NATIONAL YOUTH ANTI-DRUG MEDIA CAMPAIGN

Sec. 401. Short Title. This section establishes the title, ''National Youth Anti-Drug Media Campaign Reauthorization Act of 2003.''

Sec. 402. Purposes of the National Anti-Drug Media Campaign. This section clarifies the purposes of the campaign: (1) preventing drug abuse among young people in the United States; (2) increasing awareness of adults of the impact of drug abuse on young people; and (3) encouraging parents and other interested adults to discuss the dangers of drug use with young people.

Sec. 403. Roles and Responsibilities of the Director, the Responsibilities of the Director, the Partnership for a Drug Free America, and a Media Buying Contractor. This section establishes the roles and responsibilities of the Director, the Partnership for a Drug-Free America and a Media Buying Contractor. The Director, in consultation with PDFA, shall determine the overall purposes and strategy of the national media campaign.

Sec. 404. Responsible Use of Federal Funds for the National Youth Anti-Drug Media Campaign. This section requires the Director to allocate sufficient funds to meet the goals of the national media campaign; restricts the use of such funds for creative development of advertisements, except for advertisements intended to reach a minority, ethnic or other special audience that cannot be otherwise obtained from PDFA; requires the Director to obtain no cost matches of advertising broadcast times, print space or in-kind contributions which directly relate to substance abuse prevention and specifically promote the purposes set forth in section 102(a); and exempts any no cost match advertisements from the sponsorship identification provisions in section 317 of the Communications Act of 1934 (Section 103(c)(2)).

In addition, this section ensures responsible use of federal funds by requiring: not less than 89 percent of appropriated amounts for each fiscal year be used for the purpose of advertising time and space (Section 103(d)(1)(A)); no more than $5,000,000 is used in each fiscal year to develop creative content by an entity other than the Partnership for a Drug Free America (Section 103(d)(1)(B)); disqualification of any corporation, partnership or individual from bidding on a contract if such entity, within the last 10 years, in connection with the national media campaign has been convicted of any Federal criminal offense, subject to any Federal civil judgment or penalty in a civil proceeding involving the United States; or settled any Federal civil proceeding or potential proceeding (Section 103(d)(1)(C)(i-iii); and ONDCP to re-solicit bids for any existing contracts with a disqualified bidder, provided that the national media campaign is not interrupted during the re-solicitation process.

Finally, this section includes financial and performance accountability requirements, and expands ONDCP's reporting requirements to Congress on issues related to the national media campaign.

Sec. 405. GAO Audit of National Media Campaign. This section directs GAO to conduct an audit of the national media campaign and submit a report to Congress, within one year after the date of enactment of the Act.

Sec. 406. Authorization for the National Media Campaign. This section authorizes funding for the national media campaign of $195 million for each of the fiscal years 2004 through 2008.

TITLE V—AUTHORIZATIONS AND EXTENSION OF TERMINATION DATE

Sec. 501. Authorization of Appropriations. This section extends the authorization date for ONDCP from 2004 through 2008.

Sec. 502. Extension of Termination Date. This section extends the termination date of the Act from September 30, 2003 to September 30, 2008.

TITLE VI—DESIGNATION OF UNITED STATES ANTI-DOPING AGENCY

Sec. 601. Designation of United States Anti-Doping Agency. This section designates the United States Anti-Doping Agency: to serve as the independent anti-doping organization for amateur athletic competitions recognized by the United States Olympic Committee; to ensure that athletes participating in amateur athletic activities do not use performance-enhancing drugs; to implement anti-doping education programs; and (4) to serve as the United States representative responsible for coordination with other similar anti-doping organizations.

Sec. 602. Authorization of Appropriations. This section authorizes funding for the United States Anti-Doping Agency for fiscal years 2004 through 2008: for fiscal year 2004, $7.2 million; for fiscal year 2005, $9.2 million; for fiscal year 2006, $9.5 million; for fiscal year 2007, $9.9 million; and for fiscal year 2008, $10.5 million.

TITLE VII—DRUG EDUCATION, PREVENTION, AND TREATMENT

Sec. 701. Expansion of Substance Abuse Education and Prevention Efforts. This section authorizes the Administrator of the Substance Abuse and Mental Health Services Administration to make grants to public and non-profit private entities to carry out school-based programs concerning the dangers of abuse of and addiction to illicit drugs and to carry out community-based abuse and addiction prevention programs that are effective and research-based. In awarding grants, the Administrator is required to give priority to rural and urban areas that are experiencing a high rate or rapid increase in abuse. The section authorizes $100 million to be appropriated for FY 2004 and such sums as necessary for each succeeding fiscal year.

Sec. 702. Funding for Rural States and Economically Depressed Communities. This section authorizes $50 million for each of the fiscal years 2005 through 2007 for grants to States to provide treatment facilities in rural and economically depressed communities that have high rates of drug addiction but lack resources to provide adequate treatment.

Sec. 703. Residential Treatment Programs for Juveniles. This section authorizes $100 million a year for each fiscal year of 2005 through 2007 for grants to States to provide residential treatment facilities designed to treat drug addicted juveniles.

Sec. 704. Drug Treatment Alternatives to Prison Programs Administered by State or Local Prosecutors. This section authorizes funding of $30 million for each fiscal year of 2004 through 2006 to create a pilot project for the Attorney General to award grants to State or local prosecutors to develop, implement or expand residential drug treatment programs as an alternative to prison drug treatment programs.

Sec. 705. Funding for Residential Treatment Centers for Women and Children. This section authorizes $10 million for each of the fiscal years 2005 through 2007 for grants to States to provide residential treatment facilities for women who have minor children and who are addicted to methamphetamine, heroin, and other drugs. Such facilities offer specialized treatment for addicted mothers and allow their children to reside with them in the facility or nearby while undergoing treatment.

TITLE VIII—ANABOLIC STEROID CONTROL ACT OF 2003

Sec. 801. Short Title. This section creates a short title, ''The Anabolic Steroid Control Act of 2003.''

Sec. 802. Amendments to the Controlled Substances Act. This section amends the definition of ''anabolic steroid'' under 21 U.S.C. 802, to remove the requirement that such a substance promote muscle growth, and thereby encompass steroid precursors such as androstenedione and other similar substances—many of which have been developed since the Steroid Control Act of 1990. This section also makes technical corrections to the current list of anabolic steriods, and adds known steroid precursors to the anabolic steroid list except dehydroepiandrosterone (DHEA). Finally, this section modifies the definition of ''felony drug offense'' in 21 U.S.C. 802 to apply to offenses involving anabolic steroids.

Sec. 803. Sentencing Commission Guidelines. This section directs the United States Sentencing Commission to review and revise the sentencing guidelines, as necessary, for crimes involving anabolic steroids.

Sec. 804. Prevention and Education Programs. This section authorizes $15 million for each of the fiscal years of 2004 through 2009 for the Secretary of Health and Human Services to award grants to public and non-profit entities to carry out science-based education programs in elementary and secondary schools to highlight the harmful effects of steroids and steroid precursors.

Sec. 805. National Household survey on Drug Use and Health. This section authorizes $1 million for each of the fiscal years of 2004 through 2009 for the Secretary of Health and Human Services to include questions concerning the use of steroids and steroid precursors in the National Survey on Drug Use and Health, an annual survey conducted to measure the extent of alcohol, drug and tobacco use in the United States.

TITLE IX—NATIONAL GUARD COUNTER-DRUG SCHOOLS

Sec. 901. National Guard Counter-Drug Schools. This section authorizes $30 million for each fiscal year of 2004 through 2008 for the Chief of the National Guard Bureau to establish and operate five National Guard Counter-Drug Schools to provide training in drug interdiction and demand reduction activities to Federal, State and local law enforcement agencies, community-based organizations, and other organizations engaged in counter-drug activities.

TITLE X—MISCELLANEOUS PROVISIONS

Sec. 1001. Repeals. This section repeals the President's Council on Counter-Narcotics and the Parents Advisory Council on Youth Drug Abuse, neither of which has ever met.

Sec. 1002. Amendment to the Higher Education Act. This section clarifies and narrows Section 484(r)(1) of the Higher Education Act (20 U.S.C. 1091(r)(1) to prohibit the award of any federal education grant to any student who has been convicted of any offense under Federal or state law involving possession or sale of a controlled substance while they are receiving a federal education grant.

Sec. 1003. Controlled Substances Act Amendment. This section makes a technical correction to the Drug Addiction Treatment Act of 2000 which inadvertently classified HMOs and other large health systems in the same category as small group practices of physicians. Additionally, this section clarifies that the reporting requirements under the Act apply three years after approval of the controlled substance, not three years from the date of passage of the Act.

Sec. 1004. Exportation of Narcotic and Nonnarcotic Drugs. This Section authorizes companies to export controlled substances to central warehouse facilities outside the United States for delivery to locations in other countries, subject to the DEA certification requirement.

Sec. 1005. Study of Work Place Environment at ONDCP. This section directs GAO to conduct a study and report to Congress on the workplace environment at ONDCP.

Sec. 1006. Requirement for Latin American Heroin Strategy. This section requires the Director to submit to Congress a comprehensive strategy that addresses the increased threat from Latin American heroin, and in particular Colombian heroin.

Mr. BIDEN. Mr. President, I rise today to introduce legislation to reauthorize the so-called ''Drug Czar's'' office with Senator HATCH, the Chairman of the Judiciary Committee and Senator GRASSLEY, the Chairman of the Caucus on International Narcotics Control.

This bipartisan legislation will, I hope, result in speedy action to reauthorize the drug director's office for 5 years. No matter what perspective any of us have on a specific drug policy, this legislation is about whether we will have a drug director and a drug office to be responsible for developing, coordinating and enacting a national drug policy.

Some twenty years ago I began fighting to create the Office of National Drug Control Policy (ONDCP) because I believed then, as I believe now, that we needed a Cabinet-level official who would coordinate Federal drug policy. I argued that Cabinet-level status was necessary because this individual needed to have the clout to stop interagency feuding, fight for necessary budgetary resources and decertify inadequate agency drug budgets. But just as important, I believed that the public needed to have one high profile person to hold accountable for developing and implementing an effective national strategy.

In 1982 my bill creating a national drug director passed as part of a larger crime bill, but the President vetoed it. He, like all Presidents—both Democrats and Republicans did not like the idea of being held accountable for what was seen as an intractable problem. But I kept at it and six years later the bill became law.

Before we had a drug czar's office there was no official in charge of the Administration's drug effort. And because there was no one Cabinet official in charge, other members of the President's Cabinet could duck responsibility to talk about tough drug policy issues. And that meant no Administration talked enough or did enough about the drug problem and no Administration was held accountable on drug policy. I'm glad that those days are behind us.

As the person responsible for coordinating Federal drug policy, the drug czar deals with almost every federal agency, from the Department of Justice on drug courts to the Department of Homeland Security on interdiction issues to the State Department and the Department of Defense on Plan Colombia to the Department of Health and Human Services on groundbreaking research on how drug use changes brain chemistry. It is the drug director's job to make sure that all of these wide ranging issues are addressed in the annual drug strategy so that our national policy is a balanced one, giving proper attention to drug enforcement, drug treatment, drug prevention and research.

That is why the bill that Senator HATCH, Senator GRASSLEY and I are introducing today retains the provision in current law requiring the Drug Director to submit to Congress an annual drug strategy, detailing how he proposes to address all aspects of our national drug problem. We also ask him to reach out to state and local officials not only to get their input but also to get their support to advance the national goals on the local level.

And just as with my original drug czar legislation, the reauthorization bill retains as its central goal holding every Administration and every President accountable on the drug issue by requiring ONDCP to evaluate the effectiveness of drug policy and programs and develop specific performance measurements and goals.

The bill also includes a number of changes to strengthen current drug control policies and programs. In the area of law enforcement, the bill reauthorizes and increases the funding for the High Intensity Drug Trafficking Area (HIDTA) program which helps to coordinate federal, state and local efforts to reduce drug trafficking and production in designated areas. The bill also requires an evaluation of each individual HIDTA to monitor the program's effectiveness and requires ONDCP to report to Congress on intelligence sharing among HIDTAs and other law enforcement entities.

In terms of prevention and treatment efforts, the legislation includes a number of important provisions. First, it reauthorizes the National Youth Anti Drug Media Campaign and modifies the program so that it will be more accountable. Second, it includes a number of provisions that the Senate passed unanimously last Congress as part of the Drug Abuse Education, Prevention and Treatment Act to expand drug treatment for rural states, economically depressed communities, juveniles and women with children as well as to create a demonstration project to fund drug treatment alternatives to prison programs administered by state and local prosecutors. And finally, the bill amends the Higher Education Act to clarify that those convicted of drug offenses are not prohibited from receiving federal student aid unless they commit a drug felony while they are receiving the grant, loan or work assistance.

I want to thank Senator HATCH and Senator GRASSLEY for their cooperation in crafting a bipartisan bill to reauthorize the Office of National Drug Control Policy. Both Senators have been leaders on drug policy issues and I am glad to work with them on this important matter. I hope that the rest of my colleagues will support this legislation and that we can pass it without delay.

Mr. GRASSLEY. Mr. President, I rise today to add my comments to those of Senator HATCH and Senator BIDEN on the re-authorization of the Office of National Drug Control Policy. Drug use in America may not be on the front page of the New York Times or Washington Post, but remains a deep concern for many people in small towns and local neighborhoods where the effects of drug abuse are painfully felt. Drugs pose an immediate threat to their lives, and the lives of their children.

The re-authorization of ONDCP is about the leadership role we expect the Federal government to play in confronting the issue. I want to take a moment to highlight a few revisions we have proposed in an effort to strengthen the leadership role that ONDCP should play.

The legislation we are introducing today will improve the capacities of the Office to coordinate our Federal efforts against drug use. We have strengthened the role of the Deputy Director of State and Local Affairs, because we recognize that the coordination of activities, information sharing, and resource allocations between Federal, State, and local law enforcement is increasingly critical.

As everyone is this body knows, there isn't enough money to go around to fully fund all of the worthy causes that are out there, and part of our job is making these tough choices. By increasing the coordination between resources that are already deployed, we can increase the effectiveness of these efforts without having to reinvent how business gets done. ONDCP is an ideal place to play broker over these efforts and move this forward.

We have also included provisions clarifying the authorities and responsibilities of the offices of Demand Reduction and Supply Reduction. Much of ONDCP's responsibilities involves coordinating the activities and focus of other Departments. There is no one simple solution to our drug problem, and ONDCP has a responsibility to ensure that Federal prevention, law enforcement, treatment, and interdiction initiatives cover the full spectrum of opportunities available. Accordingly, our bill clarifies the roles and responsibilities of the various Deputies at ONDCP to strengthen their ability to coordinate the counterdrug activities both within ONDCP and those of other Departments.

The Office of National Drug Control Policy also has responsibility for the execution and effectiveness of the High Intensity Drug Trafficking Areas program, or HIDTA program. The HIDTA program has proven to be an effective

mechanism for getting multiple law enforcement agencies from multiple levels of government to work together. For a relatively modest amount, participating law enforcement agencies have benefited tremendously from the increased information sharing and coordination that HIDTAs generate.

However, there was legitimate concern over the lack of performance measures for the HIDTA program. In addition, there seemed to be some confusion over what the overall purpose of a HIDTA designation was. finally, funding for the HIDTA program has been stifled because of a fear that ONDCP may cut the amount for one particular HIDTA in favor of another. Our legislation addresses these concerns in ways we believe will improve the effectiveness, accountability, and transparency of the program.

First, this legislation establishes that the purpose of the HIDTA program is fourfold: facilitating cooperation among Federal, State, and local law enforcement; enhancing intelligence sharing; providing reliable intelligence to law enforcement agencies for the design of effective enforcement strategies and operations; and supporting coordinated strategies designed to reduce the supply of illegal drugs within a designated area. By focusing the purpose of a HIDTA on improving the capabilities and capacities of those within the HIDTA, we will strengthen the effectiveness of these designated areas to go after drugs.

Second, the legislation creates an evaluation mechanism which requires ONDCP to first establish specific purposes and measures for each HIDTA, and then evaluate the performance of each HIDTA based on the purposes and measures that were established. Because threats each HIDTA faces are unique, the performance of each HIDTA will be evaluated against the goals which are established for that particular HIDTA, rather than an undefined National standard. Not only should this give Congress a better understanding of the performance of this program, but it should give ONDCP a mechanism to better evaluate and support the particular needs of individual HIDTAs.

Third, this legislation requires ONDCP to itemize how much it believes each HIDTA should be funded when the budget request is submitted, rather than waiting until after the appropriations process is complete. Combined with the previous two changes, these changes will combine to give ONDCP the flexibility it needs and the HIDTA program the credibility it needs to expand its leadership and funding for the coordination of law enforcement counterdrug operations.

The final section of this legislation that I would like to mention is the National Media Campaign. I will be honest: I am still not convinced that this program makes the best possible use of drug prevention dollars. But I am in the minority here. Almost everyone I've talked to believes our prevention efforts will be better with the campaign than without it—even if the evidence that the campaign makes a difference is questionable, at best. If the campaign is going to continue, and this legislation does extend the Campaign, I think it's important that it get back to the parameters that were established when it was initially pitched to and authorized by congress.

I think what we have here is a good start in this direction, and I appreciate my colleagues' willingness to take my concerns into consideration. The legislation we have drafted refocuses the campaign toward its initial, buy-one-get-one-free hypothesis. We've proposed enhancing the capacity of the campaign to measure its effectiveness, in an effort to move beyond the 6-month time lag that has hampered past measurements of performance. We have also included a clearer outline of what should, and should not, be paid for by the campaign. And we have created a clear role for the Partnership for a Drug Free America, who has been working on this effort for much longer than Congress has funded it.

All in all, I think we have a good bill. Not a perfect bill, but a good bill. I look forward to continue working with the Committee, our colleagues in the House, and the Administration with the hope that we can re-authorize ONDCP expeditiously.

By Mr. LUGAR:

S. 1861. A bill to provide a framework for consideration by the legislative and executive branches of proposed unilateral economic sanctions in order to ensure coordination of United States policy with respect to trade, security, and human rights; to the Committee on Foreign Relations.

Mr. LUGAR. Mr. President, I rise to introduce the Sanctions Policy Reform Act.

The fundamental purpose of my bill is to promote good governance through thoughtful deliberation on those proposals involving unilateral economic sanctions directed against other countries. My bill lays out a set of guidelines and requirements for a careful and deliberative process in both branches of government when considering new unilateral sanctions. It does not preclude the use of economic sanctions nor does it change those sanctions already in force. It is based on the principle that if we improve the quality of our policy process and public discourse, we can improve the quality of the policy itself.

Numerous studies have shown that unilateral sanctions rarely succeed and often harm the United States more than the target country. Sanctions can jeopardize billions of dollars in U.S. export earnings and hundreds of thousands of American jobs. They frequently weaken our international competitiveness by yielding to other countries those markets and opportunities that we abandon. They also can undermine our ability to provide humanitarian assistance abroad.

Unilateral sanctions often appear to be cost-free, but they have many unintended victims—the poor in the target countries, American companies, American labor, American consumers and, quite frankly, American foreign policy. Sanctions can weaken our international competitiveness, lower our global market share, abandon our established market to others and jeopardize billions in export earnings—the key to our economic growth. They may also impair our ability to provide humanitarian assistance. They sometimes anger our friends and call our international leadership into question. In many cases, unilateral sanctions are well-intentioned, but impotent, serving only to create the illusion of U.S. action. In the worst cases, unilateral sanctions are actually undermining our own interests in the world.

Unilateral sanctions do have a place in our foreign policy. There will always be situations in which the actions of other countries are so egregious or so threatening to the United States that some response by the United States, short of the use of military force, is needed and justified. In these instances, sanctions can be helpful in getting the attention of another country, in showing U.S. determination to change behaviors we find objectionable, or in stimulating a search for creative solutions to difficult foreign policy problems.

But decisions to impose them must be fully considered and debated. Too frequently, this does not happen. Unilateral sanctions are often the result of a knee-jerk impulse to take action, combined with a timid desire to avoid the risks and commitments involved in more potent foreign policy steps that have greater potential to protect American interests. We must avoid putting U.S. national security in a straight-jacket, and we must have a clear idea of the consequences of sanctions on our own security and prosperity before we enact them.

To this end, I am offering this bill to reform the U.S. sanctions decision-making process. The bill will establish procedural guidelines and informational requirements that must be met prior to the imposition of unilateral economic sanctions. For example, before imposing unilateral sanctions, Congress would be required to consider findings by executive branch officials that evaluate the impact of the proposed sanctions on American agriculture, energy requirements, and capital markets. The bill mandates that we be better informed about the prospects that our sanctions will succeed, about the economic costs to the United States, and about the sanctions' impact on other American objectives.

In addition, this sanctions policy reform bill provides for more active consultation between the Congress and the President and for Presidential waiver authority if the President determines

it is in our national security interests. It also establishes an executive branch Sanctions Review Committee, which will be tasked with evaluating the effect of any proposed sanctions and providing appropriate recommendations to the President prior to the imposition of such sanctions.

The bill would have no effect on existing sanctions. It would apply only to new sanctions that are enacted after this bill became law. It also would apply only to sanctions that are unilateral and that are intended to achieve foreign policy goals. As such, it excludes trade remedies or trade sanctions imposed because of market access restrictions, unfair trade practices, or violations of U.S. commercial or trade laws.

Let me suggest a number of fundamental principles that I believe should shape our approach to unilateral economic sanctions: unilateral economic sanctions should not be the policy of first resort. To the extent possible, other means of persuasion and influence ought to be exhausted first; if harm is to be done or is intended, we must follow the cardinal principle that we plan to harm our adversary more than we harm ourselves; when possible, multilateral economic sanctions and international cooperation are preferable to unilateral sanctions and are more likely to succeed, even though they may be more difficult to obtain; we ought to avoid double standards and be as consistent as possible in the application of our sanctions policy; to the extent possible, we ought to avoid disproportionate harm to the civilian population. We should avoid the use of food as a weapon of foreign policy and we should permit humanitarian assistance programs to function; our foreign policy goals ought to be clear, specific and achievable within a reasonable period of time; we ought to keep to a minimum the adverse affects to our sanctions on our friends and allies; we should keep in mind that unilateral sanctions can cause adverse consequences that may be more problematic than the actions that prompted the sanctions—a regime collapse, a humanitarian disaster, a mass exodus of people, or more repression and isolation in the target country, for example; we should explore options for solving problems through dialogue, public diplomacy, and positive inducements or rewards; the President of the United States should always have options that include both sticks and carrots that can be adjusted according to circumstance and nuance; the Congress should be vigilant by insuring that his options are consistent with Congressional intent and the law; and in those cases where we do impose sanctions unilaterally, our actions must be part of a coherent and coordinated foreign policy that is coupled with diplomacy and consistent with our international obligations and objectives.

An unexamined reliance on unilateral sanctions may be appropriate for a third-rate power whose foreign policy interests lie primarily in satisfying domestic constituencies or cultivating a self-righteous posture. But the United States is the world's only superpower. Our own prosperity and security, as well as the future of the world, depend on a vigorous and effective assertion of our international interests.

The United States should never abandon its leadership role in the world, nor forsake the basic values we cherish. We must ask, however, whether we are always able to change the actions of other countries whose behavior we find disagreeable or threatening. If we are able to influence those actions, we need to ponder how best to proceed. In my judgment, unilateral economic sanctions will not always be the best answer. But, if they are the answer, they should be structured so that they do as little harm as possible to our global interests. By improving upon our procedures and the quality and timeliness of our information when considering new sanctions, I believe U.S. foreign policy will be more effective.

By Mr. JEFFORDS (for himself, Mr. LEAHY, Mr. KERRY, Mr. LIEBERMAN, and Mr. AKAKA):

S. 1867. A bill to amend the Solid Waste Disposal Act to encourage greater recycling of certain beverage containers through the use of deposit refund incentives; to the Committee on Environment and Public Works.

Mr. JEFFORDS. Mr. President, like every loyal Red Sox fan, I believe that next season, my team will be victorious. I bring this same level of optimism to my efforts to reduce the amount of wasted resources and litter caused by discarded beverage containers. I rise today to introduce the National Beverage Producer Responsibility Act of 2003, the Bottle Bill, convinced that this is our year.

I have long been an advocate for increased recycling. Vermont passed its Bottle Bill in 1972 when I was State Attorney General. In 1975, during my first session as a Representative in the U.S. House, I introduced a national Bottle Bill, closely resembling Vermont's very successful example. Last Congress, as Chairman of the Environment and Public Works Committee, I convened the first congressional hearing in many years on recycling, in which the Committee heard expert testimony on the merits of a national program to recycle beverage containers.

The reason that I continue to push this issue is simple—it makes sense. Beverage container recycling is one of the simplest ways to see a dramatic improvement in our environment. One hundred and twenty billion—let me repeat, 120 billion with a ''B''—beverage containers were wasted by not being recycled in 2001. If we could raise the Nation's recycling rate to 80 percent, we would save the equivalent of 300 million barrels of oil over the next ten years and eliminate 4 million tons of greenhouse gas emissions annually. States that have enacted bottle bills also have benefited by reducing road side litter by up to 84 percent.

These savings may sound unrealistic. But, in Vermont alone, recycling efforts in 2001 reduced greenhouse gas emissions by 94,000 metric tons of carbon equivalent. That's equal to approximately two-thirds of all industrial carbon dioxide emissions from fossil fuel combustion in Vermont and 4.5 percent of greenhouse gas emissions. To me, those savings sound remarkable.

Why a refundable deposit program? Thirty years of experience demonstrates that refundable deposit bottle bills are dramatically more effective than voluntary efforts. The ten States that have implemented deposit laws recycle more containers than all of the other 40 States combined. While I applaud curbside and other voluntary recycling efforts, the 71 percent of Americans who live in non-bottle bill States account for only 28 percent of recycled beverage containers.

My bill, the National Beverage Producer Responsibility Act of 2003, strikes a balance between the wishes of industry, the authority of individual states, and the needs of a healthy environment. Unlike traditional bottle bills, this legislation would fully harness market incentives by setting an 80 percent recovery performance standard and allowing industry the freedom to design the most efficient deposit-return program to reach the standard. States that already have bottle bills will retain their authority to continue their programs in their own individual ways as long as they meet the national performance standard.

This Saturday, November 15, 2003, is America Recycles Day in Vermont and across the country. Two years ago, to help commemorate the 2001 America Recycles Day, I participated in a public service announcement to raise awareness regarding the need to buy recycled goods. The importance of recycling deserves, however, more than a 30-second public service announcement and more than its own day on the calendar. For it to work, recycling must be a commitment of all of ours each and every day of the year.

Vermont's commitment to recycling has provided some impressive statistics. For example, in 2001, 31 percent of Vermont's municipal waste was diverted from landfills. That year, 13,260 tons of containers were recycled through soft drink and beer distributors and materials recovery facilities. The benefit of these programs is, of course, that they help keep our Green Mountains green. I commend and thank Governor Jim Douglas for his many recent initiatives to encourage and improve the efficiency of recycling across Vermont. For example, under Governor Douglas' leadership, Vermont has implemented beverage container recycling programs at 20 State information centers. In the first phase, in less than two months, over 200 pounds

of aluminum, glass, and plastic were recovered from 51,000 visitors passing through one such information center in Williston, VT.

And today, the U.S. Senate's other Vermonter, PATRICK LEAHY, joins me and Senators JOSEPH LIEBERMAN, DANIEL AKAKA, and JOHN KERRY as original cosponsors as I introduce the National Beverage Producer Responsibility Act of 2003.

Mr. AKAKA. Mr. President, I am pleased to be an original cosponsor for the National Beverage Producer Responsibility Act of 2003, a bill introduced today by Senator JIM JEFFORDS. This bill serves a need that we already have seen in Hawaii—to reduce litter and increase recycling by encouraging businesses to work together in a partnership with government to reclaim glass, plastic bottles, and cans that accumulate on our shores, in our landfills, and along our streets.

The bill sets up a deposit charge that can be reclaimed when the beverage container is returned. The legislation sets a measurable performance standard of 80 percent recovery rate for used, empty beverage containers for recycling or reuse. The bill was crafted to address the concerns of industry, retain the authority of individual States, and promote a healthy environment. It empowers the beverage container industry to design a container recycling program that best fits its business requirements to meet the 80 percent goal. States like Hawaii and 10 other States across the Nation that already have bottle bills will be able to continue their programs as long as the programs meet the national performance standard. It aims to protect and preserve our Nation's natural resources and reduce costs to counties, cities, and residents. In my own State, Hawaii recently enacted a beverage container bill which will take effect in 2005.

As our Nation prepares to celebrate America Recycles Day on Saturday, November 15, I am optimistic that the National Beverage Producer Responsibility Act of 2003 will help keep our parks, beaches, and roadsides cleaner; reduce burdens on landfills; decrease ground water contamination; save energy; lower taxes for disposal costs; and create new industries and jobs.

By Mr. BROWNBACK (for himself, Mr. CRAPO, Mr. SMITH, and Mr. SANTORUM):

S.J. Res. 24. A joint resolution providing for the recognition of Jerusalem as the undivided capital of Israel before the United States recognizes a Palestinian state, and for other purposes; to the Committee on Foreign Relations.

Mr. BROWNBACK. Mr. President, I rise to introduce a joint resolution regarding the status of Jerusalem, and its potential in catapulting the Middle East Peace process forward.

Just prior to returning from the summer recess, I traveled to Israel for five days on one of the most important official trips I have made since coming to the Congress in 1994. I have been to Israel before, but this trip had a special meaning for me both in terms of who and what I saw.

I arrived in the aftermath of the bus bombing in Jerusalem that killed Yeshiva students going to the Wailing Wall. The same week I was there, Palestinian Prime Minister Abu Mazen lost a no confidence vote and conceded to a shake up of the Palestinian cabinet. A wave of Palestinian terrorism ensued and it appeared that no Palestinian leader, at that time, had the will or the desire to contain terrorism much less stamp it out so that President Bush's Roadmap for Peace could proceed.

On my way from the airport in Tel Aviv to the hotel in Jerusalem, I made a brief visit to a town called B'nei Berek, a small Orthodox suburb of Tel Aviv. B'nei Berek was established shortly after the founding of Israel. In the intervening 50 year period, this town has turned into a thriving city of over 200,000 people—a very special place for the Orthodox community in Israel.

While I was there I met with one of the most respected and senior Rabbis in Israel. This man lived in a very modest apartment on an average street, and you would never know that he was one of the most important theological scholars in Israel. His home was lined with volume after volume of theological text, but he spoke plainly and deliberately about the importance of his faith and the role of faith in the lives of the Jewish people. The history of the Jewish people seemed to be etched onto his face and into his eyes.

On this same trip I met with the Israeli Foreign Minister Silvan Shalom, Finance Minister Benjamin Netanyahu, Former Israeli Defense Force General Ephraim Eitam and Ambassador John Wolf, who is charged with monitoring the implementation of commitments in the peace process.

One evening, I went on a tour of the Western Wall and the tunnels that run underneath the current level of buildings around the old city wall. The tour took over an hour and explored some of the most exciting history about Israel, Jerusalem and the Temple.

There is a point in the tunnels that leads to an old entrance into the old city that, if opened, would lead to a special place below where the Temple once stood. This place, I'm sure my colleagues as children in Sunday school learned, is called the Holy of Holies.

The Temple was built around this place, and it could not be entered except by the High Priest on Yom Kippur. It is the place, described in the Book of Genesis, where Abraham was to sacrifice his son Isaac. It is also the place where the Ark of the Covenant was kept. This was a unique experience.

Jerusalem is a special place. It is extremely important to the peace process. In my hand is the ''Jerusalem Resolution,'' a proposition which I hope will propel the peace process forward by moving two big issues forward.

This resolution seeks to make it U.S. policy that prior to the recognition by the U.S. of a Palestinian State, the U.S. Embassy must be moved to Jerusalem and that Jerusalem be declared as the undivided capital of Israel. This resolution would establish an important, tangible asset on both sides for advancing the peace process.

For the past decade, we have attempted to forge a peace agreement between the Palestinians and Israelis on a design of land for peace. This model has failed. We should attempt a new way. If we address two major issues at the outset of vital interest to the ultimate desire for peace, we can help to create a powerful momentum for peace. This bill pushes for the resolution of the status of Jerusalem in conjunction with the recognition of a Palestinian state.

Jerusalem has been the capital of the Jewish people for three thousand years, and is the center of Jewish faith and culture. Jerusalem is the seat of Israel's Government, and is the only capital city designated by the host country in which the U.S. does not maintain an embassy nor recognize it as the capital.

In this resolution, three months prior to the recognition of a Palestinian state, the United States must move its embassy to Jerusalem and the status of Jerusalem must be resolved by the international recognition of Jerusalem as Israel's capital.

I hope that my colleagues will join me in my effort. The peace process is in need of a major paradigm shift. We can't continue to bog ourselves down in the mechanics of the process. We must think grand about this problem and move beyond the status quo.

This resolution is a challenge to this body to change its perspective on this issue. I hope in the coming months we can engage in serious debate over peace and the way toward it in the Middle East.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 266—EXPRESSING THE SENSE OF THE SENATE WITH RESPECT TO POLIO

Mr. FEINGOLD submitted the following resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

S. RES. 266

Whereas polio has caused millions of casualties through history, paralyzing millions and killing untold numbers of others;

Whereas polio remains a public health threat in today's world, despite being easily preventable by vaccination;

Whereas polio is now limited to 10 countries, with the distinct possibility that it can be once and forever extinguished as an affliction on mankind by ensuring the vaccination of all children in these countries under the age of 5;

Whereas a Global Polio Eradication Initiative exists that seeks to once and forever end

polio as an illness, which includes efforts underway by the Centers for Disease Control and Prevention; and

Whereas the United States has the capacity to act to speed the eradication of polio by assisting in the targeting of its few remaining reservoirs: Now, therefore, be it

Resolved, That the Senate—

(1) expresses serious concern about the continuing threat posed by polio;

(2) encourages the United Nations and its component agencies, the private sector, private voluntary organizations and non-governmental organizations, concerned States, and international financial institutions to act with haste and manifold dedication to eradicate polio as soon as possible; and

(3) calls upon the United States government to continue its contribution to the multilateral effort to eradicate polio, including closely monitoring laboratory stocks of the polio virus.

SENATE CONCURRENT RESOLUTION 81—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

Mrs. FEINSTEIN (for herself, Mr. KYL, Mr. LIEBERMAN, Mr. COLEMAN, Mr. LAUTENBERG, Mr. SANTORUM, Mr. FITZGERALD, and Mr. COCHRAN) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 81

Whereas, on January 1, 1968, Iran signed the Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London, and Moscow July 1, 1968, and entered into force March 5, 1970 (the ''Nuclear Non-Proliferation Treaty'');

Whereas by becoming a party to the Nuclear Non-Proliferation Treaty as a non-nuclear weapons state, Iran has committed itself to permanently abstaining from the development or acquisition of nuclear weapons;

Whereas, in March 2003, the Director of the International Atomic Energy Agency (IAEA) announced that Iran was constructing a facility to enrich uranium, a key component of nuclear weapons;

Whereas environmental sampling by the IAEA at Iran's Natanz nuclear facility revealed the presence of highly enriched uranium that can be used to develop nuclear weapons;

Whereas the traces of highly-enriched uranium detected by the IAEA at the Natanz facility and the Kalaye Electric Company could indicate that Iran has been secretly attempting to produce weapons-grade uranium at these facilities;

Whereas the June 6, 2003, report of the Director General of the IAEA expressed concern over the failure of the Government of Iran to report material, facilities, and activities at its nuclear facilities, including those that have the potential to enrich uranium and develop nuclear weapons, in contravention of its obligations under the safeguards agreement it signed in connection with the Nuclear Non-Proliferation Treaty;

Whereas the Board of Governors of the IAEA adopted a resolution on September 12, 2003, that called on Iran to provide the IAEA a full declaration of all imported material and components relevant to the uranium enrichment program, to grant unrestricted access, including environmental sampling, to the IAEA, to resolve questions regarding the conclusion of the IAEA experts who tested gas centrifuges in that country, to provide complete information regarding the conduct of uranium conversion experiments, and to provide such other information and explanations and take such other steps as the IAEA determines necessary to resolve by October 31, 2003, all outstanding issues involving Iran's nuclear materials and nuclear activities;

Whereas on October 21, 2003, the Government of Iran reached an agreement with 3 European foreign ministers in which it promised to extend full cooperation to the IAEA, sign the IAEA Additional Protocol and commence ratification procedures, comport itself in accordance with the provisions of the Model Additional Protocol prior to ratification, and voluntarily suspend all uranium enrichment and processing activities;

Whereas the 3 European governments promised a dialogue with Iran to ease Iran's access to a variety of modern technologies and supplies once certain international concerns regarding Iran are fully resolved;

Whereas, even if Iran adheres to its commitment to the European foreign ministers to suspend enriching and processing uranium, Iran has explicitly indicated that it reserves the right to resume this activity at a time of its choosing;

Whereas, although Iran has provided the IAEA with what it claims is a full statement about the nature of its nuclear activities, the IAEA has indicated it may take some months to fully evaluate the Iranian declaration, and IAEA head Mohammed El Baradei has already stated that the documents show that Iran failed to comply with some of its commitments under the Nuclear Non-Proliferation Treaty;

Whereas Iran has not yet provided the IAEA unrestricted access to conduct inspections that the IAEA believes are necessary to resolve issues concerning Iran's nuclear program;

Whereas, on October 23, 2003, the Government of Iran provided the IAEA with a declaration that it described as a complete and accurate history of its nuclear program;

Whereas Iran's National Security Council Chief, Hassan Rouhani, stated on October 21, 2003, that Iran was not prepared to abandon its uranium enrichment program, and the Iranian Foreign Ministry indicated on October 26, 2003, that it has not yet suspended uranium enrichment but was merely studying the issue;

Whereas, in June 2003, Iran conducted a successful test of the 800-mile range Shahab-3 missile, and Iran is also seeking to produce a 1,200-mile Shahab-4 missile; and

Whereas the continuation of construction by Iran of unsafeguarded nuclear facilities, coupled with its ties to terrorist groups, will continue to constitute a severe threat to international peace and security and to vital American national interests: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) deplores the development by Iran of a nuclear weapons program and the failure of the Government of Iran for well over a decade to report material, facilities, and activities to the International Atomic Energy Agency in contravention of its obligations under the safeguards agreement it signed in connection with the Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London, and Moscow July 1, 1968, and entered into force March 5, 1970 (hereafter in this resolution referred to as the ''Nuclear Non-Proliferation Treaty'');

(2) concurs with the view of the Department of State, as delivered in testimony to the U.S.—Israel Joint Parliamentary Committee on September 17, 2003, by the Assistant Secretary of State for Verification and Compliance that the explanations provided by the Government of Iran for its nuclear activities are not credible;

(3) concurs with the conclusion reached in the Department of State's Annual Report on Adherence to and Compliance with Arms Control and Non-Proliferation Agreements and Commitments that Iran is pursuing a program to develop nuclear weapons;

(4) acknowledges the agreement reached between the Government of Iran and the foreign ministers of Germany, France, and the United Kingdom, but questions whether it signifies a sincere and lasting decision by the Government of Iran to abandon its nuclear weapons program;

(5) believes that Iran must come into full compliance with its obligations;

(6) calls on the President to use all appropriate means to prevent Iran from acquiring nuclear weapons, including—

(A) urging the Government of Iran to end its nuclear weapons program and comply fully and unconditionally with the terms of the resolution adopted by the Board of Governors of the International Atomic Energy Agency on September 12, 2003 (hereafter in this resolution referred to as the ''IAEA resolution''), that calls on Iran to—

(i) provide the Agency a full declaration of all imported material and components relevant to the uranium enrichment program;

(ii) grant unrestricted access, including environmental sampling, to the Agency;

(iii) resolve questions regarding the conclusion of the Agency experts who tested gas centrifuges in that country;

(iv) provide complete information regarding the conduct of uranium conversion experiments; and

(v) provide such other information and explanations and take such other steps as the Agency determines necessary to resolve by October 31, 2003, all outstanding issues involving Iran's nuclear materials and nuclear activities; and

(B) taking such diplomatic measures as are necessary to encourage other nations, especially Russia, France, Germany, and the United Kingdom, to urge the Government of Iran to fully and immediately comply with the such resolution;

(7) calls on Russia to—

(A) use all appropriate means to urge Iran to accept in full the IAEA resolution;

(B) suspend all nuclear cooperation with Iran, particularly the completion of the Bushehr nuclear reactor and the delivery of fuel for that reactor, until Iran fully and completely complies with the IAEA resolution and fully implements the Model Additional Protocol;

(C) insist that no fuel will be supplied to the Bushehr reactor unless Iran agrees to return all spent fuel to Russia; and

(D) put into effect procedures to ensure that Iran cannot divert any spent fuel;

(8) calls on member states of the United Nations to prevent the Government of Iran from continuing to pursue and develop programs or facilities that could be used in a nuclear weapons program and end all nuclear cooperation with Iran, including the provision of dual use items, until Iran complies fully with the IAEA resolution and fully implements the Model Additional Protocol;

(9) calls on the European Union to condition economic and commercial agreements with Iran on the full compliance by Iran with its commitment not to pursue nuclear weapons and to stipulate that any rights

that Iran obtains under such agreements will be immediately revoked if Iran interferes with the work of the IAEA or takes any other steps to acquire nuclear weapons;

(10) calls on the IAEA, in accordance with its own regulations, to formally declare Iran in violation of the Nuclear Non-Proliferation Treaty at its November 20, 2003, board meeting and refer the matter to the United Nations Security Council for further action;

(11) calls on the United Nations Security Council, immediately upon receiving any violations report from the IAEA, to address the threat to international peace and security posed by Iran's nuclear weapons program by passing a Security Council resolution, or take such other action that may be necessary to impose stringent diplomatic and economic sanctions against Iran; and

(12) calls on the Government of Iran to cease all efforts to acquire nuclear fuel cycle capabilities and to end the enrichment and processing of uranium until it is able to provide specific, verifiable assurances that it is not engaged in a clandestine nuclear weapons program by—

(A) coming into complete and verifiable compliance with its obligations under the IAEA resolution, including the prompt and unconditional implementation of the Model Additional Protocol; and

(B) fully meeting its obligations under the Nuclear Non-Proliferation Treaty.

AMENDMENTS SUBMITTED & PROPOSED

SA 2150. Mr. BOND (for himself and Ms. MIKULSKI) proposed an amendment to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes.

SA 2151. Ms. LANDRIEU submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, supra.

SA 2152. Mrs. CLINTON (for herself, Mr. ENZI, Ms. CANTWELL, Mr. GRASSLEY, Mrs. MURRAY, Mr. SMITH, Mr. SCHUMER, Mr. WYDEN, Mr. HARKIN, Ms. STABENOW, Mr. KERRY, Mr. DODD, Mr. LIEBERMAN, Mr. LEVIN, and Mr. DASCHLE) submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, supra.

SA 2153. Mr. GRAHAM, of Florida (for himself and Mr. NELSON, of Florida) submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, supra; which was ordered to lie on the table.

SA 2154. Mr. JEFFORDS submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, supra; which was ordered to lie on the table.

SA 2155. Mr. DAYTON submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, supra; which was ordered to lie on the table.

SA 2156. Mr. CRAIG (for Mr. BOND (for himself, Mr. MCCONNELL, Mr. TALENT, Mr. CHAMBLISS, Mr. MILLER, and Mr. CRAIG)) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, supra.

SA 2157. Mr. SANTORUM submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, supra; which was ordered to lie on the table.

SA 2158. Mr. CRAIG (for himself, Mr. HARKIN, Mr. COCHRAN, Mr. CONRAD, Mr. CHAMBLISS, Mr. COLEMAN, Mr. CRAPO, Mr. LUGAR, Mr. BREAUX, Mr. ROBERTS, Mr. FITZGERALD, and Mr. PRYOR) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, supra.

SA 2159. Mr. DORGAN proposed an amendment to amendment SA 2158 proposed by Mr. CRAIG (for himself, Mr. HARKIN, Mr. COCHRAN, Mr. CONRAD, Mr. CHAMBLISS, Mr. COLEMAN, Mr. CRAPO, Mr. LUGAR, Mr. BREAUX, Mr. ROBERTS, Mr. FITZGERALD, and Mr. PRYOR) to the amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, supra.

SA 2160. Mr. DEWINE (for himself and Mr. VOINOVICH) submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, supra; which was ordered to lie on the table.

SA 2161. Mr. DEWINE (for himself and Mr. VOINOVICH) submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, supra; which was ordered to lie on the table.

SA 2162. Mr. DEWINE (for himself, Mr. LEVIN, and Mr. VOINOVICH) submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, supra; which was ordered to lie on the table.

SA 2163. Mr. DEWINE (for himself and Mr. VOINOVICH) submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, supra; which was ordered to lie on the table.

SA 2164. Ms. CANTWELL (for herself, Mr. CARPER, Mr. BROWNBACK, Mr. HAGEL, Mr. ROBERTS, Mr. NELSON, of Nebraska, and Mrs. MURRAY) submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, supra; which was ordered to lie on the table.

SA 2165. Mr. COLEMAN submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, supra; which was ordered to lie on the table.

SA 2166. Mr. DORGAN submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, supra; which was ordered to lie on the table.

SA 2167. Mr. BOND proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H .R. 2861, supra.

SA 2168. Mr. REED submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, supra; which was ordered to lie on the table.

SA 2169. Mr. LEVIN (for himself, Ms. COLLINS, Ms. STABENOW, and Mr. VOINOVICH) submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, supra; which was ordered to lie on the table.

SA 2170. Mr. BOND (for Mr. LEAHY (for himself and Mr. BROWNBACK)) proposed an amendment to the bill S. 1685, to extend and expand the basic pilot program for employment eligiblity verification, and for other purposes.

SA 2171. Mr. LAUTENBERG (for himself, Ms. MIKULSKI, Mr. JEFFORDS, Mrs. BOXER, Mr. CORZINE, Mr. SCHUMER, Mr. LEAHY, Mr. LIEBERMAN, Mr. KERRY, Mr. KENNEDY, Mr. EDWARDS, Ms. CANTWELL, and Mr. DURBIN) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development , and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30 , 2004, and for other purposes.

SA 2172. Mr. BOND (for Mr. GRAHAM, OF SOUTH CAROLINA (for himself and Mr. HOLLINGS)) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, supra.

SA 2173. Mr. BOND (for Ms. MIKULSKI (for herself and Mr. BOND)) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H .R. 2861, supra.

SA 2174. Mr. BOND proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H .R. 2861, supra.

SA 2175. Mr. BOND (for Mr. STEVENS) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, supra.

SA 2176. Mr. BOND (for Mr. DURBIN (for himself and Mr. FITZGERALD)) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H .R. 2861, supra.

SA 2177. Mr. BOND (for Ms. MURKOWSKI) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, supra.

SA 2178. Ms. MIKULSKI proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, supra.

SA 2179. Mr. FITZGERALD submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, supra; which was ordered to lie on the table.

SA 2180. Mr. BOND proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, supra.

SA 2181. Mr. BOND (for Ms. MURKOWSKI) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, supra.

SA 2182. Ms. MURKOWSKI (for Mr. DORGAN (for himself, Mr. ROCKEFELLER, and Ms. LANDRIEU)) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, supra.

SA 2183. Mr. BOND (for Mr. SARBANES (for himself, Ms. COLLINS, Mr. BYRD, Mr. SANTORUM, Mr. REED, Ms. SNOWE, Mr. KENNEDY, Mr. DODD , Mr. KERRY, Mr. ALLEN, Mr. SCHUMER, Mrs. MURRAY, Mrs. CLINTON, Mr. LEAHY, Mr. CHAFEE, Ms. CANTWELL, Mrs. FEINSTEIN, Mr. LAUTENBERG, Ms. STABENOW, Mr. JEFFORDS, Mr. LIEBERMAN, Mr. AKAKA, Mr. DAYTON, and Mr. NELSON, of Florida)) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, supra.

SA 2184. Mr. BOND (for Mrs. CLINTON (for herself, Ms. SNOWE, Mr. KENNEDY, Mr. CHAFEE, Mrs. MURRAY, Mr. REED, Mr. HARKIN, and Mr. DODD)) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, supra.

SA 2185. Mr. BOND (for Mr. LEVIN (for himself, Ms. COLLINS, and Ms. STABENOW)) proposed an amendment to amendment SA 2150

proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, supra.

SA 2186. Mr. BOND (for Mrs. BOXER) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, supra.

SA 2187. Mr. MCCAIN submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, supra; which was ordered to lie on the table.

SA 2188. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, supra; which was ordered to lie on the table.

SA 2189. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, supra; which was ordered to lie on the table.

SA 2190. Mr. GRAHAM, of Florida submitted an amendment intended to be proposed by him to the bill H.R. 2861, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 2150. Mr. BOND (for himself and Ms. MIKULSKI) proposed an amendment to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the Departments of Veteran Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes, namely:

TITLE I—DEPARTMENT OF VETERANS AFFAIRS

VETERANS BENEFITS ADMINISTRATION

COMPENSATION AND PENSIONS

(INCLUDING TRANSFER OF FUNDS)

For the payment of compensation benefits to or on behalf of veterans and a pilot program for disability examinations as authorized by law (38 U.S.C. 107, chapters 11, 13, 18, 51, 53, 55, and 61); pension benefits to or on behalf of veterans as authorized by law (38 U.S.C. chapters 15, 51, 53, 55, and 61; 92 Stat. 2508); and burial benefits, emergency and other officers' retirement pay, adjusted-service credits and certificates, payment of premiums due on commercial life insurance policies guaranteed under the provisions of article IV of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 540 et seq.) and for other benefits as authorized by law (38 U.S.C. 107, 1312, 1977, and 2106, chapters 23, 51, 53, 55, and 61; 50 U.S.C. App. 540–548; 43 Stat. 122, 123; 45 Stat. 735; 76 Stat. 1198), $29,845,127,000, to remain available until expended: *Provided,* That not to exceed $17,056,000 of the amount appropriated under this heading shall be reimbursed to ''General operating expenses'' and ''Medical care'' for necessary expenses in implementing those provisions authorized in the Omnibus Budget Reconciliation Act of 1990, and in the Veterans' Benefits Act of 1992 (38 U.S.C. chapters 51, 53, and 55), the funding source for which is specifically provided as the ''Compensation and pensions'' appropriation: *Provided further,* That such sums as may be earned on an actual qualifying patient basis, shall be reimbursed to ''Medical facilities revolving fund'' to augment the funding of individual medical facilities for nursing home care provided to pensioners as authorized.

READJUSTMENT BENEFITS

For the payment of readjustment and rehabilitation benefits to or on behalf of veterans as authorized by law (38 U.S.C. chapters 21, 30, 31, 34, 35, 36, 39, 51, 53, 55, and 61), $2,529,734,000, to remain available until expended: *Provided,* That expenses for rehabilitation program services and assistance which the Secretary is authorized to provide under section 3104(a) of title 38, United States Code, other than under subsection (a)(1), (2), (5), and (11) of that section, shall be charged to this account.

VETERANS INSURANCE AND INDEMNITIES

For military and naval insurance, national service life insurance, servicemen's indemnities, service-disabled veterans insurance, and veterans mortgage life insurance as authorized by 38 U.S.C. chapter 19; 70 Stat. 887; 72 Stat. 487, $29,017,000, to remain available until expended.

VETERANS HOUSING BENEFIT PROGRAM FUND PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the cost of direct and guaranteed loans, such sums as may be necessary to carry out the program, as authorized by 38 U.S.C. chapter 37, as amended: *Provided,* That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: *Provided further,* That during fiscal year 2004, within the resources available, not to exceed $300,000 in gross obligations for direct loans are authorized for specially adapted housing loans.

In addition, for administrative expenses to carry out the direct and guaranteed loan programs, $154,850,000, which may be transferred to and merged with the appropriation for ''General operating expenses''.

EDUCATION LOAN FUND PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the cost of direct loans, $1,000, as authorized by 38 U.S.C. 3698, as amended: *Provided,* That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: *Provided further,* That these funds are available to subsidize gross obligations for the principal amount of direct loans not to exceed $3,400.

In addition, for administrative expenses necessary to carry out the direct loan program, $70,000, which may be transferred to and merged with the appropriation for ''General operating expenses''.

VOCATIONAL REHABILITATION LOANS PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the cost of direct loans, $52,000, as authorized by 38 U.S.C. chapter 31, as amended: *Provided,* That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: *Provided further,* That funds made available under this heading are available to subsidize gross obligations for the principal amount of direct loans not to exceed $3,938,000: *Provided further,* That the loan level shall be considered an estimate and not a limitation.

In addition, for administrative expenses necessary to carry out the direct loan program, $300,000, which may be transferred to and merged with the appropriation for ''General operating expenses''.

NATIVE AMERICAN VETERAN HOUSING LOAN PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For administrative expenses to carry out the direct loan program authorized by 38 U.S.C. chapter 37, subchapter V, as amended, $571,000, which may be transferred to and merged with the appropriation for ''General operating expenses''.

GUARANTEED TRANSITIONAL HOUSING LOANS FOR HOMELESS VETERANS PROGRAM ACCOUNT

For the administrative expenses to carry out the guaranteed transitional housing loan program authorized by 38 U.S.C. chapter 37, subchapter VI, not to exceed $750,000 of the amounts appropriated by this Act for ''General operating expenses'' and ''Medical care'' may be expended.

VETERANS HEALTH ADMINISTRATION

MEDICAL CARE

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses for the maintenance and operation of hospitals, nursing homes, and domiciliary facilities; for furnishing, as authorized by law, inpatient and outpatient care and treatment to beneficiaries of the Department of Veterans Affairs, including care and treatment in facilities not under the jurisdiction of the department; and furnishing recreational facilities, supplies, and equipment; funeral, burial, and other expenses incidental thereto for beneficiaries receiving care in the department; administrative expenses in support of planning, design, project management, real property acquisition and disposition, construction and renovation of any facility under the jurisdiction or for the use of the department; oversight, engineering and architectural activities not charged to project cost; repairing, altering, improving or providing facilities in the several hospitals and homes under the jurisdiction of the department, not otherwise provided for, either by contract or by the hire of temporary employees and purchase of materials; uniforms or allowances therefor, as authorized by 5 U.S.C. 5901–5902; aid to State homes as authorized by 38 U.S.C. 1741; administrative and legal expenses of the department for collecting and recovering amounts owed the department as authorized under 38 U.S.C. chapter 17, and the Federal Medical Care Recovery Act, 42 U.S.C. 2651 et seq., $25,488,080,000, plus reimbursements: *Provided,* That, notwithstanding any other provision of law, the Secretary of Veterans Affairs shall establish a priority for treatment for veterans who are service-connected disabled, lower income, or have special needs: *Provided further,* That, notwithstanding any other provision of law, the Secretary of Veterans Affairs shall give priority funding for the provision of basic medical benefits to veterans in enrollment priority groups 1 through 6: *Provided further,* That of the funds made available under this heading, $1,100,000,000 is for equipment and land and structures object classifications only, which amount shall not become available for obligation until August 1, 2004, and shall remain available until September 30, 2005: *Provided further,* That of the funds made available under this heading, not to exceed $1,100,000,000 shall be available until September 30, 2005: *Provided further,* That of the funds made available under this heading, the Secretary may transfer up to $400,000,000 to ''Construction, major projects'' for purposes of implementing CARES subject to a determination by the Secretary that such funds will improve access and quality of veteran's health care needs: *Provided further,* That, notwithstanding any other provision of law, the Secretary of Veterans Affairs may provide prescription drugs to enrolled veterans with privately written prescriptions based on

requirements established by the Secretary: *Provided further,* That the Secretary of Veterans Affairs shall conduct by contract a program of recovery audits for the fee basis and other medical services contracts with respect to payments for hospital care; and, notwithstanding 31 U.S.C. 3302(b), amounts collected, by setoff or otherwise, as the result of such audits shall be available, without fiscal year limitation, for the purposes for which funds are appropriated under this heading and the purposes of paying a contractor a percent of the amount collected as a result of an audit carried out by the contractor: *Provided further,* That all amounts so collected under the preceding proviso with respect to a designated health care region (as that term is defined in 38 U.S.C. 1729A(d)(2)) shall be allocated, net of payments to the contractor, to that region: *Provided further,* That such sums as may be deposited to the Medical Care Collections Fund pursuant to 38 U.S.C. 1729A may be transferred to this account, to remain available until expended for the purposes of this account: *Provided further,* That Medical Care Collections Funds may be used for construction, alteration and improvement of any parking facility set forth in 38 U.S.C. 8109: *Provided further,* That of the unobligated balances remaining from prior year recoveries under this heading, $270,000,000 is rescinded.

For an additional amount for ''Medical care'', $1,300,000,000: *Provided,* That the entire amount is designated by the Congress as an emergency requirement pursuant to section 502 of H. Con. Res. 95, the concurrent resolution on the budget for fiscal year 2004: *Provided further,* That the entire amount shall be available only to the extent that an official budget request for a specific dollar amount, that includes designation of the entire amount of the request as an emergency requirement as defined in H. Con. Res. 95, the concurrent resolution on the budget for fiscal year 2004, is transmitted by the President to the Congress.

MEDICAL AND PROSTHETIC RESEARCH

For necessary expenses in carrying out programs of medical and prosthetic research and development as authorized by 38 U.S.C. chapter 73, to remain available until September 30, 2005, $413,000,000 plus reimbursements.

MEDICAL ADMINISTRATION AND MISCELLANEOUS OPERATING EXPENSES

For necessary expenses in the administration of the medical, hospital, nursing home, domiciliary, construction, supply, and research activities, as authorized by law; administrative expenses in support of capital policy activities, $79,146,000: *Provided further,* That of the funds made available under this heading, not to exceed, $4,000,000 shall be available until September 30, 2005, plus reimbursements: *Provided further,* That technical and consulting services offered by the Facilities Management Field Support Service, including project management and real property administration (including leases, site acquisition and disposal activities directly supporting projects), shall be provided to Department of Veterans Affairs components only on a reimbursable basis, and such amounts will remain available until September 30, 2004.

DEPARTMENTAL ADMINISTRATION

GENERAL OPERATING EXPENSES

For necessary operating expenses of the Department of Veterans Affairs, not otherwise provided for, including administrative expenses in support of department-wide capital planning, management and policy activities, uniforms or allowances therefor; not to exceed $25,000 for official reception and representation expenses; hire of passenger motor vehicles; and reimbursement of the General Services Administration for security guard services, and the Department of Defense for the cost of overseas employee mail, $1,283,272,000: *Provided,* That expenses for services and assistance authorized under 38 U.S.C. 3104(a)(1), (2), (5), and (11) that the Secretary determines are necessary to enable entitled veterans: (1) to the maximum extent feasible, to become employable and to obtain and maintain suitable employment; or (2) to achieve maximum independence in daily living, shall be charged to this account: *Provided further,* That the Veterans Benefits Administration shall be funded at not less than $1,004,704,000: *Provided further,* That of the funds made available under this heading, not to exceed $64,000,000 shall be available for obligation until September 30, 2005: *Provided further,* That from the funds made available under this heading, the Veterans Benefits Administration may purchase up to two passenger motor vehicles for use in operations of that Administration in Manila, Philippines.

NATIONAL CEMETERY ADMINISTRATION

For necessary expenses of the National Cemetery Administration for operations and maintenance, not otherwise provided for, including uniforms or allowances therefor; cemeterial expenses as authorized by law; purchase of one passenger motor vehicle for use in cemeterial operations; and hire of passenger motor vehicles, $144,203,000: *Provided,* That of the funds made available under this heading, not to exceed $7,200,000 shall be available until September 30, 2005.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, $62,250,000, to remain available until September 30, 2005.

CONSTRUCTION, MAJOR PROJECTS

For constructing, altering, extending and improving any of the facilities under the jurisdiction or for the use of the Department of Veterans Affairs, or for any of the purposes set forth in sections 316, 2404, 2406, 8102, 8103, 8106, 8108, 8109, 8110, and 8122 of title 38, United States Code, including planning, architectural and engineering services, maintenance or guarantee period services costs associated with equipment guarantees provided under the project, services of claims analysts, offsite utility and storm drainage system construction costs, and site acquisition, where the estimated cost of a project is more than the amount set forth in 38 U.S.C. 8104(a)(3)(A) or where funds for a project were made available in a previous major project appropriation, $272,690,000, to remain available until expended, of which $183,000,000 shall be for Capital Asset Realignment for Enhanced Services (CARES) activities; and of which $10,000,000 shall be to make reimbursements as provided in 41 U.S.C. 612 for claims paid for contract disputes: *Provided,* That except for advance planning activities, including needs assessments which may or may not lead to capital investments, and other capital asset management related activities, such as portfolio development and management activities, and investment strategy studies funded through the advance planning fund and the planning and design activities funded through the design fund and CARES funds, including needs assessments which may or may not lead to capital investments, none of the funds appropriated under this heading shall be used for any project which has not been approved by the Congress in the budgetary process: *Provided further,* That funds provided in this appropriation for fiscal year 2004, for each approved project (except those for CARES activities referenced above) shall be obligated: (1) by the awarding of a construction documents contract by September 30, 2004; and (2) by the awarding of a construction contract by September 30, 2005: *Provided further,* That the Secretary of Veterans Affairs shall promptly report in writing to the Committees on Appropriations any approved major construction project in which obligations are not incurred within the time limitations established above: *Provided further,* That no funds from any other account except the ''Parking revolving fund'', may be obligated for constructing, altering, extending, or improving a project which was approved in the budget process and funded in this account until 1 year after substantial completion and beneficial occupancy by the Department of Veterans Affairs of the project or any part thereof with respect to that part only.

CONSTRUCTION, MINOR PROJECTS

For constructing, altering, extending, and improving any of the facilities under the jurisdiction or for the use of the Department of Veterans Affairs, including planning and assessments of needs which may lead to capital investments, architectural and engineering services, maintenance or guarantee period services costs associated with equipment guarantees provided under the project, services of claims analysts, offsite utility and storm drainage system construction costs, and site acquisition, or for any of the purposes set forth in sections 316, 2404, 2406, 8102, 8103, 8106, 8108, 8109, 8110, 8122, and 8162 of title 38, United States Code, where the estimated cost of a project is equal to or less than the amount set forth in 38 U.S.C. 8104(a)(3)(A), $252,144,000, to remain available until expended, along with unobligated balances of previous ''Construction, minor projects'' appropriations which are hereby made available for any project where the estimated cost is equal to or less than the amount set forth in 38 U.S.C. 8104(a)(3)(A), of which $42,000,000 shall be for Capital Asset Realignment for Enhanced Services (CARES) activities: *Provided,* That from amounts appropriated under this heading, additional amounts may be used for CARES activities upon notification of and approval by the Committees on Appropriations: *Provided further,* That funds in this account shall be available for: (1) repairs to any of the nonmedical facilities under the jurisdiction or for the use of the department which are necessary because of loss or damage caused by any natural disaster or catastrophe; and (2) temporary measures necessary to prevent or to minimize further loss by such causes.

GRANTS FOR CONSTRUCTION OF STATE EXTENDED CARE FACILITIES

For grants to assist States to acquire or construct State nursing home and domiciliary facilities and to remodel, modify or alter existing hospital, nursing home and domiciliary facilities in State homes, for furnishing care to veterans as authorized by 38 U.S.C. 8131–8137, $102,100,000, to remain available until expended.

GRANTS FOR THE CONSTRUCTION OF STATE VETERANS CEMETERIES

For grants to aid States in establishing, expanding, or improving State veterans cemeteries as authorized by 38 U.S.C. 2408, $32,000,000, to remain available until expended.

ADMINISTRATIVE PROVISIONS

(INCLUDING TRANSFER OF FUNDS)

SEC. 101. Any appropriation for fiscal year 2004 for ''Compensation and pensions'', ''Readjustment benefits'', and ''Veterans insurance and indemnities'' may be transferred to any other of the mentioned appropriations.

SEC. 102. Appropriations available to the Department of Veterans Affairs for fiscal year 2004 for salaries and expenses shall be available for services authorized by 5 U.S.C. 3109.

SEC. 103. No appropriations in this Act for the Department of Veterans Affairs (except the appropriations for ''Construction, major projects'', ''Construction, minor projects'', and the ''Parking revolving fund'') shall be available for the purchase of any site for or toward the construction of any new hospital or home.

SEC. 104. No appropriations in this Act for the Department of Veterans Affairs shall be available for hospitalization or examination of any persons (except beneficiaries entitled under the laws bestowing such benefits to veterans, and persons receiving such treatment under 5 U.S.C. 7901–7904 or 42 U.S.C. 5141–5204), unless reimbursement of cost is made to the ''Medical care'' account at such rates as may be fixed by the Secretary of Veterans Affairs.

SEC. 105. Appropriations available to the Department of Veterans Affairs for fiscal year 2004 for ''Compensation and pensions'', ''Readjustment benefits'', and ''Veterans insurance and indemnities'' shall be available for payment of prior year accrued obligations required to be recorded by law against the corresponding prior year accounts within the last quarter of fiscal year 2003.

SEC. 106. Appropriations accounts available to the Department of Veterans Affairs for fiscal year 2004 shall be available to pay prior year obligations of corresponding prior year appropriations accounts resulting from title X of the Competitive Equality Banking Act, Public Law 100–86, except that if such obligations are from trust fund accounts they shall be payable from ''Compensation and pensions''.

SEC. 107. Notwithstanding any other provision of law, during fiscal year 2004, the Secretary of Veterans Affairs shall, from the National Service Life Insurance Fund (38 U.S.C. 1920), the Veterans' Special Life Insurance Fund (38 U.S.C. 1923), and the United States Government Life Insurance Fund (38 U.S.C. 1955), reimburse the ''General operating expenses'' account for the cost of administration of the insurance programs financed through those accounts: *Provided,* That reimbursement shall be made only from the surplus earnings accumulated in an insurance program in fiscal year 2004 that are available for dividends in that program after claims have been paid and actuarially determined reserves have been set aside: *Provided further,* That if the cost of administration of an insurance program exceeds the amount of surplus earnings accumulated in that program, reimbursement shall be made only to the extent of such surplus earnings: *Provided further,* That the Secretary shall determine the cost of administration for fiscal year 2004 which is properly allocable to the provision of each insurance program and to the provision of any total disability income insurance included in such insurance program.

SEC. 108. Notwithstanding any other provision of law, the Department of Veterans Affairs shall continue the Franchise Fund pilot program authorized to be established by section 403 of Public Law 103–356 until October 1, 2004: *Provided,* That the Franchise Fund, established by title I of Public Law 104–204 to finance the operations of the Franchise Fund pilot program, shall continue until October 1, 2004.

SEC. 109. Amounts deducted from enhanced-use lease proceeds to reimburse an account for expenses incurred by that account during a prior fiscal year for providing enhanced-use lease services, may be obligated during the fiscal year in which the proceeds are received.

SEC. 110. Funds available in any Department of Veterans Affairs appropriation for fiscal year 2004 or funds for salaries and other administrative expenses shall also be available to reimburse the Office of Resolution Management and the Office of Employment Discrimination Complaint Adjudication for all services provided at rates which will recover actual costs but not exceed $29,318,000 for the Office of Resolution Management and $3,059,000 for the Office of Employment and Discrimination Complaint Adjudication: *Provided,* That payments may be made in advance for services to be furnished based on estimated costs: *Provided further,* That amounts received shall be credited to ''General operating expenses'' for use by the office that provided the service.

SEC. 111. No appropriations in this Act for the Department of Veterans Affairs shall be available to enter into any new lease of real property if the estimated annual rental is more than $300,000 unless the Secretary submits a report which the Committees on Appropriations of the Congress approve within 30 days following the date on which the report is received.

SEC. 112. No appropriations in this Act for the Department of Veterans Affairs shall be available for hospitalization or treatment of any person by reason of eligibility under section 1710(a)(3) of title 38, United States Code, unless that person has disclosed to the Secretary of Veterans Affairs, in such form as the Secretary may require—

(1) current, accurate third-party reimbursement information for purposes of section 1729 of such title; and

(2) annual income information for purposes of section 1722 of such title.

SEC. 113. None of the funds in this Act may be used to implement sections 2 and 5 of Public Law 107–287.

SEC. 114. Receipts that would otherwise be credited to the Veterans Extended Care Revolving Fund, the Medical Facilities Revolving Fund, the Special Therapeutic and Rehabilitation Fund, the Nursing Home Revolving Fund, the Veterans Health Services Improvement Fund, and the Parking Revolving Fund shall be deposited into the Medical Care Collections Fund, and shall be transferred to the Medical Care account, to remain available until expended, to carry out the purposes of the Medical Care account.

SEC. 115. Notwithstanding any other provision of law, at the discretion of the Secretary of Veterans Affairs, proceeds or revenues derived from enhanced-use leasing activities (including disposal) that are deposited into the Medical Care Collections Fund may be transferred and merged with major construction and minor construction accounts and be used for construction (including site acquisition and disposition), alterations and improvements of any medical facility under the jurisdiction or for the use of the Department of Veterans Affairs. Such sums as realized are in addition to the amount provided for in the Major and Minor Construction appropriations.

TITLE II—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PUBLIC AND INDIAN HOUSING

HOUSING CERTIFICATE FUND

(INCLUDING TRANSFER AND RESCISSION OF FUNDS)

For activities and assistance under the United States Housing Act of 1937, as amended (42 U.S.C. 1437 et seq.) (''the Act'' herein), not otherwise provided for, $18,433,606,000, and amounts that are recaptured in this account, to remain available until expended: *Provided,* That of the amounts made available under this heading, $14,233,606,379 and the aforementioned recaptures shall be available on October 1, 2003 and $4,200,000,000 shall be available on October 1, 2004: *Provided further,* That amounts made available under this heading are provided as follows:

(1) $16,202,616,000 for expiring or terminating section 8 project-based subsidy contracts (including section 8 moderate rehabilitation contracts), for amendments to section 8 project-based subsidy contracts, for contracts entered into pursuant to section 441 of the McKinney-Vento Homeless Assistance Act, for the 1-year renewal of section 8 contracts for units in projects that are subject to approved plans of action under the Emergency Low Income Housing Preservation Act of 1987 or the Low-Income Housing Preservation and Resident Homeownership Act of 1990, and for renewals of expiring section 8 tenant-based annual contributions contracts (including amendments and renewals of enhanced vouchers under any provision of law authorizing such assistance under section 8(t) of the Act (42 U.S.C. 1437f(t))): *Provided,* That notwithstanding any other provision of law, the Secretary shall renew expiring section 8 tenant-based annual contributions contracts for each public housing agency (including for agencies participating in the Moving to Work demonstration, unit months representing section 8 tenant-based assistance funds committed by the public housing agency for specific purposes, other than reserves, that are authorized pursuant to any agreement and conditions entered into under such demonstration, and utilized in compliance with any applicable program obligation deadlines) based on the total number of unit months which were under lease as reported on the most recent end-of-year financial statement submitted by the public housing agency to the Department, adjusted by such additional information submitted by the public housing agency to the Secretary which the Secretary determines to be timely and reliable regarding the total number of unit months under lease at the time of renewal of the annual contributions contract, and by applying an inflation factor based on local or regional factors to the actual per unit cost as reported: *Provided further,* That funds may be made available in this paragraph to support a total number of unit months under lease that exceeds a public housing agency's authorized level of units under lease to the extent that the use of these funds is part of a strategy for a public housing agency to attain its authorized level of units under contract: *Provided further,* That when a public housing agency is over its authorized contract level, that public housing agency may not issue another voucher (including turnover vouchers) until that public housing agency is at or below its authorized contract level for vouchers.

(2) $461,329,000 for a central fund to be allocated by the Secretary for the support of section 8 subsidy contracts or amendments to such contracts, and for such other purposes as are set forth in this paragraph: *Provided,* That subject to the following proviso, the Secretary shall use amounts in such fund, as necessary, for contract amendments to maintain the total number of unit months under lease (up to the authorized level) including turnover and reissuance of authorized vouchers, and for contract amendments resulting from a significant increase in per-unit costs, or otherwise provide funds so that public housing agencies may lease units up to their authorized unit level: *Provided further,* That the Secretary may use up to $36,000,000 in such funds for incremental vouchers under section 8 of the Act to be used for non-elderly disabled families affected by the designation of a public housing development under section 7 of the Act, the establishment of preferences in accordance

with section 651 of the Housing and Community Development Act of 1992 (42 U.S.C. 13611), or the restriction of occupancy to elderly families in accordance with section 658 of such Act (42 U.S.C. 13618): *Provided further,* That the Secretary may only allocate the incremental vouchers under the previous proviso upon a determination that there are adequate funds under this heading to fund all voucher needs in this fiscal year: *Provided further,* That if a public housing agency, at any point in time during their fiscal year, has obligated the amounts made available to such agency pursuant to paragraph (1) under this heading for the renewal of expiring section 8 tenant-based annual contributions contracts, and if such agency has expended 50 percent of the amounts available to such agency in its annual contributions contract reserve account, the Secretary shall make available such amounts as are necessary from amounts available from such central fund to fund amendments under the preceding proviso within 30 days of a request from such agency: *Provided further,* That none of the funds made available in this paragraph may be used to support a total number of unit months under lease which exceeds a public housing agency's authorized level of units under contract: *Provided further,* That the Secretary shall provide quarterly reports to the Committees on Appropriations of the House and the Senate on the obligation of funds provided in this paragraph;

(3) $252,203,000 for section 8 rental assistance for relocation and replacement of housing units that are demolished or disposed of pursuant to the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Public Law 104–134), conversion of section 23 projects to assistance under section 8, the family unification program under section 8(x) of the Act, relocation of witnesses in connection with efforts to combat crime in public and assisted housing pursuant to a request from a law enforcement or prosecution agency, enhanced vouchers under any provision of law authorizing such assistance under section 8(t) of the Act (42 U.S.C.1437f(t)), and tenant protection assistance, including replacement and relocation assistance;

(4) $72,000,000 for family self-sufficiency coordinators under section 23 of the Act;

(5) not to exceed $1,339,448,400 for administrative and other expenses of public housing agencies in administering the section 8 tenant-based rental assistance program: *Provided,* That the fee otherwise authorized under section 8(q) of the Act shall be determined in accordance with section 8(q), as in effect immediately before the enactment of the Quality Housing and Work Responsibility Act of 1998;

(6) $100,000,000 for contract administrators for section 8 project-based assistance;

(7) not less than $3,010,000 shall be transferred to the Working Capital Fund for the development of and modifications to information technology systems which serve activities under ''Public and Indian Housing''; and

(8) up to $3,000,000 for an outside audit by a major accounting firm to assess the current status of all funds within this account, including the amounts of obligated and unobligated funds for all programs funded under this heading for fiscal year 2004 as well as the availability of funds currently appropriated under this heading for fiscal years 2005 and thereafter.

The Secretary may transfer up to 15 percent of funds provided under paragraphs (1), (2), (3) or (5), herein to paragraphs (1), (2), (3) or (5), if the Secretary determines that such action is necessary because the funding provided under one such paragraph otherwise would be depleted and as a result, the maximum utilization of section 8 tenant-based assistance with the funds appropriated for this purpose by this Act would not be feasible: *Provided,* That prior to undertaking the transfer of funds in excess of 10 percent from any paragraph pursuant to the previous proviso, the Secretary shall notify the Chairman and Ranking Member of the Subcommittees on Veterans Affairs and Housing and Urban Development, and Independent Agencies of the Committees on Appropriations of the House of Representatives and the Senate and shall not transfer any such funds until 30 days after such notification: *Provided further,* That, hereafter, the Secretary shall require public housing agencies to submit accounting data for funds disbursed under this heading in this Act and prior Acts by source and purpose of such funds: *Provided further,* That incremental vouchers previously made available under this heading for non-elderly disabled families shall, to the extent practicable, continue to be provided to non-elderly disabled families upon turnover: *Provided further,* That $1,372,000,000 is rescinded from unobligated balances remaining from funds appropriated to the Department of Housing and Urban Development under this heading or the heading ''Annual contributions for assisted housing'' or any other heading for fiscal year 2003 and prior years, to be effected by the Secretary no later than September 30, 2004: *Provided further,* That any such balances governed by reallocation provisions under the statute authorizing the program for which the funds were originally appropriated shall be available for the rescission: *Provided further,* That any obligated balances of contract authority from fiscal year 1974 and prior that have been terminated shall be cancelled.

PUBLIC HOUSING CAPITAL FUND

(INCLUDING TRANSFER OF FUNDS)

For the Public Housing Capital Fund Program to carry out capital and management activities for public housing agencies, as authorized under section 9 of the United States Housing Act of 1937, as amended (42 U.S.C. 1437g), $2,641,000,000 (the ''Act''), to remain available until September 30, 2007: *Provided,* That of the total amount provided under this heading, in addition to amounts otherwise allocated under this heading, $400,000,000 shall be allocated for such capital and management activities only among public housing agencies that have obligated all assistance for the agency for fiscal years 2001 and 2002 made available under this same heading in accordance with the requirements under paragraphs (1) and (2) of section 9(j) of such Act: *Provided further,* That notwithstanding any other provision of law or regulation, during fiscal year 2004, the Secretary may not delegate to any Department official other than the Deputy Secretary any authority under paragraph (2) of such section 9(j) regarding the extension of the time periods under such section for obligation of amounts made available for fiscal years 1998, 1999, 2000, 2001, 2002, 2003, or 2004: *Provided further,* That with respect to any amounts made available under the Public Housing Capital Fund for fiscal years 1999, 2000, 2001, 2002, 2003, or 2004 that remain unobligated in violation of paragraph (1) of such section 9(j) or unexpended in violation of paragraph (5)(A) of such section 9(j), the Secretary shall recapture any such amounts and reallocate such amounts among public housing agencies determined under 6(j) of the Act to be high-performing: *Provided further,* That for purposes of this heading, the term ''obligate'' means, with respect to amounts, that the amounts are subject to a binding agreement that will result in outlays immediately or in the future: *Provided further,* That of the total amount provided under this heading, up to $50,000,000 shall be for carrying out activities under section 9(h) of such Act, of which up to $13,000,000 shall be for the provision of remediation services to public housing agencies identified as ''troubled'' under the Section 8 Management Assessment Program and for surveys used to calculate local Fair Market Rents and assess housing conditions in connection with rental assistance under section 8 of the Act: *Provided further,* That of the total amount provided under this heading, up to $500,000 shall be for lease adjustments to section 23 projects, and no less than $10,610,000 shall be transferred to the Working Capital Fund for the development of and modifications to information technology systems which serve programs or activities under ''Public and Indian housing'': *Provided further,* That no funds may be used under this heading for the purposes specified in section 9(k) of the United States Housing Act of 1937, as amended: *Provided further,* That of the total amount provided under this heading, up to $40,000,000 shall be available for the Secretary of Housing and Urban Development to make grants to public housing agencies for emergency capital needs resulting from emergencies and natural disasters in fiscal year 2003: *Provided further,* That of the total amount provided under this heading, $15,000,000 shall be for Neighborhood Networks grants for activities authorized in section 9(d)(1)(E) of the United States Housing Act of 1937, as amended: *Provided further,* That notwithstanding any other provision of law, amounts made available in the previous proviso shall be awarded to public housing agencies on a competitive basis as provided in section 102 of the Department of Housing and Urban Development Reform Act of 1989: *Provided further,* That of the total amount provided under this heading, $55,000,000 shall be for supportive services, service coordinators and congregate services as authorized by section 34 of the Act and the Native American Housing Assistance and Self-Determination Act of 1996: *Provided further,* That of the total amount provided under this heading, up to $125,000,000 shall be for grants and credit subsidy to support a loan guarantee and loan program for the development of public housing units in mixed income housing developments: *Provided further,* That the first proviso under this heading in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2003 is amended by striking ''1998, 1999''.

PUBLIC HOUSING OPERATING FUND

For payments to public housing agencies for the operation and management of public housing, as authorized by section 9(e) of the United States Housing Act of 1937, as amended (42 U.S.C. 1437g(e)), $3,576,600,000: *Provided,* That of the total amount provided under this heading, $10,000,000 shall be for programs, as determined appropriate by the Attorney General, which assist in the investigation, prosecution, and prevention of violent crimes and drug offenses in public and federally-assisted low-income housing, including Indian housing, which shall be administered by the Department of Justice through a reimbursable agreement with the Department of Housing and Urban Development: *Provided further,* That, in fiscal year 2004 and all fiscal years hereafter, no amounts under this heading in any appropriations Act may be used for payments to public housing agencies for the costs of operation and management of public housing for any year prior to the current year of such Act: *Provided further,* That no funds may be used under this heading for the purposes specified in section 9(k) of the United States Housing Act of 1937, as amended.

REVITALIZATION OF SEVERELY DISTRESSED PUBLIC HOUSING (HOPE VI)

For grants to public housing agencies for demolition, site revitalization, replacement housing, and tenant-based assistance grants to projects as authorized by section 24 of the United States Housing Act of 1937, as amended (''such Act''), $195,115,000, to remain available until expended: *Provided,* That the Secretary may recapture funds from grants previously awarded under this heading in fiscal year 1997 and prior fiscal years for use in making grants in fiscal year 2004 as authorized under section 24 of such Act: *Provided further,* That the Secretary may only recapture grants under the previous proviso where the Secretary determines that a project is less than 90 percent complete and that the project is unlikely to be completed successfully within the next 2 fiscal years: *Provided further,* That the Secretary shall not recapture funds from any HOPE VI project that has unobligated funds due to litigation or a court ordered consent decree: *Provided further,* That the Secretary shall establish an alternative housing plan to meet tenant needs where the Secretary is recapturing HOPE VI funds from a public housing agency with a failed HOPE VI project and the Secretary may recapture only the amount of funds which are not necessary to meet the requirements of the alternative housing plan: *Provided further,* That the Secretary shall report to the Congress by December 15, 2003 on the status of all HOPE VI projects that are unlikely to be completed according to program requirements: *Provided further,* That the Secretary shall report to the Congress on any decision to recapture funds from a HOPE VI project, including the justification for the decision and the provisions of the alternative housing plan: *Provided further,* That the Secretary may use up to $3,000,000 of the funds made available under this heading for technical assistance and contract expertise, to be provided directly or indirectly by grants, contracts or cooperative agreements, including training and cost of necessary travel for participants in such training, by or to officials and employees of the department and of public housing agencies and to residents: *Provided further,* That none of such funds shall be used directly or indirectly by granting competitive advantage in awards to settle litigation or pay judgments, unless expressly permitted herein.

NATIVE AMERICAN HOUSING BLOCK GRANTS

(INCLUDING TRANSFERS OF FUNDS)

For the Native American Housing Block Grants program, as authorized under title I of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (25 U.S.C. 4111 et seq.), $646,600,000, to remain available until expended, of which $2,200,000 shall be contracted through the Secretary as technical assistance and capacity building to be used by the National American Indian Housing Council in support of the implementation of NAHASDA; of which $4,000,000 shall be to support the inspection of Indian housing units, contract expertise, training, and technical assistance in the training, oversight, and management of Indian housing and tenant-based assistance, including up to $300,000 for related travel; and of which no less than $2,720,000 shall be transferred to the Working Capital Fund for development of and modifications to information technology systems which serve programs or activities under ''Public and Indian housing'': *Provided,* That of the amount provided under this heading, $2,000,000 shall be made available for the cost of guaranteed notes and other obligations, as authorized by title VI of NAHASDA: *Provided further,* That such costs, including the costs of modifying such notes and other obligations, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: *Provided further,* That these funds are available to subsidize the total principal amount of any notes and other obligations, any part of which is to be guaranteed, not to exceed $16,658,000: *Provided further,* That for administrative expenses to carry out the guaranteed loan program, up to $150,000 from amounts in the first proviso, which shall be transferred to and merged with the appropriation for ''Salaries and expenses'', to be used only for the administrative costs of these guarantees.

INDIAN HOUSING LOAN GUARANTEE FUND PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the cost of guaranteed loans, as authorized by section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13a), $5,300,000, to remain available until expended: *Provided,* That such costs, including the costs of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: *Provided further,* That these funds are available to subsidize total loan principal, any part of which is to be guaranteed, not to exceed $197,243,000.

In addition, for administrative expenses to carry out the guaranteed loan program, up to $250,000 from amounts in the first paragraph, which shall be transferred to and merged with the appropriation for ''Salaries and expenses'', to be used only for the administrative costs of these guarantees.

NATIVE HAWAIIAN HOUSING LOAN GUARANTEE FUND PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the cost of guaranteed loans, as authorized by section 184A of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13b), $1,035,000, to remain available until expended: *Provided,* That such costs, including the costs of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: *Provided further,* That these funds are available to subsidize total loan principal, any part of which is to be guaranteed, not to exceed $39,712,000.

In addition, for administrative expenses to carry out the guaranteed loan program, up to $35,000 from amounts in the first paragraph, which shall be transferred to and merged with the appropriation for ''Salaries and expenses'', to be used only for the administrative costs of these guarantees.

COMMUNITY PLANNING AND DEVELOPMENT

HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

For carrying out the Housing Opportunities for Persons with AIDS program, as authorized by the AIDS Housing Opportunity Act (42 U.S.C. 12901 et seq.), $291,000,000, to remain available until September 30, 2005: *Provided,* That the Secretary shall renew all expiring contracts for permanent supportive housing that were funded under section 854(c)(3) of such Act that meet all program requirements before awarding funds for new contracts and activities authorized under this section: *Provided further,* That the formula funds made available under this heading for fiscal year 2004 shall be awarded to eligible grantees under the same rules and requirements as were in effect for fiscal year 2003: *Provided further,* That the Secretary may use up to $3,000,000 of the funds under this heading for training, oversight, and technical assistance activities.

RURAL HOUSING AND ECONOMIC DEVELOPMENT

For the Office of Rural Housing and Economic Development in the Department of Housing and Urban Development, $25,000,000 to remain available until expended, which amount shall be awarded by June 1, 2004, to Indian tribes, State housing finance agencies, State community and/or economic development agencies, local rural nonprofits and community development corporations to support innovative housing and economic development activities in rural areas: *Provided,* That all grants shall be awarded on a competitive basis as specified in section 102 of the Department of Housing and Urban Development Reform Act of 1989.

COMMUNITY DEVELOPMENT FUND

(INCLUDING TRANSFERS OF FUNDS)

For assistance to units of State and local government, and to other entities, for economic and community development activities, and for other purposes, $4,950,000,000, to remain available until September 30, 2006: *Provided,* That of the amount provided, $4,545,700,000 is for carrying out the community development block grant program under title I of the Housing and Community Development Act of 1974, as amended (the ''Act'' herein) (42 U.S.C. 5301 et seq.): *Provided further,* That not to exceed 20 percent of any grant made with funds appropriated under this heading (other than a grant made available in this paragraph to the Housing Assistance Council or the National American Indian Housing Council, or a grant using funds under section 107(b)(3) of the Act) shall be expended for ''Planning and Management Development'' and ''Administration'', as defined in regulations promulgated by the Department: *Provided further,* That $72,500,000 shall be for grants to Indian tribes notwithstanding section 106(a)(1) of such Act; $3,300,000 shall be for a grant to the Housing Assistance Council; $2,600,000 shall be for a grant to the National American Indian Housing Council; $52,500,000 shall be for grants pursuant to section 107 of the Act; no less than $4,900,000 shall be transferred to the Working Capital Fund for the development of and modification to information technology systems which serve programs or activities under ''Community planning and development''; $12,000,000 shall be for grants pursuant to the Self Help Homeownership Opportunity Program; $35,500,000 shall be for capacity building, of which $31,500,000 shall be for Capacity Building for Community Development and Affordable Housing for LISC and the Enterprise Foundation for activities as authorized by section 4 of the HUD Demonstration Act of 1993 (42 U.S.C. 9816 note), as in effect immediately before June 12, 1997, with not less than $5,000,000 of the funding to be used in rural areas, including tribal areas, and of which $4,000,000 shall be for capacity building activities administered by Habitat for Humanity International; $10,000,000 for the Native Hawaiian Housing Block Grant Program, as authorized under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4111 et seq.), of which $400,000 shall be for training and technical assistance; $60,000,000 shall be available for YouthBuild program activities authorized by subtitle D of title IV of the Cranston-Gonzalez National Affordable Housing Act, as amended, and such activities shall be an eligible activity with respect to any funds made available under this heading: *Provided,* That local YouthBuild programs that demonstrate an ability to leverage private and nonprofit funding shall be given a priority for YouthBuild funding: *Provided further,* That no more than 10 percent of any grant award under the YouthBuild program may be used for administrative costs: *Provided further,* That of the amount made available for YouthBuild not less than $10,000,000 is for grants to establish YouthBuild programs in underserved and rural areas and

$2,000,000 is to be made available for a grant to YouthBuild USA for capacity building for community development and affordable housing activities as specified in section 4 of the HUD Demonstration Act of 1993, as amended.

Of the amount made available under this heading, $21,000,000 shall be available for neighborhood initiatives that are utilized to improve the conditions of distressed and blighted areas and neighborhoods, to stimulate investment, economic diversification, and community revitalization in areas with population outmigration or a stagnating or declining economic base, or to determine whether housing benefits can be integrated more effectively with welfare reform initiatives: *Provided,* That these grants shall be provided in accordance with the terms and conditions specified in the report accompanying this Act.

Of the amount made available under this heading, $140,000,000 shall be available for grants for the Economic Development Initiative (EDI) to finance a variety of targeted economic investments in accordance with the terms and conditions specified in the report accompanying this Act.

The referenced statement of the managers under this heading in title II of Division K of the Consolidated Appropriations Resolution, 2003 (Public Law 108–7; H. Rept. 108–10) is deemed to be amended with respect to item number 721 by striking ''training'' and inserting ''creation, small business development and quality of life improvements within the State of South Carolina''.

The referenced statement of the managers under this heading in title II of Division K of the Consolidated Appropriations Resolution, 2003 (Public Law 108–7; H. Rept. 108–10) is deemed to be amended with respect to item number 317 by striking ''135,000'' and inserting ''151,000''.

The referenced statement of the managers under this heading in title II of Division K of the Consolidated Appropriations Resolution, 2003 (Public Law 108–7; H. Rept. 108–10) is deemed to be amended with respect to item number 324 by striking ''225,000'' and inserting ''209,000''.

COMMUNITY DEVELOPMENT LOAN GUARANTEES PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

For the cost of guaranteed loans, $6,325,000, to remain available until September 30, 2005, as authorized by section 108 of the Housing and Community Development Act of 1974, as amended: *Provided,* That such costs, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: *Provided further,* That these funds are available to subsidize total loan principal, any part of which is to be guaranteed, not to exceed $275,000,000, notwithstanding any aggregate limitation on outstanding obligations guaranteed in section 108(k) of the Housing and Community Development Act of 1974, as amended.

In addition, for administrative expenses to carry out the guaranteed loan program, $1,000,000 which shall be transferred to and merged with the appropriation for ''Salaries and expenses''.

BROWNFIELDS REDEVELOPMENT

For Economic Development Grants, as authorized by section 108(q) of the Housing and Community Development Act of 1974, as amended, for Brownfields redevelopment projects, $25,000,000, to remain available until September 30, 2005: *Provided,* That the Secretary of Housing and Urban Development shall make these grants available on a competitive basis as specified in section 102 of the Department of Housing and Urban Development Reform Act of 1989.

HOME INVESTMENT PARTNERSHIPS PROGRAM

(INCLUDING TRANSFER OF FUNDS)

For the HOME investment partnerships program, as authorized under title II of the Cranston-Gonzalez National Affordable Housing Act, as amended, $1,925,000,000, to remain available until September 30, 2006: *Provided,* That of the total amount provided in this paragraph, up to $40,000,000 shall be available for housing counseling under section 106 of the Housing and Urban Development Act of 1968; and no less than $1,100,000 shall be transferred to the Working Capital Fund for the development of, maintenance of, and modification to information technology systems which serve programs or activities under ''Community planning and development''.

In addition to the amounts made available under this heading, $50,000,000, to remain available until September 30, 2006, for assistance to homebuyers as authorized under title II of the Cranston-Gonzalez National Affordable Housing Act, as amended: *Provided,* That the Secretary shall provide such assistance in accordance with a formula developed through rulemaking.

HOMELESS ASSISTANCE GRANTS

(INCLUDING TRANSFER OF FUNDS)

For the emergency shelter grants program as authorized under subtitle B of title IV of the McKinney-Vento Homeless Assistance Act, as amended; the supportive housing program as authorized under subtitle C of title IV of such Act; the section 8 moderate rehabilitation single room occupancy program as authorized under the United States Housing Act of 1937, as amended, to assist homeless individuals pursuant to section 441 of the McKinney-Vento Homeless Assistance Act; and the shelter plus care program as authorized under subtitle F of title IV of such Act, $1,325,000,000, to remain available until September 30, 2006: *Provided,* That not less than 30 percent of funds made available, excluding amounts provided for renewals under the shelter plus care program, shall be used for permanent housing: *Provided further,* That all funds awarded for services shall be matched by 25 percent in funding by each grantee: *Provided further,* That the Secretary shall renew on an annual basis expiring contracts or amendments to contracts funded under the shelter plus care program if the program is determined to be needed under the applicable continuum of care and meets appropriate program requirements and financial standards, as determined by the Secretary: *Provided further,* That all awards of assistance under this heading shall be required to coordinate and integrate homeless programs with other mainstream health, social services, and employment programs for which homeless populations may be eligible, including Medicaid, State Children's Health Insurance Program, Temporary Assistance for Needy Families, Food Stamps, and services funding through the Mental Health and Substance Abuse Block Grant, Workforce Investment Act, and the Welfare-to-Work grant program: *Provided further,* That $12,000,000 of the funds appropriated under this heading shall be available for the national homeless data analysis project and technical assistance: *Provided further,* That no less than $2,580,000 of the funds appropriated under this heading shall be transferred to the Working Capital Fund for the development of and modifications to information technology systems which serve activities under ''Community planning and development''.

URBAN DEVELOPMENT ACTION GRANTS

From balances of the Urban Development Action Grant Program, as authorized by title I of the Housing and Community Development Act of 1974, as amended, $30,000,000 are cancelled.

HOUSING PROGRAMS

HOUSING FOR SPECIAL POPULATIONS

(INCLUDING TRANSFER OF FUNDS)

For assistance for the purchase, construction, acquisition, or development of additional public and subsidized housing units for low income families not otherwise provided for, $1,033,801,000, to remain available until September 30, 2007: *Provided,* That $783,286,000, plus recaptures or cancelled commitments, shall be for capital advances, including amendments to capital advance contracts, for housing for the elderly, as authorized by section 202 of the Housing Act of 1959, as amended, and for project rental assistance for the elderly under section 202(c)(2) of such Act, including amendments to contracts for such assistance and renewal of expiring contracts for such assistance for up to a 1-year term, and for supportive services associated with the housing, of which amount $50,000,000 shall be for service coordinators and the continuation of existing congregate service grants for residents of assisted housing projects, of which amount up to $30,000,000 shall be for grants under section 202b of the Housing Act of 1959 (12 U.S.C. 1701q–2) for conversion of eligible projects under such section to assisted living or related use, including substantial capital repair, of which amount $25,000,000 shall be maintained by the Secretary as a revolving loan fund for use as gap financing to assist grantees in meeting all the initial cost requirements for developing projects under section 202 of such Act: *Provided further,* That of the amount under this heading, $250,515,000 shall be for capital advances, including amendments to capital advance contracts, for supportive housing for persons with disabilities, as authorized by section 811 of the Cranston-Gonzalez National Affordable Housing Act, for project rental assistance for supportive housing for persons with disabilities under section 811(d)(2) of such Act, including amendments to contracts for such assistance and renewal of expiring contracts for such assistance for up to a 1-year term, and for supportive services associated with the housing for persons with disabilities as authorized by section 811(b)(1) of such Act, and for tenant-based rental assistance contracts entered into pursuant to section 811 of such Act: *Provided further,* That of the amount made available under this heading, $15,000,000 shall be available to the Secretary of Housing and Urban Development only for making grants to private nonprofit organizations and consumer cooperatives for covering costs of architectural and engineering work, site control, and other planning relating to the development of supportive housing for the elderly that is eligible for assistance under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q): *Provided further,* That amounts made available in the previous proviso shall be awarded on a competitive basis as provided in section 102 of the Department of Housing and Urban Development Reform Act of 1989: *Provided further,* That no less than $940,000, to be divided evenly between the appropriations for the section 202 and section 811 programs, shall be transferred to the Working Capital Fund for the development of and modifications to information technology systems which serve activities under ''Housing programs'' or ''Federal housing administration'': *Provided further,* That, in addition to amounts made available for renewal of tenant-based rental assistance contracts pursuant to the second proviso of this paragraph, the Secretary may designate up to 25 percent of the amounts earmarked under this paragraph for section 811 of such

Act for tenant-based assistance, as authorized under that section, including such authority as may be waived under the next proviso, which assistance is 5 years in duration: *Provided further,* That the Secretary may waive the provisions governing the terms and conditions of project rental assistance and tenant-based rental assistance for such section 202 and such section 811, except that the initial contract term for such assistance shall not exceed 5 years in duration: *Provided further,* That all balances and recaptures, as of October 1, 2003, remaining in the ''Congregate housing services'' account as authorized by the Housing and Community Development Amendments of 1978, as amended, shall be transferred to and merged with the amounts for those purposes under this heading.

FLEXIBLE SUBSIDY FUND

(TRANSFER OF FUNDS)

From the Rental Housing Assistance Fund, all uncommitted balances of excess rental charges as of September 30, 2003, and any collections made during fiscal year 2004 (with the exception of amounts required to make refunds of excess income remittances as authorized by Public Law 106–569), shall be transferred to the Flexible Subsidy Fund, as authorized by section 236(g) of the National Housing Act, as amended.

RENTAL HOUSING ASSISTANCE

(RESCISSION)

Up to $303,000,000 of recaptured section 236 budget authority resulting from prepayment of mortgages subsidized under section 236 of the National Housing Act (12 U.S.C. 1715z–1) shall be rescinded in fiscal year 2004: *Provided,* That the limitation otherwise applicable to the maximum payments that may be required in any fiscal year by all contracts entered into under section 236 is reduced in fiscal year 2004 by not more than $303,000,000 in uncommitted balances of authorizations of contract authority provided for this purpose in appropriations Acts.

MANUFACTURED HOUSING FEES TRUST FUND

For necessary expenses as authorized by the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended (42 U.S.C. 5401 et seq.), $13,000,000, to remain available until expended, to be derived from the Manufactured Housing Fees Trust Fund: *Provided,* That not to exceed the total amount appropriated under this heading shall be available from the general fund of the Treasury to the extent necessary to incur obligations and make expenditures pending the receipt of collections to the Fund pursuant to section 620 of such Act: *Provided further,* That the amount made available under this heading from the general fund shall be reduced as such collections are received during fiscal year 2004 so as to result in a final fiscal year 2004 appropriation from the general fund estimated at not more than $0 and fees pursuant to such section 620 shall be modified as necessary to ensure such a final fiscal year 2004 appropriation.

FEDERAL HOUSING ADMINISTRATION

MUTUAL MORTGAGE INSURANCE PROGRAM ACCOUNT

(INCLUDING TRANSFERS OF FUNDS)

During fiscal year 2004, commitments to guarantee loans to carry out the purposes of section 203(b) of the National Housing Act, as amended, shall not exceed a loan principal of $185,000,000,000.

During fiscal year 2004, obligations to make direct loans to carry out the purposes of section 204(g) of the National Housing Act, as amended, shall not exceed $50,000,000: *Provided,* That the foregoing amount shall be for loans to nonprofit and governmental entities in connection with sales of single family real properties owned by the Secretary and formerly insured under the Mutual Mortgage Insurance Fund.

For administrative expenses necessary to carry out the guaranteed and direct loan program, $359,000,000, of which not to exceed $355,000,000 shall be transferred to the appropriation for ''Salaries and expenses''; and not to exceed $4,000,000 shall be transferred to the appropriation for ''Office of Inspector General''. In addition, for administrative contract expenses, $85,000,000, of which no less than $20,744,000 shall be transferred to the Working Capital Fund for the development of and modifications to information technology systems which serve programs or activities under ''Housing programs'' or ''Federal housing administration'': *Provided,* That to the extent guaranteed loan commitments exceed $65,500,000,000 on or before April 1, 2004, an additional $1,400 for administrative contract expenses shall be available for each $1,000,000 in additional guaranteed loan commitments (including a pro rata amount for any amount below $1,000,000), but in no case shall funds made available by this proviso exceed $30,000,000.

GENERAL AND SPECIAL RISK PROGRAM ACCOUNT

(INCLUDING TRANSFERS OF FUNDS)

For the cost of guaranteed loans, as authorized by sections 238 and 519 of the National Housing Act (12 U.S.C. 1715z–3 and 1735c), including the cost of loan guarantee modifications, as that term is defined in section 502 of the Congressional Budget Act of 1974, as amended, $15,000,000, to remain available until expended: *Provided,* That these funds are available to subsidize total loan principal, any part of which is to be guaranteed, of up to $25,000,000,000.

Gross obligations for the principal amount of direct loans, as authorized by sections 204(g), 207(l), 238, and 519(a) of the National Housing Act, shall not exceed $50,000,000, of which not to exceed $30,000,000 shall be for bridge financing in connection with the sale of multifamily real properties owned by the Secretary and formerly insured under such Act; and of which not to exceed $20,000,000 shall be for loans to nonprofit and governmental entities in connection with the sale of single-family real properties owned by the Secretary and formerly insured under such Act.

In addition, for administrative expenses necessary to carry out the guaranteed and direct loan programs, $229,000,000, of which $209,000,000, shall be transferred to the appropriation for ''Salaries and expenses''; and of which $20,000,000 shall be transferred to the appropriation for ''Office of Inspector General''.

In addition, for administrative contract expenses necessary to carry out the guaranteed and direct loan programs, $93,780,000, of which no less than $16,946,000 shall be transferred to the Working Capital Fund for the development of and modifications to information technology systems which serve activities under ''Housing programs'' or ''Federal housing administration'': *Provided,* That to the extent guaranteed loan commitments exceed $8,426,000,000 on or before April 1, 2004, an additional $1,980 for administrative contract expenses shall be available for each $1,000,000 in additional guaranteed loan commitments over $8,426,000,000 (including a pro rata amount for any increment below $1,000,000), but in no case shall funds made available by this proviso exceed $14,400,000.

GOVERNMENT NATIONAL MORTGAGE ASSOCIATION

GUARANTEES OF MORTGAGE-BACKED SECURITIES LOAN GUARANTEE PROGRAM ACCOUNT

(INCLUDING TRANSFER OF FUNDS)

New commitments to issue guarantees to carry out the purposes of section 306 of the National Housing Act, as amended (12 U.S.C. 1721(g)), shall not exceed $200,000,000,000, to remain available until September 30, 2005.

For administrative expenses necessary to carry out the guaranteed mortgage-backed securities program, $10,695,000, to be derived from the GNMA guarantees of mortgage-backed securities guaranteed loan receipt account, of which not to exceed $10,695,000, shall be transferred to the appropriation for ''Salaries and expenses''.

POLICY DEVELOPMENT AND RESEARCH

RESEARCH AND TECHNOLOGY

For contracts, grants, and necessary expenses of programs of research and studies relating to housing and urban problems, not otherwise provided for, as authorized by title V of the Housing and Urban Development Act of 1970, as amended (12 U.S.C. 1701z–1 et seq.), including carrying out the functions of the Secretary under section 1(a)(1)(i) of Reorganization Plan No. 2 of 1968, $47,000,000, to remain available until September 30, 2005: *Provided,* That of the total amount provided under this heading, $7,500,000 shall be for the Partnership for Advancing Technology in Housing (PATH) Initiative.

FAIR HOUSING AND EQUAL OPPORTUNITY

FAIR HOUSING ACTIVITIES

For contracts, grants, and other assistance, not otherwise provided for, as authorized by title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, and section 561 of the Housing and Community Development Act of 1987, as amended, $50,000,000, to remain available until September 30, 2005, of which $20,000,000 shall be to carry out activities pursuant to such section 561: *Provided,* That no funds made available under this heading shall be used to lobby the executive or legislative branches of the Federal Government in connection with a specific contract, grant or loan.

OFFICE OF LEAD HAZARD CONTROL

LEAD HAZARD REDUCTION

For the Lead Hazard Reduction Program, as authorized by section 1011 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, $175,000,000, to remain available until September 30, 2005, of which $10,000,000 shall be for the Healthy Homes Initiative, pursuant to sections 501 and 502 of the Housing and Urban Development Act of 1970: *Provided,* That both programs may include research, studies, evaluations, testing, and demonstration efforts, including education and outreach by units of general local government, community-based organizations and other appropriate entities concerning lead-based paint poisoning and other housing-related diseases and hazards: *Provided,* That of the total amount made available under this heading, $50,000,000 shall be made available on a competitive basis for areas with the highest lead paint abatement needs, as identified by the Secretary as having: (1) the highest number of pre-1940 units of rental housing; and (2) a disproportionately high number of documented cases of lead-poisoned children: *Provided further,* That each grantee receiving funds under the previous proviso shall target those privately owned units and multifamily buildings that are occupied by low-income families as defined under section 3(b)(2) of the United States Housing Act of 1937: *Provided further,* That not less than 90 percent of the funds made available under this paragraph shall be used exclusively for abatement, inspections, risk assessments, temporary relocations and interim control of lead-based hazards as defined by 42 U.S.C. 4851: *Provided further,* That each recipient of funds provided under the first proviso shall make a matching contribution in an amount

not less than 25 percent: *Provided further,* That each applicant shall submit a detailed plan and strategy that demonstrates adequate capacity that is acceptable to the Secretary of the Department of Housing and Urban Development to carry out the proposed use of funds pursuant to a Notice of Funding Availability.

MANAGEMENT AND ADMINISTRATION

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For necessary administrative and non-administrative expenses of the Department of Housing and Urban Development, not otherwise provided for, including purchase of uniforms, or allowances therefor, as authorized by 5 U.S.C. 5901–5902; hire of passenger motor vehicles; services as authorized by 5 U.S.C. 3109; and not to exceed $25,000 for official reception and representation expenses, $1,112,130,000, of which $564,000,000 shall be provided from the various funds of the Federal Housing Administration, $10,695,000 shall be provided from funds of the Government National Mortgage Association, $1,000,000 shall be provided from the ''Community development loan guarantees program'' account, $150,000 shall be provided by transfer from the ''Native American housing block grants'' account, $250,000 shall be provided by transfer from the ''Indian housing loan guarantee fund program'' account and $35,000 shall be transferred from the ''Native Hawaiian housing loan guarantee fund'' account: *Provided further,* That the General Counsel of the Department of Housing and Urban Development shall have for fiscal year 2004 and all fiscal years hereafter overall responsibility for all issues related to appropriations law: *Provided further,* That the Secretary shall fill 7 out of 10 vacancies at the GS–14 and GS–15 levels until the total number of GS–14 and GS–15 positions in the Department has been reduced from the number of GS–14 and GS–15 positions on the date of enactment of Public Law 106–377 by 2½ percent: *Provided further,* That no funds shall be made available for the salaries (other than pensions and related costs) of any employees who had significant responsibility for allocating funding for the overleasing of vouchers by public housing agencies.

WORKING CAPITAL FUND

For additional capital for the Working Capitol Fund (42 U.S.C. 3535) for the development of, modifications to, and infrastructure for Department-wide information technology systems, and for the continuing operation of both Department-wide and program-specific information systems, $240,000,000, to remain available until September 30, 2005: *Provided,* That any amounts transferred to this Fund under this Act shall remain available until expended.

OFFICE OF INSPECTOR GENERAL

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses of the Office of Inspector General in carrying out the Inspector General Act of 1978, as amended, $102,000,000, of which $24,000,000 shall be provided from the various funds of the Federal Housing Administration: *Provided,* That the Inspector General shall have independent authority over all personnel issues within this office: *Provided further,* That no less than $300,000 shall be transferred to the Working Capital Fund for the development of and modifications to information technology systems for the Office of Inspector General.

CONSOLIDATED FEE FUND

(RESCISSION)

All unobligated balances remaining available from fees and charges under section 7(j) of the Department of Housing and Urban Development Act on October 1, 2003 are rescinded.

OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT

SALARIES AND EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For carrying out the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, including not to exceed $500 for official reception and representation expenses, $32,415,000, to remain available until expended, to be derived from the Federal Housing Enterprises Oversight Fund: *Provided,* That not to exceed such amount shall be available from the general fund of the Treasury to the extent necessary to incur obligations and make expenditures pending the receipt of collections to the Fund: *Provided further,* That the general fund amount shall be reduced as collections are received during the fiscal year so as to result in a final appropriation from the general fund estimated at not more than $32,415,000.

ADMINISTRATIVE PROVISIONS

SEC. 201. Fifty percent of the amounts of budget authority, or in lieu thereof 50 percent of the cash amounts associated with such budget authority, that are recaptured from projects described in section 1012(a) of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988 (42 U.S.C. 1437 note) shall be rescinded, or in the case of cash, shall be remitted to the Treasury, and such amounts of budget authority or cash recaptured and not rescinded or remitted to the Treasury shall be used by State housing finance agencies or local governments or local housing agencies with projects approved by the Secretary of Housing and Urban Development for which settlement occurred after January 1, 1992, in accordance with such section. Notwithstanding the previous sentence, the Secretary may award up to 15 percent of the budget authority or cash recaptured and not rescinded or remitted to the Treasury to provide project owners with incentives to refinance their project at a lower interest rate.

SEC. 202. None of the amounts made available under this Act may be used during fiscal year 2004 to investigate or prosecute under the Fair Housing Act any otherwise lawful activity engaged in by one or more persons, including the filing or maintaining of a nonfrivolous legal action, that is engaged in solely for the purpose of achieving or preventing action by a Government official or entity, or a court of competent jurisdiction.

SEC. 203. (a) Notwithstanding section 854(c)(1)(A) of the AIDS Housing Opportunity Act (42 U.S.C. 12903(c)(1)(A)), from any amounts made available under this title for fiscal year 2004 that are allocated under such section, the Secretary of Housing and Urban Development shall allocate and make a grant, in the amount determined under subsection (b), for any State that—

(1) received an allocation in a prior fiscal year under clause (ii) of such section; and

(2) is not otherwise eligible for an allocation for fiscal year 2004 under such clause (ii) because the areas in the State outside of the metropolitan statistical areas that qualify under clause (i) in fiscal year 2004 do not have the number of cases of acquired immunodeficiency syndrome (AIDS) required under such clause.

(b) The amount of the allocation and grant for any State described in subsection (a) shall be an amount based on the cumulative number of AIDS cases in the areas of that State that are outside of metropolitan statistical areas that qualify under clause (i) of such section 854(c)(1)(A) in fiscal year 2004, in proportion to AIDS cases among cities and States that qualify under clauses (i) and (ii) of such section and States deemed eligible under subsection (a).

SEC. 204. Except as explicitly provided in law, any grant or assistance made pursuant to title II of this Act shall be made on a competitive basis in accordance with section 102 of the Department of Housing and Urban Development Reform Act of 1989.

SEC. 205. Funds of the Department of Housing and Urban Development subject to the Government Corporation Control Act or section 402 of the Housing Act of 1950 shall be available, without regard to the limitations on administrative expenses, for legal services on a contract or fee basis, and for utilizing and making payment for services and facilities of the Federal National Mortgage Association, Government National Mortgage Association, Federal Home Loan Mortgage Corporation, Federal Financing Bank, Federal Reserve banks or any member thereof, Federal Home Loan banks, and any insured bank within the meaning of the Federal Deposit Insurance Corporation Act, as amended (12 U.S.C. 1811–1831).

SEC. 206. Unless otherwise provided for in this Act or through a reprogramming of funds, no part of any appropriation for the Department of Housing and Urban Development shall be available for any program, project or activity in excess of amounts set forth in the budget estimates submitted to Congress.

SEC. 207. Corporations and agencies of the Department of Housing and Urban Development which are subject to the Government Corporation Control Act, as amended, are hereby authorized to make such expenditures, within the limits of funds and borrowing authority available to each such corporation or agency and in accordance with law, and to make such contracts and commitments without regard to fiscal year limitations as provided by section 104 of such Act as may be necessary in carrying out the programs set forth in the budget for 2004 for such corporation or agency except as hereinafter provided: *Provided,* That collections of these corporations and agencies may be used for new loan or mortgage purchase commitments only to the extent expressly provided for in this Act (unless such loans are in support of other forms of assistance provided for in this or prior appropriations Acts), except that this proviso shall not apply to the mortgage insurance or guaranty operations of these corporations, or where loans or mortgage purchases are necessary to protect the financial interest of the United States Government.

SEC. 208. None of the funds provided in this title for technical assistance, training, or management improvements may be obligated or expended unless HUD provides to the Committees on Appropriations a description of each proposed activity and a detailed budget estimate of the costs associated with each program, project or activity as part of the Budget Justifications. For fiscal year 2004, HUD shall transmit this information to the Committees by March 15, 2004 for 30 days of review.

SEC. 209. Notwithstanding any other provision of law, in fiscal year 2004, in managing and disposing of any multifamily property that is owned or held by the Secretary and is occupied primarily by elderly or disabled families, the Secretary of Housing and Urban Development shall maintain any rental assistance payments under section 8 of the United States Housing Act of 1937 that are attached to any dwelling units in the property. To the extent the Secretary determines that such a multifamily property owned or held by the Secretary is not feasible for continued rental assistance payments under such section 8, the Secretary may, in consultation with the tenants of that property, contract for project-based rental assistance payments with an owner or owners of other

existing housing properties or provide other rental assistance.

SEC. 210. A public housing agency or such other entity that administers Federal housing assistance in the States of Alaska, Iowa, and Mississippi shall not be required to include a resident of public housing or a recipient of assistance provided under section 8 of the United States Housing Act of 1937 on the board of directors or a similar governing board of such agency or entity as required under section (2)(b) of such Act. Each public housing agency or other entity that administers Federal housing assistance under section 8 in the States of Alaska, Iowa and Mississippi shall establish an advisory board of not less than 6 residents of public housing or recipients of section 8 assistance to provide advice and comment to the public housing agency or other administering entity on issues related to public housing and section 8. Such advisory board shall meet not less than quarterly.

SEC. 211. Section 24(n) of the United States Housing Act of 1937 (42 U.S.C. 1437v(n)) is amended by striking ''September 30, 2004'' and inserting ''September 30, 2006''.

SEC. 212. The Secretary of Housing and Urban Development shall provide quarterly reports to the House and Senate Committees on Appropriations regarding all uncommitted, unobligated, and excess funds in each program and activity within the jurisdiction of the Department and shall submit additional, updated budget information to these committees upon request.

SEC. 213. The Secretary of Housing and Urban Development shall submit an annual report no later than August 30, 2004 and annually thereafter to the House and Senate Committees on Appropriations regarding the number of Federally assisted units under lease and the per unit cost of these units to the Department of Housing and Urban Development.

SEC. 214. (a) Notwithstanding any other provision of law, the amount allocated for fiscal year 2004 and thereafter to the City of Philadelphia, Pennsylvania on behalf of the Philadelphia, PA–NJ Primary Metropolitan Statistical Area (hereafter ''metropolitan area''), under section 854(c) of the AIDS Housing Opportunity Act (42 U.S.C. 12903(c)), shall be adjusted by the Secretary of Housing and Urban Development by allocating to the State of New Jersey the proportion of the metropolitan area's amount that is based on the number of cases of AIDS reported in the portion of the metropolitan area that is located in New Jersey. The State of New Jersey shall use amounts allocated to the State under this subsection to carry out eligible activities under section 855 of the AIDS Housing Opportunity Act (42 U.S.C. 12904) in the portion of the metropolitan area that is located in New Jersey.

(b) Notwithstanding any other provision of law, the Secretary of Housing and Urban Development shall allocate to Wake County, North Carolina, the amounts that otherwise would be allocated for fiscal year 2004 and thereafter under section 854(c) of the AIDS Housing Opportunity Act (42 U.S.C. 12903(c)) to the City of Raleigh, North Carolina, on behalf of the Raleigh-Durham-Chapel Hill, North Carolina Metropolitan Statistical Area. Any amounts allocated to Wake County shall be used to carry out eligible activities under section 855 of such Act (42 U.S.C. 12904) within such metropolitan statistical area.

SEC. 215. (a) During fiscal year 2004, in the provision of rental assistance under section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)) in connection with a program to demonstrate the economy and effectiveness of providing such assistance for use in assisted living facilities that is carried out in the counties of the State of Michigan specified in subsection (b) of this section, notwithstanding paragraphs (3) and (18)(B)(iii) of such section 8(o), a family residing in an assisted living facility in any such county, on behalf of which a public housing agency provides assistance pursuant to section 8(o)(18) of such Act, may be required, at the time the family initially receives such assistance, to pay rent in an amount exceeding 40 percent of the monthly adjusted income of the family by such a percentage or amount as the Secretary of Housing and Urban Development determines to be appropriate.

(b) The counties specified in this subsection are Oakland County, Macomb County, Wayne County, and Washtenaw County, in the State of Michigan.

SEC. 216. Section 683(2) of the Housing and Community Development Act of 1992 is amended—

(1) in subparagraph (F), by striking ''and'';

(2) in subparagraph (G), by striking ''section.'' and inserting ''section; and''; and

(3) by adding the following new subparagraph at the end:

''(H) housing that is assisted under section 811 of the Cranston-Gonzalez National Affordable Housing Act.''.

SEC. 217. Section 224 of the National Housing Act (12 U.S.C. 1735o) is amended by adding the following new sentence at the end of the first paragraph: ''Notwithstanding the preceding sentence and the following paragraph, if an insurance claim is paid in cash for any mortgage that is insured under section 203 or 234 of this Act and is endorsed for mortgage insurance after the date of enactment of this sentence, the debenture interest rate for purposes of calculating such a claim shall be the monthly average yield, for the month in which the default on the mortgage occurred, on United States Treasury Securities adjusted to a constant maturity of ten years.''.

SEC. 218. The McKinney-Vento Homeless Assistance Act (42 U.S.C. 11301 et seq.) is amended—

(1) in section 101(b), by striking ''Interagency Council on the Homeless'' and inserting ''United States Interagency Council on Homelessness'';

(2) in section 102(b)(1), by striking ''an Interagency Council on the Homeless'' and inserting ''the United States Interagency Council on Homelessness'';

(3) in the heading for title II, by striking ''INTERAGENCY COUNCIL ON THE HOMELESS'' and inserting ''UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS'';

(4) in sections 201, 207(1), 501(c)(2)(a), and 501(d)(3), by striking ''Interagency Council on the Homeless'' and inserting ''United States Interagency Council on Homelessness''; and

(5) in section 204(c), by inserting after ''reimbursable'' the two places it appears the following: ''or nonreimbursable''.

SEC. 219. Title II of the National Housing Act (12 U.S.C. 1707 et seq.) is amended by adding the following new section at the end:

''PAYMENT REWARDS FOR CERTAIN SINGLE FAMILY MORTGAGES

''SEC. 257. For purposes of establishing an alternative to high cost mortgages for borrowers with credit impairments, the Secretary may insure under sections 203(b) and 234(c) of this title any mortgage that meets the requirements of such sections, except as provided in the following sentences. The Secretary may establish lower percentage of appraised value limitations than those provided in section 203(b)(2)(B). Notwithstanding section 203(c)(2)(B), the Secretary may establish and collect annual premium payments in an amount not exceeding 1.0 percent of the remaining insured principal balance and such payments may be reduced or eliminated in subsequent years based on mortgage payment performance. All mortgages insured pursuant to this section shall be obligations of the Mutual Mortgage Insurance Fund notwithstanding section 519 of this Act.''.

SEC. 220. (a) INFORMATION COMPARISONS FOR PUBLIC AND ASSISTED HOUSING PROGRAMS.—Section 453(j) of the Social Security Act (42 U.S.C. 653(j)) is amended by adding at the end the following new paragraph:

''(7) INFORMATION COMPARISONS FOR HOUSING ASSISTANCE PROGRAMS.—

''(A) FURNISHING OF INFORMATION BY HUD.—Subject to subparagraph (G), the Secretary of Housing and Urban Development shall furnish to the Secretary, on such periodic basis as determined by the Secretary of Housing and Urban Development in consultation with the Secretary, information in the custody of the Secretary of Housing and Urban Development for comparison with information in the National Directory of New Hires, in order to obtain information in such Directory with respect to individuals who are participating in any program under—

''(i) the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.);

''(ii) section 202 of the Housing Act of 1959 (12 U.S.C. 1701q);

''(iii) section 221(d)(3), 221(d)(5), or 236 of the National Housing Act (12 U.S.C. 1715l(d) and 1715z–1);

''(iv) section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013); or

''(v) section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s).

''(B) REQUIREMENT TO SEEK MINIMUM INFORMATION.—The Secretary of Housing and Urban Development shall seek information pursuant to this section only to the extent necessary to verify the employment and income of individuals described in subparagraph (A).

''(C) DUTIES OF THE SECRETARY.—

''(i) INFORMATION DISCLOSURE.—The Secretary, in cooperation with the Secretary of Housing and Urban Development, shall compare information in the National Directory of New Hires with information provided by the Secretary of Housing and Urban Development with respect to individuals described in subparagraph (A), and shall disclose information in such Directory regarding such individuals to the Secretary of Housing and Urban Development, in accordance with this paragraph, for the purposes specified in this paragraph.

''(ii) CONDITION ON DISCLOSURE.—The Secretary shall make disclosures in accordance with clause (i) only to the extent that the Secretary determines that such disclosures do not interfere with the effective operation of the program under this part.

''(D) USE OF INFORMATION BY HUD.—The Secretary of Housing and Urban Development may use information resulting from a data match pursuant to this paragraph only—

''(i) for the purpose of verifying the employment and income of individuals described in subparagraph (A); and

''(ii) after removal of personal identifiers, to conduct analyses of the employment and income reporting of individuals described in subparagraph (A).

''(E) DISCLOSURE OF INFORMATION BY HUD.—

''(i) PURPOSE OF DISCLOSURE.—The Secretary of Housing and Urban Development may make a disclosure under this subparagraph only for the purpose of verifying the employment and income of individuals described in subparagraph (A).

''(ii) DISCLOSURES PERMITTED.—Subject to clause (iii), the Secretary of Housing and Urban Development may disclose information resulting from a data match pursuant to this paragraph only to a public housing agency, the Inspector General of the Department of Housing and Urban Development, and the Attorney General in connection with the administration of a program described in subparagraph (A). Information obtained by the Secretary of Housing and Urban Development pursuant to this paragraph shall not be made available under section 552 of title 5, United States Code.

''(iii) CONDITIONS ON DISCLOSURE.—Disclosures under this paragraph shall be—

''(I) made in accordance with data security and control policies established by the Secretary of Housing and Urban Development and approved by the Secretary;

''(II) subject to audit in a manner satisfactory to the Secretary; and

''(III) subject to the sanctions under subsection (l)(2).

''(iv) ADDITIONAL DISCLOSURES.—

''(I) DETERMINATION BY SECRETARIES.—The Secretary of Housing and Urban Development and the Secretary shall determine whether to permit disclosure of information under this paragraph to persons or entities described in subclause (II), based on an evaluation made by the Secretary of Housing and Urban Development (in consultation with and approved by the Secretary), of the costs and benefits of disclosures made under clause (ii) and the adequacy of measures used to safeguard the security and confidentiality of information so disclosed.

''(II) PERMITTED PERSONS OR ENTITIES.—If the Secretary of Housing and Urban Development and the Secretary determine pursuant to subclause (I) that disclosures to additional persons or entities shall be permitted, information under this paragraph may be disclosed by the Secretary of Housing and Urban Development to a private owner, a management agent, and a contract administrator in connection with the administration of a program described in subparagraph (A), subject to the conditions in clause (iii) and such additional conditions as agreed to by the Secretaries.

''(v) RESTRICTIONS ON REDISCLOSURE.—A person or entity to which information is disclosed under this subparagraph may use or disclose such information only as needed for verifying the employment and income of individuals described in subparagraph (A), subject to the conditions in clause (iii) and such additional conditions as agreed to by the Secretaries.

''(F) REIMBURSEMENT OF HHS COSTS.—The Secretary of Housing and Urban Development shall reimburse the Secretary, in accordance with subsection (k)(3), for the costs incurred by the Secretary in furnishing the information requested under this paragraph.

''(G) CONSENT.—The Secretary of Housing and Urban Development shall not seek, use, or disclose information under this paragraph relating to an individual without the prior written consent of such individual (or of a person legally authorized to consent on behalf of such individual).''.

(b) CONSENT TO INFORMATION COMPARISON AND USE AS CONDITION OF HUD PROGRAM ELIGIBILITY.—As a condition of participating in any program authorized under—

(1) the United States Housing Act of 1937 (42 U.S.C. 1437 et seq.);

(2) section 202 of the Housing Act of 1959 (12 U.S.C. 1701q);

(3) section 221(d)(3), 221(d)(5), or 236 of the National Housing Act (12 U.S.C. 1715l(d) and 1715z–1);

(4) section 811 of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 8013); or

(5) section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s),

the Secretary of Housing and Urban Development may require consent by an individual (or by a person legally authorized to consent on behalf of such individual) for such Secretary to obtain, use, and disclose information with respect to such individual in accordance with section 453(j)(7) of the Social Security Act (42 U.S.C. 653(j)(7)).

SEC. 221. Section 9 of the United States Housing Act of 1937 is amended by inserting at the end the following new subsection:

''(o) LOAN GUARANTEE DEVELOPMENT FUNDING.—

''(1) In order to facilitate the financing of the rehabilitation and development needs of public housing, the Secretary is authorized to provide loan guarantees for public housing agencies to enter into loans or other financial obligations with financial institutions for the purpose of financing the rehabilitation of a portion of public housing or the development off-site of public housing in mixed income developments (including demolition costs of the public housing units to be replaced), provided that the number of public housing units developed off-site replaces no less than an equal number of on-site public housing units in a project. Loans or other obligations entered into pursuant to this subsection shall be in such form and denominations, have such maturities, and be subject to such conditions as may be prescribed by regulations issued by the Secretary.

''(2) The Secretary may prohibit a public housing agency from obtaining a loan under this subsection only if the rehabilitation or replacement housing proposed by a public housing agency is inconsistent with its Public Housing Agency Plan, as submitted under section 5A, or the proposed terms of the guaranteed loan constitutes an unacceptable financial risk to the public housing agency or for repayment of the loan under this subsection.

''(3) Notwithstanding any other provision of this title, funding allocated to a public housing agency under subsections (d)(2) and (e)(2) of this section for capital and operating funds is authorized for use in the payment of the principal and interest due (including such servicing, underwriting or other costs as may be specified in the regulations of the Secretary) on the loans or other obligations entered into pursuant to this subsection.

''(4) The amount of any loan or other obligation entered into under this subsection shall not exceed in total the pro-rata amount of funds that would be allocated over a period not to exceed 30 years under subsections (d)(2) and (e)(2) of this section on a per unit basis as a percentage of the number of units that are designated to be rehabilitated or replaced under this subsection by a public housing agency as compared to the total number of units in the public housing development, as determined on the basis of funds made available under such subsections (d)(2) and (e)(2) in the previous year. Any reduction in the total amount of funds provided to a public housing agency under this section in subsequent years shall not reduce the amount of funds to be paid under a loan entered into under this subsection but instead shall reduce the capital and operating funds which are available for the other housing units in the public housing development in that fiscal year. Any additional income, including the receipt of rental income from tenants, generated by the rehabilitated or replaced units may be used to establish a loan loss reserve for the public housing agency to assist in the repayment of loans or other obligations entered into under this subsection or to address any shortfall in the operating or capital needs of the public housing agency in any fiscal year.

''(5) Subject to appropriations, the Secretary may use funds from the Public Housing Capital Fund to—

''(A) establish a loan loss reserve account within the Department of Housing and Urban Development to minimize the risk of loss associated with the repayment of loans guaranteed under this subsection,

''(B) make grants to a public housing agency for capital investment needs or for the creation of a loan loss reserve account to be used in conjunction with a loan made under this subsection for the rehabilitation of a portion of public housing or the development off-site of public housing in mixed income developments (including demolition costs of the public housing units to be replaced), or

''(C) or repay any losses associated with a loan guarantee under this subsection.

''(6) The Secretary may, to the extent approved in appropriations Acts, assist in the payment of all or a portion of the principal and interest amount due under the loan or other obligation entered into under this subsection, if the Secretary determines that the public housing agency is unable to pay the amount it owes because of circumstances of extreme hardship beyond the control of the public housing agency.''.

SEC. 222. Section 204(a) of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11314(a)) is amended by striking in the first sentence after the word ''level'', ''V'', and inserting in its place ''III''.

SEC. 223. Notwithstanding any other provision of law, the State of Hawaii may elect by July 31, 2004 to distribute funds under section 106(d)(2) of the Housing and Community Development Act of 1974, to units of general local government located in nonentitlement areas of that State. If the State of Hawaii fails to make such election, the Secretary shall for fiscal years 2005 and thereafter make grants to the units of general local government located in the State of Hawaii's nonentitlement areas (Hawaii, Kauai, and Maui counties). The Secretary of Housing and Urban Development shall allocate funds under section 106(d) of such Act to units of general local government located in nonentitlement areas within the State of Hawaii in accordance with a formula which bears the same ratio to the total amount available for the nonentitlement areas of the State as the weighted average of the ratios between (1) the population of that eligible unit of general local government and the population of all eligible units of general local government in the nonentitlement areas of the State; (2) the extent of poverty in that eligible unit of general local government and the extent of poverty in all of the eligible units of general local government in the nonentitlement areas of the State; and (3) the extent of housing overcrowding in that eligible unit of general local government and the extent of housing overcrowding in all of the eligible units of general local government in the nonentitlement areas of the State. In determining the weighted average of the ratios described in the previous sentence, the ratio described in clause (2) shall be counted twice and the ratios described in clauses (1) and (3) shall be counted once. Notwithstanding any other provision, grants made under this section shall be subject to the program requirements of section 104 of the Housing and Community Development Act of 1974 in the same manner as such requirements are made applicable to grants made under section 106(b) of the Housing and Community Development Act of 1974.

SEC. 224. The Secretary of Housing and Urban Development shall issue a proposed rulemaking, in accordance with Title V, United States Code, not later than 90 days

from the date of enactment of this Act that—

(1) addresses and expands, as necessary, the participation and certification requirements for the sale of HUD-owned multifamily housing projects and the foreclosure sale of any multifamily housing securing a mortgage held by the Secretary, including whether a potential purchaser is in substantial compliance with applicable state or local government housing statutes, regulations, ordinances and codes with regard to other properties owned by the purchaser; and

(2) requires any state, city, or municipality that exercises its right of first refusal for the purchase of a multifamily housing project under section 203 of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1701z–11(i)) to ensure that potential purchasers of the project from the state, city, or municipality are subject to the same standards that they would otherwise be subject to if they had purchased the project directly from the Secretary, including whether a potential purchaser is in substantial compliance with applicable state or local government housing statutes, regulations, ordinances and codes with regard to other properties owned by the purchaser.

SEC. 225. Section 217 of Public Law 107–73 is amended by striking ''the rehabilitation'' and inserting in lieu thereof: ''redevelopment, including demolition and new construction''.

TITLE III—INDEPENDENT AGENCIES

AMERICAN BATTLE MONUMENTS COMMISSION

SALARIES AND EXPENSES

For necessary expenses, not otherwise provided for, of the American Battle Monuments Commission, including the acquisition of land or interest in land in foreign countries; purchases and repair of uniforms for caretakers of national cemeteries and monuments outside of the United States and its territories and possessions; rent of office and garage space in foreign countries; purchase (one for replacement only) and hire of passenger motor vehicles; and insurance of official motor vehicles in foreign countries, when required by law of such countries, $35,000,000, to remain available until expended.

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

SALARIES AND EXPENSES

For necessary expenses in carrying out activities pursuant to section 112(r)(6) of the Clean Air Act, as amended, including hire of passenger vehicles, uniforms or allowances therefore, as authorized by 5 U.S.C. 5901–5902, and for services authorized by 5 U.S.C. 3109 but at rates for individuals not to exceed the per diem equivalent to the maximum rate payable for senior level positions under 5 U.S.C. 5376, $8,000,000, of which $5,500,000 is to remain available until September 30, 2004 and $2,500,000, of which is to remain available until September 30, 2005: *Provided further,* That the Chemical Safety and Hazard Investigation Board shall have not more than three career Senior Executive Service positions.

DEPARTMENT OF THE TREASURY

COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS

COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS FUND PROGRAM ACCOUNT

To carry out the Community Development Banking and Financial Institutions Act of 1994, including services authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the rate for ES–3, $70,000,000, to remain available until September 30, 2005, of which not less than $5,000,000 shall be for financial assistance, technical assistance, training and outreach programs designed to benefit Native American, Native Hawaiian, and Alaskan Native communities and provided primarily through qualified community development lender organizations with experience and expertise in community development banking and lending in Indian country, Native American organizations, tribes and tribal organizations and other suitable providers, and up to $12,000,000 may be used for administrative expenses, including administration of the New Markets Tax Credit, up to $6,000,000 may be used for the cost of direct loans, and up to $250,000 may be used for administrative expenses to carry out the direct loan program: *Provided,* That the cost of direct loans, including the cost of modifying such loans, shall be as defined in section 502 of the Congressional Budget Act of 1974, as amended: *Provided further,* That these funds are available to subsidize gross obligations for the principal amount of direct loans not to exceed $11,000,000.

CONSUMER PRODUCT SAFETY COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the Consumer Product Safety Commission, including hire of passenger motor vehicles, services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the maximum rate payable under 5 U.S.C. 5376, purchase of nominal awards to recognize non-Federal officials' contributions to Commission activities, and not to exceed $500 for official reception and representation expenses, $60,000,000.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

NATIONAL AND COMMUNITY SERVICE PROGRAMS OPERATING EXPENSES

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses for the Corporation for National and Community Service (the ''Corporation'') in carrying out programs, activities, and initiatives under the National and Community Service Act of 1990 (the ''Act'') (42 U.S.C. 12501 et seq.), $452,575,000, to remain available until September 30, 2005: *Provided,* That not more than $330,000,000 of the amount provided under this heading shall be available for the National Service Trust under subtitle D of title I of the Act (42 U.S.C. 12601 et seq.) and for grants under the National Service Trust Program authorized under subtitle C of title I of the Act (42 U.S.C. 12571 et seq.) (relating to activities of the AmeriCorps program), including grants to organizations operating projects under the AmeriCorps Education Awards Program (without regard to the requirements of sections 121(d) and (e), section 131(e), section 132, and sections 140(a), (d), and (e) of the Act): *Provided further,* That from the amount provided under the previous proviso, the Corporation may transfer funds as necessary, to remain available without fiscal year limitation, to the National Service Trust for educational awards authorized under subtitle D of title I of the Act (42 U.S.C. 12601), of which up to $5,000,000 shall be available to support national service scholarships for high school students performing community service: *Provided further,* That the Corporation shall approve and enroll AmeriCorps members pursuant to the Strengthen AmeriCorps Program Act (Public Law 108–45): *Provided further,* That of the amount provided under this heading for grants under the National Service Trust program authorized under subtitle C of title I of the Act, not more than $50,000,000 may be used to administer, reimburse, or support any national service program authorized under section 121(d)(2) of such Act (42 U.S.C. 12581(d)(2)): *Provided further,* That not more than $14,575,000 shall be available for quality and innovation activities authorized under subtitle H of title I of the Act (42 U.S.C. 12853 et seq.), of which $5,000,000 shall be available for challenge grants to non-profit organizations: *Provided further,* That notwithstanding subtitle H of title I of the Act (42 U.S.C. 12853), none of the funds provided under the previous proviso shall be used to support salaries and related expenses (including travel) attributable to Corporation employees: *Provided further,* That to the maximum extent feasible, funds appropriated under subtitle C of title I of the Act shall be provided in a manner that is consistent with the recommendations of peer review panels in order to ensure that priority is given to programs that demonstrate quality, innovation, replicability, and sustainability: *Provided further,* That not more than $10,000,000 of the funds made available under this heading shall be made available for the Points of Light Foundation for activities authorized under title III of the Act (42 U.S.C. 12661 et seq.), of which not more than $2,500,000 may be used to support an endowment fund, the corpus of which shall remain intact and the interest income from which shall be used to support activities described in title III of the Act, provided that the Foundation may invest the corpus and income in federally insured bank savings accounts or comparable interest bearing accounts, certificates of deposit, money market funds, mutual funds, obligations of the United States, and other market instruments and securities but not in real estate investments: *Provided further,* That no funds shall be available for national service programs run by Federal agencies authorized under section 121(b) of such Act (42 U.S.C. 12571(b)): *Provided further,* That not more than $5,000,000 of the funds made available under this heading shall be made available to America's Promise—The Alliance for Youth, Inc.: *Provided further,* That to the maximum extent practicable, the Corporation shall increase significantly the level of matching funds and in-kind contributions provided by the private sector, and shall reduce the total Federal costs per participant in all programs by not less than 10 percent: *Provided further,* That the Inspector General of the Corporation for National and Community Service shall conduct random audits of the grantees that administer activities under the AmeriCorps programs and shall debar any grantee (or successor in interest or any entity with substantially the same person or persons in control) that has been determined to have committed any substantial violations of the requirements of the AmeriCorps programs, including any grantee that has been determined to have violated the prohibition of using Federal funds to lobby the Congress: *Provided further,* That the Inspector General shall obtain reimbursements in the amount of any misused funds from any grantee that has been determined to have committed any substantial violations of the requirements of the AmeriCorps programs.

SALARIES AND EXPENSES

For necessary expenses (including payment of salaries, authorized travel, hire of passenger motor vehicles, the rental of conference rooms in the District of Columbia, the employment of experts and consultants authorized under 5 U.S.C. 3109, and not to exceed $2,500 for official reception and representation expenses) involved in carrying out the National and Community Service Act of 1990 (42 U.S.C. 12501 et seq.) involved in administration as provided under section 501(a)(4) of the Act, $25,000,000.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the Inspector General Act of 1978, as amended,

$6,500,000, to remain available until September 30, 2005.

ADMINISTRATIVE PROVISIONS

Notwithstanding any other provision of law, the term ''qualified student loan'' with respect to national service education awards shall mean any loan determined by an institution of higher education to be necessary to cover a student's cost of attendance at such institution and made, insured, or guaranteed directly to a student by a State agency, in addition to other meanings under section 148(b)(7) of the National and Community Service Act.

Notwithstanding any other provision of law, funds made available under section 129(d)(5)(B) of the National and Community Service Act to assist entities in placing applicants who are individuals with disabilities may be provided to any entity that receives a grant under section 121 of the Act.

UNITED STATES COURT OF APPEALS FOR VETERANS CLAIMS

SALARIES AND EXPENSES

For necessary expenses for the operation of the United States Court of Appeals for Veterans Claims as authorized by 38 U.S.C. 7251–7298, $16,220,000 of which $1,175,000 shall be available for the purpose of providing financial assistance as described, and in accordance with the process and reporting procedures set forth, under this heading in Public Law 102–229.

DEPARTMENT OF DEFENSE—CIVIL

CEMETERIAL EXPENSES, ARMY

SALARIES AND EXPENSES

For necessary expenses, as authorized by law, for maintenance, operation, and improvement of Arlington National Cemetery and Soldiers' and Airmen's Home National Cemetery, including the purchase of two passenger motor vehicles for replacement only, and not to exceed $1,000,000 for official reception and representation expenses, $32,000,000, to remain available until expended.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

NATIONAL INSTITUTES OF HEALTH

NATIONAL INSTITUTE OF ENVIRONMENTAL HEALTH SCIENCES

For necessary expenses for the National Institute of Environmental Health Sciences in carrying out activities set forth in section 311(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, and section 126(g) of the Superfund Amendments and Reauthorization Act of 1986, $78,774,000.

AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY

TOXIC SUBSTANCES AND ENVIRONMENTAL PUBLIC HEALTH

For necessary expenses for the Agency for Toxic Substances and Disease Registry (ATSDR) in carrying out activities set forth in sections 104(i), 111(c)(4), and 111(c)(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended; section 118(f) of the Superfund Amendments and Reauthorization Act of 1986 (SARA), as amended; and section 3019 of the Solid Waste Disposal Act, as amended, $73,467,000, which may be derived to the extent funds are available from the Hazardous Substance Superfund Trust Fund pursuant to section 517(a) of SARA (26 U.S.C. 9507): *Provided*, That notwithstanding any other provision of law, in lieu of performing a health assessment under section 104(i)(6) of CERCLA, the Administrator of ATSDR may conduct other appropriate health studies, evaluations, or activities, including, without limitation, biomedical testing, clinical evaluations, medical monitoring, and referral to accredited health care providers: *Provided further*, That in performing any such health assessment or health study, evaluation, or activity, the Administrator of ATSDR shall not be bound by the deadlines in section 104(i)(6)(A) of CERCLA: *Provided further*, That none of the funds appropriated under this heading shall be available for ATSDR to issue in excess of 40 toxicological profiles pursuant to section 104(i) of CERCLA during fiscal year 2004, and existing profiles may be updated as necessary.

ENVIRONMENTAL PROTECTION AGENCY

SCIENCE AND TECHNOLOGY

For science and technology, including research and development activities, which shall include research and development activities under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended; necessary expenses for personnel and related costs and travel expenses, including uniforms, or allowances therefor, as authorized by 5 U.S.C. 5901–5902; services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the maximum rate payable for senior level positions under 5 U.S.C. 5376; procurement of laboratory equipment and supplies; other operating expenses in support of research and development; construction, alteration, repair, rehabilitation, and renovation of facilities, not to exceed $75,000 per project, $715,579,000, which shall remain available until September 30, 2005.

ENVIRONMENTAL PROGRAMS AND MANAGEMENT

For environmental programs and management, including necessary expenses, not otherwise provided for, for personnel and related costs and travel expenses, including uniforms, or allowances therefor, as authorized by 5 U.S.C. 5901–5902; services as authorized by 5 U.S.C. 3109, but at rates for individuals not to exceed the per diem rate equivalent to the maximum rate payable for senior level positions under 5 U.S.C. 5376; hire of passenger motor vehicles; hire, maintenance, and operation of aircraft; purchase of reprints; library memberships in societies or associations which issue publications to members only or at a price to members lower than to subscribers who are not members; construction, alteration, repair, rehabilitation, and renovation of facilities, not to exceed $75,000 per project; and not to exceed $9,000 for official reception and representation expenses, $2,219,659,000, which shall remain available until September 30, 2005, including administrative costs of the brownfields program under the Small Business Liability Relief and Brownfields Revitalization Act of 2002.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, and for construction, alteration, repair, rehabilitation, and renovation of facilities, not to exceed $75,000 per project, $36,808,000, to remain available until September 30, 2005.

BUILDINGS AND FACILITIES

For construction, repair, improvement, extension, alteration, and purchase of fixed equipment or facilities of, or for use by, the Environmental Protection Agency, $42,918,000, to remain available until expended.

HAZARDOUS SUBSTANCE SUPERFUND

(INCLUDING TRANSFERS OF FUNDS)

For necessary expenses to carry out the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, including sections 111(c)(3), (c)(5), (c)(6), and (e)(4) (42 U.S.C. 9611), and for construction, alteration, repair, rehabilitation, and renovation of facilities, not to exceed $75,000 per project; $1,265,000,000 (of which $100,000,000 shall not become available until September 1, 2003), to remain available until expended, consisting of such sums as are available in the Trust Fund as authorized by section 517(a) of the Superfund Amendments and Reauthorization Act of 1986 (SARA) and up to $1,265,000,000 as a payment from general revenues to the Hazardous Substance Superfund for purposes as authorized by section 517(b) of SARA, as amended: *Provided*, That funds appropriated under this heading may be allocated to other Federal agencies in accordance with section 111(a) of CERCLA: *Provided further*, That of the funds appropriated under this heading, $13,214,000 shall be transferred to the ''Office of Inspector General'' appropriation to remain available until September 30, 2005, and $45,000,000 shall be transferred to the ''Science and technology'' appropriation to remain available until September 30, 2005.

LEAKING UNDERGROUND STORAGE TANK PROGRAM

For necessary expenses to carry out leaking underground storage tank cleanup activities authorized by section 205 of the Superfund Amendments and Reauthorization Act of 1986, and for construction, alteration, repair, rehabilitation, and renovation of facilities, not to exceed $75,000 per project, $72,545,000, to remain available until expended.

OIL SPILL RESPONSE

For expenses necessary to carry out the Environmental Protection Agency's responsibilities under the Oil Pollution Act of 1990, $16,209,000, to be derived from the Oil Spill Liability trust fund, to remain available until expended.

STATE AND TRIBAL ASSISTANCE GRANTS

For environmental programs and infrastructure assistance, including capitalization grants for State revolving funds and performance partnership grants, $3,814,000,000, to remain available until expended, of which $1,350,000,000 shall be for making capitalization grants for the Clean Water State Revolving Funds under title VI of the Federal Water Pollution Control Act, as amended (the ''Act''); $850,000,000 shall be for capitalization grants for the Drinking Water State Revolving Funds under section 1452 of the Safe Drinking Water Act, as amended, except that, notwithstanding section 1452(n) of the Safe Drinking Water Act, as amended, none of the funds made available under this heading in this Act, or in previous appropriations Acts, shall be reserved by the Administrator for health effects studies on drinking water contaminants; $50,000,000 shall be for architectural, engineering, planning, design, construction and related activities in connection with the construction of high priority water and wastewater facilities in the area of the United States-Mexico Border, after consultation with the appropriate border commission; $45,000,000 shall be for grants to the State of Alaska to address drinking water and wastewater infrastructure needs of rural and Alaska Native Villages: *Provided*, That, of these funds (1) 25 percent will be set aside for regional hub communities of populations over 1,000 but under 5,000, (2) the State of Alaska shall provide a match of 25 percent, (3) no more than 5 percent of the fund may be used for administrative and overhead expenses, and (4) a statewide priority list shall be established which shall remain in effect for at least three years; $3,500,000 shall be for remediation of above ground leaking fuel tanks pursuant to Public Law 106–554; $130,000,000 shall be for making grants for the

construction of drinking water, wastewater and storm water infrastructure and for water quality protection in accordance with the terms and conditions specified for such grants in the committee report accompanying this Act, and, notwithstanding any other provision of law, heretofore and hereafter, projects awarded such grants under this heading that also receive loans from a State water pollution control or drinking water revolving fund may be administered in accordance with applicable State water pollution control or drinking water revolving fund administrative and procedural requirements, and, for purposes of these grants, each grantee shall contribute not less than 45 percent of the cost of the project unless the grantee is approved for a waiver by the Administrator of the Environmental Protection Agency; $100,500,000 shall be to carry out section 104(k) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, including grants, interagency agreements, and associated program support costs; and $1,130,000,000 shall be for grants, including associated program support costs, to States, federally recognized tribes, interstate agencies, tribal consortia, and air pollution control agencies for multi-media or single media pollution prevention, control and abatement and related activities, including activities pursuant to the provisions set forth under this heading in Public Law 104–134, and for making grants under section 103 of the Clean Air Act for particulate matter monitoring and data collection activities of which and subject to terms and conditions specified by the Administrator, of which $60,000,000 shall be for carrying out section 128 of CERCLA, as amended, and $20,000,000 shall be for Environmental Information Exchange Network grants, including associated program support costs: *Provided,* That for fiscal year 2004, State authority under section 302(a) of Public Law 104–182 shall remain in effect: *Provided further,* That notwithstanding section 603(d)(7) of the Act, the limitation on the amounts in a State water pollution control revolving fund that may be used by a State to administer the fund shall not apply to amounts included as principal in loans made by such fund in fiscal year 2004 and prior years where such amounts represent costs of administering the fund to the extent that such amounts are or were deemed reasonable by the Administrator, accounted for separately from other assets in the fund, and used for eligible purposes of the fund, including administration: *Provided further,* That for fiscal year 2004, and notwithstanding section 518(f) of the Act, the Administrator is authorized to use the amounts appropriated for any fiscal year under section 319 of that Act to make grants to Indian tribes pursuant to sections 319(h) and 518(e) of that Act: *Provided further,* That for fiscal year 2004, notwithstanding the limitation on amounts in section 518(c) of the Act, up to a total of 1½ percent of the funds appropriated for State Revolving Funds under title VI of that Act may be reserved by the Administrator for grants under section 518(c) of such Act: *Provided further,* That no funds provided by this legislation to address the water, wastewater and other critical infrastructure needs of the colonias in the United States along the United States-Mexico border shall be made available to a county or municipal government unless that government has established an enforceable local ordinance, or other zoning rule, which prevents in that jurisdiction the development or construction of any additional colonia areas, or the development within an existing colonia the construction of any new home, business, or other structure which lacks water, wastewater, or other necessary infrastructure: *Provided further,* That the referenced statement of the managers under this heading in Public Law 106–377 is deemed to be amended by striking ''wastewater'' in reference to item number 219 and inserting ''water'': *Provided further,* That the referenced statement of the managers under this heading in Public Law 108–7 is deemed to be amended by striking ''wastewater'' in reference to item number 409 and inserting ''water''.

ADMINISTRATIVE PROVISIONS

For fiscal year 2004, notwithstanding 31 U.S.C. 6303(1) and 6305(1), the Administrator of the Environmental Protection Agency, in carrying out the Agency's function to implement directly Federal environmental programs required or authorized by law in the absence of an acceptable tribal program, may award cooperative agreements to federally-recognized Indian Tribes or Intertribal consortia, if authorized by their member Tribes, to assist the Administrator in implementing Federal environmental programs for Indian Tribes required or authorized by law, except that no such cooperative agreements may be awarded from funds designated for State financial assistance agreements.

None of the funds appropriated or otherwise made available by this Act shall be used to promulgate a final regulation to implement changes in the payment of pesticide tolerance processing fees as proposed at 64 Fed. Reg. 31040, or any similar proposals. The Environmental Protection Agency may proceed with the development of such a rule.

The Environmental Protection Agency may not use any of the funds appropriated or otherwise made available by this Act to implement the Registration Fee system codified at 40 Code of Federal Regulations Subpart U (sections 152.400 et seq.) if its authority to collect maintenance fees pursuant to FIFRA section 4(i)(5) is extended for at least 1 year beyond September 30, 2003.

Section 136a–1 of title 7, U.S.C. is amended—

(1) in subsection (i)(5)(C)(i) by striking ''2003'' and inserting ''2004'';

(2) in subsection (i)(5)(H) by striking ''2003'' and inserting ''2004'';

(3) in subsection (i)(6) by striking ''2003'' and inserting ''2004''; and

(4) in subsection (k)(3)(A) by striking ''2003'' and inserting ''2004''.

Notwithstanding CERCLA 104(k)(4)(B)(i)(IV), appropriated funds may hereafter be used to award grants or loans under section 104(k) of CERCLA to eligible entities that satisfy all of the elements set forth in CERCLA section 101(40) to qualify as a bona fide prospective purchaser except that the date of acquisition of the property was prior to the date of enactment of the Small Business Liability Relief and Brownfield Revitalization Act of 2001.

For fiscal year 2004, notwithstanding any other provision of law, recipients of grants awarded under section 104(k) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9601 et seq.) may use funds for reasonable administrative costs, as determined by the Administrator of the Environmental Protection Agency.

Section 209(e)(1)(A) of the Clean Air Act (42 U.S.C. 7543(e)(1)(A)) is amended by striking out ''New engines which are'' and inserting in lieu thereof the following: ''Any engine covered by a certificate of conformity that also covers any engine''.

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

For necessary expenses of the Office of Science and Technology Policy, in carrying out the purposes of the National Science and Technology Policy, Organization, and Priorities Act of 1976 (42 U.S.C. 6601 and 6671), hire of passenger motor vehicles, and services as authorized by 5 U.S.C. 3109, not to exceed $2,500 for official reception and representation expenses, and rental of conference rooms in the District of Columbia, $7,027,000.

COUNCIL ON ENVIRONMENTAL QUALITY AND OFFICE OF ENVIRONMENTAL QUALITY

For necessary expenses to continue functions assigned to the Council on Environmental Quality and Office of Environmental Quality pursuant to the National Environmental Policy Act of 1969, the Environmental Quality Improvement Act of 1970, and Reorganization Plan No. 1 of 1977, and not to exceed $750 for official reception and representation expenses, $3,238,000: *Provided,* That, notwithstanding section 202 of the National Environmental Policy Act of 1970, the Council shall consist of one member, appointed by the President, by and with the advice and consent of the Senate, serving as chairman and exercising all powers, functions, and duties of the Council.

FEDERAL DEPOSIT INSURANCE CORPORATION

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the provisions of the Inspector General Act of 1978, as amended, $30,848,000, to be derived from the Bank Insurance Fund, the Savings Association Insurance Fund, and the FSLIC Resolution Fund.

GENERAL SERVICES ADMINISTRATION

FEDERAL CITIZEN INFORMATION CENTER FUND

For necessary expenses of the Federal Citizen Information Center, including services authorized by 5 U.S.C. 3109, $14,000,000, to be deposited into the Federal Citizen Information Center Fund: *Provided,* That the appropriations, revenues, and collections deposited into the Fund shall be available for necessary expenses of Federal Citizen Information Center activities in the aggregate amount not to exceed $21,000,000. Appropriations, revenues, and collections accruing to this Fund during fiscal year 2004 in excess of $21,000,000 shall remain in the Fund and shall not be available for expenditure except as authorized in appropriations Acts.

UNITED STATES INTERAGENCY COUNCIL ON HOMELESSNESS

OPERATING EXPENSES

For necessary expenses (including payment of salaries, authorized travel, hire of passenger motor vehicles, the rental of conference rooms in the District of Columbia, and the employment of experts and consultants under section 3109 of title 5, United States Code) of the Interagency Council on the Homeless in carrying out the functions pursuant to title II of the McKinney-Vento Homeless Assistance Act, as amended, $1,500,000.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

SPACE FLIGHT CAPABILITIES

For necessary expenses, not otherwise provided for, in the conduct and support of space flight capabilities research and development activities, including research, development, operations, support and services; maintenance; construction of facilities including repair, rehabilitation, revitalization and modification of facilities, construction of new facilities and additions to existing facilities, facility planning and design, and acquisition or condemnation of real property, as authorized by law; environmental compliance and restoration; space flight, spacecraft control and communications activities including operations, production, and services; program management; personnel and related

costs, including uniforms or allowances therefor, as authorized by 5 U.S.C. 5901–5902; travel expenses; purchase and hire of passenger motor vehicles; not to exceed $35,000 for official reception and representation expenses; and purchase, lease, charter, maintenance and operation of mission and administrative aircraft, $7,582,100,000, to remain available until September 30, 2005, of which no less than $3,968,000,000 shall be available for activities related to the Space Shuttle and shall not be available for transfer to any other program or account, and no more than $1,507,000,000 shall be available for activities related to the International Space Station.

SCIENCE, AERONAUTICS AND EXPLORATION

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses, not otherwise provided for, in the conduct and support of science, aeronautics and exploration research and development activities, including research, development, operations, support and services; maintenance; construction of facilities including repair, rehabilitation, revitalization, and modification of facilities, construction of new facilities and additions to existing facilities, facility planning and design, and restoration, and acquisition or condemnation of real property, as authorized by law; environmental compliance and restoration; space flight, spacecraft control and communications activities including operations, production, and services; program management; personnel and related costs, including uniforms or allowances therefor, as authorized by 5 U.S.C. 5901–5902; travel expenses; purchase and hire of passenger motor vehicles; not to exceed $35,000 for official reception and representation expenses; and purchase, lease, charter, maintenance and operation of mission and administrative aircraft, $7,730,507,000, to remain available until September 30, 2005, of which amounts as determined by the Administrator for salaries and benefits; training, travel and awards; facility and related costs; information technology services; science, engineering, fabricating and testing services; and other administrative services may be transferred to ''Space flight capabilities'' in accordance with section 312(b) of the National Aeronautics and Space Act of 1958, as amended by Public Law 106–377.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General in carrying out the Inspector General Act of 1978, as amended, $26,300,000.

ADMINISTRATIVE PROVISIONS

Notwithstanding the limitation on the availability of funds appropriated for ''Science, aeronautics and exploration'', or ''Space flight capabilities'' by this appropriations Act, when any activity has been initiated by the incurrence of obligations for construction of facilities as authorized by law, such amount available for such activity shall remain available until expended. This provision does not apply to the amounts appropriated for institutional minor revitalization and construction of facilities, and institutional facility planning and design.

Notwithstanding the limitation on the availability of funds appropriated for ''Science, aeronautics and exploration'', or ''Space flight capabilities'' by this appropriations Act, the amounts appropriated for construction of facilities shall remain available until September 30, 2006.

From amounts made available in this Act for these activities, the Administration may transfer amounts between aeronautics from the ''Science, aeronautics and exploration'' account to the ''Space flight capabilities'' account, provided NASA meets all reprogramming requirements.

Funds for announced prizes otherwise authorized shall remain available, without fiscal year limitation, until the prize is claimed or the offer is withdrawn.

NASA shall maintain a working capital fund in the United States Treasury and report to the Congress on the status of this fund by January 31, 2004. Amounts in the fund are available for financing activities, services, equipment, information, and facilities as authorized by law to be provided within the Administration; to other agencies or instrumentalities of the United States; to any State, Territory, or possession or political subdivision thereof; to other public or private agencies; or to any person, firm, association, corporation, or educational institution on a reimbursable basis. The fund shall also be available for the purpose of funding capital repairs, renovations, rehabilitation, sustainment, demolition, or replacement of NASA real property, on a reimbursable basis within the Administration. Amounts in the fund are available without regard to fiscal year limitation. The capital of the fund consists of amounts appropriated to the fund; the reasonable value of stocks of supplies, equipment, and other assets and inventories on order that the Administrator transfers to the fund, less the related liabilities and unpaid obligations; and payments received for loss or damage to property of the fund. The fund shall be reimbursed, in advance, for supplies and services at rates that will approximate the expenses of operation, such as the accrual of annual leave, depreciation of plant, property and equipment, and overhead.

The unexpired balances of prior appropriations to NASA for activities for which funds are provided under this Act may be transferred to the new account established for the appropriation that provides such activity under this Act. Balances so transferred may be merged with funds in the newly established account and thereafter may be accounted for as one fund under the same terms and conditions.

Notwithstanding any other provision of law, no funds under this Act or any other Act may be used to compensate any person who contracts with NASA who has otherwise chosen to retire early or has taken a buyout.

NATIONAL CREDIT UNION ADMINISTRATION

CENTRAL LIQUIDITY FACILITY

During fiscal year 2004, gross obligations of the Central Liquidity Facility for the principal amount of new direct loans to member credit unions, as authorized by 12 U.S.C. 1795 et seq., shall not exceed $1,500,000,000: *Provided*, That administrative expenses of the Central Liquidity Facility in fiscal year 2004 shall not exceed $310,000.

COMMUNITY DEVELOPMENT REVOLVING LOAN FUND

For the Community Development Revolving Loan Fund program as authorized by 42 U.S.C. 9812, 9822 and 9910, $1,500,000 shall be available: *Provided*, That of this amount $700,000, together with amounts of principal and interest on loans repaid, is available until expended for loans to community development credit unions, and $800,000 is available until September 30, 2005 for technical assistance to low-income and community development credit unions.

NATIONAL SCIENCE FOUNDATION

RESEARCH AND RELATED ACTIVITIES

For necessary expenses in carrying out the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861–1875), and the Act to establish a National Medal of Science (42 U.S.C. 1880–1881); services as authorized by 5 U.S.C. 3109; maintenance and operation of aircraft and purchase of flight services for research support; acquisition of aircraft; and authorized travel; $4,220,610,000, of which not to exceed $341,730,000 shall remain available until expended for Polar research and operations support, and for reimbursement to other Federal agencies for operational and science support and logistical and other related activities for the United States Antarctic program; the balance to remain available until September 30, 2005: *Provided*, That receipts for scientific support services and materials furnished by the National Research Centers and other National Science Foundation supported research facilities may be credited to this appropriation: *Provided further*, That to the extent that the amount appropriated is less than the total amount authorized to be appropriated for included program activities, all amounts, including floors and ceilings, specified in the authorizing Act for those program activities or their subactivities shall be reduced proportionally: *Provided further*, That $90,000,000 of the funds available under this heading shall be made available for a comprehensive research initiative on plant genomes for economically significant crops.

MAJOR RESEARCH EQUIPMENT AND FACILITIES CONSTRUCTION

For necessary expenses for the acquisition, construction, commissioning, and upgrading of major research equipment, facilities, and other such capital assets pursuant to the National Science Foundation Act of 1950, as amended, including authorized travel, $149,680,000, to remain available until expended.

EDUCATION AND HUMAN RESOURCES

For necessary expenses in carrying out science and engineering education and human resources programs and activities pursuant to the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861–1875), including services as authorized by 5 U.S.C. 3109, authorized travel, and rental of conference rooms in the District of Columbia, $975,870,000, to remain available until September 30, 2005: *Provided*, That to the extent that the amount of this appropriation is less than the total amount authorized to be appropriated for included program activities, all amounts, including floors and ceilings, specified in the authorizing Act for those program activities or their subactivities shall be reduced proportionally.

SALARIES AND EXPENSES

For salaries and expenses necessary in carrying out the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861–1875); services authorized by 5 U.S.C. 3109; hire of passenger motor vehicles; not to exceed $9,000 for official reception and representation expenses; uniforms or allowances therefor, as authorized by 5 U.S.C. 5901–5902; rental of conference rooms in the District of Columbia; and reimbursement of the General Services Administration for security guard services; $225,700,000: *Provided*, That contracts may be entered into under ''Salaries and expenses'' in fiscal year 2004 for maintenance and operation of facilities, and for other services, to be provided during the next fiscal year.

OFFICE OF THE NATIONAL SCIENCE BOARD

For necessary expenses (including payment of salaries, authorized travel, hire of passenger motor vehicles, the rental of conference rooms in the District of Columbia, and the employment of experts and consultants under section 3109 of title 5, United States Code) involved in carrying out section 4 of the National Science Foundation Act of 1950 (42 U.S.C. 1863) and Public Law 86–209 (42 U.S.C. 1880 et seq.), $3,900,000: *Provided*, That not more than $9,000 shall be available for official reception and representation expenses.

OFFICE OF INSPECTOR GENERAL

For necessary expenses of the Office of Inspector General as authorized by the Inspector General Act of 1978, as amended, $10,000,000, to remain available until September 30, 2005.

NEIGHBORHOOD REINVESTMENT CORPORATION

PAYMENT TO THE NEIGHBORHOOD REINVESTMENT CORPORATION

For payment to the Neighborhood Reinvestment Corporation for use in neighborhood reinvestment activities, as authorized by the Neighborhood Reinvestment Corporation Act (42 U.S.C. 8101–8107), $115,000,000, of which $5,000,000 shall be for a multi-family rental housing program.

ADMINISTRATIVE PROVISION

Section 605(a) of the Neighborhood Reinvestment Corporation Act (42 U.S.C. 8104) is amended by—

(1) striking out ''compensation'' and inserting ''salary''; and striking out ''highest rate provided for GS–18 of the General Schedule under section 5332 of title 5 United States Code''; and inserting ''rate for level IV of the Executive Schedule''; and

(2) inserting after the end the following sentence: ''The Corporation shall also apply the provisions of section 5307(a)(1), (b)(1) and (b)(2) of title 5, United States Code, governing limitations on certain pay as if its employees were Federal employees receiving payments under title 5.''.

SELECTIVE SERVICE SYSTEM

SALARIES AND EXPENSES

For necessary expenses of the Selective Service System, including expenses of attendance at meetings and of training for uniformed personnel assigned to the Selective Service System, as authorized by 5 U.S.C. 4101–4118 for civilian employees; purchase of uniforms, or allowances therefor, as authorized by 5 U.S.C. 5901–5902; hire of passenger motor vehicles; services as authorized by 5 U.S.C. 3109; and not to exceed $750 for official reception and representation expenses; $26,308,000: *Provided*, That during the current fiscal year, the President may exempt this appropriation from the provisions of 31 U.S.C. 1341, whenever the President deems such action to be necessary in the interest of national defense: *Provided further*, That none of the funds appropriated by this Act may be expended for or in connection with the induction of any person into the Armed Forces of the United States: *Provided further*, That none of the funds appropriated under this heading may be used in direct support of the Corporation for National and Community Service.

TITLE IV—GENERAL PROVISIONS

SEC. 401. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

SEC. 402. No funds appropriated by this Act may be expended—

(1) pursuant to a certification of an officer or employee of the United States unless—

(A) such certification is accompanied by, or is part of, a voucher or abstract which describes the payee or payees and the items or services for which such expenditure is being made; or

(B) the expenditure of funds pursuant to such certification, and without such a voucher or abstract, is specifically authorized by law; and

(2) unless such expenditure is subject to audit by the General Accounting Office or is specifically exempt by law from such audit.

SEC. 403. None of the funds provided in this Act to any department or agency may be obligated or expended for: (1) the transportation of any officer or employee of such department or agency between the domicile and the place of employment of the officer or employee, with the exception of an officer or employee authorized such transportation under 31 U.S.C. 1344 or 5 U.S.C. 7905; or (2) to provide a cook, chauffeur, or other personal servants to any officer or employee of such department or agency.

SEC. 404. None of the funds provided in this Act may be used for payment, through grants or contracts, to recipients that do not share in the cost of conducting research resulting from proposals not specifically solicited by the Government: *Provided*, That the extent of cost sharing by the recipient shall reflect the mutuality of interest of the grantee or contractor and the Government in the research.

SEC. 405. None of the funds provided in this Act may be used, directly or through grants, to pay or to provide reimbursement for payment of the salary of a consultant (whether retained by the Federal Government or a grantee) at more than the daily equivalent of the rate paid for level IV of the Executive Schedule, unless specifically authorized by law.

SEC. 406. None of the funds provided in this Act may be used to pay the expenses of, or otherwise compensate, non-Federal parties intervening in regulatory or adjudicatory proceedings. Nothing herein affects the authority of the Consumer Product Safety Commission pursuant to section 7 of the Consumer Product Safety Act (15 U.S.C. 2056 et seq.).

SEC. 407. Except as otherwise provided under existing law, or under an existing Executive order issued pursuant to an existing law, the obligation or expenditure of any appropriation under this Act for contracts for any consulting service shall be limited to contracts which are: (1) a matter of public record and available for public inspection; and (2) thereafter included in a publicly available list of all contracts entered into within 24 months prior to the date on which the list is made available to the public and of all contracts on which performance has not been completed by such date. The list required by the preceding sentence shall be updated quarterly and shall include a narrative description of the work to be performed under each such contract.

SEC. 408. Except as otherwise provided by law, no part of any appropriation contained in this Act shall be obligated or expended by any executive agency, as referred to in the Office of Federal Procurement Policy Act (41 U.S.C. 401 et seq.), for a contract for services unless such executive agency: (1) has awarded and entered into such contract in full compliance with such Act and the regulations promulgated thereunder; and (2) requires any report prepared pursuant to such contract, including plans, evaluations, studies, analyses and manuals, and any report prepared by the agency which is substantially derived from or substantially includes any report prepared pursuant to such contract, to contain information concerning: (A) the contract pursuant to which the report was prepared; and (B) the contractor who prepared the report pursuant to such contract.

SEC. 409. (a) It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available in this Act should be American-made.

(b) In providing financial assistance to, or entering into any contract with, any entity using funds made available in this Act, the head of each Federal agency, to the greatest extent practicable, shall provide to such entity a notice describing the statement made in subsection (a) by the Congress.

SEC. 410. None of the funds appropriated in this Act may be used to implement any cap on reimbursements to grantees for indirect costs, except as published in Office of Management and Budget Circular A–21.

SEC. 411. Such sums as may be necessary for fiscal year 2004 pay raises for programs funded by this Act shall be absorbed within the levels appropriated in this Act.

SEC. 412. None of the funds made available in this Act may be used for any program, project, or activity, when it is made known to the Federal entity or official to which the funds are made available that the program, project, or activity is not in compliance with any Federal law relating to risk assessment, the protection of private property rights, or unfunded mandates.

SEC. 413. Except in the case of entities that are funded solely with Federal funds or any natural persons that are funded under this Act, none of the funds in this Act shall be used for the planning or execution of any program to pay the expenses of, or otherwise compensate, non-Federal parties to lobby or litigate in respect to adjudicatory proceedings funded in this Act. A chief executive officer of any entity receiving funds under this Act shall certify that none of these funds have been used to engage in the lobbying of the Federal Government or in litigation against the United States unless authorized under existing law.

SEC. 414. No part of any funds appropriated in this Act shall be used by an agency of the executive branch, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, and for the preparation, distribution or use of any kit, pamphlet, booklet, publication, radio, television or film presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress itself.

SEC. 415. All Departments and agencies funded under this Act are encouraged, within the limits of the existing statutory authorities and funding, to expand their use of ''E-Commerce'' technologies and procedures in the conduct of their business practices and public service activities.

SEC. 416. None of the funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government that is established after the date of the enactment of this Act, except pursuant to a transfer made by, or transfer authority provided in, this Act or any other appropriation Act.

SEC. 417. None of the funds provided in this Act to any department or agency shall be obligated or expended to procure passenger automobiles as defined in 15 U.S.C. 2001 with an EPA estimated miles per gallon average of less than 22 miles per gallon.

This Act may be cited as the ''Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2004''.

SA 2151. Ms. LANDRIEU submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 125, between lines 7 and 8, insert the following:

SEC. 418. Section 106(d) of the Housing and Community Development Act of 1974 (42 U.S.C. 5306(d)) is amended—

(1) in paragraph (3)(A), by striking ''shall not exceed 2 percent'' and inserting ''shall

not, subject to paragraph (6), exceed 3 percent'';

(2) in paragraph (5), by striking ''not to exceed 1 percent'' and inserting ''subject to paragraph (6), not to exceed 3 percent'';

(3) by redesignating the second paragraph (5) and paragraph (6) as paragraphs (7) and (8), respectively; and

(4) by inserting after paragraph (5) the following:

''(6) Of the amounts received under paragraph (1), the State may deduct not more than an aggregate total of 3 percent of such amounts for—

''(A) administrative expenses under paragraph (3)(A); and

''(B) technical assistance under paragraph (5).''.

SA 2152. Mrs. CLINTON (for herself, Mr. ENZI, Ms. CANTWELL, Mr. GRASSLEY, Mrs. MURRAY, Mr. SMITH, Mr. SCHUMER, Mr. WYDEN, Mr. HARKIN, Ms. STABENOW, Mr. KERRY, Mr. DODD, Mr. LIEBERMAN, Mr. LEVIN, and Mr. DASCHLE) submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

At the end of title I, add the following:

SEC. 116. (a) LIMITATION ON USE OF FUNDS FOR CARES INITIATIVE.—No funds appropriated or otherwise made available for the Department of Veterans Affairs for a fiscal year before fiscal year 2005 may be obligated or expended to take any actions proposed under the Capital Asset Realignment for Enhanced Services (CARES) initiative that would result in the closure of a Department of Veterans Affairs health care facility, or reduction in services at such a facility, until the Secretary of Veterans Affairs—

(1) modifies the Capital Asset Realignment for Enhanced Services initiative national planning procedures to require that no changes be made in long-term care, domiciliary care, or mental health services without a completed and separate Capital Asset Realignment for Enhanced Services planning process intended to assess the future demand for such services;

(2) modifies the Capital Asset Realignment for Enhanced Services initiative national planning process to take into account the impact that any transfer of health care services under the initiative will have on the access of veterans to primary outpatient care, inpatient hospital care, and tertiary hospital care in rural and frontier population areas, as defined by the Census Bureau, taking into consideration such travel matters as road conditions, numbers of lanes on roads, and seasonal changes in and other factors relating to the weather;

(3) modifies the Capital Asset Realignment for Enhanced Services initiative national planning process to permit veterans to testify at hearings of the Capital Asset Realignment for Enhanced Services Commission and reconvenes the Commission for further hearings on the initiative in regions where the Commission has held hearings without permitting veterans to testify;

(4) modifies the Capital Asset Realignment for Enhanced Services initiative national planning process to hold at least one hearing regarding the realignment of services under the initiative within 30 miles of each Department of Veterans Affairs facility that would experience a realignment of services under the national plan for the initiative; and

(5) submits to Congress a report on the Capital Asset Realignment for Enhanced Services initiative national planning process that sets forth the results of the modifications under paragraphs (1), (2), (3), and (4).

(b) AVAILABILITY OF CARES INITIATIVE FUNDS FOR ENHANCED SERVICES.—Notwithstanding any other provision of law, neither subsection (a) nor any other provision of law shall be construed to limit the obligation or expenditure of funds under the Capital Asset Realignment for Enhanced Services initiative for the provision of enhanced services as long as the provision of such services does not involve the closure of a Department health care facility or a reduction in services as such a facility.

SA 2153. Mr. GRAHAM of Florida (for himself and Mr. NELSON of Florida) submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title I, add the following:

SEC. 116. Of the amount appropriated or otherwise made available by this title under the heading ''CONSTRUCTION, MAJOR PROJECTS'', $300,000 shall be available for advance planning for national cemeteries in the areas as follows:

(1) The Jacksonville, Florida, area.

(2) The Sarasota, Florida, area.

SA 2154. Mr. JEFFORDS submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, add the following:

SEC. ___. NATIONAL ACADEMY OF SCIENCES STUDY.

The matter under the heading ''ADMINISTRATIVE PROVISIONS'' under the heading ''ENVIRONMENTAL PROTECTION AGENCY'' in title III of division K of section 2 of the Consolidated Appropriations Resolution, 2003 (117 Stat. 513), is amended—

(1) in the first sentence of the fifth undesignated paragraph (beginning ''As soon as''), by inserting before the period at the end the following: '', and the impact of the final rule entitled 'Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Equipment Replacement Provision of the Routine Maintenance, Repair and Replacement Exclusion', amending parts 51 and 52 of title 40, Code of Federal Regulations, and published in electronic docket OAR–2002–0068 on August 27, 2003''; and

(2) in the sixth undesignated paragraph (beginning ''The National Academy of Sciences''), by striking ''March 3, 2004'' and inserting ''September 1, 2004''.

SA 2155. Mr. DAYTON submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 125, between lines 7 and 8, insert the following:

SEC. 418. There are appropriated $1,100,000 to the Secretary of Housing and Urban Development for the purposes of making the grant authorized under section 3 of the Paul and Sheila Wellstone Center for Community Building Act.

SA 2156. Mr. CRAIG (for Mr. BOND (for himself, Mr. MCCONNELL, Mr. TALENT, Mr. CHAMBLISS, Mr. MILLER, and Mr. CRAIG)) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for the purposes; as follows:

Page 106, strike lines 16 to 20 and insert in lieu thereof the following:

Section 209(e)(1) of the Clean Air Act (42 U.S.C. 7543(e)(1)) is amended by—

(a) striking the words ''either of''; and

(b) in paragraph (A), adding before the period at the end the following: '', and any new spark-ignition engines smaller than 50 horsepower''.

Not later than December 1, 2004, the Administrator of the Environmental Protection Agency shall propose regulations containing new standards applicable to emissions from new nonroad spark-ignition engines smaller than 50 horsepower.

SA 2157. Mr. SANTORUM submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 89, line 14, strike ''$452,575,000'' and insert ''$545,575,000''.

On page 89, line 16, strike ''$330,000,000'' and insert ''$423,000,000''.

On page 92, line 22, strike the period and insert '': *Provided further*, That each amount under each heading (other than this heading) in this Act shall be reduced on a pro rata basis by $93,000,000.''.

SA 2158. Mr. CRAIG (for himself, Mr. HARKIN, Mr. COCHRAN, Mr. CONRAD, Mr. CHAMBLISS, Mr. COLEMAN, Mr. CRAPO, Mr. LUGAR, Mr. BREAUX, Mr. ROBERTS, Mr. FITZGERALD, and Mr. PRYOR) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

Beginning on page 105, strike line 3 and all that follows through page 105, line 25, and insert the following:

SEC. ___. PESTICIDE REGISTRATION.

(a) SHORT TITLE.—This section may be cited as the ''Pesticide Registration Improvement Act of 2003''.

(b) REGISTRATION REQUIREMENTS FOR ANTIMICROBIAL PESTICIDES.—Section 3(h) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a(h)) is amended—

(1) in paragraph (2)(F), by striking ''90 to 180 days'' and inserting ''120 days''; and

(2) in paragraph (3)—

(A) in subparagraph (D)(vi), by striking ''240 days'' and inserting ''120 days''; and

(B) in subparagraph (F), by adding at the end the following:

''(iv) LIMITATION.—Notwithstanding clause (ii), the failure of the Administrator to notify an applicant for an amendment to a registration for an antimicrobial pesticide shall not be judicially reviewable in a Federal or State court if the amendment requires scientific review of data within—

''(I) the time period specified in subparagraph (D)(vi), in the absence of a final regulation under subparagraph (B); or

''(II) the time period specified in paragraph (2)(F), if adopted in a final regulation under subparagraph (B).''.

(c) MAINTENANCE FEES.—

(1) AMOUNTS FOR REGISTRANTS.—Section 4(i)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a–1(i)(5)) is amended—

(A) in subparagraph (A)—

(i) by striking ''(A) Subject'' and inserting the following:

''(A) IN GENERAL.—Subject''; and

(ii) by striking ''of—'' and all that follows through ''additional registration'' and inserting ''for each registration'';

(B) in subparagraph (D)—

(i) by striking ''(D) The'' and inserting the following:

''(D) MAXIMUM AMOUNT OF FEES FOR REGISTRANTS.—The'';

(ii) in clause (i), by striking ''shall be $55,000; and'' and inserting ''shall be—

''(I) for fiscal year 2004, $84,000;

''(II) for each of fiscal years 2005 and 2006, $87,000;

''(III) for fiscal year 2007, $68,000; and

''(IV) for fiscal year 2008, $55,000; and''; and

(iii) in clause (ii), by striking ''shall be $95,000.'' and inserting ''shall be—

''(I) for fiscal year 2004, $145,000;

''(II) for each of fiscal years 2005 and 2006, $151,000;

''(III) for fiscal year 2007, $117,000; and

''(IV) for fiscal year 2008, $95,000.''; and

(C) in subparagraph (E)—

(i) by striking ''(E)(i) For'' and inserting the following:

''(E) MAXIMUM AMOUNT OF FEES FOR SMALL BUSINESSES.—

''(i) IN GENERAL.—For'';

(ii) by indenting the margins of subclauses (I) and (II) of clause (i) appropriately; and

(iii) in clause (i)—

(I) subclause (I), by striking ''shall be $38,500; and'' and inserting ''shall be—

''(aa) for fiscal year 2004, $59,000;

''(bb) for each of fiscal years 2005 and 2006, $61,000;

''(cc) for fiscal year 2007, $48,000; and

''(dd) for fiscal year 2008, $38,500; and''; and

(II) in subclause (II), by striking ''shall be $66,500.'' and inserting ''shall be—

''(aa) for fiscal year 2004, $102,000;

''(bb) for each of fiscal years 2005 and 2006, $106,000;

''(cc) for fiscal year 2007, $82,000; and

''(dd) for fiscal year 2008, $66,500.''.

(2) TOTAL AMOUNT OF FEES.—Section 4(i)(5)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136(a)–1(i)(5)(C)) is amended—

(A) by striking ''(C)(i) The'' and inserting the following:

''(C) TOTAL AMOUNT OF FEES.—The''; and

(B) by striking ''aggregate amount'' and all that follows through clause (ii) and inserting ''aggregate amount of—

''(i) for fiscal year 2004, $26,000,000;

''(ii) for fiscal year 2005, $27,000,000;

''(iii) for fiscal year 2006, $27,000,000;

''(iv) for fiscal year 2007, $21,000,000; and

''(v) for fiscal year 2008, $15,000,000.''.

(3) DEFINITION OF SMALL BUSINESS.—Section 4(i)(5)(E)(ii) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a–1(i)(5)(E)(ii)) is amended—

(A) by redesignating subclauses (I) and (II) as items (aa) and (bb), respectively, and indenting the margins appropriately;

(B) by striking ''(ii) For purposes of'' and inserting the following:

''(ii) DEFINITION OF SMALL BUSINESS.—

''(I) IN GENERAL.—In'';

(C) in item (aa) (as so redesignated), by striking ''150'' and inserting ''500'';

(D) in item (bb) (as so redesignated), by striking ''gross revenue from chemicals that did not exceed $40,000,000.'' and inserting ''global gross revenue from pesticides that did not exceed $60,000,000.''; and

(E) by adding at the end the following:

''(II) AFFILIATES.—

''(aa) IN GENERAL.—In the case of a business entity with 1 or more affiliates, the gross revenue limit under subclause (I)(bb) shall apply to the gross revenue for the entity and all of the affiliates of the entity, including parents and subsidiaries, if applicable.

''(bb) AFFILIATED PERSONS.—For the purpose of item (aa), persons are affiliates of each other if, directly or indirectly, either person controls or has the power to control the other person, or a third person controls or has the power to control both persons.

''(cc) INDICIA OF CONTROL.—For the purpose of item (aa), indicia of control include interlocking management or ownership, identity of interests among family members, shared facilities and equipment, and common use of employees.''.

(4) EXTENSION OF AUTHORITY FOR COLLECTING MAINTENANCE FEES.—Section 4(i)(5)(H) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a–1(i)(5)(H)) is amended by striking ''2003'' and inserting ''2008''.

(5) REREGISTRATION AND OTHER ACTIVITIES.—Section 4(g)(2) of the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 136a–1(g)(2)) is amended—

(A) by striking subparagraph (A) and inserting the following:

''(A) IN GENERAL.—The Administrator shall make a determination as to eligibility for reregistration—

''(i) for all active ingredients subject to reregistration under this section for which tolerances or exemptions from tolerances are required under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.), not later than the last date for tolerance reassessment established under section 408(q)(1)(C) of that Act (21 U.S.C. 346a(q)(1)(C)); and

''(ii) for all other active ingredients subject to reregistration under this section, not later than October 3, 2008.'';

(B) in subparagraph (B)—

(i) by striking ''(B) Before'' and inserting the following:

''(B) PRODUCT-SPECIFIC DATA.—

''(i) IN GENERAL.—Before'';

(ii) by striking ''The Administrator'' and inserting the following:

''(ii) TIMING.—

''(I) IN GENERAL.—Subject to subclause (II), the Administrator''; and

(iii) by adding at the end the following:

''(II) EXTRAORDINARY CIRCUMSTANCES.—In the case of extraordinary circumstances, the Administrator may provide such a longer period, of not more than 2 additional years, for submission of data to the Administrator under this subparagraph.''; and

(C) in subparagraph (D)—

(i) by striking ''(D) If'' and inserting the following:

''(D) DETERMINATION TO NOT REREGISTER.—

''(i) IN GENERAL.—If''; and

(ii) by adding at the end the following:

''(ii) TIMING FOR REGULATORY ACTION.—Regulatory action under clause (i) shall be completed as expeditiously as possible.''.

(d) OTHER FEES.—

(1) IN GENERAL.—Section 4(i)(6) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a–1(i)(6)) is amended—

(A) by striking ''During'' and inserting ''Except as provided in section 33, during''; and

(B) by striking ''2003'' and inserting ''2010''.

(2) TOLERANCE FEES.—Notwithstanding section 408(m)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(m)(1)), during the period beginning on October 1, 2003, and ending on September 30, 2008, the Administrator of the Environmental Protection Agency shall not collect any tolerance fees under that section.

(e) EXPEDITED PROCESSING OF SIMILAR APPLICATIONS.—Section 4(k)(3) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a–1(k)(3)) is amended—

(1) in the paragraph heading, by striking ''EXPEDITED'' and inserting ''REVIEW OF INERT INGREDIENTS; EXPEDITED''; and

(2) in subparagraph (A)—

(A) by striking ''1997'' and all that follows through ''of the maintenance fees'' and inserting ''2004 through 2006, approximately $3,300,000, and for each of fiscal years 2007 and 2008, between ⅛ and ½, of the maintenance fees'';

(B) by redesignating clauses (i), (ii), and (iii) as subclauses (I), (II) and (III), respectively, and indenting appropriately; and

(C) by striking ''resources to assure the expedited processing and review of any application that'' and inserting ''resources—

''(i) to review and evaluate new inert ingredients; and

''(ii) to ensure the expedited processing and review of any application that—''.

(f) PESTICIDE REGISTRATION SERVICE FEES.—The Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a et seq.) is amended—

(1) by redesignating sections 33 and 34 (7 U.S.C. 136x, 136y) as sections 34 and 35, respectively; and

(2) by inserting after section 32 (7 U.S.C. 136w–7) the following:

"SEC. 33. PESTICIDE REGISTRATION SERVICE FEES.

''(a) DEFINITION OF COSTS.—In this section, the term 'costs', when used with respect to review and decisionmaking pertaining to an application for which registration service fees are paid under this section, means—

''(1) costs to the extent that—

''(A) officers and employees provide direct support for the review and decisionmaking for covered pesticide applications, associated tolerances, and corresponding risk and benefits information and analyses;

''(B) persons and organizations under contract with the Administrator engage in the review of the applications, and corresponding risk and benefits information and assessments; and

''(C) advisory committees and other accredited persons or organizations, on the request of the Administrator, engage in the peer review of risk or benefits information associated with covered pesticide applications;

''(2) costs of management of information, and the acquisition, maintenance, and repair of computer and telecommunication resources (including software), used to support review of pesticide applications, associated tolerances, and corresponding risk and benefits information and analyses; and

''(3) costs of collecting registration service fees under subsections (b) and (c) and reporting, auditing, and accounting under this section.

''(b) FEES.—

''(1) IN GENERAL.—Effective beginning on the effective date of the Pesticide Registration Improvement Act of 2003, the Administrator shall assess and collect covered pesticide registration service fees in accordance with this section.

''(2) COVERED PESTICIDE REGISTRATION APPLICATIONS.—

''(A) IN GENERAL.—An application for the registration of a pesticide covered by this Act that is received by the Administrator on or after the effective date of the Pesticide Registration Improvement Act of 2003 shall be subject to a registration service fee under this section.

''(B) EXISTING APPLICATIONS.—

''(i) IN GENERAL.—Subject to clause (ii), an application for the registration of a pesticide that was submitted to the Administrator before the effective date of the Pesticide Registration Improvement Act of 2003 and is pending on that effective date shall be subject to a service fee under this section if the application is for the registration of a new active ingredient that is not listed in the Registration Division 2003 Work Plan of the Office of Pesticide Programs of the Environmental Protection Agency.

''(ii) TOLERANCE OR EXEMPTION FEES.—The amount of any fee otherwise payable for an application described in clause (i) under this section shall be reduced by the amount of any fees paid to support the related petition for a pesticide tolerance or exemption under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.).

''(C) DOCUMENTATION.—An application subject to a registration service fee under this section shall be submitted with documentation certifying—

''(i) payment of the registration service fee; or

''(ii) a request for a waiver from or reduction of the registration service fee.

''(3) SCHEDULE OF COVERED APPLICATIONS AND REGISTRATION SERVICE FEES.—

''(A) IN GENERAL.—Not later than 30 days after the effective date of the Pesticide Registration Improvement Act of 2003, the Administrator shall publish in the Federal Register a schedule of covered pesticide registration applications and corresponding registration service fees.

''(B) REPORT.—Subject to paragraph (6), the schedule shall be the same as the applicable schedule appearing in the Congressional Record on pages S11631 through S11633, dated September 17, 2003.

''(4) PENDING PESTICIDE REGISTRATION APPLICATIONS.—

''(A) IN GENERAL.—An applicant that submitted a registration application to the Administrator before the effective date of the Pesticide Registration Improvement Act of 2003, but that is not required to pay a registration service fee under paragraph (2)(B), may, on a voluntary basis, pay a registration service fee in accordance with paragraph (2)(B).

''(B) VOLUNTARY FEE.—The Administrator may not compel payment of a registration service fee for an application described in subparagraph (A).

''(C) DOCUMENTATION.—An application for which a voluntary registration service fee is paid under this paragraph shall be submitted with documentation certifying—

''(i) payment of the registration service fee; or

''(ii) a request for a waiver from or reduction of the registration service fee.

''(5) RESUBMISSION OF PESTICIDE REGISTRATION APPLICATIONS.—If a pesticide registration application is submitted by a person that paid the fee for the application under paragraph (2), is determined by the Administrator to be complete, and is not approved or is withdrawn (without a waiver or refund), the submission of the same pesticide registration application by the same person (or a licensee, assignee, or successor of the person) shall not be subject to a fee under paragraph (2).

''(6) FEE ADJUSTMENT.—Effective for a covered pesticide registration application received on or after October 1, 2005, the Administrator shall—

''(A) increase by 5 percent the service fee payable for the application under paragraph (3); and

''(B) publish in the Federal Register the revised registration service fee schedule.

''(7) WAIVERS AND REDUCTIONS.—

''(A) IN GENERAL.—An applicant for a covered pesticide registration may request the Administrator to waive or reduce the amount of a registration service fee payable under this section under the circumstances described in subparagraphs (D) through (G).

''(B) DOCUMENTATION.—

''(i) IN GENERAL.—A request for a waiver from or reduction of the registration service fee shall be accompanied by appropriate documentation demonstrating the basis for the waiver or reduction.

''(ii) CERTIFICATION.—The applicant shall provide to the Administrator a written certification, signed by a responsible officer, that the documentation submitted to support the waiver or reduction request is accurate.

''(iii) INACCURATE DOCUMENTATION.—An application shall be subject to the applicable registration service fee payable under paragraph (3) if, at any time, the Administrator determines that—

''(I) the documentation supporting the waiver or reduction request is not accurate; or

''(II) based on the documentation or any other information, the waiver or reduction should not have been granted or should not be granted.

''(C) DETERMINATION TO GRANT OR DENY REQUEST.—As soon as practicable, but not later than 60 days, after the date on which the Administrator receives a request for a waiver or reduction of a registration service fee under this paragraph, the Administrator shall—

''(i) determine whether to grant or deny the request; and

''(ii) notify the applicant of the determination.

''(D) MINOR USES.—

''(i) IN GENERAL.—The Administrator may waive or reduce a registration service fee for an application for minor uses for a pesticide.

''(ii) SUPPORTING DOCUMENTATION.—An applicant requesting a waiver under this subparagraph shall provide supporting documentation that demonstrates, to the satisfaction of the Administrator, that anticipated revenues from the uses that are the subject of the application would be insufficient to justify imposition of the full application fee.

''(E) IR–4 WAIVER.—The Administrator shall waive the registration service fee for an application if the Administrator determines that—

''(i) the application is solely associated with a tolerance petition submitted in connection with the Inter-Regional Project Number 4 (IR–4) as described in section 2 of Public Law 89–106 (7 U.S.C. 450i(e)); and

''(ii) the waiver is in the public interest.

''(F) SMALL BUSINESSES.—

''(i) IN GENERAL.—The Administrator shall waive 50 percent of the registration service fees payable by an entity for a covered pesticide registration application under this section if the entity is a small business (as defined in section 4(i)(5)(E)(ii)) at the time of application.

''(ii) WAIVER OF FEES.—The Administrator shall waive all of the registration service fees payable by an entity under this section if the entity—

''(I) is a small business (as defined in section 4(i)(5)(E)(ii)) at the time of application; and

''(II) has average annual global gross revenues described in section 4(i)(5)(E)(ii)(I)(bb) that does not exceed $10,000,000, at the time of application.

''(iii) FORMATION FOR WAIVER.—The Administrator shall not grant a waiver under this subparagraph if the Administrator determines that the entity submitting the application has been formed or manipulated primarily for the purpose of qualifying for the waiver.

''(iv) DOCUMENTATION.—An entity requesting a waiver under this subparagraph shall provide to the Administrator—

''(I) documentation demonstrating that the entity is a small business (as defined in section 4(i)(5)(E)(ii)) at the time of application; and

''(II) if the entity is requesting a waiver of all registration service fees payable under this section, documentation demonstrating that the entity has an average annual global gross revenues described in section 4(i)(5)(E)(ii)(I)(bb) that does not exceed $10,000,000, at the time of application.

''(G) FEDERAL AND STATE AGENCY EXEMPTIONS.—An agency of the Federal Government or a State government shall be exempt from covered registration service fees under this section.

''(8) REFUNDS.—

''(A) EARLY WITHDRAWALS.—If, during the first 60 days after the beginning of the applicable decision time review period under subsection (f)(3), a covered pesticide registration application is withdrawn by the applicant, the Administrator shall refund all but 10 percent of the total registration service fee payable under paragraph (3) for the application.

''(B) WITHDRAWALS AFTER THE FIRST 60 DAYS OF DECISION REVIEW TIME PERIOD.—

''(i) IN GENERAL.—If a covered pesticide registration application is withdrawn after the first 60 days of the applicable decision time review period, the Administrator shall determine what portion, if any, of the total registration service fee payable under paragraph (3) for the application may be refunded based on the proportion of the work completed at the time of withdrawal.

''(ii) TIMING.—The Administrator shall—

''(I) make the determination described in clause (i) not later than 90 days after the date the application is withdrawn; and

''(II) provide any refund as soon as practicable after the determination.

''(C) DISCRETIONARY REFUNDS.—

''(i) IN GENERAL.—In the case of a pesticide registration application that has been filed with the Administrator and has not been withdrawn by the applicant, but for which the Administrator has not yet made a final determination, the Administrator may refund a portion of a covered registration service fee if the Administrator determines that the refund is justified.

''(ii) BASIS.—The Administrator may provide a refund for an application under this subparagraph—

''(I) on the basis that, in reviewing the application, the Administrator has considered data submitted in support of another pesticide registration application; or

''(II) on the basis that the Administrator completed portions of the review of the application before the effective date of this section.

''(D) CREDITED FEES.—In determining whether to grant a refund under this paragraph, the Administrator shall take into account any portion of the registration service fees credited under paragraph (2) or (4).

''(c) PESTICIDE REGISTRATION FUND.—

''(1) ESTABLISHMENT.—There is established in the Treasury of the United States a Pesticide Registration Fund to be used in carrying out this section (referred to in this section as the 'Fund'), consisting of—

''(A) such amounts as are deposited in the Fund under paragraph (2);

''(B) any interest earned on investment of amounts in the Fund under paragraph (4); and

''(C) any proceeds from the sale or redemption of investments held in the Fund.

''(2) DEPOSITS IN FUND.—Subject to paragraph (4), the Administrator shall deposit fees collected under this section in the Fund.

''(3) EXPENDITURES FROM FUND.—

''(A) IN GENERAL.—Subject to subparagraphs (B) and (C) and paragraph (4), the Administrator may make expenditures from the Fund—

''(i) to cover the costs associated with the review and decisionmaking pertaining to all applications for which registration service fees have been paid under this section; and

''(ii) to otherwise carry out this section.

''(B) WORKER PROTECTION.—For each of fiscal years 2004 through 2008, the Administrator shall use approximately 1/17 of the amount in the Fund (but not more than $1,000,000, and not less than $750,000, for any fiscal year) to enhance current scientific and regulatory activities related to worker protection.

''(C) NEW INERT INGREDIENTS.—For each of fiscal years 2004 and 2005, the Administrator shall use approximately 1/34 of the amount in the Fund (but not to exceed $500,000 for any fiscal year) for the review and evaluation of new inert ingredients.

''(4) COLLECTIONS AND APPROPRIATIONS ACTS.—The fees authorized by this section and amounts deposited in the Fund—

''(A) shall be collected and made available for obligation only to the extent provided in advance in appropriations Acts; and

''(B) shall be available without fiscal year limitation.

''(5) UNUSED FUNDS.—Amounts in the Fund not currently needed to carry out this section shall be—

''(A) maintained readily available or on deposit;

''(B) invested in obligations of the United States or guaranteed by the United States; or

''(C) invested in obligations, participations, or other instruments that are lawful investments for fiduciary, trust, or public funds.

''(d) ASSESSMENT OF FEES.—

''(1) DEFINITION OF COVERED FUNCTIONS.—In this subsection, the term 'covered functions' means functions of the Office of Pesticide Programs of the Environmental Protection Agency, as identified in key programs and projects of the final operating plan for the Environmental Protection Agency submitted as part of the budget process for fiscal year 2002, regardless of any subsequent transfer of 1 or more of the functions to another office or agency or the subsequent transfer of a new function to the Office of Pesticide Programs.

''(2) MINIMUM AMOUNT OF APPROPRIATIONS.—Registration service fees may not be assessed for a fiscal year under this section unless the amount of appropriations for salaries, contracts, and expenses for the functions (as in existence in fiscal year 2002) of the Office of Pesticide Programs of the Environmental Protection Agency for the fiscal year (excluding the amount of any fees appropriated for the fiscal year) are equal to or greater than the amount of appropriations for covered functions for fiscal year 2002 (excluding the amount of any fees appropriated for the fiscal year).

''(3) USE OF FEES.—Registration service fees authorized by this section shall be available, in the aggregate, only to defray increases in the costs associated with the review and decisionmaking for the review of pesticide registration applications and associated tolerances (including increases in the number of full-time equivalent positions in the Environmental Protection Agency engaged in those activities) over the costs for fiscal year 2002, excluding costs paid from fees appropriated for the fiscal year.

''(4) COMPLIANCE.—The requirements of paragraph (2) shall have been considered to have been met for any fiscal year if the amount of appropriations for salaries, contracts, and expenses for the functions (as in existence in fiscal year 2002) of the Office of Pesticide Programs of the Environmental Protection Agency for the fiscal year (excluding the amount of any fees appropriated for the fiscal year) is not more than 3 percent below the amount of appropriations for covered functions for fiscal year 2002 (excluding the amount of any fees appropriated for the fiscal year).

''(5) SUBSEQUENT AUTHORITY.—If the Administrator does not assess registration service fees under subsection (b) during any portion of a fiscal year as the result of paragraph (2) and is subsequently permitted to assess the fees under subsection (b) during the fiscal year, the Administrator shall assess and collect the fees, without any modification in rate, at any time during the fiscal year, notwithstanding any provisions of subsection (b) relating to the date fees are to be paid.

''(e) REFORMS TO REDUCE DECISION TIME REVIEW PERIODS.—To the maximum extent practicable consistent with the degrees of risk presented by pesticides and the type of review appropriate to evaluate risks, the Administrator shall identify and evaluate reforms to the pesticide registration process under this Act with the goal of reducing decision review periods in effect on the effective date of the Pesticide Registration Improvement Act of 2003 for pesticide registration actions for covered pesticide registration applications (including reduced risk applications).

''(f) DECISION TIME REVIEW PERIODS.—

''(1) IN GENERAL.—Not later than 30 days after the effective date of the Pesticide Registration Improvement Act of 2003, the Administrator shall publish in the Federal Register a schedule of decision review periods for covered pesticide registration actions and corresponding registration service fees under this Act.

''(2) REPORT.—The schedule shall be the same as the applicable schedule appearing in the Congressional Record on pages S11631 through S11633, dated September 17, 2003.

''(3) APPLICATIONS SUBJECT TO DECISION TIME REVIEW PERIODS.—The decision time review periods specified in paragraph (1) shall apply to—

''(A) covered pesticide registration applications subject to registration service fees under subsection (b)(2);

''(B) covered pesticide registration applications for which an applicant has voluntarily paid registration service fees under subsection (b)(4); and

''(C) covered pesticide registration applications listed in the Registration Division 2003 Work Plan of the Office of Pesticide Programs of the Environmental Protection Agency.

''(4) START OF DECISION TIME REVIEW PERIOD.—

''(A) IN GENERAL.—Except as provided in subparagraphs (C), (D), and (E), in the case of a pesticide registration application accompanied by the registration service fee required under this section, the decision time review period begins 21 days after the date on which the Administrator receives the covered pesticide registration application.

''(B) COMPLETENESS OF APPLICATION.—In conducting an initial screening of an application, the Administrator shall determine—

''(i) whether—

''(I) the applicable registration service fee has been paid; or

''(II) the application contains a waiver or refund request; and

''(ii) whether the application—

''(I) contains all necessary forms, data, draft labeling, and, documentation certifying payment of any registration service fee required under this section; or

''(II) establishes a basis for any requested waiver or reduction.

''(C) APPLICATIONS WITH WAIVER OR REDUCTION REQUESTS.—

''(i) IN GENERAL.—In the case of an application submitted with a request for a waiver or reduction of registration service fees under subsection (b)(7), the decision time review period shall be determined in accordance with this subparagraph.

''(ii) REQUEST GRANTED WITH NO ADDITIONAL FEES REQUIRED.—If the Administrator grants the waiver or reduction request and no additional fee is required, the decision time review period begins on the earlier of—

''(I) the date on which the Administrator grants the request; or

''(II) the date that is 60 days after the date of receipt of the application.

''(iii) REQUEST GRANTED WITH ADDITIONAL FEES REQUIRED.—If the Administrator grants the waiver or reduction request, in whole or in part, but an additional registration service fee is required, the decision time review

period begins on the date on which the Administrator receives certification of payment of the applicable registration service fee.

''(iv) REQUEST DENIED.—If the Administrator denies the waiver or reduction request, the decision time review period begins on the date on which the Administrator receives certification of payment of the applicable registration service fee.

''(D) PENDING APPLICATIONS.—

''(i) IN GENERAL.—The start of the decision time review period for applications described in clause (ii) shall be the date on which the Administrator receives certification of payment of the applicable registration service fee.

''(ii) APPLICATIONS.—Clause (i) applies to—

''(I) covered pesticide registration applications for which voluntary fees have been paid under subsection (b)(4); and

''(II) covered pesticide registration applications received on or after the effective date of the Pesticide Registration Improvement Act of 2003 but submitted without the applicable registration service fee required under this section due to the inability of the Administrator to assess fees under subsection (d)(1).

''(E) 2003 WORK PLAN.—In the case of a covered pesticide registration application listed in the Registration Division 2003 Work Plan of the Office of Pesticide Programs of the Environmental Protection Agency, the decision time review period begins on the date that is 30 days after the effective date of the Pesticide Registration Improvement Act of 2003.

''(5) EXTENSION OF DECISION TIME REVIEW PERIOD.—The Administrator and the applicant may mutually agree in writing to extend a decision time review period under this subsection.

''(g) JUDICIAL REVIEW.—

''(1) IN GENERAL.—Any applicant adversely affected by the failure of the Administrator to make a determination on the application of the applicant for registration of a new active ingredient or new use for which a registration service fee is paid under this section may obtain judicial review of the failure solely under this section.

''(2) SCOPE.—

''(A) IN GENERAL.—In an action brought under this subsection, the only issue on review is whether the Administrator failed to make a determination on the application specified in paragraph (1) by the end of the applicable decision time review period required under subsection (f) for the application.

''(B) OTHER ACTIONS.—No other action authorized or required under this section shall be judicially reviewable by a Federal or State court.

''(3) TIMING.—

''(A) IN GENERAL.—A person may not obtain judicial review of the failure of the Administrator to make a determination on the application specified in paragraph (1) before the expiration of the 2-year period that begins on the date on which the decision time review period for the application ends.

''(B) MEETING WITH ADMINISTRATOR.—To be eligible to seek judicial review under this subsection, a person seeking the review shall first request in writing, at least 120 days before filing the complaint for judicial review, a decision review meeting with the Administrator.

''(4) REMEDIES.—The Administrator may not be required or permitted to refund any portion of a registration service fee paid in response to a complaint that the Administrator has failed to make a determination on the covered pesticide registration application specified in paragraph (1) by the end of the applicable decision review period.

''(h) ACCOUNTING.—The Administrator shall—

''(1) provide an annual accounting of the registration service fees paid to the Administrator and disbursed from the Fund, by providing financial statements in accordance with—

''(A) the Chief Financial Officers Act of 1990 (Public Law 101–576; 104 Stat. 2838) and amendments made by that Act; and

''(B) the Government Management Reform Act of 1994 (Public Law 103–356; 108 Stat. 3410) and amendments made by that Act;

''(2) provide an accounting describing expenditures from the Fund authorized under subsection (c); and

''(3) provide an annual accounting describing collections and expenditures authorized under subsection (d).

''(i) AUDITING.—

''(1) FINANCIAL STATEMENTS OF AGENCIES.—For the purpose of section 3515(c) of title 31, United States Code, the Fund shall be considered a component of an executive agency.

''(2) COMPONENTS.—The annual audit required under sections 3515(b) and 3521 of that title of the financial statements of activities under this section shall include an analysis of—

''(A) the fees collected under subsection (b) and disbursed;

''(B) compliance with subsection (f);

''(C) the amount appropriated to meet the requirements of subsection (d)(1); and

''(D) the reasonableness of the allocation of the overhead allocation of costs associated with the review and decisionmaking pertaining to applications under this section.

''(3) INSPECTOR GENERAL.—The Inspector General of the Environmental Protection Agency shall—

''(A) conduct the annual audit required under this subsection; and

''(B) report the findings and recommendations of the audit to the Administrator and to the appropriate committees of Congress.

''(j) PERSONNEL LEVELS.—All full-time equivalent positions supported by fees authorized and collected under this section shall not be counted against the agency-wide personnel level goals of the Environmental Protection Agency.

''(k) REPORTS.—

''(1) IN GENERAL.—Not later than March 1, 2005, and each March 1 thereafter through March 1, 2009, the Administrator shall publish an annual report describing actions taken under this section.

''(2) CONTENTS.—The report shall include—

''(A) a review of the progress made in carrying out each requirement of subsections (e) and (f), including—

''(i) the number of applications reviewed, including the decision times for each application specified in subsection (f);

''(ii) the number of actions pending in each category of actions described in subsection (f)(3), as well as the number of inert ingredients;

''(iii) to the extent determined appropriate by the Administrator and consistent with the authorities of the Administrator and limitations on delegation of functions by the Administrator, recommendations for—

''(I) expanding the use of self-certification in all appropriate areas of the registration process;

''(II) providing for accreditation of outside reviewers and the use of outside reviewers to conduct the review of major portions of applications; and

''(III) reviewing the scope of use of the notification process to cover broader categories of registration actions; and

''(iv) the use of performance-based contracts, other contracts, and procurement to ensure that—

''(I) the goals of this Act for the timely review of applications for registration are met; and

''(II) the registration program is administered in the most productive and cost effective manner practicable;

''(B) a description of the staffing and resources relating to the costs associated with the review and decisionmaking pertaining to applications; and

''(C) a review of the progress in meeting the timeline requirements of section 4(g).

''(3) METHOD.—The Administrator shall publish a report required by this subsection by such method as the Administrator determines to be the most effective for efficiently disseminating the report, including publication of the report on the Internet site of the Environmental Protection Agency.

''(l) SAVINGS CLAUSE.—Nothing in this section affects any other duties, obligations, or authorities established by any other section of this Act, including the right to judicial review of duties, obligations, or authorities established by any other section of this Act.

''(m) TERMINATION OF EFFECTIVENESS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), the authority provided by this section terminates on September 30, 2008.

''(2) PHASE OUT.—

''(A) FISCAL YEAR 2009.—During fiscal year 2009, the requirement to pay and collect registration service fees applies, except that the level of registration service fees payable under this section shall be reduced 40 percent below the level in effect on September 30, 2008.

''(B) FISCAL YEAR 2010.—During fiscal year 2010, the requirement to pay and collect registration service fees applies, except that the level of registration service fees payable under this section shall be reduced 70 percent below the level in effect on September 30, 2008.

''(C) SEPTEMBER 30, 2010.—Effective September 30, 2010, the requirement to pay and collect registration service fees terminates.

''(D) DECISION REVIEW PERIODS.—

''(i) PENDING APPLICATIONS.—In the case of an application received under this section before September 30, 2008, the application shall be reviewed in accordance with subsection (f).

''(ii) NEW APPLICATIONS.—In the case of an application received under this section on or after September 30, 2008, subsection (f) shall not apply to the application.''.

(g) CONFORMING AMENDMENTS.—The table of contents in section 1(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. prec. 136) is amended—

(1) by striking the item relating to section 4(k)(3) and inserting the following:

''(3) Review of inert ingredients; expedited processing of similar applications.'';

and

(2) by striking the items relating to sections 30 and 31 and inserting the following:

''Sec. 30. Minimum requirements for training of maintenance applicators and service technicians.

''Sec. 31. Environmental Protection Agency minor use program.

''Sec. 32. Department of Agriculture minor use program.

''(a) In general.

''(b)(1) Minor use pesticide data.

''(2) Minor Use Pesticide Data Revolving Fund.

''Sec. 33. Pesticide registration service fees.

''(a) Definition of costs.

''(b) Fees.

''(1) In general.

''(2) Covered pesticide registration applications.

''(3) Schedule of covered applications and registration service fees.

''(4) Pending pesticide registration applications.
''(5) Resubmission of pesticide registration applications.
''(6) Fee adjustment.
''(7) Waivers and reductions.
''(8) Refunds.
''(c) Pesticide Registration Fund.
''(1) Establishment.
''(2) Transfers to Fund.
''(3) Expenditures from Fund.
''(4) Collections and appropriations Acts.
''(5) Unused funds.
''(d) Assessment of fees.
''(1) Definition of covered functions.
''(2) Minimum amount of appropriations.
''(3) Use of fees.
''(4) Compliance.
''(5) Subsequent authority.
''(e) Reforms to reduce decision time review periods.
''(f) Decision time review periods.
''(1) In general.
''(2) Report.
''(3) Applications subject to decision time review periods.
''(4) Start of decision time review period.
''(5) Extension of decision time review period.
''(g) Judicial review.
''(1) In general.
''(2) Scope.
''(3) Timing.
''(4) Remedies.
''(h) Accounting.
''(i) Auditing.
''(1) Financial statements of agencies.
''(2) Components.
''(3) Inspector General.
''(j) Personnel levels.
''(k) Reports.
''(1) In general.
''(2) Contents.
''(l) Savings clause.
''(m) Termination of effectiveness.
''(1) In general.
''(2) Phase out.
''Sec. 34. Severability.
''Sec. 35. Authorization for appropriations.''.

(h) EFFECTIVE DATE.—Except as otherwise provided in this section and the amendments made by this section, this section and the amendments made by this section take effect on the date that is 60 days after the date of enactment of this Act.

SA 2159. Mr. DORGAN proposed an amendment to amendment SA 2158 proposed by Mr. CRAIG (for himself, Mr. HARKIN, Mr. COCHRAN, Mr. CONRAD, Mr. CHAMBLISS, Mr. COLEMAN, Mr. CRAPO, Mr. LUGAR, Mr. BREAUX, Mr. ROBERTS, Mr. FITZGERALD, and Mr. PRYOR) to the amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

At the appropriate place, insert the following:

(____) REGISTRATION OF CANADIAN PESTICIDES.—

(1) IN GENERAL.—Section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136a) is amended by adding at the end the following:

''(i) REGISTRATION OF CANADIAN PESTICIDES.—

''(1) DEFINITIONS.—In this subsection:

''(A) CANADIAN PESTICIDE.—The term 'Canadian pesticide' means a pesticide that—

''(i) is registered for use as a pesticide in Canada;

''(ii) is identical or substantially similar in its composition to a comparable domestic pesticide registered under this section; and

''(iii) is registered in Canada by the registrant of the comparable domestic pesticide or by an affiliated entity of the registrant.

''(B) COMPARABLE DOMESTIC PESTICIDE.—The term 'comparable domestic pesticide' means a pesticide—

''(i) that is registered under this section;

''(ii) the registration of which is not under suspension;

''(iii) that is not subject to—

''(I) a notice of intent to cancel or suspend under any provision of this Act;

''(II) a notice for voluntary cancellation under section 6(f); or

''(III) an enforcement action under any provision of this Act;

''(iv) that is used as the basis for comparison for the determinations required under paragraph (4);

''(v) that is registered for use on each site of application for which registration is sought under this subsection;

''(vi) for which no use is the subject of a pending interim administrative review under subsection (c)(8);

''(vii) that is not subject to any limitation on production or sale agreed to by the Administrator and the registrant or imposed by the Administrator for risk mitigation purposes; and

''(viii) that is not classified as a restricted use pesticide under subsection (d).

''(2) AUTHORITY TO REGISTER CANADIAN PESTICIDES.—

''(A) IN GENERAL.—The Administrator may register a Canadian pesticide if the registration—

''(i) complies with this subsection;

''(ii) is consistent with this Act; and

''(iii) has not previously been disapproved by the Administrator.

''(B) PRODUCTION OF ANOTHER PESTICIDE.—A pesticide registered under this subsection shall not be used to produce a pesticide registered under this section or section 24(c).

''(C) REGISTRANT.—

''(i) IN GENERAL.—The Administrator may register a Canadian pesticide under this subsection on the application of any person.

''(ii) APPLICATION.—If the Administrator registers a Canadian pesticide under this subsection on application of any person, the applicant shall be considered to be the registrant of the Canadian pesticide for all purposes of this Act.

''(D) ADMINISTRATOR.—Not later than 60 days after a person submits a complete application for the registration of a Canadian pesticide under this subsection, the Administrator shall—

''(i) approve the application; or

''(ii)(I) disapprove the application; and

''(II) provide the applicant with a statement of the reasons for the disapproval.

''(E) DELEGATION.—

''(i) IN GENERAL.—Subject to clause (ii), the Administrator may delegate a function of the Administrator under this subsection.

''(ii) APPROVAL.—The Administrator shall approve or disapprove any final action taken under this subsection as the result of a function delegated to a State.

''(3) APPLICANT REQUIREMENTS.—A person seeking registration of a Canadian pesticide under this subsection shall—

''(A) demonstrate to the Administrator that the Canadian pesticide is identical or substantially similar in its composition to a comparable domestic pesticide; and

''(B) submit to the Administrator a copy of—

''(i) the label approved by the Pesticide Management Regulatory Agency for the Canadian pesticide; and

''(ii) the label approved by the Administrator for the comparable domestic pesticide.

''(4) CRITERIA FOR REGISTRATION.—The Administrator may register a Canadian pesticide under this subsection if the Administrator—

''(A) obtains the confidential statement of formula for the Canadian pesticide;

''(B) determines that the Canadian pesticide is identical or substantially similar in composition to a comparable domestic pesticide;

''(C) for each food or feed use authorized by the registration—

''(i) determines that there exists an adequate tolerance or exemption under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 et seq.) that permits the residues of the pesticide on the food or feed; and

''(ii) identifies the tolerances or exemptions in the notification submitted under subparagraph (E);

''(D) obtains a label approved by the Administrator that—

''(i) includes all statements, other than the establishment number, from the approved labeling of the comparable domestic pesticide that are relevant to the uses registered by the Administrator; and

''(ii) excludes all labeling statements relating to uses that are not registered by the Administrator; and

''(E) not later than 10 business days after the issuance of the registration, publish in the Federal Register a written notification of the action of the Administrator that includes—

''(i) a description of the determination made under this paragraph; and

''(ii) a statement of the effective date of the registration;

''(5) LABELING OF CANADIAN PESTICIDES.—

''(A) IN GENERAL.—Each container containing a Canadian pesticide registered by the Administrator shall bear the label that is approved by the Administrator under this subsection.

''(B) DISPLAY OF LABEL.—The label shall be securely attached to the container and shall be the only label visible on the container.

''(C) ORIGINAL CANADIAN LABEL.—The original Canadian label on the container shall be preserved underneath the label approved by the Administrator.

''(D) PREPARATION AND USE OF LABELS.—After a Canadian pesticide is registered under this subsection, the registrant shall—

''(i) prepare labels approved by the Administrator for the Canadian pesticide; and

''(ii) conduct or supervise all labeling of the Canadian pesticide with the approved labeling.

''(E) REGISTERED ESTABLISHMENTS.—Labeling of a Canadian pesticide under this subsection shall be conducted at an establishment registered by the registrant under section 7.

''(6) REVOCATION.—

''(A) IN GENERAL.—After the registration of a Canadian pesticide, if the Administrator finds that the Canadian pesticide is not identical or substantially similar in composition to a comparable domestic pesticide, the Administrator may issue an emergency order revoking the registration of the Canadian pesticide.

''(B) TERMS OF ORDER.—The order—

''(i) shall be effective immediately;

''(ii) may prohibit the sale, distribution, and use of the Canadian pesticide in a State; and

''(iii) may require the registrant of the Canadian pesticide to purchase and dispose of any unopened product subject to the order.

''(C) REQUEST FOR HEARING.—Not later than 10 days after issuance of the order, the registrant of the Canadian pesticide subject to the order may request a hearing on the order.

''(D) FINAL ORDER.—If a hearing is not requested in accordance with subparagraph (C), the order shall become final and shall not be subject to judicial review.

''(E) JUDICIAL REVIEW.—If a hearing is requested on the order, judicial review may be sought only at the conclusion of the hearing on the order and following the issuance by the Administrator of a final revocation order.

''(F) PROCEDURE.—A final revocation order issued following a hearing shall be reviewable in accordance with section 16.

''(7) LIMITS ON LIABILITY.—No action for monetary damages may be heard in any Federal or State court against—

''(A) the Administrator acting as a registering agency under the authority of and consistent with this subsection for injury or damage resulting from the use of a product registered by the Administrator under this subsection; or

''(B) a registrant for damages resulting from adulteration or compositional alteration of a Canadian pesticide registered under this subsection if the registrant did not have and could not reasonably have obtained knowledge of the adulteration or compositional alteration.

''(8) PROVISION OF INFORMATION BY REGISTRANTS OF COMPARABLE DOMESTIC PESTICIDES.—

''(A) IN GENERAL.—On request by the Administrator the registrant of a comparable domestic pesticide shall provide to the Administrator that is seeking to register a Canadian pesticide under this subsection information that is necessary for the Administrator to make the determinations required by paragraph (4).

''(B) PENALTY FOR NONCOMPLIANCE.—

''(i) IN GENERAL.—If the registrant of a comparable domestic pesticide fails to provide to the Administrator, not later than 15 days after receipt of a written request by the Administrator, information possessed by or reasonably accessible to the registrant that is necessary to make the determinations required by paragraph (4), the Administrator may assess a penalty against the registrant of the comparable pesticide.

''(ii) AMOUNT.—The amount of the penalty shall be equal to the product obtained by multiplying—

''(I) the difference between the per-acre cost of the application of the comparable domestic pesticide and the application of the Canadian pesticide, as determined by the Administrator; and

''(II) the number of acres in the United States devoted to the commodity for which the registration is sought.

''(C) NOTICE AND OPPORTUNITY FOR HEARING.—No penalty under this paragraph shall be assessed unless the registrant is given notice and opportunity for a hearing in accordance with section 14(a)(3).

''(D) ISSUES AT HEARING.—The only issues for resolution at the hearing shall be—

''(i) whether the registrant of the comparable domestic pesticide failed to timely provide to the Administrator the information possessed by or reasonably accessible to the registrant that was necessary to make the determinations required by paragraph (4); and

''(ii) the amount of the penalty.

''(9) PENALTY FOR DISCLOSURE.—

''(A) IN GENERAL.—The Administrator shall not make public information obtained under paragraph (8) that is privileged and confidential and contains or relates to trade secrets or commercial or financial information.

''(B) DISCLOSURE.—Any employee of the Environmental Protection Agency who willfully discloses information described in subparagraph (A) shall be subject to penalties described in section 10(f).

''(10) DATA COMPENSATION.—The Administrator and a person registering a Canadian pesticide under this subsection shall not be liable for compensation for data supporting the registration if the registration of the Canadian pesticide in Canada and the registration of the comparable domestic pesticide are held by the same registrant or by affiliated entities.

''(11) FORMULATION CHANGES.—

''(A) IN GENERAL.—The registrant of a comparable domestic pesticide shall notify the Administrator of any change in the formulation of a comparable domestic pesticide or a Canadian pesticide registered by the registrant or an affiliated entity not later than 30 days before any sale or distribution of the pesticide containing the new formulation.

''(B) STATEMENT OF FORMULA.—The registrant of the comparable domestic pesticide shall submit, with the notice required under subparagraph (A), a confidential statement of the formula for the new formulation if the registrant has possession of or reasonable access to the information.

''(C) SUSPENSION OF REGISTRATION FOR NONCOMPLIANCE.—

''(i) IN GENERAL.—If the registrant fails to provide notice or submit a confidential statement of formula as required by this paragraph, the Administrator may issue a notice of intent to suspend the registration of the comparable domestic pesticide for a period of not less than 1 year.

''(ii) EFFECTIVE DATE.—The suspension shall become final not later than the end of the 30-day period beginning on the date of the issuance by the Administrator of the notice of intent to suspend the registration, unless during the period the registrant requests a hearing.

''(iii) HEARING PROCEDURE.—If a hearing is requested, the hearing shall be conducted in accordance with section 6(d).

''(iv) ISSUES.—The only issues for resolution at the hearing shall be whether the registrant has failed to provide notice or submit a confidential statement of formula as required by this paragraph.''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table of contents in section 1(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. prec. 121) is amended by adding at the end of the items relating to section 3 the following:

''(4) Mixtures of nitrogen stabilizers and fertilizer products.
''(g) Registration review.
''(h) Registration requirements for antimicrobial pesticides.
''(1) Evaluation of process.
''(2) Review time period reduction goal.
''(3) Implementation.
''(4) Annual report.
''(i) Registration of Canadian pesticides.
''(1) Definitions.
''(2) Authority to register Canadian pesticides.
''(3) Applicant requirements.
''(4) Criteria for registration.
''(5) Labeling of Canadian pesticides.
''(6) Revocation.
''(7) Limits on liability.
''(8) Provision of information by registrants of comparable domestic pesticides.
''(9) Penalty for disclosure.
''(10) Data compensation.
''(11) Formulation changes.''.

(3) EFFECTIVE DATE.—This subsection and the amendments made by this subsection take effect on the date that is 180 days after the date of enactment of this Act.

SA 2160. Mr. DEWINE (for himself and Mr. VOINOVICH) submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 113, after line 22, add the following:

The aggregate amount appropriated by this title under the heading ''NATIONAL AERONAUTICS AND SPACE ADMINISTRATION'' is hereby increased by $29,000,000, with the amount of the increase to be available for commercial technology transfer programs. The amount available under the preceding sentence for commercial technology transfer programs is in addition to any other amounts available under this Act for such programs.

The amount appropriated by this title under the heading ''SCIENCE, AERONAUTICS, AND EXPLORATION'' is hereby reduced by $29,000,000, with the amount of the reduction to be allocated to the Beyond Einstein Initiative.

SA 2161. Mr. DEWINE (for himself and Mr. VOINOVICH) submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 111, line 6, insert before the period the following: '': *Provided*, That of the amounts available under this heading, $4,000,000 shall be available for the purpose of research and development relating to intelligence propulsion and related advancements, and shall be in addition to any other amounts available under this heading for that purpose''.

SA 2162. Mr. DEWINE (for himself, Mr. LEVIN, and Mr. VOINOVICH) submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 97, line 24, after ''members;'', insert the following: ''the Great Lakes Legacy Program of the Environmental Protection Agency, in an amount that is not less than $15,000,000;''.

SA 2163. Mr. DEWINE (for himself and Mr. VOINOVICH) submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr.

BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. ___. From amounts appropriated under this Act, there shall be set aside $660,000 for the National Academy of Sciences study proposal ''Health Risks to Children from Residential Lead Contamination''.

SA 2164. Ms. CANTWELL (for herself, Mr. CARPER, Mr. BROWNBACK, Mr. HAGEL, Mr. ROBERTS, Mr. NELSON of Nebraska, and Mrs. MURRAY) submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 125, between lines 7 and 8, insert the following:

SEC. 418. EXTENSION OF CERTAIN PUBLIC HOUSING/SECTION 8 MOVING TO WORK DEMONSTRATION AGREEMENTS.

(a) EXTENSION.—The Secretary of Housing and Urban Development shall extend the term of the Moving to Work Demonstration Agreement entered into between a public housing agency and the Secretary under section 204, title V, of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104–134, April 26, 1996) if—

(1) the public housing agency requests such extension in writing;

(2) the public housing agency is not at the time of such request for extension in default under its Moving to Work Demonstration Agreement; and

(3) the Moving to Work Demonstration Agreement to be extended would otherwise expire on or before December 31, 2004.

(b) TERMS.—Unless the Secretary of Housing and Urban Development and the public housing agency otherwise agree, the extension under subsection (a) shall be upon the identical terms and conditions set forth in the extending agency's existing Moving to Work Demonstration Agreement, except that for each public housing agency that has been or will be granted an extension to its original Moving to Work agreement, the Secretary shall require that data be collected so that the effect of Moving to Work policy changes on residents can be measured.

(c) EXTENSION PERIOD.—The extension under subsection (a) shall be for such period as is requested by the public housing agency, not to exceed 3 years from the date of expiration of the extending agency's existing Moving to Work Demonstration Agreement.

(d) BREACH OF AGREEMENT.—Nothing contained in this section shall limit the authority of the Secretary of Housing and Urban Development to terminate any Moving to Work Demonstration Agreement of a public housing agency if the public housing agency is in breach of the provisions of such agreement.

SEC. 419. STUDY OF MOVING TO WORK PROGRAM.

(a) IN GENERAL.—The General Accounting Office shall conduct a study of the Moving to Work demonstration program to evaluate—

(1) whether the statutory goals of the Moving to Work demonstration program are being met;

(2) the effects policy changes related to the Moving to Work demonstration program have had on residents; and

(3) whether public housing agencies participating in the Moving to Work program are meeting the requirements of the Moving to Work demonstration program under law and any agreements with the Department of Housing and Urban Development.

(b) REPORT.—Not later than 18 months after the date of enactment of this Act, the General Accounting Office shall submit to Congress a report on the study conducted under subsection (a).

SA 2165. Mr. COLEMAN submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 125, between lines 7 and 8, insert the following:

SEC. 418. There are appropriated $1,060,000 to the Neighborhood House in Saint Paul, Minnesota, for construction costs of the Paul and Sheila Wellstone Center for Community Building.

SA 2166. Mr. DORGAN submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 125, between lines 7 and 8, insert the following:

SEC. ___. (a) Section 45D(e) of the Internal Revenue Code of 1986 (relating to low-income community) is amended by adding at the end the following new paragraph:

''(4) MODIFICATION OF INCOME REQUIREMENT FOR CENSUS TRACTS WITHIN HIGH MIGRATION RURAL COUNTIES.—

''(A) IN GENERAL.—In the case of a population census tract located within a high migration rural county, paragraph (1)(B)(i) shall be applied by substituting '85 percent' for '80 percent'.

''(B) HIGH MIGRATION RURAL COUNTY.—For purposes of this paragraph, the term 'high migration rural county' means any county which, during the 20-year period ending on December 31, 2000, has a net out-migration of inhabitants from the county of at least 10-percent of the population of the county at the beginning of such period.''.

(b) The amendment made by this section shall take effect as if included in the amendment made by section 121(a) of the Community Renewal Tax Relief Act of 2000.

SA 2167. Mr. BOND proposed an amendment to amendment SA 150 proposed by Mr. BOND (for himself and Ms. MILKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

Beginning on page 9, line 20, strike ''*: Provided,* That'' and all that follows through ''Congress'' on line 5, page 10.

SA 2168. Mr. REED submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 125, between lines 7 and 8, insert the following:

SEC. 418. Funds made available under this Act or any other Act that are awarded by the Secretary of Housing and Urban Development to a public housing agency for replacement housing needs arising from the demolition of public housing units, and that are used by the public housing agency as project-based assistance, shall not be included as tenant-based assistance that is attached to a structure for the purposes of the 20 percent limitation under section 8(o)(13)(B) of the United States Housing Act of 1937 (42 U.S.C. 1437f), if the public housing agency certifies that use of the funds as project-based assistance is necessary in order to provide adequate replacement housing opportunities consistent with the purposes of section 24 of that Act (42 U.S.C. 1437v).

SA 2169. Mr. LEVIN (for himself, Ms. COLLINS, Ms. STABENOW, and Mr. VOINOVICH) submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 125, between lines 7 and 8, insert the following:

SEC. 4___. SEWER OVERFLOW CONTROL GRANTS.

Section 221 of the Federal Water Pollution Control Act (33 U.S.C. 1301) is amended—

(1) in subsection (f), by striking ''2002 and 2003'' and inserting ''2005 and 2006'';

(2) in subsection (g)(1)—

(A) in the paragraph heading, by striking ''2002'' and inserting ''2005''; and

(B) by striking ''2002'' and inserting ''2005'';

(3) in subsection (g)(2)—

(A) in the paragraph heading, by striking ''2003'' and inserting ''2006''; and

(B) by striking ''2003'' and inserting ''2006''; and

(4) in subsection (i), by striking ''2003'' and inserting ''2006''.

SA 2170. Mr. BOND (for Mr. LEAHY (for himself and Mr. BROWNBACK)) proposed an amendment to the bill S. 1685,

to extend and expand the basic pilot program for employment eligibility verification, and for other purposes; as follows:

At the end, add the following:

SEC. 4. PILOT IMMIGRATION PROGRAM.

(a) PROCESSING PRIORITY UNDER PILOT IMMIGRATION PROGRAM FOR REGIONAL CENTERS TO PROMOTE ECONOMIC GROWTH.—Section 610 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note) is amended—

(1) by striking ''Attorney General'' each place such term appears and inserting ''Secretary of Homeland Security''; and

(2) by adding at the end the following:

''(d) In processing petitions under section 204(a)(1)(H) of the Immigration and Nationality Act (8 U.S.C. 1154(a)(1)(H)) for classification under section 203(b)(5) of such Act (8 U.S.C. 1153(b)(5)), the Secretary of Homeland Security may give priority to petitions filed by aliens seeking admission under the pilot program described in this section. Notwithstanding section 203(e) of such Act (8 U.S.C. 1153(e)), immigrant visas made available under such section 203(b)(5) may be issued to such aliens in an order that takes into account any priority accorded under the preceding sentence.''.

(b) EXTENSION.—Section 610(b) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993 (8 U.S.C. 1153 note) is amended by striking ''10 years'' and inserting ''15 years''.

SEC. 5. GAO STUDY.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the General Accounting Office shall report to Congress on the immigrant investor program created under section 203(b)(5) of the Immigration and Nationality Act (8 U.S.C. 1153(b)(5)).

(b) CONTENTS.—The report described in subsection (a) shall include information regarding—

(1) the number of immigrant investors that have received visas under the immigrant investor program in each year since the inception of the program;

(2) the country of origin of the immigrant investors;

(3) the localities where the immigrant investors are settling and whether those investors generally remain in the localities where they initially settle;

(4) the number of immigrant investors that have sought to become citizens of the United States;

(5) the types of commercial enterprises that the immigrant investors have established; and

(6) the types and number of jobs created by the immigrant investors.

SA 2171. Mr. LAUTENBERG (for himself, Ms. MIKULSKI, Mr. JEFFORDS, Mrs. BOXER, Mr. CORZINE, Mr. SCHUMER, Mr. LEAHY, Mr. LIEBERMAN, Mr. KERRY, Mr. KENNEDY, Mr. EDWARDS, Ms. CANTWELL, and Mr. DURBIN) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 98, line 5, before the period at the end, insert the following: '', of which, in addition to any other amounts provided under this heading for the Office of Enforcement and Compliance Assurance, $5,400,000 shall be made available for that office''.

SA 2172. Mr. BOND (for Mr. GRAHAM of South Carolina (for himself and Mr. HOLLINGS)) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

At the end of title I, add the following:

SEC. 116. Notwithstanding paragraph (2) of section 8163(c) of title 38, United States Code, the Secretary of Veterans Affairs may enter into an enhanced-use lease with the Medical University Hospital Authority, a public authority of the State of South Carolina, for approximately 0.48 acres of underutilized property at the Charleston Department of Veterans Affairs Medical Center, Charleston, South Carolina, at any time after 30 days after the date of the submittal of the notice required by paragraph (1) of that section with respect to such property. The Secretary is not required to submit a report on the lease as otherwise required by paragraph (4) of that section.

SA 2173. Mr. BOND (for Ms. MIKULSKI (for herself and Mr. BOND)) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 92, line 22, strike the period and insert the following:'': *Provided further,* That, for fiscal year 2004 and every year thereafter, the Corporation shall make any significant changes to program requirements or policy only through public notice and comment rulemaking: *Provided further,* That, for fiscal year 2004 and every year thereafter, during any grant selection process, no officer or employee of the Corporation shall knowingly disclose any covered grant selection information regarding such selection, directly or indirectly, to any person other than an officer or employee of the Corporation that is authorized by the Corporation to receive such information.''.

SA 2174. Mr. BOND proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 61, beginning on line 7, strike out ''$32,415,00,'' and all that follows through the period on line 16 and insert in lieu thereof ''$39,915,000, to remain available until expended, to be derived from the Federal Housing Enterprise Oversight Fund: *Provided,* That not less than 60 percent of total amount made available under this heading shall be used to for licensed audit personnel and audit support: *Provided further,* That an additional $10,000,000 shall be made available until expended, to be derived from the Federal Housing Enterprise Oversight Fund only upon a certification by the Secretary of the Treasury that these funds are necessary to meet an emergency need: *Provided further,* That not to exceed such amounts shall be available from the general fund of the Treasury to the extent necessary to incur obligations and make expenditures pending the receipt of collections to the Fund: *Provided further,* That the general fund amount shall be reduced as collections are received during the fiscal year so as to result in a final appropriation from the general fund estimated at not more than $0.''.

SA 2175. Mr. BOND (for Mr. STEVENS) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 86, between lines 11 and 12, insert the following:

SEC. 2___. NATIVE AMERICAN HOUSING.

ALLOCATION OF FUNDING.—Of the amounts made available to carry out the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 et seq.) for fiscal year 2004, there shall be made available to each grant recipient the same percentage of funding as each recipient received for fiscal year 2003.

SA 2176. Mr. BOND (for Mr. DURBIN (for himself and Mr. FITZGERALD)) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Hosing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

At the appropriate place, insert the following:

SEC. . Notwithstanding any other provision of law, the Secretary of Veterans Affairs shall make the North Chicago VA Medical Center available to the Navy to the maximum extent feasible. The Secretary shall report to the Senate Appropriations Committee by June 30, 2004, regarding the progress in modifying North Chicago VA Medical Center's surgical suite and emergency and urgent care centers for use by veterans and Department of Defense beneficiaries. Further, the Secretary shall consider having the new joint VA/Navy ambulatory care center to serve both veterans and Department of Defense beneficiaries sited on or adjacent to the North Chicago VA Medical Center and shall consult with the Secretary of the Navy to select the site for the center. The Secretary of Veterans Affairs shall report to the Senate Appropriations Committee on the site selection by June 30, 2004.

SA 2177. Mr. BOND (for Ms. MURKOWSKI) proposed an amendment to amendment SA 2150 proposed by Mr.

BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

At the appropriate place, insert the following:

SEC. ___. RURAL TEACHER HOUSING.

Section 307 of the Denali Commission Act of 1998 (42 U.S.C. 3121 note) is amended by adding at the end the following:

''(e) RURAL TEACHER HOUSING.—The Commission may make grants and loans to public school districts serving remote incorporated cities and unincorporated communities in Alaska (including Alaska Native Villages) with a population of 6,500 or fewer persons for expenses associated with the construction, purchase, lease, and rehabilitation of housing units in such cities and communities. Unless otherwise authorized by the Commission, such units may be occupied only by teachers, school administrators, and other school staff (including members of their households).''.

SA 2178. Ms. MIKULSKI proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 104, between lines 14 and 15, insert the following

For an additional amount for capitalization grants for State revolving funds, $3,000,000,000, to remain available until expended, of which $1,850,000,000 shall be for capitalization grants from State water pollution control revolving funds established under title VI of the Federal Water Pollution Control Act (33 U.S.C. 1381 et seq.) and $1,150,000,000 shall be for capitalization grants from State drinking water treatment revolving loan funds under section 1452 of the Safe Drinking Water Act (42 U.S.C. 300j–12): *Provided*, That the entire amount made available under this paragraph is designated by Congress as an emergency requirement under section 502(c) of H. Con. Res. 95 (108th Cong.).

SA 2179. Mr. FITZGERALD submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 125, between lines 7 and 8, insert the following:

SEC. 418. (a) IN GENERAL.—None of the funds appropriated under this Act shall be used for the purpose of implementing or carrying out the Mark-to-Market program established under the Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437f et seq.) with—

(1) any for-profit entity with respect to the Evergreen Terrace I and Evergreen Terrace II housing complexes located in Joliet, Illinois; or

(2) any entity, or its successors or assignees, that signed, prior to October 1, 2003, a restructuring commitment with the Department of Housing and Urban Development with respect to the Evergreen Terrace I and Evergreen Terrace II housing complexes located in Joliet, Illinois.

(b) RIGHTS OF RESIDENTS.—Nothing in this section shall be construed to alter the rights or eligibility of residents of the Evergreen Terrace I and Evergreen Terrace II housing complexes in Joliet, Illinois, to benefit from or to participate in programs administered by the Secretary of Housing and Urban Development.

SA 2180. Mr. BOND proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 86, after line 11, insert the following new section:

SEC. 226. The Secretary of Housing and Urban Development shall conduct negotiated rulemaking with representatives from interested parties for purposes of any changes to the formula governing the Public Housing Operating Fund. A final rule shall be issued no later than July 31, 2004.

SA 2181. Mr. BOND (for Ms. MURKOWSKI) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

At the end of title I, add the following:

SEC. 116. (a) TREATMENT OF PIONEER HOMES IN ALASKA AS STATE HOME FOR VETERANS.—The Secretary of Veterans Affairs may—

(1) treat the Pioneer Homes in the State of Alaska collectively as a single State home for veterans for purposes of section 1741 of title 38, United States Code; and

(2) make per diem payments to the State of Alaska for care provided to veterans in the Pioneer Homes in accordance with the provisions of that section.

(b) TREATMENT NOTWITHSTANDING NON-VETERAN RESIDENCY.—The Secretary shall treat the Pioneer Homes as a State home under subsection (a) notwithstanding the residency of non-veterans in one or more of the Pioneer Homes.

(c) PIONEER HOMES DEFINED.—In this section, the term ''Pioneer Homes'' means the six regional homes in the State of Alaska known as Pioneer Homes, which are located in the following:

(1) Anchorage, Alaska.
(2) Fairbanks, Alaska.
(3) Juneau, Alaska.
(4) Ketchikan, Alaska.
(5) Palmer, Alaska.
(6) Sitka, Alaska.

SA 2182. Ms. MURKOWSKI (for Mr. DORGAN (for himself, Mr. ROCKEFELLER, and Ms. LANDRIEU)) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

At the end of title I, add the following:

SEC. 116. (a) FINDINGS ON ACCESS TO PRIMARY HEALTH CARE OF VETERANS IN RURAL AREAS.—The Senate makes the following findings:

(1) The Secretary of Veterans Affairs has appointed a commission, called the Capital Asset Realignment for Enhanced Services (CARES) Commission, and directed it to make specific recommendations regarding the realignment and allocation of capital assets necessary to meet the demand for veterans health care services over the next 20 years.

(2) The Department of Veterans Affairs accessibility standard for primary health care provides that at least 70 percent of the veterans enrolled in each of the regional ''markets'' of the Department should live within a specified driving time of a Department primary care facility. That driving time is 30 minutes for veterans living in urban and rural areas and 60 minutes for veterans living in highly rural areas.

(3) The Draft National CARES Plan issued by the Under Secretary for Health would place veterans in 18 rural and highly rural regional markets outside the Department accessibility standard for primary health care until at least fiscal year 2022, which means that thousands of veterans will have to continuing traveling up to 3–4 hours each way to visit a Department primary care facility.

(4) The 18 rural and highly rural markets that will remain outside the Department accessibility standard for primary health care comprise all or parts of Arkansas, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Minnesota, Mississippi, Missouri, Montana, Nebraska, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Virginia, Washington, and West Virginia.

(5) Health care facilities for veterans are disproportionately needed in rural and highly rural areas because the residents of such areas are generally older, poorer, and sicker than their urban counterparts.

(b) SENSE OF SENATE.—It is the sense of the Senate that—

(1) the CARES Commission should give as much attention to solving the special needs of veterans who live in rural areas as it does to providing for the health care needs of veterans living in more highly populated areas;

(2) the CARES Commission should reject the portions of the Draft National CARES Plan that would prevent any regional market of the Department from complying with the Department accessibility standard for primary health care, which provides that at least 70 percent of the veterans residing in each market be within specified driving times of a Department primary care facility; and

(3) the CARES Commission should recommend to the Secretary the investments and initiatives that are necessary to achieve the Department accessibility standard for primary health care in each of the rural and highly rural health care markets of the Department.

SA 2183. Mr. BOND (for Mr. SARBANES (for himself, Ms. COLLINS, Mr.

BYRD, Mr. SANTORUM, Mr. REED, Ms. SNOWE, Mr. KENNEDY, Mr. DODD, Mr. KERRY, Mr. ALLEN, Mr. SCHUMER, Mrs. MURRAY, Mrs. CLINTON, Mr. LEAHY, Mr. CHAFEE, Ms. CANTWELL, Mrs. FEINSTEIN, Mr. LAUTENBERG, Ms. STABENOW, Mr. JEFFORDS, Mr. LIEBERMAN, Mr. AKAKA, Mr. DAYTON, and Mr. NELSON of Florida)) proposed and amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 125, between lines 7 and 8, insert the following:

SEC. 4___. SENSE OF THE SENATE.

(a) FINDINGS.—The Senate finds that—

(1) 30 percent of American families have housing affordability problems, with 14,300,000 families paying more than half of their income for housing costs, and 17,300,000 families paying 30 to 50 percent of their income towards housing costs;

(2) 9,300,000 American families live in housing that is overcrowded or distressed;

(3) 3,500,000 households in the United States will experience homelessness at some point this year, including 1,350,000 children;

(4) the number of working families who are unable to afford adequate housing is increasing, as the gap between wages and housing costs grows;

(5) there is no county or metropolitan area in the country where a minimum wage earner can afford to rent a modest 2-bedroom apartment, and on average, a family must earn over $15 an hour to afford modest rental housing, which is almost 3 times the minimum wage;

(6) section 8 housing vouchers help approximately 2,000,000 families with children, senior citizens, and disabled individuals afford a safe and decent place to live;

(7) utilization of vouchers is at a high of 96 percent, and is on course to rise to 97 percent in fiscal year 2004, according to data provided by the Department of Housing and Urban Development;

(8) the average cost per voucher has also steadily increased from just over $6400 in August of 2002, to $6,756 in April, 2003, due largely to rising rents in the private market, and the Congressional Budget Office estimates that the cost per voucher in fiscal year 2004 will be $7,028, $560 more per voucher than the estimate contained in the fiscal year 2004 budget request; and

(9) the congressionally appointed, bipartisan Millennial Housing Commission found that housing vouchers are ''the linchpin of a national housing policy providing very low-income renters access to privately-owned housing stock''.

(b) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) housing vouchers are a critical resource in ensuring that families in America can afford safe, decent, and adequate housing;

(2) public housing agencies must retain the ability to use 100 percent of their authorized vouchers to help house low-income families; and

(3) the Senate expects the Department of Housing and Urban Development to take all necessary actions to encourage full utilization of vouchers, and to use all legally available resources as needed to support full funding for housing vouchers in fiscal year 2004, so that every voucher can be used by a family in need.

SA 2184. Mr. BOND (for Mrs. CLINTON (for herself, Ms. SNOWE, Mr. KENNEDY, Mr. CHAFEE, Mrs. MURRAY, Mr. REED, Mr. HARKIN, and Mr. DODD)) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 92, line 22, insert ''*: Provided further,* That the Corporation shall offer any individual selected after October 31, 2002, for initial enrollment or reenrollment as a VISTA volunteer under title I of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq.) the option of receiving a national service educational award under subtitle D of title I of the National and Community Service Act of 1990 (42 U.S.C. 12601 et seq.)'' after ''programs''.

SA 2185. Mr. BOND (for Mr. LEVIN (for himself, Ms. COLLINS, and Ms. STABENOW)) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

On page 125, between lines 7 and 8, insert the following:

SEC. 4___. SEWER OVERFLOW CONTROL GRANTS.

Section 221 of the Federal Water Pollution Control Act (33 U.S.C. 1301) is amended—

(1) in subsection (f), by striking ''2002 and 2003'' and inserting ''2005 and 2006'';

(2) in subsection (g)(1)—

(A) in the paragraph heading, by striking ''2002'' and inserting ''2005''; and

(B) by striking ''2002'' and inserting ''2005'';

(3) in subsection (g)(2)—

(A) in the paragraph heading, by striking ''2003'' and inserting ''2006''; and

(B) by striking ''2003'' and inserting ''2006''; and

(4) in subsection (i), by striking ''2003'' and inserting ''2006''.

SA 2186. Mr. BOND (for Mrs. BOXER) proposed an amendment to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; as follows:

It is the sense of the Senate that human dosing studies of pesticides raises ethical and health questions.

SA 2187. Mr. MCCAIN submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 109, beginning with line 21, strike through ''$7,730,507,000,'' in line 23 on page 110 and insert the following:

$7,663,700,000, to remain available until September 30, 2005, of which no less than $3,968,000,000 shall be available for activities related to the Space Shuttle and shall not be available for transfer to any other program or account, and no more than $1,588,600,000 shall be available for activities related to the International Space Station, of which $81,600,000 shall be derived from reductions in the following amounts and for the following projects, as specified in Senate Report 108–143, which amounts are unauthorized by law or unrequested by the President:

(1) $1,000,000 to Utah State University, Logan, Utah for the Calibration Center.

(2) $1,500,000 to Montana State University-Bozeman for the Center for Studying Life in Extreme Environments.

(3) $750,000 to Montana State University-Bozeman for the Space Science and Engineering Lab.

(4) $1,000,000 to the University of Idaho in Moscow, Idaho for advanced microelectronics and biomolecular research.

(5) $2,000,000 to New Mexico State University for the ultra-long balloon program to augment planned flights and technology development.

(6) $2,000,000 to Texas Tech University in Lubbock, Texas, for equipment at the Experimental Sciences Building.

(7) $1,000,000 to the University of Texas, Austin for nanomedicine.

(8) $1,000,000 to Texas A&M University in College Station for the Space Engineering Institute.

(9) $1,400,000 to the University of New Orleans, Louisiana for the Composites Research Center of Excellence and for the development of advanced metallic joining technologies at Michoud Space Center.

(10) $2,500,000 to Marshall University, Bridgeport, West Virginia for the Hubble Telescope Project.

(11) $2,300,000 to the University of North Dakota, Grand Forks, North Dakota for the Northern Great Plains Space Science and Technology Center.

(12) $2,000,000 for University of Maryland, Baltimore County for photonics research.

(13) $1,500,000 to George Mason University, Fairfax, Virginia for the Center for Earth Observing and Space Research Mid-Atlantic Geospatial Information Consortium.

(14) $1,000,000 to Utah State University, Logan, Utah for the Intermountain Region Digital Image Archive and Processing Center.

(15) $2,500,000 to the University of Mississippi for the Enterprise for Innovative Geospatial Solutions.

(16) $2,000,000 to Mississippi State University for the Geospatial and Natural Resources Institute.

(17) $1,600,000 to the University of New Mexico for the Center for Rapid Environmental Assessment and Terrain Evaluation.

(18) $3,000,000 for the University of Alaska for weather and ocean research.

(19) $1,000,000 for the Pacific Northwest Collaboratory at the Pacific Northwest National Laboratory to demonstrate real-time applications of earth science data.

(20) $1,000,000 to Glenn Research Center for the John Glenn Biomedical Engineering Consortium.

(21) $1,250,000 to Space Sciences Inc. in Montana for microgravity related pharmaceutical development.

(22) $2,000,000 for the University of Missouri Bioinformatics Consortium for equipment purchase.

(23) $1,500,000 for Truman State University Life Sciences for laboratory equipment.

(24) $5,000,000 for the development of an aeronautics research budget covering the next 5 years allocated to the National Institute for Aerospace located in Hampton, Virginia, for contracting with industry and academia to prepare such a budget plan no later than March 1, 2004.

(25) $3,000,000 to Wichita State University, Wichita, Kansas for the National Center for Composite Materials Performance.

(26) $1,000,000 to Wichita State University, Wichita, Kansas, for the Critical Aircraft Icing project.

(27) $1,000,000 to the Delaware Aerospace Education and Foundation, Kent County, Delaware.

(28) $2,000,000 to Wheeling Jesuit University for the National Technology Transfer Center.

(29) $600,000 to the Challenger Center in Kenai, Alaska.

(30) $1,000,000 to the Virginia Commonwealth University, Richmond, Virginia for advance research in batteries and fuel cells.

(31) $1,500,000 to the University of Montana in Missoula, Montana for the National Space Privatization Program.

(32) $2,000,000 for the Denver Museum of Nature and Science in Denver, Colorado for equipment for the Space Sciences Museum.

(33) $1,500,000 for the Adventure Science Center in Nashville, Tennessee for the Sudekum Planetarium.

(34) $500,000 for the University of Northern Iowa in Cedar Falls, Iowa for the Existing Business Enhancement Program.

(35) $1,300,000 for Iowa State University for the PIPELINES Project.

(36) $1,000,000 for the Metropolitan School District of Decatur Township Indiana for the Challenger Learning Center Expansion.

(37) $1,700,000 for Northern Kentucky University/University of Louisville for a digital science center.

(38) $2,000,000 for the University of Alabama in Huntsville for the Center for Modeling Simulation and Analysis.

(39) $1,000,000 for the Oregon Museum of Science and Industry for the space science education distance learning program.

(40) $1,000,000 for Southeast Missouri State University for the NASA ERSC Outreach Project.

(41) $1,500,000 for Dominican University's Center for Science and Technology for project based learning.

(42) $200,000 to Wheeling Jesuit University in West Virginia for Classroom of the Future.

(43) $2,000,000 to the University of Connecticut for the Center for Land Use Education and Research.

(44) $2,000,000 to Iowa State University, Ames, Iowa for non-destructive evaluation studies.

(45) $500,000 to the Des Moines Science Center, Des Moines, Iowa.

(46) $2,000,000 for the School of Science and Mathematics at the College of Charleston, Charleston, South Carolina.

(47) $3,000,000 to the University of Hawaii, Hilo for the Mauna Kea Astronomy Education Center.

(48) $1,500,000 to Space Education Initiative, Wisconsin for the Wisconsin Geoscience Education initiative.

(49) $1,000,000 to the Youth Achievers Committee of New Jersey, Burlington County, New Jersey for the Youth Achievement Committee Science and Math Initiative.

(50) $500,000 to the University of Vermont, Burlington, Vermont for the Center for Advanced Computing.

(51) $1,000,000 to Wayne State University, Detroit, Michigan for the Center of Smart Sensors and Integrated Microsystems.

(52) $1,000,000 for Wellpinit School District in Wellpinit, Washington for the Virtual Classroom Project.

(53) $1,500,000 for the Mitchell Institute, Portland, Maine, for science and engineering education.

SCIENCE, AERONAUTICS AND EXPLORATION

(INCLUDING TRANSFER OF FUNDS)

For necessary expenses, not otherwise provided for, in the conduct and support of science, aeronautics and exploration research and development activities, including research, development, operations, support and services; maintenance; construction of facilities including repair, rehabilitation, revitalization, and modification of facilities, construction of new facilities and additions to existing facilities, facility planning and design, and restoration, and acquisition or condemnation of real property, as authorized by law; environmental compliance and restoration; space flight, spacecraft control and communications activities including operations, production, and services; program management; personnel and related costs, including uniforms or allowances therefor, as authorized by 5 U.S.C. 5901–5902; travel expenses; purchase and hire of passenger motor vehicles; not to exceed $35,000 for official reception and representation expenses; and purchase, lease, charter, maintenance and operation of mission and administrative aircraft, $7,648,907,000,

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SA 2188. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 125, between lines 7 and 8, insert the following:

TITLE V—SECURITY OF WASTEWATER TREATMENT WORKS

SEC. 501. SHORT TITLE.

This title may be cited as the ''Wastewater Treatment Works Security Act of 2003''.

SEC. 502. WASTEWATER TREATMENT WORKS SECURITY.

Title II of the Federal Water Pollution Control Act (33 U.S.C. 1281 et seq.) is amended by adding at the end the following:

''SEC. 222. WASTEWATER TREATMENT WORKS SECURITY.

''(a) DEFINITION OF VULNERABILITY ASSESSMENT.—

''(1) IN GENERAL.—In this section, the term 'vulnerability assessment' means an assessment of the vulnerability of a treatment works to an unlawful action intended—

''(A) to substantially disrupt the ability of the treatment works to safely and reliably operate; or

''(B) to have a substantial adverse effect on critical infrastructure, public health or safety, or the environment.

''(2) INCLUSIONS.—The term 'vulnerability assessment' includes—

''(A) a review of the vulnerabilities of the treatment works that identifies, with respect to the treatment works—

''(i) facilities, systems, and devices used in the storage, treatment, recycling, or reclamation of municipal sewage or industrial wastes;

''(ii) intercepting sewers, outfall sewers, sewage collection systems, and other constructed conveyances;

''(iii) electronic, computer, and other automated systems;

''(iv) pumping, power, and other equipment;

''(v) use, storage, and handling of various chemicals; and

''(vi) operation and maintenance procedures; and

''(B) the identification of procedures, countermeasures, and equipment that a treatment works may implement or use to reduce the vulnerabilities of the treatment works identified in a review described in subparagraph (A).

''(b) GRANTS FOR VULNERABILITY ASSESSMENTS AND SECURITY ENHANCEMENTS.—The Administrator may provide grants to a State, municipality, or intermunicipal or interstate agency—

''(1) to conduct a vulnerability assessment of a publicly owned treatment works; and

''(2) to implement security enhancements described in subsection (c)(1) and other security enhancements to reduce vulnerabilities identified in a vulnerability assessment.

''(c) GRANTS FOR SECURITY ENHANCEMENTS.—

''(1) PREAPPROVED SECURITY ENHANCEMENTS.—Except as provided in paragraph (3), on certification by an applicant that a vulnerability assessment has been completed for a treatment works, and that the security enhancement for which assistance is sought is for the purpose of reducing vulnerabilities of the treatment works identified in the vulnerability assessment, the Administrator may provide grants to the applicant under subsection (b)(2) for 1 or more of the uses described in paragraph (2).

''(2) USES OF GRANT FUNDS.—The uses referred to in paragraph (1) are—

''(A) the purchase and installation of equipment for materials and activities relating to access control, intrusion prevention and delay, and detection of intruders and hazardous or dangerous substances, including—

''(i) barriers, fencing, and gates;

''(ii) security lighting and cameras;

''(iii) metal grates, wire mesh, and outfall entry barriers;

''(iv) securing of manhole covers and fill and vent pipes;

''(v) installation and rekeying of doors and locks; and

''(vi) smoke, chemical, and explosive mixture detection systems;

''(B) the conduct of an activity to improve the security for electronic, computer, or other automated systems and remote security systems, including—

''(i) controlling access to those systems;

''(ii) intrusion detection and prevention; and

''(iii) system backup;

''(C) participation in a training program, and the purchase of training manuals and guidance material, relating to security; and

''(D) the conduct of security screening of employees or contractor support services.

''(3) ADDITIONAL SECURITY ENHANCEMENTS.—

''(A) GRANTS.—The Administrator may provide a grant under subsection (b) to an applicant for additional security enhancements not specified in paragraph (2).

''(B) ELIGIBILITY.—To be eligible for a grant under this subsection, an applicant shall—

''(i) submit to the Administrator an application containing a description of the security enhancement; and

''(ii) obtain approval of the application by the Administrator.

''(4) LIMITATIONS.—

''(A) USE OF FUNDS.—A grant provided under subsection (b) shall not be used for—

''(i) payment of personnel costs; or

''(ii) operation or maintenance of facilities, equipment, or systems.

''(B) DISCLOSURE OF VULNERABILITY ASSESSMENT.—As a condition of applying for or receiving a grant under this subsection, the Administrator may not require an applicant to provide the Administrator with a copy of a vulnerability assessment.

''(d) GRANT AMOUNTS.—

''(1) FEDERAL SHARE.—The Federal share of the cost of an activity funded by a grant under subsection (b) shall not exceed 75 percent, as determined by the Administrator.

''(2) MAXIMUM AMOUNT.—The total amount of grants made under subsection (b) for any publicly owned treatment works shall not exceed $150,000, as determined by the Administrator.

''(e) TECHNICAL ASSISTANCE FOR SMALL PUBLICLY OWNED TREATMENT WORKS.—

''(1) DEFINITION OF SMALL PUBLICLY OWNED TREATMENT WORKS.—In this subsection, the term 'small publicly owned treatment works' means a publicly owned treatment works that services a population of fewer than 20,000 individuals.

''(2) SECURITY ASSESSMENT AND PLANNING ASSISTANCE.—

''(A) IN GENERAL.—The Administrator, in coordination with the States, may provide technical guidance and assistance to small publicly owned treatment works for—

''(i) the conduct of a vulnerability assessment; and

''(ii) the implementation of security enhancements to reduce vulnerabilities identified in a vulnerability assessment.

''(B) INCLUSIONS.—Technical guidance and assistance provided under subparagraph (A) may include technical assistance programs, training, and preliminary engineering evaluations.

''(3) PARTICIPATION BY NONPROFIT ORGANIZATIONS.—The Administrator may provide grants to nonprofit organizations to assist in accomplishing the purposes of this subsection.

''(f) REFINEMENT OF VULNERABILITY ASSESSMENT METHODOLOGY FOR PUBLICLY OWNED TREATMENT WORKS.—

''(1) GRANTS.—The Administrator may provide to nonprofit organizations 1 or more grants to be used in improving vulnerability assessment methodologies and tools for publicly owned treatment works, including publicly owned treatment works that are part of a combined public wastewater treatment and water supply system.

''(2) ELIGIBLE ACTIVITIES.—A grant provided under this subsection may be used—

''(A) to develop and distribute vulnerability self-assessment methodology software upgrades;

''(B) to improve and enhance critical technical and user support functions;

''(C) to expand libraries of information addressing threats and countermeasures; and

''(D) to implement user training initiatives.

''(3) COST.—A service described in paragraph (2) that is funded by a grant under this subsection shall be provided at no cost to the recipients of the service.

''(g) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated, to remain available until expended—

''(1) $200,000,000 for use in making grants under subsection (b);

''(2) $15,000,000 for use in providing assistance under subsection (e); and

''(3) to carry out subsection (f), $1,000,000 for each of fiscal years 2003 through 2007.''.

SEC. 503. RESEARCH AND REVIEW.

Title II of the Federal Water Pollution Control Act (33 U.S.C. 1281 et seq.) (as amended by section 502) is amended by adding at the end the following:

''SEC. 223. RESEARCH AND REVIEW.

''(a) DEFINITIONS.—In this section:

''(1) COVERED TREATMENT WORKS.—The term 'covered treatment works' has the meaning given the term 'treatment works' in section 212.

''(2) HARMFUL INTENTIONAL ACT.—The term 'harmful intentional act' means a terrorist attack or other intentional act carried out with respect to a covered treatment works that is intended—

''(A) to substantially disrupt the ability of the covered treatment works to provide safe and reliable—

''(i) conveyance and treatment of wastewater;

''(ii) disposal of effluent; or

''(iii) storage of a potentially hazardous chemical used to treat wastewater;

''(B) to damage critical infrastructure;

''(C) to have an adverse effect on the environment; or

''(D) to otherwise pose a significant threat to public health or safety.

''(b) REVIEW BY ADMINISTRATOR.—Not later than 2 years after the date of enactment of this section, the Administrator, in coordination with appropriate Federal agencies, shall research and review (or enter into a contract or cooperative agreement to provide for research and review of)—

''(1) means by which terrorists or other individuals or groups could carry out harmful intentional acts; and

''(2) means by which alternative processes of conveying, treating, and disposing of wastewater could be provided in the event of the destruction, impairment, or disruption of covered treatment works as the result of harmful intentional acts.

''(c) MEANS OF CARRYING OUT HARMFUL INTENTIONAL ACTS.—Means referred to in subsection (b)(1) include—

''(1) means by which pipes and other constructed conveyances used in covered treatment works could be destroyed or otherwise prevented from providing adequate conveyance, pretreatment, treatment, and disposal of wastewater meeting applicable public health standards;

''(2) means by which conveyance, pretreatment, treatment, storage, and disposal facilities used by, or in connection with, covered treatment works could be destroyed or otherwise prevented from providing adequate treatment of wastewater meeting applicable public health standards;

''(3) means by which pipes, constructed conveyances, pretreatment, treatment, storage, and disposal systems that are used in connection with treatment works could be altered or affected so as to pose a threat to public health, public safety, or the environment;

''(4) means by which pipes, constructed conveyances, pretreatment, treatment, storage, and disposal systems that are used in connection with covered treatment works could be reasonably protected from harmful intentional acts;

''(5) means by which pipes, constructed conveyances, pretreatment, treatment, storage, and disposal systems could be reasonably secured from use as a means of transportation by terrorists or other individuals or groups who intend to threaten public health or safety; and

''(6) means by which information systems, including process controls and supervisory control, data acquisition, and cyber systems, at covered treatment works could be disrupted by terrorists or other individuals or groups.

''(d) CONSIDERATIONS.—In carrying out the review under this section, the Administrator—

''(1) shall ensure that the review reflects the needs of covered treatment works of various sizes and various geographic areas of the United States; and

''(2) may consider the vulnerability of, or potential for forced interruption of service for, a region or service area, including the National Capital Area.

''(e) INFORMATION SHARING.—As soon as practicable after the review carried out under this section has been evaluated by the Administrator, the Administrator shall disseminate to covered treatment works information on the results of the review through the Information Sharing and Analysis Center or other appropriate means.

''(f) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to carry out this section $15,000,000 for the period of fiscal years 2004 through 2008.''.

SEC. 504. FUNDING.

Notwithstanding any other provision of this Act, of the amounts made available by this Act to the Administrator of the Environmental Protection Agency for security purposes, the Administrator may use such sums as are necessary to provide grants under section 222(b) of the Federal Water Pollution Control Act (as added by section 502).

SA 2189. Mr. INHOFE submitted an amendment intended to be proposed to amendment SA 2150 proposed by Mr. BOND (for himself and Ms. MIKULSKI) to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

On page 106, between lines 20 and 21, insert the following:

SEC. ___. DESIGNATIONS OF AREAS FOR $PM_{2.5}$ AND SUBMISSION OF IMPLEMENTATION PLANS FOR REGIONAL HAZE.

(a) IN GENERAL.—Section 107(d) of the Clean Air Act (42 U.S.C. 7407(d)) is amended by adding at the end the following:

''(6) DESIGNATIONS.—

''(A) SUBMISSION.—Notwithstanding any other provision of law, not later than February 15, 2004, the Governor of each State shall submit designations referred to in paragraph (1) for the July 1997 $PM_{2.5}$ national ambient air quality standards for each area within the State, based on air quality monitoring data collected in accordance with any applicable Federal reference methods for the relevant areas.

''(B) PROMULGATION.—Notwithstanding any other provision of law, not later than December 31, 2004, the Administrator shall, consistent with paragraph (1), promulgate the designations referred to in subparagraph (A) for each area of each State for the July 1997 $PM_{2.5}$ national ambient air quality standards.

''(7) IMPLEMENTATION PLAN FOR REGIONAL HAZE.—

''(A) IN GENERAL.—Notwithstanding any other provision of law, not later than 3 years after the date on which the Administrator promulgates the designations referred to in paragraph (6)(B) for a State, the State shall submit, for the entire State, the State implementation plan revisions to meet the requirements promulgated by the Administrator under section 169B(e)(1) (referred to in this paragraph as 'regional haze requirements').

''(B) NO PRECLUSION OF OTHER PROVISIONS.—Nothing in this paragraph precludes the implementation of the agreements and recommendations stemming from the Grand Canyon Visibility Transport Commission Report dated June 1996, including the submission of State implementation plan revisions by the States of Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, or Wyoming by December 31, 2003, for implementation of regional haze requirements applicable to those States.''.

(b) RELATIONSHIP TO TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY.—Except as provided in paragraphs (6) and (7) of section 107(d) of the Clean Air Act (as added by subsection (a)), section 6101, subsections (a) and (b) of section 6102, and section 6103 of the Transportation Equity Act for the 21st Century (42 U.S.C. 7407 note; 112 Stat. 463), as in effect on the day before the date of enactment of this Act, shall remain in effect.

SA 2190. Mr. GRAHAM of Florida submitted an amendment intended to be proposed by him to the bill H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, and for other purposes; which was ordered to lie on the table; as follows:

At the end of title I, add the following:

SEC. 116. PROVISION OF OUT-PATIENT MEDICATION BENEFIT FOR MEDICARE-ELIGIBLE VETERANS.—Section 1712 of title 38, United States Code, is amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d) the following new subsection (e):

''(e)(1) The Secretary shall furnish to any medicare-eligible veteran on an out-patient basis such drugs and medicines as may be ordered on prescription of a duly licensed physician as specific therapy in the treatment of any illness or injury suffered by such veteran.

''(2) In this subsection, the term 'medicare-eligible veteran' means any veteran who—

''(A) is entitled to or enrolled in hospital insurance benefits under part A of title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.); or

''(B) is enrolled in the supplementary medical insurance program under part B of such title (42 U.S.C. 1395j et seq.).

''(3) The furnishing of drugs and medicines under this subsection shall be subject to the provisions of section 1722A(b) of this title.''.

(b) COPAYMENT REQUIREMENTS.—

(1) IN GENERAL.—Section 1722A of such title is amended—

(A) in subsection (a)(1), by inserting ''(other than a veteran covered by subsection (b))'' after ''require a veteran'';

(B) by redesignating subsections (b), (c), and (d), as subsections (c), (d), and (e), respectively;

(C) by inserting after subsection (a) the following new subsection (b):

''(b)(1) In the case of a veteran who is furnished medications on an out-patient basis under section 1712(e) of this title, the Secretary shall require the veteran to pay, at the election of the Secretary, one or more of the following:

''(A) An annual enrollment fee in an amount determined appropriate by the Secretary.

''(B) A copayment for each 30-day supply of such medications in an amount determined appropriate by the Secretary.

''(C) An amount equal to the cost to the Secretary of such medications, as determined by the Secretary.

''(2)(A) In determining the amounts to be paid by a veteran under paragraph (1), and the basis of payment under one or more subparagraphs of that paragraph, the Secretary shall ensure that the total amount paid by veterans for medications under that paragraph in a year is not less than the costs of the Department in furnishing medications to veterans under section 1712(e) of this title during that year, including the cost of purchasing and furnishing medications, and other costs of administering that section.

''(B) The Secretary shall take appropriate actions to ensure, to the maximum extent practicable, that amounts paid by veterans under paragraph (1) in a year are equal to the costs of the Department referred to in subparagraph (A) in that year.

''(3) In determining amounts under paragraph (1), the Secretary may take into account the following:

''(A) Whether or not the medications furnished are generic medications or brand name medications.

''(B) Whether or not the medications are furnished by mail.

''(C) Whether or not the medications furnished are listed on the National Prescription Drug Formulary of the Department.

''(D) Any other matters the Secretary considers appropriate.

''(4) The Secretary may from time to time adjust any amount determined by the Secretary under paragraph (1), as previously adjusted under this paragraph, in order to meet the purpose specified in paragraph (2).''; and

(D) in subsection (d), as so redesignated—

(i) by striking ''subsection (a)'' and inserting ''subsections (a) and (b)''; and

(ii) by striking ''subsection (b)'' and inserting ''subsection (c)''.

(2) DEPOSIT OF COLLECTIONS IN MEDICAL CARE COLLECTIONS FUND.—Paragraph (4) of section 1729A(b) of such title is amended to read as follows:

''(4) Subsection (a) or (b) of section 1722A of this title.''.

(c) CLERICAL AMENDMENTS.—(1) The heading for section 1712 of such title is amended by striking ''**for certain disabled veterans**''.

(2) The table of sections at the beginning of chapter 17 of such title is amended in the item relating to section 1712 by striking ''for certain disabled veterans''.

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DOMENICI. Mr. President, I announce for the information of the Senate and the public that the hearing to conduct oversight of the implementation of the Energy Employees Occupational Illness Compensation Program previously scheduled before the Committee on Energy and Natural Resources on Friday, November 14 at 10 a.m. has been cancelled and will be rescheduled as soon as practicable.

For further information regarding this hearing, please contact Pete Lyons of the Committee staff at 202–224–5861.

SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

Mr. CRAIG. Mr. President, I announce for the information of the Senate and the public that the Subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources will add two bills to the agenda of the hearing scheduled for November 18, 2003 at 2:30 p.m. in room SD–366 of the Dirksen Senate Office Building.

The bills being added are S. 1167, which would resolve boundary conflicts in Barry and Stone Counties in the State of Missouri, and S. 1848, which would amend the Bend Pine Nursery Land Conveyance Act to direct the Secretary of Agriculture to sell the Bend Pine Nursery Administrative Site in the State of Oregon.

The other bills that will be considered at the hearing are S. 1467, a bill to establish the Rio Grande Outstanding Natural Area in the State of Colorado, and for other purposes, S. 1209, a bill to provide for the acquisition of property in Washington County, UT, for implementation of a desert tortoise habitat conservation plan, and H.R. 708, a bill to require the conveyance of certain National Forest System lands in Mendocino National Forest, CA, to provide for the use of the proceeds from such conveyance for National Forest purposes, and for other purposes.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, SD–364, Washington, DC 20510–6150 prior to the hearing date.

For further information, please contact Dick Bouts or Meghan Beal (202–224–7556).

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DOMENICI. Mr. President, I announce for the information of the Senate and the public that a hearing has been scheduled before the Committee on Energy and Natural Resources.

The hearing will be held on Friday, November 21, at 9:30 a.m. in room SD–366 of the Dirksen Senate Office Building.

The purpose of the hearing is to conduct oversight of the implementation of the Energy Employees Occupational Illness Compensation Program.

Because of the limited time available for the hearings, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510–6150.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. WARNER. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on Wednesday, November 12, 2003, at 4 p.m., in closed session to receive a classified operations/intelligence briefing regarding ongoing military operations and areas of key concern around the world.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. WARNER. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Wednesday, November 12, 2003, at 9:30 a.m., on ''Tobacco: State Use of Settlement Funds.''

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. WARNER. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet on Wednesday, November 12, at 9:15 a.m., to conduct a business meeting to consider S. 1072, a bill to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes, and the nomination of Rixio E. Medina to be a member of the U.S. Chemical Safety and Hazard Investigation Board.

The hearing will take place in SD-406 (Hearing Room).

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. WARNER. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet on Wednesday, November 12, 2003, immediately following a 2 p.m., nomination hearing, for a hearing titled ''S. 1358, the Federal Employee Protection of Disclosures Act: Amendments to the Whistleblower Protection Act.''

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. WARNER. Mr. President, I ask unanimous consent that the Committee on Governmental Affairs be authorized to meet on Wednesday, November 12, 2003, at 2 p.m., for hearing to consider the nomination of Scott J. Bloch to be Special Counsel, Office of Special Counsel.

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

COMMITTEE ON THE JUDICIARY

Mr. WARNER. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on Wednesday, November 12, 2003, at 10 a.m., on ''Judicial Nominations,'' in the Dirksen Senate Office Building Room 226.

Witness List

Panel I: Senators.

Panel II: Judith C. Herrera to be United States District Judge for the District of New Mexico; F. Dennis Saylor to be United States District Judge for the District of Massachusetts; and Sandra L. Townes to be United States District Judge for the Eastern District of New York.

Panel III: Domingo S. Herraiz to be Director of the Bureau of Justice Assistance United States Department of Justice.

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

SUBCOMMITTEE ON SECURITIES AND INVESTMENT

Mr. WARNER. Mr. President, I ask unanimous consent that the Subcommittee on Securities and Investment of the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on November 12, 2003, at 2 p.m., to conduct a hearing on ''The Financial Accounting Standards Board and Small Business Growth.''

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 markup on Friday, November 14, 2003, after the last cloture vote in Dirksen Room 226. Note: This markup was rescheduled from Thursday, November 13, 2003.

Agenda

I. Nominations: Henry W. Saad to be U.S. Circuit Judge for the Sixth Circuit; James B. Comey to be Deputy Attorney General; Michael J. Garcia to be Assistant Secretary of U.S. Immigration and Customs Enforcement; Claude A. Allen to be U.S. Circuit Judge for the Fourth Circuit; and Federico L. Rocha to be U.S. Marshal for the Northern District of California.

II. Bills: H.R. 1437, To improve the United States Code [Sensenbrenner, Conyers] and S. Res. 253, To recognize the evolution and importance of motorsports [Campbell, Kyl].

PRIVILEGES OF THE FLOOR

Mrs. FEINSTEIN. Madam President, I ask unanimous consent that privilege of the floor be granted to Craig Harper, a fellow in my office, during consideration of the VA–HUD legislation.

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

Mr. HARKIN. Mr. President, I ask unanimous consent that Jason Eaton and Melissa Hall of my staff be granted floor privileges for the duration of the week.

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

Mr. ALEXANDER. I ask unanimous consent that Bridget Lipscomb of my staff be permitted the privilege of the floor during the time I am on the floor until 9 o'clock.

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

Mr. FEINGOLD. Mr. President, I ask unanimous consent that Sharmila Matugama, from the Judiciary staff, be granted the privilege of the floor during consideration of the judicial nominations.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. CRAIG. Mr. President, I ask unanimous consent that privilege of the floor be granted to Lisa McGrath, a law fellow who is on my staff, during consideration of this judicial nomination debate.

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

Mr. ENZI. Mr. President, I ask unanimous consent that Joe Laird from my staff be allowed on the floor for the duration of this hour of debate.

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

Mr. HATCH. Mr. President, I ask unanimous consent that privilege of the floor be granted to Ursula Williams, an intern with Senator SANTORUM's office, during consideration of this debate on judicial nominations.

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

FOREIGN TRAVEL FINANCIAL REPORTS

In accordance with the appropriate provisions of law, the Secretary of the Senate herewith submits the following reports for standing committees of the Senate, certain joint committee of the Congress, delegations and groups, and select and special committees of the Senate, relating to expenses incurred in the performance of authorized foreign travel:

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTRY FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2003

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Thad Cochran:									
Mexico	Dollar		2,178.00						2,178.00
Senator Mike Crapo:									
Mexico	Dollar		2,178.00						2,178.00

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTRY FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2003—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Hunt Shipman:									
Mexico	Dollar		2,038.00						2,038.00
Matthew O'Mara:									
Mexico	Dollar		2,038.00						2,038.00
Mark Halverson:									
Mexico	Dollar		2,038.00						2,038.00
Stephanie Mercier:									
Mexico	Dollar		2,038.00						2,038.00
Senator Norm Coleman:									
United States	Dollar				6,822.00				6,822.00
Cuba	Dollar		700.00						700.00
Jeff Harrison:									
United States	Dollar				6,822.00				6,822.00
Cuba	Dollar		700.00						700.00
Total	Dollar		13,908.00		13,644.00				27,552.00

THAD COCHRAN,
Chairman, Committee on Agriculture, Nutrition and Forestry, Sept. 25, 2003.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON APPROPRIATIONS FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2003

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Dennis Ward:									
United States	Dollar				4,314.32				4,314.32
South Korea	Won		1,072.00						1,072.00
Total			1,072.00		4,314.32				5,386.32

TED STEVENS,
Chairman, Committee on Appropriations, Sept. 8, 2003.

AMENDED CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON APPROPRIATIONS FOR TRAVEL FROM APR. 1 TO JUNE 30, 2003.

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Thad Cochran:									
France	Euro		460.00						460.00
Senator Tom Harkin:									
France	Euro		460.00						460.00
Sid Ashworth:									
France	Euro		460.00						460.00
Charlie Houy:									
France	Euro		460.00						460.00
Ellen Murray:									
France	Euro		460.00						460.00
Kay Webber:									
France	Euro		460.00						460.00
Mark Keenum:									
France	Euro		460.00						460.00
Katherine Hennessey:									
Dominican Republic	Peso		476.00						476.00
Costa Rica	Colon		225.00						225.00
Mexico	Peso		646.00						646.00
Dennis Balkham:									
Dominican Republic	Peso		476.00						476.00
Costa Rica	Colon		225.00						225.00
Mexico	Peso		646.00						646.00
Jill Shapiro Long:									
Dominican Republic	Peso		476.00						476.00
Costa Rica	Colon		225.00						225.00
Mexico	Peso		646.00						646.00
Kate Eltrich:									
Dominican Republic	Peso		476.00						476.00
Costa Rica	Colon		225.00						225.00
Mexico	Peso		646.00						646.00
Chad Schulken:									
Dominican Republic	Peso		476.00						476.00
Costa Rica	Colon		225.00						225.00
Mexico	Peso		646.00						646.00
Senator Daniel Inouye:									
Japan	Yen		966.00						966.00
United States	Dollar				7,133.00				7,133.00
Charlie Houy:									
Japan	Yen		966.00						966.00
United States	Dollar				7,133.00				7,133.00
Total			11,887.00		14,266.00				26,153.00

TED STEVENS,
Chairman, Committee on Appropriations, Sept. 8, 2003.

AMENDED 2ND QUARTER CONSOLIDATED REPORT OF EXPENDITURE OF FOREIGN FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ARMED SERVICES FOR TRAVEL FROM APR. 1 TO JUNE 30, 2003

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator James M. Inhofe:									
Ghana	Dollar		100.00						100.00
Italy	Euro		90.27						90.27
Czech Republic	Dollar		563.07						563.07
United Kingdom	Euro		299.60						229.60
Mark Powers:									
Ghana	Dollar		172.00						172.00
Italy	Euro		74.00						74.00
United States	Dollar				5,172.46				5,172.46
Total			1,228.94		5,172.46				6,401.40

JOHN WARNER,
Chairman, Committee on Armed Services, Oct. 20, 2003.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ARMED SERVICES FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2003

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Maren R. Leed:									
United States	Dollar				5,157.68				5,157.68
South Korea	Won		219.70				8.90		228.60
Joseph T. Sixeas:									
United States	Dollar				5,157.68				5,157.68
South Korea	Won		219.70				8.90		228.60
Senator Bill Nelson:									
United States	Dollar				6,469.94				6,469.94
Belgium	Euro		367.65						367.65
Czech Republic	Crown		277.79						277.79
Germany	Euro		419.73						419.73
Denmark	Krone		613.05						613.05
Kuwait	Dinar		568.34						568.34
Daniel Shapiro:									
United States	Dollar				6,199.01				6,199.01
Kuwait	Dinar		620.00		50.00		23.00		693.00
Barbara Strickland:									
United States	Dollar				4,890.94				4,890.94
Belgium	Euro		203.39						203.39
Czech Republic	Crown		377.70						377.70
Germany	Euro		832.96						832.96
Denmark	Krone		685.95						685.95
Senator Jeff Sessions:									
United States	Dollar				5,384.06				5,384.06
Kuwait	Dollar		293.00						293.00
Qatar	Dollar		172.50						172.50
Pakistan	Dollar		40.00						40.00
Germany	Dollar		298.50						298.50
Arch Galloway II:									
United States	Dollar				5,384.06				5,384.06
Kuwait	Dollar		273.00						273.00
Qatar	Dollar		179.00						179.00
Pakistan	Dollar		22.00						22.00
Germany	Dollar		250.50						250.50
Ambrose R. Hock:									
United States	Dollar				5,384.06				5,384.06
Kuwait	Dollar		275.00						275.00
Qatar	Dollar		162.73						162.73
Pakistan	Dollar		28.50						28.50
Germany	Dollar		294.41						294.41
Senator Lindsey Graham:									
Israel	Dollar		552.20						552.20
Kuwait	Dollar		581.20						581.20
Pakistan	Dollar		313.20						313.20
Turkey	Dollar		248.20						248.20
Cyprus	Dollar		437.20						437.20
Senator John McCain:									
Israel	Dollar		530.00						530.00
Kuwait	Dollar		593.00						593.00
Pakistan	Dollar		333.00						333.00
Turkey	Dollar		276.00						276.00
Cyprus	Dollar		481.00						481.00
Daniel C. Twining:									
Israel	Dollar		724.00						724.00
Kuwait	Dollar		778.00						778.00
Pakistan	Dollar		526.00						526.00
Turkey	Dollar		276.00						276.00
Cyprus	Dollar		512.00						512.00
Senator James M. Inhofe:									
United States	Dollar				6,458.23				6,458.23
Israel	Dollar		209.00						209.00
Bulgaria	Dollar		140.00						140.00
John Bonsell:									
United States	Dollar				4,751.23				4,751.23
Israel	Dollar		227.75						227.75
Bulgaria	Dollar		158.75						158.75
Germany	Dollar		66.75						66.75
Netherlands	Dollar		35.73						35.73
Senator John Warner:									
Liberia	Dollar		64.00						64.00
Ascension Island	Dollar		22.00						22.00
Qatar	Dollar		218.71						218.71
Kuwait	Dollar		645.37						645.37
Senator Carl Levin:									
Qatar	Dollar		199.39						199.39
Kuwait	Dollar		645.37						645.37
Senator Jack Reed:									
Qatar	Dollar		232.12						232.12
Kuwait	Dollar		689.48						689.48

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ARMED SERVICES FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2003—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Susan Collins:									
Qatar	Dollar		245.80						245.80
Kuwait	Dollar		645.37						645.37
Senator E. Benjamin Nelson:									
Qatar	Dollar		245.80						245.80
Kuwait	Dollar		645.37						645.37
Senator Pat Roberts:									
Qatar	Dollar		234.00						234.00
Kuwait	Dollar		778.00						778.00
Senator John Cornyn:									
Qatar	Dollar		278.71						278.71
Kuwait	Dollar		822.71						822.71
Total			22,306.28		55,286.89		40.80		77,633.97

JOHN WARNER,
Chairman, Committee on Armed Services, Oct. 1, 2003.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2003

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Richard Shelby:									
United Kingdom	Pound		1,230.00						1,230.00
Belgium	Euro		341.00						341.00
Germany	Euro		1,810.00						1,810.00
Senator Wayne Allard:									
United Kingdom	Pound		1,230.00						1,230.00
Belgium	Euro		341.00						341.00
Germany	Euro		1,810.00						1,810.00
Senator Paul S. Sarbanes:									
United Kingdom	Pound		1,230.00						1,230.00
Belgium	Euro		341.00						341.00
Kathleen L. Casey:									
United Kingdom	Pound		1,190.00						1,190.00
Belgium	Euro		321.00						321.00
Germany	Euro		1,710.00						1,710.00
John M. Smith, III:									
United Kingdom	Pound		1,160.00						1,160.00
Belgium	Euro		311.00						311.00
Germany	Euro		1,660.00						1,660.00
Steven B. Harris:									
United Kingdom	Pound		1,047.00						1,047.00
Belgium	Euro		249.00						249.00
Germany	Euro		1,354.00						1,354.00
Stephen R. Kroll:									
United Kingdom	Pound		955.00						955.00
Belgium	Euro		341.00						341.00
Germany	Euro		1,560.00						1,560.00
Total	Euro		20,191.00						20,191.00

RICHARD SHELBY,
Chairman, Committee on Banking, Housing, and Urban Affairs, Oct. 3, 2003.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2003

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Maria Cantwell:									
Israel	New Shekel		563.00						563.00
Kuwait	Dinar		543.00						543.00
Pakistan	Rupee		305.00						305.00
Turkey	Lira		240.00						240.00
Cyprus	Pound		440.00						440.00
Total			2,091.00						2,091.00

JOHN McCAIN,
Chairman, Committee on Commerce, Science, and Transportation,
Sept. 23, 2003.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ENERGY AND NATURAL RESOURCES FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2003

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Peter B. Lyons:									
Japan	Yen		518.61		635.11		67.68		1,221.40
United States	Dollar				7,649.97		17.00		7,666.97
Total			518.61		8,285.08		84.68		8,888.37

PETE V. DOMENICI,
Chairman, Committee on Energy and Natural Resources, Sept. 6, 2003.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FINANCE FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2003

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Max Baucus:									
Mexico	Dollar		1,895.00						1,895.00
United States	Dollar				1,316.62				1,316.62
Senator Craig Thomas:									
Mexico	Dollar		1,470.00						1,470.00
Shara Aranoff:									
Mexico	Dollar		1,405.00						1,405.00
United States	Dollar				394.83				394.83
Everett Eissenstat:									
Mexico	Dollar		1,530.00						1,530.00
United States	Dollar				1,840.65				1,840.65
John Gilliland:									
Mexico	Dollar		1,865.00						1,865.00
United States	Dollar				1,114.65				1,114.65
Laura Hayes:									
Mexico	Dollar		1,385.00						1,385.00
United States	Dollar				201.42				201.42
Robert Holifield:									
Mexico	Dollar		1,869.00						1,869.00
United States	Dollar				378.65				378.65
David S. Johanson:									
Mexico	Dollar		1,513.18						1,513.18
United States	Dollar				1,840.65				1,840.65
Tom Mahr:									
Mexico	Dollar		1,333.00						1,333.00
United States	Dollar				191.52				191.52
David A. Olson:									
Mexico	Dollar		1,438.00						1,438.00
Brian Pomper:									
Mexico	Dollar		1,380.00						1,380.00
United States	Dollar				189.91				189.91
Tim Punke:									
Mexico	Dollar		1,409.00						1,409.00
United States	Dollar				201.42				201.42
Stephen Schaefer:									
Mexico	Dollar		1,485.00						1,485.00
United States	Dollar				1.840.65				1,840.65
Bryn Stewart:									
Mexico	Dollar		1,330.00						1,330.00
Total			21,307.18		9,510.97				30,818.15

CHUCK GRASSLEY,
Chairman, Committee on Finance, Oct. 20, 2003.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2003

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator John Sununu:									
United States	Dollar				3,063.85				3,063.85
Senator Lincoln Chafee:									
Israel	Dollar		1,086.00						1,086.00
Jordan	Dollar		326.00						326.00
United States	Dollar				4,438.50				4,438.50
Senator Richard Lugar:									
Russia	Dollar		866.66						866.66
Kazakhstan	Dollar		866.66						866.66
Uzbekistan	Dollar		866.67						866.67
Turkey	Dollar		562.00						562.00
Germany	Dollar		724.00						724.00
United States	Dollar				6,027.99				6,027.99
Senator Sam Brownback:									
Israel	Dollar		1,448.00						1,448.00
United States	Dollar				4,767.04				4,767.04
Heather Flynn:									
Ghana	Dollar		1,030.00						1,030.00
Sierra Leone	Dollar		440.00						440.00
Senegal	Dollar		1,058.00						1,058.00
United States	Dollar				7,417.00				7,417.00
Michael Phelan:									
Rwanda	Dollar		321.00						321.00
Tanzania	Dollar		45.00						45.00
Congo	Dollar		450.00		172.00				622.00
United States	Dollar				7,634.47		115.00		7,749.47
Michael Haltzel:									
Bosnia	Dollar		600.00						600.00
Austria	Dollar		800.00						800.00
Romania	Dollar		550.00						550.00
United States	Dollar				5,963.19				5,963.19
Andrew Fisher:									
Russia	Dollar		1,040.00						1,040.00
Kazakhstan	Dollar		220.00						220.00
Uzbekistan	Dollar		154.00						154.00
Turkey	Dollar		562.00						562.00
Germany	Dollar		600.00						600.00
United States	Dollar				6,027.99				6,027.99
Mark Helmke:									
Mexico	Dollar		950.00		68.00		272.00		1,290.00
Daniel Shapiro:									
Qatar	Dollar		204.00						204.00
Kuwait	Dollar		369.00						369.00
Carl Meacham:									
Brazil	Dollar		630.00						630.00
United States	Dollar				6,628.77				6,628.77
Puneet Talwar:									
Sweden	Dollar		891.00						891.00
United States	Dollar				4,900.60				4,900.60

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2003—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Jennifer Simon:									
Brazil	Dollar		630.00						630.00
United States	Dollar				6,662.40				6,662.40
Thomas Brady:									
Israel	Dollar		1,448.00						1,448.00
United States	Dollar				4,612.54				4,612.54
Thomas Moore:									
Russia	Dollar		465.33						465.33
Kazakhstan	Dollar		465.33						465.33
Uzbekistan	Dollar		465.33						465.33
Turkey	Dollar		562.00						562.00
Germany	Dollar		824.00						824.00
United States	Dollar				6,027.99				6,027.99
Jonah Blank:									
Sri Lanka	Dollar		1,330.00						1,330.00
Thailand	Dollar		380.00						380.00
Malaysia	Dollar		470.00						470.00
Singapore	Dollar		390.00						390.00
United States	Dollar				9,618.44				9,618.44
Frank Jannuzi:									
China	Dollar		2,515.00						2,515.00
North Korea	Dollar		1,178.00		1,905.70				3,083.70
South Korea	Dollar		292.00						292.00
United States	Dollar				2,594.73				2,594.73
Kenneth Myers, Jr.:									
Russia	Dollar		866.66						866.66
Kazakhstan	Dollar		866.66						866.66
Uzbekistan	Dollar		866.67						866.67
Turkey	Dollar		562.00						562.00
Germany	Dollar		724.00						724.00
United States	Dollar				6,027.99				6,027.99
Kenneth Myers III:									
Russia	Dollar		533.33						533.33
Kazakhstan	Dollar		533.33						533.33
Uzbekistan	Dollar		533.34						533.34
Turkey	Dollar		562.00						562.00
Germany	Dollar		724.00						724.00
United States	Dollar				6,027.99				6,027.99
Keith Luse:									
Indonesia	Dollar		1,285.04		1,236.85		304.20		2,826.09
Singapore	Dollar		134.16						134.16
China	Dollar		528.87						528.87
North Korea	Dollar		437.50						437.50
United States	Dollar				7,020.09				7,020.09
John Seggerman:									
Israel	Dollar		860.00						860.00
Jordan	Dollar		290.00						290.00
United States	Dollar				4,438.50				4,438.50
Total			45,410.53		113,282.62		691.20		153,356.36

RICHARD LUGAR,
Chairman, Committee on Foreign Relations, Oct. 6, 2003.

2ND QUARTER CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS FOR TRAVEL FROM APR. 1 TO JUNE 30, 2003

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Richard Lugar:									
Jordan	Dollar		1,350.00						1,350.00
Senator Chuck Hagel:									
Jordan	Dollar		1,350.00						1,350.00
Philippines	Dollar		294.00						294.00
Singapore	Dollar		622.00						622.00
Japan	Dollar		202.00						202.00
Jofi Joseph:									
Peru	Dollar		689.00		172.28				861.28
United States	Dollar				4,054.90				4,054.90
Senator Norm Coleman:									
Colombia	Dollar		675.00						675.00
Andrew Parasiliti:									
Kuwait	Dollar		1,167.00						1,167.00
Saudi Arabia	Dollar		450.00						450.00
United States	Dollar				7,031.66				7,031.66
Puneet Talwar:									
Kuwait	Dollar		1,167.00						1,167.00
Saudi Arabia	Dollar		450.00						450.00
United States	Dollar				7,031.66				7,031.66
Andrew Parsiliti:									
Jordan	Dollar		1,350.00						1,350.00
Iraq	Dollar		1,666.00						1,666.00
United States	Dollar				1,677.00				1,677.00
Puneet Talwar:									
Jordan	Dollar		1,350.00						1,350.00
Iraq	Dollar		1,666.00						1,666.00
United States	Dollar				1,677.00				1,677.00
Frank Zannuzi:									
Indonesia	Dollar		382.00						382.00
Thailand	Dollar		1,442.00						1,442.00
Laos	Dollar		157.00						157.00
United States	Dollar				7,648.06				7,648.06
Michael Haltzel:									
Lithuania	Dollar		235.00						235.00
Latvia	Dollar		414.00						414.00
Estonia	Dollar		446.00						446.00
Finland	Dollar		668.00						668.00
United States	Dollar				5,258.37				5,258.37
Kenneth Myers, Jr.:									

2ND QUARTER CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS FOR TRAVEL FROM APR. 1 TO JUNE 30, 2003—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Jordan	Dollar		1,350.00						1,350.00
Janice O'Connell:									
Mexico	Dollar		336.00						336.00
Haiti	Dollar		634.00						634.00
United States	Dollar				2,630.30				2,630.30
Nancy Stetson:									
Haiti	Dollar		646.00						646.00
United States	Dollar				1,162.00				1,162.00
Jennifer Simon:									
Mexico	Dollar		504.00						504.00
United States	Dollar				2,045.40				2,045.40
Kim Savit:									
Jordan	Dollar		635.00						635.00
Jennifer Simon:									
Venezuela	Dollar		894.00						894.00
United States	Dollar				2,193.33				2,193.33
Michelle Gavin:									
Sierra Leone	Dollar		750.00				145.00		895.00
United States	Dollar				8,377.73				8,377.73
Heather Flynn:									
Indonesia	Dollar		382.00						382.00
Thailand	Dollar		1,442.00		115.00				1,557.00
Laos	Dollar		157.00						157.00
United States	Dollar				11,414.78				11,414.78
Lou Ann Linehan:									
Philippines	Dollar		294.00						294.00
Singapore	Dollar		622.00						622.00
Japan	Dollar		202.00						202.00
Michael Phelan:									
Sierra Leone	Dollar		150.00				100.00		250.00
United States	Dollar				9,772.79				9,772.79
Carl Meacham:									
Colombia	Dollar		675.00						675.00
Lorianne Woodrow:									
Colombia	Dollar		675.00						675.00
Carl Meacham:									
Mexico	Dollar		504.00						504.00
United States	Dollar				2,045.40				2,045.40
Carl Meacham:									
Venezuela	Dollar		744.00						744.00
Chile	Dollar		288.00						288.00
United States	Dollar				4,696.33				4,696.33
Total			30,076.00		79,003.99		245.00		109,324.99

RICHARD LUGAR,
Chairman, Committee on Foreign Relations, Oct. 6, 2003.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON GOVERNMENTAL AFFAIRS FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2003

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Raymond V. Shepherd III:									
United States	Dollar				1,028.54				1,028.54
Germany	Euro		1,021.00						1,021.00
Laura Stuber:									
United States	Dollar				1,028.54				1,028.54
Germany	Euro		1,021.00						1,021.00
Total			2,042.00		2,057.08				4,099.08

SUSAN COLLINS,
Chairman, Committee on Governmental Affairs, Oct. 22, 2003.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON THE JUDICIARY FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2003

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Janice Kaguyutan:									
United States	Dollar				6,249.86				6,249.86
Guinea	Franc		463.18				306.36		769.54
Cote d'Ivoire	CFA Franc		875.31						875.31
Sierra Leone	Leone		363.01						363.01
Christopher Campbell:									
Mexico	Peso		372.50						372.50
Senator John Cornyn:									
Mexico	Peso		105.00						105.00
Matthew Winslow:									
Mexico	Peso		40.00						40.00
Senator Orrin Hatch:									
Mexico	Peso		200.00						200.00
Bruce Artim:									
Mexico	Peso		57.49						57.49
Marcia Lee:									
United States	Dollar				6,277.45				6,277.45
Turkey	Lira		899.00						899.00
Uzbekistan	SOM		262.00				15.00		277.00
Jeffrey Miller:									
United States	Dollar				5,044.40				5,044.40
Turkey	Lira		877.04						877.04

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON THE JUDICIARY FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2003—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Uzbekistan	SOM		269.40						269.40
Jennifer Wagner:									
United States	Dollar				6,494.45				6,494.45
Turkey	Lira		1,041.00						1,041.00
Uzbekistan	SOM		290.00						290.00
Senator John Cornyn:									
United States	Dollar				710.00				710.00
Mexico	Peso		413.87						413.87
Matthew Winslow:									
United States	Dollar				824.00				824.00
Mexico	Peso		412.19						412.19
Total			6,940.99		25,600.16		321.36		32,862.51

ORRIN HATCH,
Chairman, Committee on the Judiciary, Oct. 29, 2003.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON INTELLIGENCE FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2003

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
William Duhnke			879.42						879.42
Melvin Dubee			877.00						877.00
Senator John Rockefeller			1,012.00						1,012.00
Randall Bookout			1,656.00						1,656.00
	Dollar				8,109.11				8,109.11
Richard Douglas			1,729.00						1,729.00
	Dollar				8,109.00				8,109.00
Jacqueline Russell			638.00						638.00
	Dollar				4,857.37				4,857.37
Thomas Corcoran			638.00						638.00
	Dollar				4,862.70				4,862.70
Cynthia Bruno Wynkoop			232.00						232.00
	Dollar				4,907.37				4,907.37
Elizabeth O'Reilly			232.00						232.00
	Dollar				4,769.00				4,769.00
Total			7,893.42		35,614.55				43,507.97

PAT ROBERTS,
Chairman, Committee on Intelligence, Oct. 16, 2003.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), CODEL FRIST FOR TRAVEL FROM AUG. 19 TO AUG. 29, 2003

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Bill Frist:									
United States	Dollar				3,634.20				3,634.20
South Africa	Rand		697.00						697.00
Mozambique	Metical		458.00						458.00
Botswana	Pula		421.00						421.00
Senator John Warner:									
United States	Dollar				5,266.88				5,266.88
South Africa	Rand		642.00						642.00
Mozambique	Metical		417.00						417.00
Botswana	Pula		350.00						350.00
Senator Mike DeWine:									
South Africa	Rand		630.00						630.00
Mozambique	Metical		269.00						269.00
Botswana	Pula		325.00						325.00
Namibia	Dollar		171.00						171.00
Senator Mike Enzi:									
South Africa	Rand		571.00						571.00
Mozambique	Metical		460.00						460.00
Botswana	Pula		421.00						421.00
Namibia	Dollar		368.00						368.00
Senator Lamar Alexander:									
South Africa	Rand		597.00						597.00
Mozambique	Metical		460.00						460.00
Botswana	Pula		421.00						421.00
Namibia	Dollar		368.00						368.00
Senator Norm Coleman:									
United States	Dollar				4,809.89				4,809.89
South Africa	Rand		697.00						697.00
Mozambique	Metical		458.00						458.00
Botswana	Pula		205.00						205.00
David Schiappa:									
South Africa	Rand		597.00						597.00
Mozambique	Metical		460.00						460.00
Botswana	Pula		421.00						421.00
Namibia	Dollar		368.00						368.00
Steve Biegun:									
South Africa	Rand		697.00						697.00
Mozambique	Metical		460.00						460.00
Botswana	Pula		421.00						421.00
Namibia	Dollar		368.00						368.00
Andy Olson:									
South Africa	Rand		601.00						601.00
Mozambique	Metical		460.00						460.00
Botswana	Pula		421.00						421.00

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), CODEL FRIST FOR TRAVEL FROM AUG. 19 TO AUG. 29, 2003—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Namibia	Dollar		368.00						368.00
Nick Smith:									
South Africa	Rand		597.00						597.00
Mozambique	Metical		460.00						460.00
Botswana	Pula		421.00						421.00
Namibia	Dollar		368.00						368.00
George Tolbert:									
South Africa	Rand		497.00						497.00
Mozambique	Metical		360.00						360.00
Botswana	Pula		421.00						421.00
Namibia	Dollar		312.00						312.00
Sally Walsh:									
South Africa	Rand		697.00						697.00
Mozambique	Metical		460.00						460.00
Botswana	Pula		421.00						421.00
Namibia	Dollar		368.00						368.00
Delegation expenses*:									
South Africa	Rand						29,129.59		29,129.59
Mozambique	Metical						11,638.77		11,638.77
Botswana	Pula						11,941.09		11,941.09
Namibia	Dollar						11,638.77		11,638.77
Total			20,430.00		13,710.97		64,348.22		98,489.19

*Delegation expenses include payments and reimbursements to the Department of State, and the Department of Defense under the authority of Sec. 502(b) of the Mutual Security Act of 1954, as amended by Sec. 22 of P.L. 95–384, and S. Res. 179 agreed to May 25, 1977.

BILL FRIST,
Majority Leader, Oct. 11, 2003.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), BILL FRIST, MAJORITY LEADER FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2003

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Rohit Kumar:									
Mexico	Pesos		708.00						708.00
Total			708.00						708.00

BILL FRIST,
Majority Leader, Nov. 5, 2003.

101ST AIRBORNE

Mr. FRIST. Mr. President, ''Iraqi Destiny,'' which is the 101st Airborne Division's weekly newsletter, runs a feature on its last page called ''Man on the Street.'' The 101st Airborne is based in Tennessee and Kentucky, right on the border. I and my colleague, LAMAR ALEXANDER, and the distinguished colleagues from Kentucky have a particular interest in the men and the women with the 101st Airborne and their families and their support groups. It is fascinating to receive this weekly newsletter. In it was run a feature on the last page called ''Man on the Street.'' It features the 101st soldiers and Iraqi citizens answering a question of the week. The questions range from light hearted to the much more serious, such as, ''What will you do with the extra money you are making?'' to, ''What do you think of the new schools that are opening?''

A few weeks ago, soldiers were asked, ''What Arabic words have you learned while in Iraq?'' Most had conventional responses, things you would expect: ''Hello, how are you.'' But I was very interested to learn that a certain Screaming Eagle, Sergeant Thomas Baker, has learned the word, ''Habibi,'' Arabic for ''Sweetheart.'' Now, I won't speculate as to how or why Sergeant Baker has learned the word, ''Habibi.'' But I do think we can take it as an encouraging sign of the progress that is being made in Iraq.

I take special, home State pride in the 101st Airborne Division. It is based at Fort Campbell, 60 percent of which is located in Tennessee. It goes without saying that Fort Campbell is integral to the Tennessee community, and especially to Clarksville where many of Fort Campbell's families reside.

I've had the privilege of visiting Fort Campbell numerous times, actually staying overnight in the army barracks and traveling to Fort Campbell on another occasion with the President of the United States.

Under the leadership of Major General David Petraeus, a friend and someone I had known prior to coming to the Senate, the 101st is doing extraordinary work. You may remember that it was the 101st that found and dispatched Uday and Qusay Hussein in Mosul. Since then, the 101st has moved more quickly than any other American unit in training guards and policeman for the new Iraqi Civil Defense Corps.

They've also shown the Iraqi people tremendous generosity and heart in helping to rebuild Iraq's infrastructure, civic institutions and, even more fundamentally, the people's pride and hope in their future.

Take for example the story of the Avgani Clinic. Located in the north, the clinic serves 60,000 Iraqis from the town of Avgani and 50 outlaying villages. Under Saddam Hussein, the clinic was allowed to fall into disrepair. It had cracking walls, poor electricity, no bathroom. The clinic's director says that the clinic was ''a sad place.'' That, however, was before the arrival of First Lieutenant Michael Lefler and the Screaming Eagles.

In 3 months time, with just $25,000—in America, the price of a mid-size sedan—Lefler and his team led the renovation of the entire facility.

They installed new desks, chairs, computers, curtains, and yard tiles. They constructed several new rooms and bathrooms. The clinic is now fully operational, with twice the funds it previously had. The director of the clinic says the facility is now a ''very happy place.''

The 101st soldiers list among their values: ''Duty, Respect, Selfless-Service, Honor, Integrity, Personal Courage, and Professionalism.'' All of these virtues have been on sterling display. From organizing book drives for Iraqi schoolchildren, to restoring water and power, everyday the 101st is showing the Iraqi people exceptional character and America's commitment to Iraq's future.

I'd like to close with a story about a soccer game, not too long ago, in the town of Al Qosh. With the help of the 101st, the Lady Virgin Orphanage of Al

Qosh hosted the championship soccer tournament of the season. For the event, army engineers cleared an area adjacent to the orphanage to create a soccer field.

Seven teams from around the region, along with their families, gathered at the new field, cheering and blowing kazoos as the Screaming Eagles faced off against the Iraqi Sharafeya team. The Screaming Eagles won 2 to 1, and the crowd of spectators ran onto the field with cheers and laughter.

Among the happy fans were children from the orphanage wearing personalized soccer uniforms. Earlier in the summer, the 101st had given each child their own soccer uniform with the child's name printed across the back, and ''Screaming Eagles'' in Arabic emblazoned across the front. I suspect those uniforms will be treasured for years to come, and that is what this struggle is all about—the years to come. We have undertaken an extraordinary task to change the course of history, to bring peace and democracy to Iraq. We know that democracies do not export terror. Tyrannies do. So, we have toppled a despotic, terror-sponsoring regime and set out to transform a brutalized nation.

It is an ambitious undertaking worthy of a great country. America is a great country, and through the noble efforts of men and women like those of the 101st, Iraq is on the road to freedom.

Not too long ago, President Bush signed the historic $87 billion wartime supplemental that will help the Iraqis realize their dream. He also gave a very important speech to remind us of the fundamental nature of democracy, and America's role in the world.

He said:

> The advance of freedom is the calling of our time; it is the calling of our country. We believe that freedom is not for us alone, it is the right and the capacity of all mankind. The establishment of a free Iraq in the heart of the Middle East will be a watershed event in the global revolution.

President Bush has set a brave and courageous course. And I am confident that twenty years from now, Iraqis will fondly recall moments, like the Al Qosh championship soccer match of 2003, with the special pride of having been there when the liberation came.

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 the order for the quorum call be rescinded.

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

VISION 100—CENTURY OF AVIATION REAUTHORIZATION ACT—CONFERENCE REPORT

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to consideration of the conference report to accompany H.R. 2115, the Century of Aviation Reauthorization Act.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

> The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 2115), to amend title 49, United States Code, to reauthorize programs for the Federal Aviation Administration, and for other purposes, having met, have agreed to recommend and do recommend to their respective Houses as follows:
>
> That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment and the Senate agree to the same, signed by a majority of the conferees on the part of both Houses.

(The text of the Conference Report is printed in the proceedings of the House in the RECORD of October 29, 2003.)

CLOTURE MOTION

Mr. FRIST. To my understanding, we are unable to reach a time agreement on this conference report. I now send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to report the motion to invoke cloture on the conference report to accompany H.R. 2115, the Vision 100—Century of Aviation Reauthorization Act.

The 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 conference report to accompany H.R. 2115, the Flight 100—Century of Aviation Reauthorization Act.
>
> Bill Frist, John McCain, Conrad Burns, Ben Nighthorse Campbell, A. Wayne Allard, Jeff Sessions, M. Crapo, Larry E. Craig, Kay Bailey Hutchison, John E. Sununu, George Allen, Saxby Chambliss, Rick Santorum, Norm Coleman, Craig Thomas, Pat Roberts, Trent Lott.

The PRESIDING OFFICER. The minority leader.

Mr. DASCHLE. Mr. President, if I could just intercede for a moment, I have been discussing this matter with the distinguished majority leader. It is regrettable that, at least at this point, we have not reached a time agreement on the FAA conference report. A lot of work has gone into the bill on both sides. A lot of negotiation has gone into the conference agreement itself.

Because there is no public assurance on the part of the administration that they are not prepared to at least examine the impact of privatization, we are unable to reach agreement with regard to the time on the FAA conference report at this time. I am still hopeful that perhaps before the time we reach the cloture vote, the scheduled time for the cloture vote on Monday, the administration will at least give additional thought to a proposal that has been made now on both sides of the aisle that they simply join with us in examining more carefully the implications of privatization prior to the time it is decided.

A 1-year moratorium, an examination of the ramifications of privatization is what we are seeking. With that assurance I think we could get a vote of 100 to 0, perhaps, on this bill. I am very hopeful that is still within the realm of possibility. If it were not for that, I think we would have agreement this afternoon. So I only note that, given the fact that we still have time before next Monday to come to some agreement with regard to how to proceed on privatization.

I thank the majority leader for his intervention. I will await further word. I yield the floor.

Mr. FRIST. Mr. President, the Democratic leader and I were just talking about that prior to my taking the floor. I will discuss this with the appropriate people, as well as Senator LOTT, who has worked very hard on the conference report.

Mr. DASCHLE. I thank the majority leader.

Mr. FRIST. I now ask, notwithstanding rule XXII, this vote occur at 5:30 on Monday, and that the time from 4:30 to 5:30 be equally divided between the two leaders or their designees for debate prior to the vote. Finally, I ask the quorum under rule XXII be waived.

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

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. FRIST. I ask unanimous consent the Senate now proceed to executive session for the consideration of Calendar Nos. 237 and 238, en bloc.

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

The nominations will be stated.

DEPARTMENT OF AGRICULTURE

The legislative clerk read the nomination of Thomas C. Dorr, of Iowa, to be Under Secretary of Agriculture for Rural Development.

The legislative clerk read the nomination of Thomas C. Dorr, of Iowa, to be a Member of the Board of Directors of the Commodity Credit Corporation.

CLOTURE MOTIONS

Mr. FRIST. This nomination was reported by the Agriculture Committee on June 18. We have been unable to reach a consent on its consideration. Therefore, I send two cloture motions to the desk and ask they be reported consecutively.

The PRESIDING OFFICER. The cloture motions having been presented under rule XXII, the Chair directs the clerk to read the motions.

The 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 Executive Calendar No. 237, the nomination of Thomas Dorr to be Under Secretary of Agriculture for Rural Development:

Bill Frist, Thad Cochran, Saxby Chambliss, Rick Santorum, Norm Coleman, Craig Thomas, Jeff Sessions, Pat Roberts, Kay Bailey Hutchison, George V. Voinovich, Charles Grassley, Wayne Allard, Michael B. Enzi, Elizabeth Dole, John E. Sununu, Sam Brownback, John Warner.

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 Executive Calendar No. 238, the nomination of Thomas C. Dorr, of Iowa, to be a member of the Board of Directors of the Commodity Credit Corporation:

Bill Frist, Thad Cochran, Norm Coleman, Charles Grassley, Wayne Allard, Jim Bunning, Conrad Burns, Mitch McConnell, John Cornyn, Lamar Alexander, Larry Craig, Richard G. Lugar, Peter Fitzgerald, George Allen, Don Nickles, John Ensign, James M. Inhofe.

Mr. FRIST. I ask unanimous consent the mandatory quorum under rule XXII be waived.

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

DEPARTMENT OF STATE

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate immediately proceed to the consideration of the following nomination on today's Executive Calendar: Calendar No. 461. I further ask unanimous consent that the nomination be confirmed, the motion to reconsider be laid upon the table, and 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 was considered and confirmed as follows:

Zalmay Khalilzad, of Maryland, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Transitional Islamic State of Afghanistan.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to Legislative Session.

ADOPTION INCENTIVES REAUTHORIZATION ACT OF 2003

Mr. FRIST. Mr. President, I ask unanimous consent that the Finance Committee be discharged from further consideration of H.R. 3182 and the Senate proceed to its immediate consideration.

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

The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 3182) to reauthorize the adoption incentive payments program under part E of title IV of the Social Security Act, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. ROCKEFELLER. Mr. President, today, the Senate is taking bipartisan action to pass the Adoption Promotion Act of 2003, which will extend and improve the adoption bonuses created as part of the 1997 Adoption and Safe Families Act. For many years, the Senate has taken a bipartisan approach to adoption and child welfare policy. I am very proud to be one of the lead advocates for this legislation that rewards states which promote adoption and invest in child welfare.

Throughout this year, a bipartisan group, led by Finance Chairman GRASSLEY met to forge consensus on extending the adoption incentives, and doing more to focus attention on the needs of older children. President Bush highlighted the need to do more to promote adoptions for children nine years old or older, and Congress agreed. The list of cosponsors, including Senators LANDRIEU, BUNNING, CRAIG, BAUCUS, DEWINE, LEVIN, INHOFE, NELSON, LINCOLN, CLINTON, and JEFFORDS, demonstrates the broad coalition that can be achieved when we take a bipartisan approach.

As I noted, our legislation builds on the foundation set with the 1997 Adoption and Safe Families Act. Since its passage, adoptions from foster care have nearly doubled nationwide and over 900 West Virginia children have a permanent home. By extending and expanding this law, we hope to continue to promote permanent homes, and place a new focus on older children.

Despite our success in recent years, across this nation 126,000 children are waiting to be adopted. Children over the age of 9 represent almost half of the children awaiting adoption yet these children spend the most time in the system and have a difficult time finding permanent homes. The Adoption Promotion Act of 2003 will especially help these children by offering incentives to states that successfully place older children in adoptive homes.

This bill rewards states for moving children into permanent homes from the foster care system and further rewards states for moving special needs, and older children from foster care to permanent placements. This bill is particularly important for my state. In West Virginia, over 70 percent of the children in foster care are over age 9. This act will help older children find much needed, permanent homes.

This legislation is a positive way we can strengthen our child welfare system, but we also know that more must be done to help vulnerable children. The bipartisan spirit that helped ensure this legislation passage is the same spirit needed to deal with the rest of the child welfare system as we continue to push the basic goal of a child's health and safety being paramount, and every child finding a permanent home.

Mr. NELSON of Nebraska. Mr. President, I rise today in support of H.R. 3182, legislation to reauthorize the adoption incentive program. I would like to thank Senator GRASSLEY for his leadership on this issue. He has been a friend to American families for his entire tenure in this body and his work has made it even easier for more families to come together through adoption.

As an adoptive parent myself, I know firsthand how adoption can complete a family and how it can give new beginnings to both adoptive parents and children. And as a member of the Adoption Caucus, I have worked to make it easier for other families to experience the joy my family did through adoption.

This legislation will help that process by removing financial obstacles to adopting a child. As anyone who has been through an adoption knows, it can often by a very long, expensive process and for some families; the costs are so high as to be prohibitive. This legislation will help ensure that a family is not prevented from adopting a child simply because of the high costs involved.

The Adoption Incentives Program has already had been a tremendous success. Now this reauthorized and amended version of the program can help even more children and families for years to come. I stand wholeheartedly behind the goals of this bill and I look forward to working with Senator GRASSLEY on this issue again in the future.

ABUSED AND NEGLECTED CHILDREN

Mrs. CLINTON. Mr. President, first I want to thank Senator GRASSLEY for the leadership that he has shown in addressing the needs of abused and neglected children. Together with Senator LANDRIEU and Senator BUNNING, Senator GRASSLEY has worked tirelessly and I know that this work comes from the heart. It is not an issue that gets in the headlines unless something goes wrong. It's an issue that one champions only because he or she cares. I also want to acknowledge the longstanding commitment of my friend Senator ROCKEFELLER who is well known as the greatest ally of needy children in this esteemed body.

Mr. GRASSLEY. I too want to thank Senator LANDRIEU, and I would like to recognize Senator BUNNING's efforts on this legislation.

Today we are passing the Adoption Incentives Reauthorization Act of 2003. It is particularly appropriate that we are doing so during National Adoption Month. Since the original Adoption Incentives Act was passed in 1997, the number of adoptions has doubled in 33 states. I am proud of this achievement and pleased that we are today continuing the authorization of this effective program.

Mrs. CLINTON. I too am pleased to reach this milestone. When my husband and I worked to establish the program in 1997, we hoped that this program would become half the success that it has. My husband set a goal of

doubling the number of children adopted out of foster care and last month we finally achieved that goal. In New York City, the number of children in foster care has plummeted by more than half since 1997 due in large part to the increased focus on helping available children for adoption.

Nevertheless we still have a long way to go. Over 580,000 children remain in foster care, 126,000 of them are ready and waiting to be adopted into a loving home. That is why this legislation is so important. And not only does it continue the incentives for States to help children with special needs be adopted out of foster care, it adds a new incentive to focus on older children—those over 9—whose chances of being adopted grow slimmer by the year. These vulnerable children face the greatest danger of aging out of foster care, a transition that is associated with lower educational outcomes, higher rates of teen pregnancy, higher rates of poverty, lower rates of employment, and many other negative factors.

Mr. GRASSLEY. I am pleased that this bill focuses on older children, thanks to the leadership of President Bush, and I hope when we revisit this legislation during the next reauthorization we will have seen the same remarkable results that we have seen over the past 5 years.

Mrs. CLINTON. Of course, as the number of children in foster care declines, as it has in New York City, it becomes increasingly difficult for states to qualify for adoption incentive awards. In order to receive such a bonus, states must exceed the highest number of adoptions they have achieved since the base year. Some have suggested that an alternative, and potentially more accurate, method for determining bonuses would be to look at the percentage of children in foster care who are adopted as opposed to the raw number.

Mr. GRASSLEY. I am aware that that method has been put on the table. However by adjusting the base year to 2002 and adding a new category of older children, we made it much easier for states to qualify for an adoption incentive bonus. Throughout the course of this reauthorization we talked to child welfare advocates and listened to their concerns about the way the incentives are awarded. The method we arrived at was reached through consensus and we have received very strong bi-partisan, bi-cameral support for the bill before us today. In fact, the House has already passed this legislation without opposition. By passing the same language here in the Senate, we are ensuring that President Bush will sign this important legislation into law sooner rather than later.

Mrs. CLINTON. I very much appreciate all the time that has gone into this act. And I am pleased that we are going to work together to have the General Accounting Office look into what is the best way to structure the adoption incentives formula so that when we consider this legislation in the future we will have thoroughly explored other methods for calculating bonuses.

Mr. GRASSLEY. I am also looking forward to a through study of this issue that can inform the next reauthorization.

Mrs. CLINTON. Now, there have been some news reports lately that have argued that the Adoption Incentives Program has put children in dangerous situations by creating a strong financial incentive to place children for adoption out of foster care without regard to their safety or well-being.

Mr. GRASSLEY. I have seen those reports and I disagree with their premise. The primary goal of the Adoption and Safe Families Act is to make the safety and well-being of children paramount in child welfare decisions. In addition, in order to receive funds under the Promoting Safe and Stable Families Program, states must develop a plan to assure safety and permanency for children who enter the state's foster care system.

Adoption assistance is minimal especially when you think about the cost of raising a child. Families who adopt are highly unlikely to adopt children for the financial benefit. Nationally payments made on behalf of an eight-year-old average only $14 per day. This is a fraction of what the Department of Agriculture suggests is needed to raise a child.

Mrs. CLINTON. I absolutely agree. And I would build on your remarks by adding that if States are not making the safety and well-being of the child paramount they are endangering their Title–IV–E funds, which is a much larger pot of money than the small amount they receive as a bonus under the Adoption Incentives Program. However, I would also add that it becomes increasingly difficult to guarantee the safety of each child under the care of the State when caseworkers are responsible for excessive caseloads and do not have the training to effectively serve the children in the child welfare system.

I would also add that I believe the next important step we need to take to make all adoptions out of foster care successful is to dedicate more resources to post-adoption services, including respite care, mental healthcare, and educational services.

Mr. GRASSLEY. I agree that we have to focus on the full range of adoption services. We have not improved the lives of abused and neglected children if they are adopted only to be returned to foster care because the families that adopted them didn't have the support they needed to care for them. This is not good for these kids.

Mrs. CLINTON. One way that we might consider to help States provide the full range of adoption services is to tap into the pot of unspent funds in the Adoption Incentives Program. Last year $45 million was appropriated for the purpose of awarding bonuses, but only $18 million was actually awarded. I believe these funds have been retained by HHS for the purpose of awarding future bonuses, but with the great need for child welfare funds, I believe these funds would be better spent this year on post-adoption services or in bonuses for States that have increased the percentage of children adopted out of foster care.

Mr. GRASSLEY. I agree that funds appropriated for the Adoption Incentives Program should be spent on child welfare. While we may disagree about how exactly those funds should be spent, we are in agreement that they should be used to improve the lives of abused and neglected children. I know that there is interest among members of the Finance Committee to see that these unspent funds are used to improve the lives of children and I hope we can all work together to address this in the future.

Mrs. CLINTON. I thank Senator GRASSLEY for his leadership and his commitment to America's most vulnerable children. I look forward to working with him in the future.

Mr. FRIST. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The bill (H.R. 3182) was read for the third time and passed.

OVERSEAS PRIVATE INVESTMENT CORPORATION AMENDMENTS ACT OF 2003

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 36, S. 1824.

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

The legislative clerk read as follows:

A bill (S. 1824) to amend the Foreign Assistance Act of 1961 to reauthorize the Overseas Private Investment Corporation, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

Mr. FRIST. Mr. President, I ask unanimous consent that the bill be read for a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The bill (S. 1824) was read the third time and passed, as follows:

S. 1824

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 ''Overseas Private Investment Corporation Amendments Act of 2003''.

SEC. 2. ISSUING AUTHORITY.

Section 235(a)(2) of the Foreign Assistance Act of 1961 (22 U.S.C. 2195(a)(2)) is amended

by striking ''November 1, 2000'' and inserting ''2007''.

SEC. 3. TECHNICAL CORRECTIONS.

(a) ADMINISTRATIVE COSTS.—Section 235(a)(1)(B) of the Foreign Assistance Act of 1961 (22 U.S.C. 2195(a)(1)(B)) is amended by striking ''subsidy cost'' and inserting ''subsidy and administrative costs''.

(b) NONCREDIT ACCOUNT REVOLVING FUND.—Section 235(c) of the Foreign Assistance Act of 1961 (22 U.S.C. 2195(c)) is amended—

(1) in the first sentence—

(A) by striking ''an insurance and guaranty fund, which shall have separate accounts to be known as the Insurance Reserve and the Guaranty Reserve, which reserves'' and inserting ''a noncredit account revolving fund, which''; and

(B) by striking ''such reserves have'' and inserting ''of the fund has'';

(2) by striking the third sentence; and

(3) in the last sentence, by striking ''reserves'' and inserting ''fund''.

(c) PAYMENTS TO DISCHARGE LIABILITIES.—Section 235(d) of the Foreign Assistance Act of 1961 (22 U.S.C. 2195(d)) is amended—

(1) in the first sentence, by striking ''Insurance Reserve, as long as such reserve'' and inserting ''noncredit account revolving fund, as long as such fund''; and

(2) in the second sentence, by striking ''or under similar predecessor guaranty authority'' and all that follows through ''subsection (f) of this section'' and inserting ''or 234(c) shall be paid in accordance with the Federal Credit Reform Act of 1990''.

(d) AUTHORIZATION OF APPROPRIATIONS.—Section 235(f) of the Foreign Assistance Act of 1961 (22 U.S.C. 2195(f)) is amended—

(1) in the first sentence, by striking ''insurance and guaranty fund'' and inserting ''noncredit account revolving fund''; and

(2) by striking ''Insurance Reserve'' each place it appears and inserting ''noncredit account revolving fund''.

(e) BOARD OF DIRECTORS.—Section 233(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2193(b)) is amended in the second paragraph—

(1) by striking ''officials'' and inserting ''principal officers'';

(2) by inserting ''whose duties relate to the programs of the Corporation'' after ''Government of the United States''; and

(3) by striking ''an official'' and inserting ''one such officer''.

SEC. 4. INVESTMENT INSURANCE.

(a) EXPROPRIATION OR CONFISCATION.—Section 234(a)(1)(B) of the Foreign Assistance Act of 1961 (22 U.S.C. 2194(a)(1)(B)) is amended by inserting ''or any political subdivision thereof'' after ''government''.

(b) DEFINITION OF EXPROPRIATION.—Section 238(b) of the Foreign Assistance Act of 1961 (22 U.S.C. 2198(b)) is amended by inserting '', a political subdivision of a foreign government, or a corporation owned or controlled by a foreign government,'' after ''government''.

SEC. 5. LOCAL CURRENCY GUARANTY.

(a) LOCAL CURRENCY GUARANTY.—Section 234 of the Foreign Assistance Act of 1961 (22 U.S.C. 2194) is amended by adding at the end the following:

''(h) LOCAL CURRENCY GUARANTIES FOR ELIGIBLE INVESTORS.—To issue to—

''(1) eligible investors, or

''(2) local financial institutions, guaranties,

denominated in currencies other than United States dollars, of loans and other investments made to projects sponsored by or significantly involving eligible investors, assuring against loss due to such risks and upon such terms and conditions as the Corporation may determine, for projects that the Corporation determines to have significant developmental effects or as the Corporation determines to be necessary or appropriate to carry out the purposes of this title.''.

(b) DEFINITION OF LOCAL FINANCIAL INSTITUTION.—Section 238 of the Foreign Assistance Act of 1961 (22 U.S.C. 2198) is amended—

(1) in subsection (d), by striking ''and'' after the semicolon;

(2) in subsection (f), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(g) the term 'local financial institution'—

''(1) means any bank or financial institution that is organized under the laws of any country or area in which the Corporation operates; but

''(2) does not include a branch, however organized, of a bank or other financial institution that is organized under the laws of a country in which the Corporation does not operate.''.

SEC. 6. OUTREACH TO MINORITY- AND WOMEN-OWNED BUSINESSES.

(a) IN GENERAL.—Section 240 of the Foreign Assistance Act of 1961 (22 U.S.C. 2200) is amended—

(1) in the first sentence, by striking ''The Corporation'' and inserting:

''(a) IN GENERAL.—The Corporation''; and

(2) by adding at the end the following:

''(b) OUTREACH TO MINORITY-OWNED AND WOMEN-OWNED BUSINESSES.—The Corporation shall collect data on the involvement of minority- and women-owned businesses in projects supported by the Corporation, including—

''(1) the amount of insurance and financing provided by the Corporation to such businesses in connection with projects supported by the Corporation; and

''(2) to the extent such information is available, the involvement of such businesses in procurement activities conducted or supported by the Corporation.

The Corporation shall include, in its annual report submitted to the Congress under section 240A, the aggregate data collected under this paragraph, in such form as to quantify the effectiveness of the Corporation's outreach activities to minority- and women-owned businesses.''.

WORKFORCE INVESTMENT ACT AMENDMENTS OF 2003

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 366, S. 1627.

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

The legislative clerk read as follows:

A bill (S. 1627) to reauthorize the Workforce Investment Act of 1998, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Health, Education, Labor, and Pensions, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

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

S. 1627

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 ''Workforce Investment Act Amendments of 2003''.

[SEC. 2. TABLE OF CONTENTS.

[The table of contents of this Act is as follows:

[Sec. 1. Short title.
[Sec. 2. Table of contents.
[Sec. 3. References.
[TITLE I—AMENDMENTS TO TITLE I OF THE WORKFORCE INVESTMENT ACT OF 1998
[Subtitle A—Definitions
[Sec. 101. Definitions.
[Subtitle B—Statewide and Local Workforce Investment Systems
[Sec. 111. Purpose.
[Sec. 112. State workforce investment boards.
[Sec. 113. State plan.
[Sec. 114. Local workforce investment areas.
[Sec. 115. Local workforce investment boards.
[Sec. 116. Local plan.
[Sec. 117. Establishment of one-stop delivery systems.
[Sec. 118. Eligible providers of training services.
[Sec. 119. Eligible providers of youth activities.
[Sec. 120. Youth activities.
[Sec. 121. Adult and dislocated worker employment and training activities.
[Sec. 122. Performance accountability system.
[Sec. 123. Authorization of appropriations.
[Subtitle C—Job Corps
[Sec. 131. Job Corps.
[Subtitle D—National Programs
[Sec. 141. Native American programs.
[Sec. 142. Migrant and seasonal farmworker programs.
[Sec. 143. Veterans' workforce investment programs.
[Sec. 144. Youth challenge grants.
[Sec. 145. Technical assistance.
[Sec. 146. Demonstration, pilot, multiservice, research, and multistate projects.
[Sec. 147. National dislocated worker grants.
[Sec. 148. Authorization of appropriations for national activities.
[Subtitle E—Administration
[Sec. 151. Requirements and restrictions.
[Sec. 152. Cost principles.
[Sec. 153. Reports.
[Sec. 154. Administrative provisions.
[Sec. 155. Use of certain real property.
[TITLE II—AMENDMENTS TO THE ADULT EDUCATION AND FAMILY LITERACY ACT
[Sec. 201. Short title; purpose.
[Sec. 202. Definitions.
[Sec. 203. Authorization of appropriations.
[Sec. 204. Reservation of funds; grants to eligible agencies; allotments.
[Sec. 205. Performance accountability system.
[Sec. 206. State administration.
[Sec. 207. State distribution of funds; matching requirement.
[Sec. 208. State leadership activities.
[Sec. 209. State plan.
[Sec. 210. Programs for corrections education and other institutionalized individuals.
[Sec. 211. Grants and contracts for eligible providers.
[Sec. 212. Local application.
[Sec. 213. Local administrative cost limits.
[Sec. 214. Administrative provisions.
[Sec. 215. National Institute for Literacy.
[Sec. 216. National leadership activities.
[Sec. 217. Integrated English literacy and civics education.
[Sec. 218. Transition.
[TITLE III—AMENDMENTS TO OTHER PROVISIONS OF LAW
[Sec. 301. Wagner-Peyser Act.

[TITLE IV—REHABILITATION ACT AMENDMENTS
[Sec. 401. Short title.
[Sec. 402. Technical amendments to table of contents.
[Sec. 403. Purpose.
[Sec. 404. Definitions.
[Sec. 405. Administration of the Act.
[Sec. 406. Carryover.
[Subtitle A—Vocational Rehabilitation Services
[Sec. 411. Declaration of policy; authorization of appropriations.
[Sec. 412. State plans.
[Sec. 413. Eligibility and individualized plan for employment.
[Sec. 414. Vocational rehabilitation services.
[Sec. 415. State rehabilitation council.
[Sec. 416. Evaluation standards and performance indicators.
[Sec. 417. State allotments.
[Sec. 418. Client assistance program.
[Sec. 419. Incentive grants.
[Sec. 420. Vocational rehabilitation services grants.
[Sec. 421. GAO studies.
[Subtitle B—Research and Training
[Sec. 431. Authorization of appropriations.
[Sec. 432. National Institute on Disability and Rehabilitation Research.
[Sec. 433. Research and other covered activities.
[Sec. 434. Rehabilitation research advisory council.
[Subtitle C—Professional Development and Special Projects and Demonstrations
[Sec. 441. Training.
[Sec. 442. Demonstration and training programs.
[Sec. 443. Migrant and seasonal farmworkers.
[Sec. 444. Recreational programs.
[Subtitle D—National Council on Disability
[Sec. 451. Authorization of appropriations.
[Subtitle E—Rights and Advocacy
[Sec. 461. Architectural and transportation barriers compliance board.
[Sec. 462. Protection and advocacy of individual rights.
[Subtitle F—Employment Opportunities for Individuals With Disabilities
[Sec. 471. Projects with industry authorization of appropriations.
[Sec. 472. Services for individuals with significant disabilities authorization of appropriations.
[Subtitle G—Independent Living Services and Centers for Independent Living
[Sec. 481. State plan.
[Sec. 482. Statewide independent living council.
[Sec. 483. Independent living services authorization of appropriations.
[Sec. 484. Program authorization.
[Sec. 485. Grants to centers for independent living in States in which Federal funding exceeds State funding.
[Sec. 486. Grants to centers for independent living in States in which State funding equals or exceeds Federal funding.
[Sec. 487. Standards and assurances for centers for independent living.
[Sec. 488. Centers for independent living authorization of appropriations.
[Sec. 489. Independent living services for older individuals who are blind.
[Sec. 490. Program of grants.
[Sec. 491. Independent living services for older individuals who are blind authorization of appropriations.
[Subtitle H—Miscellaneous
[Sec. 495. Helen Keller National Center Act.
[TITLE V—TRANSITION AND EFFECTIVE DATE
[Sec. 501. Transition provisions.
[Sec. 502. Effective date.

[SEC. 3. REFERENCES.

[Except as otherwise expressly provided, wherever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the amendment or repeal shall be considered to be made to a section or other provision of the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.).

[TITLE I—AMENDMENTS TO TITLE I OF THE WORKFORCE INVESTMENT ACT OF 1998

[Subtitle A—Definitions

[SEC. 101. DEFINITIONS.

[Section 101 (29 U.S.C. 2801) is amended—

[(1) by striking paragraph (24);

[(2) by redesignating paragraphs (1) through (4), (5) through (16), (17), (18) through (23), (25) through (41), and (42) through (53) as paragraphs (2) through (5), (7) through (18), (20), (23) through (28), (29) through (45), and (47) through (58), respectively;

[(3) by inserting before paragraph (3) (as redesignated by paragraph (2)) the following:

[''(1) ACCRUED EXPENDITURES.—The term 'accrued expenditures' means charges incurred by recipients of funds under this title for a given period requiring the provision of funds for—

[''(A) goods or other tangible property received;

[''(B) services performed by employees, contractors, subgrantees, subcontractors, and other payees; and

[''(C) other amounts becoming owed under programs assisted under this title for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

[(4) in paragraph (2) (as redesignated by paragraph (2)), by striking ''Except in sections 127 and 132,'' and inserting ''Except in section 132,'';

[(5) by inserting after paragraph (5) (as redesignated by paragraph (2)) the following:

[''(6) BUSINESS INTERMEDIARY.—The term 'business intermediary' means an entity that brings together various stakeholders with an expertise in an industry or business sector.'';

[(6) in paragraph (9) (as redesignated by paragraph (2)), by inserting '', including a faith-based organization,'' after ''nonprofit organization'';

[(7) in paragraph (10) (as redesignated by paragraph (2))—

[(A) in subparagraph (B), by striking ''and'' after the semicolon;

[(B) in subparagraph (C)—

[(i) by striking ''not less than 50 percent of the cost of the training'' and inserting ''a significant portion of the cost of training as determined by the local board, taking into account the size of the employer and such other factors as the local board determines to be appropriate''; and

[(ii) by striking the period and inserting ''; and''; and

[(C) by adding at the end the following:

[''(D) for customized training with employers in various parts of the State, a significant portion of the cost of the training, as determined by the Governor, taking into account the size of the employer and such other factors as the Governor determines appropriate.'';

[(8) in paragraph (11) (as redesignated by paragraph (2))—

[(A) in subparagraph (A)(ii)(II), by striking ''section 134(c)'' and inserting ''section 121(e)'';

[(B) in subparagraph (C), by striking ''or'' after the semicolon;

[(C) in subparagraph (D), by striking the period and inserting ''; or''; and

[(D) by adding at the end the following:

[''(E)(i) is a member of the Armed Forces on active duty, who has been involuntarily separated with an honorable discharge, from the Armed Forces, or who has received notice of such separation;

[''(ii) is the spouse or adult dependent of a member of the Armed Forces who has experienced the loss of employment as a direct result of relocation to accommodate a change in duty station of such member; or

[''(iii) is the spouse of a member of the Armed Forces on active duty who meets the criteria described in paragraph (13)(B).'';

[(9) in paragraph (12)(A) (as redesignated by paragraph (2))—

[(A) by striking ''and'' after the semicolon and inserting ''or'';

[(B) by striking ''(A)'' and inserting ''(A)(i)''; and

[(C) by adding at the end the following:

[''(ii) is the dependent spouse of a member of the Armed Forces, whose family income is significantly reduced because of a deployment, an activation, a transfer of duty station, or the service-connected death or disability of the spouse; and'';

[(10) in paragraph (14)(A) (as redesignated by paragraph (2)), by striking ''section 122(e)(3)'' and inserting ''section 122'';

[(11) by inserting after paragraph (18) (as redesignated by paragraph (2)) the following:

[''(19) HARD-TO-SERVE POPULATIONS.—The term 'hard-to-serve populations' means populations of individuals who are hard-to-serve, including displaced homemakers, low-income individuals, Native Americans, individuals with disabilities, older individuals, ex-offenders, homeless individuals, individuals with limited English proficiency, individuals who do not meet the definition of literacy in section 203, individuals facing substantial cultural barriers, migrant and seasonal farmworkers, individuals within 2 years of exhausting lifetime eligibility under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), and such other groups as the Governor determines to be hard-to-serve.'';

[(12) by inserting after paragraph (20) (as redesignated by paragraph (2)) the following:

[''(21) INTEGRATED TRAINING PROGRAM.—The term 'integrated training program' means a program that combines occupational skills training with language acquisition.

[''(22) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' has the meaning given the term in section 102(a)(1) (A) and (B) of the Higher Education Act of 1965 (20 U.S.C. 1002(a)(1)).'';

[(13) in paragraph (29) (as redesignated by paragraph (2))—

[(A) in subparagraph (B), by striking ''higher of—'' and all that follows through ''level, for an equivalent period'' and inserting ''poverty line for an equivalent period'';

[(B) by redesignating subparagraphs (D) through (F) as subparagraphs (E) through (G), respectively; and

[(C) by inserting after subparagraph (C) the following:

[''(D) receives or is eligible to receive a free or reduced price lunch under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.);'';

[(14) in paragraph (34) (as redesignated by paragraph (2)), by inserting '', subject to section 121(b)(1)(C)'' after ''121(b)(1)'';

[(15) by striking paragraph (37) (as redesignated by paragraph (2)) and inserting the following:

[''(37) OUT-OF-SCHOOL YOUTH.—The term 'out-of-school youth' means an out-of-school youth as defined in section 129(a)(1)(B).'';

[(16) in paragraph (45) (as redesignated by paragraph (2)), by striking '', and the term means such Secretary for purposes of section 503'';

[(17) by inserting after paragraph (45) (as redesignated by paragraph (2)) the following:

[''(46) SELF-SUFFICIENCY.—The term 'self-sufficiency' has the meaning given the term in section 134(a)(3)(A)(4)(x) and section 134(e)(1)(A)(ix).'';

[(18) in paragraph (48) (as redesignated by paragraph (2)), by striking ''clause (iii) or (v) of section 136(b)(3)(A)'' and inserting ''section 136(b)(3)(A)(iii)'';

[(19) in paragraph (57) (as redesignated by paragraph (2)), by striking ''(or as described in section 129(c)(5))'' and inserting ''(or as described in section 129(a)(2))''; and

[(20) in paragraph (58) (as redesignated by paragraph (2)), by striking ''established under section 117(h)'' and inserting ''that may be established under section 117(h)(2)''.

[Subtitle B—Statewide and Local Workforce Investment Systems

[SEC. 111. PURPOSE.

[Section 106 (29 U.S.C. 2811) is amended to read as follows:

[''SEC. 106. PURPOSES.

[''The purposes of this subtitle are the following:

[''(1)(A) Primarily, to provide workforce investment activities, through statewide and local workforce investment systems, that increase the employment, retention, self-sufficiency, and earnings of participants, and increase occupational skill attainment by participants.

[''(B) As a result of the provision of the activities, to improve the quality of the workforce, reduce welfare dependency, increase self-sufficiency, and enhance the productivity and competitiveness of the Nation.

[''(2) To enhance the workforce investment system of the Nation by strengthening one-stop centers, providing for more effective governance arrangements, promoting access to a more comprehensive array of employment and training and related services, establishing a targeted approach to serving youth, improving performance accountability, and promoting State and local flexibility.

[''(3) To provide workforce investment activities in a manner that promotes the informed choice of participants and actively involves participants in decisions affecting their participation in such activities.

[''(4) To provide workforce investment systems that are demand-driven and responsive to the needs of all employers, including small employers.

[''(5) To provide workforce investment systems that work in all areas of the Nation, including urban and rural areas.

[''(6) To allow flexibility to meet State, local, regional, and individual workforce investment needs.

[''(7) To recognize and reinforce the vital link between economic development and workforce investment activities.

[''(8) To provide for accurate data collection, reporting, and performance measures that are not unduly burdensome.

[''(9) To address the ongoing shortage of essential skills in the United States workforce related to both manufacturing and knowledge-based economies to ensure that the United States remains competitive in the global economy.

[''(10) To equip workers with higher skills and contribute to lifelong education.

[''(11) To eliminate training disincentives for hard-to-serve populations and minority workers, including effectively utilizing community programs, services, and agencies.

[''(12) To educate limited English proficient individuals about skills and language so the individuals are employable.

[''(13) To increase the employment, retention and earnings of individuals with disabilities.''.

[SEC. 112. STATE WORKFORCE INVESTMENT BOARDS.

[(a) MEMBERSHIP.—

[(1) IN GENERAL.—Section 111(b) (29 U.S.C. 2821(b)) is amended—

[(A) in paragraph (1), by striking subparagraph (C) and inserting the following:

[''(C) representatives appointed by the Governor, who—

[''(i) are the lead State agency officials with responsibility for the programs and activities that are described in section 121(b) and carried out by one-stop partners, except that—

[''(I) in any case in which no lead State agency official has responsibility for such a program or activity, the representative shall be a representative in the State with expertise relating to such program or activity; and

[''(II) in the case of the programs authorized under title I of the Rehabilitation Act of 1973, the representative shall be the head of the designated State unit, as defined in section 7 of the Rehabilitation Act of 1973 (29 U.S.C. 705);

[''(ii) are the State agency officials responsible for economic development;

[''(iii) are representatives of all business in the State, including small businesses, who—

[''(I) are owners of businesses, chief executive or operating officers of businesses, or other business executives or employers with optimum policymaking or hiring authority;

[''(II) represent businesses with employment opportunities that reflect employment opportunities in the State; and

[''(III) are appointed from among individuals nominated by State business organizations, business trade associations, and local boards;

[''(iv) is a chief elected official (representing cities and counties, where appropriate);

[''(v) are representatives of labor organizations, who have been nominated by State labor federations; and

[''(vi) are such other State agency officials and other representatives as the Governor may designate.''; and

[(B) in paragraph (3), by striking ''paragraph (1)(C)(i)'' and inserting ''paragraph (1)(C)(iii)''.

[(2) CONFORMING AMENDMENT.—Section 111(c) (29 U.S.C. 2821(c)) is amended by striking ''subsection (b)(1)(C)(i)'' and inserting ''subsection (b)(1)(C)(iii)''.

[(b) FUNCTIONS.—Section 111(d) (29 U.S.C. 2811(d)) is amended—

[(1) in paragraph (1), by striking ''development'' and inserting ''development, implementation, and revision'';

[(2) in paragraph (2), by striking ''section 134(c)'' and inserting ''section 121(e)'';

[(3) by striking paragraph (3) and inserting the following:

[''(3) reviewing and providing comment on the State plans of all one-stop partner programs, where applicable, in order to provide effective strategic leadership in the development of a high quality, comprehensive statewide workforce investment system, including commenting at least once annually on the measures taken pursuant to section 113(b)(3) of the Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C 2323(b)(3)) and title II of this Act;'';

[(4) by redesignating paragraphs (4) through (9) as paragraphs (5) through (10), respectively;

[(5) by inserting after paragraph (3) the following:

[''(4) development and review of statewide policies affecting the coordinated provision of services through the one-stop delivery systems described in section 121(e) within the State, including—

[''(A) the development of objective procedures and criteria for use by local boards in assessing the effectiveness and continuous improvement of one-stop centers under section 121(g);

[''(B) the development of guidance for the allocation of one-stop center infrastructure funds under section 121(h)(1)(B);

[''(C) the development of—

[''(i) statewide policies relating to the appropriate roles and contributions of one-stop partner programs within the one-stop delivery system, including approaches to facilitating equitable and efficient cost allocation in the one-stop delivery system;

[''(ii) statewide strategies for providing effective outreach to individuals, including hard-to-serve populations, and employers who could benefit from services provided through the one-stop delivery system; and

[''(iii) strategies for technology improvements to facilitate access to services provided through the one-stop delivery system, in remote areas, and for individuals with disabilities, which may be utilized throughout the State;

[''(D) identification and dissemination of information on best practices for effective operation of one-stop centers, including use of innovative business outreach, partnerships, and service delivery strategies, including for hard-to-serve populations; and

[''(E) such other matters as may promote statewide objectives for, and enhance the performance of, the one-stop delivery systems;'';

[(6) in paragraph (5) (as redesignated by paragraph (4)), by inserting ''and the development of Statewide criteria to be used by chief elected officials for the appointment of local boards and for use in certification of local boards consistent with section 117'' after ''section 116'';

[(7) in paragraph (6) (as redesignated by paragraph (4)), by striking ''sections 128(b)(3)(B) and 133(b)(3)(B)'' and inserting ''sections 128(b)(3) and 133(b)(3)(B)'';

[(8) in paragraph (8) (as redesignated by paragraph (4), by striking ''and'' after the semicolon;

[(9) in paragraph (10) (as redesignated by paragraph (4))—

[(A) by striking ''section 503'' and inserting ''section 136(i)(1)''; and

[(B) by striking the period and inserting ''; and''; and

[(10) by adding at the end the following:

[''(11) increasing the availability of skills training, employment opportunities, and career advancement for hard-to-serve populations.''.

[(c) ALTERNATIVE ENTITY.—Section 111(e) (29 U.S.C. 2811(e)) is amended—

[(1) in paragraph (1), by striking ''For'' and inserting ''Subject to paragraph (3), for''; and

[(2) by adding at the end the following:

[''(3) FAILURE TO MEET PERFORMANCE MEASURES.—If a State fails to meet the State adjusted levels of performance established pursuant to section 136, the Secretary may require the State to establish a State board in accordance with subsections (a), (b), and (c) in lieu of the alternative entity established under paragraph (1).''.

[(d) SUNSHINE PROVISION.—Section 111(g) (29 U.S.C. 2822(g)) is amended—

[(1) by inserting '', and modifications to the State plan,'' before ''prior''; and

[(2) by inserting '', and modifications to the State plan'' after ''the plan''.

[(e) AUTHORITY TO HIRE STAFF.—Section 111 (29 U.S.C. 2811)) is amended by adding at the end the following:

[''(h) AUTHORITY TO HIRE STAFF.—The State board may hire staff to assist in carrying out the functions described in subsection (d) using funds allocated under section 127(b)(1)(C) and section 132(b).''.

[SEC. 113. STATE PLAN.

[(a) PLANNING CYCLE.—Section 112(a) (29 U.S.C. 2822(a)) is amended—

[(1) by striking ''5-year strategy'' and inserting ''4-year strategy''; and

[(2) by adding at the end the following: ''At the end of the first 2-year period of the 4-year State plan, the State board shall review and, as needed, amend the 4-year State plan to reflect labor market and economic conditions. In addition, the State shall submit a modification to the State plan at the end of the first 2-year period of the State plan, which may include redesignation of local areas pursuant to section 116(a) and the levels of performance under sections 136 for the third and fourth years of the plan.''.

[(b) CONTENTS.—Section 112(b) (29 U.S.C. 2822(b)) is amended—

[(1) in paragraph (8)(A)—

[(A) in clause (ix), by striking ''and'' after the semicolon; and

[(B) by adding at the end the following:

[''(xi) programs authorized under title II of the Social Security Act (42 U.S.C. 401 et seq.) (relating to Federal old-age, survivors, and disability insurance benefits), title XVI of such Act (42 U.S.C. 1381 et seq.) (relating to supplemental security income), title XIX of such Act (42 U.S.C. 1396 et seq.) (relating to medicaid), and title XX of such Act (relating to block grants to States for social services), programs authorized under title VII of the Rehabilitation Act of 1973 (29 U.S.C. 796 et seq.), and programs carried out by State agencies relating to mental retardation and developmental disabilities; and'';

[(2) by striking paragraph (10) and inserting the following:

[''(10) a description of how the State will use funds the State received under this subtitle to leverage other Federal, State, local, and private resources, in order to maximize the effectiveness of such resources, expand resources for the provision of education and training services, and expand the participation of businesses, employees, and individuals in the Statewide workforce investment system, including a description of incentives and technical assistance the State will provide to local areas for such purposes;'';

[(3) in paragraph (12)(A), by striking ''sections 128(b)(3)(B) and 133(b)(3)(B)'' and inserting ''sections 128(b)(3) and 133(b)(3)(B)'';

[(4) in paragraph (14), by striking ''section 134(c)'' and inserting ''section 121(e)'';

[(5) in paragraph (17)—

[(A) in subparagraph (A)—

[(i) in clause (iii)—

[(I) by inserting ''local'' before ''customized training''; and

[(II) by striking ''and'' at the end;

[(ii) in clause (iv), by striking ''homemakers),'' and all that follows through ''disabilities)'' and inserting ''hard-to-serve populations and individuals training for nontraditional employment''; and

[(iii) by adding after clause (iv) the following:

[''(v) how the State will serve the employment and training needs of individuals with disabilities, consistent with section 188 and Executive Order 13217 (42 U.S.C. 12131 note; relating to community-based alternatives for individuals with disabilities), including the provision of outreach, intake, the conduct of assessments, service delivery, the development of performance measures, and the training of staff; and''; and

[(B) in subparagraph (B), by striking ''and'' at the end;

[(6) in paragraph (18)(D)—

[(A) by striking ''youth opportunity grants'' and inserting ''youth challenge grants authorized under section 169 and other federally funded youth programs''; and

[(B) by striking the period and inserting a semicolon; and

[(7) by adding at the end the following:

[''(19) a description of how the State will utilize technology to facilitate access to services in remote areas, which may be utilized throughout the State;

[''(20) a description of the State strategy for coordinating workforce investment activities and economic development activities;

[''(21) a description of the State strategy and assistance needed for ensuring regional cooperation;

[''(22) a description of how the State will use funds the State receives under this subtitle to—

[''(A) implement innovative programs and strategies designed to meet the needs of all businesses in the State, including small businesses, which may include incumbent worker training programs, sectoral and industry cluster strategies, regional skills alliances, career ladder programs, utilization of effective business intermediaries, and other business services and strategies that better engage employers in workforce activities and make the statewide workforce investment system more relevant to the needs of State and local businesses, consistent with the purposes of this Act; and

[''(B) provide incentives and technical assistance to assist local areas in more fully engaging large and small employers in local workforce development activities, to make the workforce investment system more relevant to the needs of area businesses, and to better coordinate workforce investment and economic development efforts to contribute to the economic well being of the local area, as determined appropriate by the local board;

[''(23) a description of the State strategy for ensuring cooperation between transportation providers, including public transportation providers, and workforce investment activities;

[''(24) a description of how the State will assist local areas in assuring physical and programmatic assessability for individuals with disabilities at one-stop centers;

[''(25) a description of the process and methodology that will be used by the State board to—

[''(A) review statewide policies and provide guidance on the coordinated provision of services through the one-stop delivery system described in section 121;

[''(B) establish, in consultation with chief elected officials and local boards, procedures and objective criteria for use by local boards in periodically assessing the effectiveness and continuous improvement of one-stop centers and one-stop delivery systems as described in section 121(g); and

[''(C) determine one-stop partner program contributions for—

[''(i) the costs of the infrastructure of one-stop centers under section 121(h)(2); and

[''(ii) the formula for allocating the funds described in section 121(h)(2) to local areas; and

[''(26) a description of the State strategy for ensuring that activities carried out under this title are placing men and women in jobs, education, or training that lead to comparable pay.''.

[(c) MODIFICATIONS TO PLAN.—Section 112(d) (29 U.S.C. 2822(d)) is amended—

[(1) by striking ''5-year period'' and inserting ''4-year period''; and

[(2) by adding at the end the following: ''In addition, the State shall submit the modifications to the State plan required under subsection (a), and under circumstances prescribed by the Secretary that are due to changes in Federal law that significantly affect elements of the State plan.''.

[SEC. 114. LOCAL WORKFORCE INVESTMENT AREAS.

[(a) DESIGNATION OF AREAS.—

[(1) CONSIDERATIONS.—Section 116(a)(1)(B) (29 U.S.C. 2831(a)(1)(B)) is amended by adding at the end the following:

[''(vi) The extent to which such local areas will promote maximum effectiveness in the administration and provision of services.''.

[(2) AUTOMATIC DESIGNATION.—Section 116(a)(2) (29 U.S.C. 2831(a)(2)) is amended to read as follows:

[''(2) AUTOMATIC DESIGNATION.—

[''(A) IN GENERAL.—The Governor shall approve a request for designation as a local area that is submitted prior to the submission of the State plan, or of a modification to the State plan relating to area designation, from any area that—

[''(i) is a unit of general local government with a population of 500,000 or more, except that after the initial 2-year period following such designation pursuant to this clause that occurs after the date of enactment of the Workforce Investment Act Amendments of 2003, the Governor shall only be required to approve a request for designation from such area if such area—

[''(I) performed successfully; and

[''(II) sustained fiscal integrity;

[''(ii) was a local area under this title for the preceding 2-year period, if such local area—

[''(I) performed successfully; and

[''(II) sustained fiscal integrity; or

[''(iii) is served by a rural concentrated employment program grant recipient, except that after the 2-year period following any such designation under the initial State plan submitted after the date of enactment of the Workforce Investment Act Amendments of 2003, the Governor shall only be required to approve a request for designation under this clause if such area—

[''(I) performed successfully; and

[''(II) sustained fiscal integrity.

[''(B) DEFINITIONS.—For purposes of this paragraph:

[''(i) PERFORMED SUCCESSFULLY.—The term 'performed successfully' means that the local area involved is not subject to sanctions under section 136(h)(2) due to the failure to meet the levels of performance established under section 136(c) for 2 consecutive years.

[''(ii) SUSTAINED FISCAL INTEGRITY.—The term 'sustained fiscal integrity' means that the Secretary has not made a formal determination during the preceding 2-year period that either the grant recipient or the administrative entity of the area misexpended funds provided under this title due to willful disregard of the requirements of the Act involved, gross negligence, or failure to comply with accepted standards of administration.''.

[(3) CONFORMING AMENDMENTS.—Section 116(a) (29 U.S.C. 2831(a)) is amended—

[(A) by striking paragraph (3);

[(B) by redesignating paragraphs (4) and (5) as paragraph (3) and (4), respectively;

[(C) in paragraph (3) (as redesignated by subparagraph (B))—

[(i) by striking ''(including temporary designation)''; and

[(ii) by striking ''(v)'' and inserting ''(vi)''; and

[(D) in paragraph (4) (as redesignated by subparagraph (B))—

[(i) by striking ''under paragraph (2) or (3)'' and inserting ''under paragraph (2)''; and

[(ii) by striking the second sentence.

[(b) SINGLE LOCAL AREA STATES.—Section 116(b) (29 U.S.C. 2831(b)) is amended to read as follows:

[''(b) SINGLE LOCAL AREA STATES.—

[''(1) CONTINUATION OF PREVIOUS DESIGNATION.—Notwithstanding subsection (a)(2), the Governor of any State that was a single local area for purposes of this title as of July 1, 2002, may continue to designate the State as a single local area for purposes of this title if the Governor identifies the State as a local area in the State plan under section 112(b)(5).

[''(2) REDESIGNATION.—The Governor may redesignate the State as a single local area if, prior to the submission of the State plan or modification to such plan so designating the State, no local area meeting the requirements for automatic designation under subsection (a)(2) requests such designation as a separate local area.

[''(3) EFFECT ON LOCAL PLAN.—In any case in which a State is designated as a local area pursuant to this subsection, the local plan epared under section 118 for the area shall be submitted to the Secretary for approval as part of the State plan under section 112.''.

[(c) REGIONAL PLANNING.—Section 116(c) (29 U.S.C. 2831(c)) is amended—

[(1) by striking paragraph (1) and inserting the following:

[''(1) PLANNING.—

[''(A) IN GENERAL.—As part of the process for developing the State plan, a State may require regional planning by local boards for a designated region in the State. The State may require the local boards for a designated region to participate in a regional planning process that results in the establishment of regional performance measures for workforce investment activities authorized under this subtitle. The State, after consultation with local boards and chief elected officials, may require the local boards for the designated region to prepare, submit, and obtain approval of a single regional plan that incorporates local plans for each of the local areas in the region, as required under section 118. The State may award regional incentive grants to the designated regions that meet or exceed the regional performance measures pursuant to section 134(a)(2)(C).

[''(B) TECHNICAL ASSISTANCE.—If the State requires regional planning as provided in subparagraph (A), the State shall provide technical assistance and labor market information to such local areas in the designated regions to assist with such regional planning and subsequent service delivery efforts.'';

[(2) in paragraph (2), by inserting ''information about the skill requirements of existing and emerging industries and industry clusters,'' after ''information about employment opportunities and trends,''; and

[(3) in paragraph (3), by adding at the end the following: ''Such services may be required to be coordinated with regional economic development services and strategies.''.

[SEC. 115. LOCAL WORKFORCE INVESTMENT BOARDS.

[(a) COMPOSITION.—Section 117(b) (29 U.S.C. 2832(b)) is amended—

[(1) in paragraph (2)(A)—

[(A) in clause (i), by striking subclause (II) and inserting the following:

[''(II) collectively, represent businesses with employment opportunities that reflect the employment opportunities of the local area, and include representatives of businesses that are in high-growth and emerging industries, and representatives of all businesses, including small businesses, in the local area; and'';

[(B) by striking clause (ii) and inserting the following:

[''(ii)(I) a superintendent representing the local school districts involved or another high-level official from such districts;

[''(II) the president or highest ranking official of an institution of higher education serving the local area; and

[''(III) an administrator of local entities providing adult education and literacy activities in the local area;'';

[(C) in clause (iv), by inserting '', hard-to-serve populations,'' after ''disabilities''; and

[(D) by striking clause (vi) and inserting the following:

[''(vi) if the local board does not establish a youth council, representatives with experience serving out-of-school youth, particularly out-of-school youth facing barriers to employment.''; and

[(2) by adding at the end the following:

[''(6) SPECIAL RULE.—In the case that there are multiple school districts or institutions of higher education serving a local area, the representatives described in paragraph (2)(A)(ii) shall be appointed from among individuals nominated by regional or local educational agencies, institutions, or organizations representing such agencies or institutions.''.

[(b) AUTHORITY OF BOARD MEMBERS.—Section 117(b)(3) (29 U.S.C. 2832(b)(3)) is amended—

[(1) in the heading, by inserting ''AND REPRESENTATION'' after ''AUTHORITY''; and

[(2) by adding at the end the following: ''The members of the board shall represent diverse geographic sections within the local area.''.

[(c) CONFORMING AMENDMENT.—Section 117(c)(1)(C) (29 U.S.C. 2832 (c)(1)(C)) is amended by striking ''section 116(a)(2)(B)'' and inserting ''section 116(a)(2)(A)(ii)''.

[(d) FUNCTIONS.—Section 117(d) (29 U.S.C. 2832(d)) is amended—

[(1) in paragraph (2)—

[(A) in subparagraph (B)—

[(i) by inserting ''(except as provided in section 123(b))'' after ''basis''; and

[(ii) by inserting ''where appropriate'' after ''youth council''; and

[(B) by adding at the end the following:

[''(E) CONSUMER CHOICE REQUIREMENTS.—Consistent with section 134(d)(3) and (d)(4), the local board shall work to ensure there are sufficient providers of intensive services and training services serving the local area in a manner that maximizes consumer choice, including providers with expertise in assisting individuals with disabilities.'';

[(2) in paragraph (4), by inserting '', and shall ensure the appropriate use and management of the funds provided under this subtitle for such programs, activities, and system'' after ''area'';

[(3) in paragraph (8)—

[(A) by inserting ''all'' before ''private sector'';

[(B) by inserting '', including small employers,'' after ''private sector employers''; and

[(C) by striking the period and inserting '', taking into account the unique needs of small businesses.''; and

[(4) by adding at the end the following:

[''(9) TECHNOLOGY IMPROVEMENTS.—The local board shall develop strategies for technology improvements to facilitate access to services, in remote areas, for services authorized under this subtitle and carried out in the local area.''.

[(e) CONFORMING AMENDMENT.—Section 117(f)(2) (29 U.S.C. 2832(f)(2)) is amended by striking ''described in section 134(c)''.

[(f) AUTHORITY TO ESTABLISH COUNCILS AND ELIMINATION OF REQUIREMENT FOR YOUTH COUNCILS.—Section 117(h) (29 U.S.C. 2832(h)) is amended to read as follows:

[''(h) COUNCILS.—The local board may establish or continue councils to provide information and advice to assist the local board in carrying out activities under this title. Such councils may include—

[''(1) a council composed of one-stop partners to advise the local board on the operation of the one-stop delivery system involved;

[''(2) a youth council composed of experts and stakeholders in youth programs to advise the local board on youth activities; and

[''(3) such other councils as the local board determines are appropriate.''.

[(g) ALTERNATIVE ENTITY PROVISION.—Section 117(i)(1) (29 U.S.C. 2832(i)(1)) is amended—

[(1) by striking subparagraph (B) and inserting the following:

[''(B) was in existence on August 7, 1998, pursuant to State law; and'';

[(2) by striking subparagraph (C); and

[(3) by redesignating subparagraph (D) as subparagraph (C).

[SEC. 116. LOCAL PLAN.

[(a) PLANNING CYCLE.—Section 118(a) (29 U.S.C. 2833(a)) is amended—

[(1) by striking ''5-year'' and inserting ''4-year''; and

[(2) by adding at the end the following: ''At the end of the first 2-year period of the 4-year plan, the local board shall review and, as needed, amend the 4-year plan to reflect labor market and economic conditions.''.

[(b) CONTENTS.—Section 118(b) (29 U.S.C. 2833(b)) is amended—

[(1) in paragraph (2)—

[(A) in subparagraph (A), by striking ''and'' after the semicolon;

[(B) by striking subparagraph (B) and inserting the following:

[''(B) a description of how the local board will facilitate access to services provided through the one-stop delivery system, in remote areas, including facilitating access through the use of technology; and''; and

[(C) by adding at the end the following:

[''(C) a description of how the local board will ensure physical and programmatic assessability for individuals with disabilities at one-stop centers;'';

[(2) in paragraph (9), by striking ''; and'' and inserting a semicolon;

[(3) by redesignating paragraph (10) as paragraph (14); and

[(4) by inserting after paragraph (9) the following:

[''(10) a description of how the local board will coordinate workforce investment activities carried out in the local area with economic development activities carried out in the local area;

[''(11) a description of the strategies and services that will be initiated in the local area to more fully engage all employers, including small employers, in workforce development activities, to make the workforce investment system more relevant to the needs of area businesses, and to better coordinate workforce investment and economic development efforts, which may include the implementation of innovative initiatives such as incumbent worker training programs, sectoral and industry cluster strategies, regional skills alliances, career ladder programs, utilization of effective business intermediaries, and other business services and strategies designed to meet the needs of area employers and contribute to the economic well being of the local area, as determined appropriate by the local board, consistent with the purposes of this Act;

[''(12) a description of how the local board will expand access to education and training services for eligible individuals who are in need of such services through—

[''(A) the utilization of programs funded under this title; and

[''(B) the increased leveraging of resources other than those provided under this title, including tax credits, private sector-provided training, and other Federal, State, local, and

private funding sources that are brokered through the one-stop centers for training;

[''(13) a description of how the local board will coordinate workforce investment activities carried out in the local area with the provision of transportation, including public transportation, in the local area; and''.

[SEC. 117. ESTABLISHMENT OF ONE-STOP DELIVERY SYSTEMS.

[(a) ONE-STOP PARTNERS.—

[(1) REQUIRED PARTNERS.—Section 121(b)(1) (29 U.S.C. 2841(b)(1)) is amended—

[(A) by striking subparagraph (A) and inserting the following:

[''(A) ROLES AND RESPONSIBILITIES OF ONE-STOP PARTNERS.—Each entity that carries out a program or activities described in subparagraph (B) shall—

[''(i) provide access through the one-stop delivery system to the programs and activities carried out by the entity, including making the core services described in section 134(d)(2) that are applicable to the program of the entity available at the comprehensive one-stop centers (in addition to any other appropriate locations);

[''(ii) use a portion of the funds available to the program of the entity to maintain the one-stop delivery system, including payment of the infrastructure costs of one-stop centers in accordance with subsection (h);

[''(iii) enter into the local memorandum of understanding with the local board relating to the operation of the one-stop system that meets the requirements of subsection (c);

[''(iv) participate in the operation of the one-stop system consistent with the terms of the memorandum of understanding, the requirements of this title, and the requirements of the Federal laws authorizing the programs carried out by the entity; and

[''(v) provide representation on the State board to the extent provided under section 111.'';

[(B) in subparagraph (B)—

[(i) by striking clause (v);

[(ii) by redesignating clauses (vi) through (xii) as clauses (v) through (xi), respectively;

[(iii) in clause (x) (as redesignated by clause (ii)), by striking ''and'' at the end;

[(iv) in clause (xi) (as redesignated by clause (ii)), by striking the period and inserting ''; and''; and

[(v) by adding at the end the following:

[''(xii) programs authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), subject to subparagraph (C).''; and

[(C) by adding at the end the following:

[''(C) DETERMINATION BY THE GOVERNOR.—

[''(i) IN GENERAL.—An entity that carries out programs referred to in subparagraph (B)(xii) shall be included in the one-stop partners for the local area, as a required partner, for purposes of this title unless the Governor of the State provides the notification described in clause (ii).

[''(ii) NOTIFICATION.—The notification referred to in clause (i) is a notification that—

[''(I) is made in writing of a determination by the Governor not to include such entity in the one-stop partners described in clause (i); and

[''(II) is provided to the Secretary and the Secretary of Health and Human Services.''.

[(2) ADDITIONAL PARTNERS.—

[(A) IN GENERAL.—Section 121(b)(2)(A) (29 U.S.C. 2841(b)(2)(A)) is amended to read as follows:

[''(A) IN GENERAL.—With the approval of the local board and chief elected official, in addition to the entities described in paragraph (1), other entities that carry out a human resource program described in subparagraph (B) may be a one-stop partner and carry out the responsibilities described in paragraph (1)(A).''.

[(B) ADDITIONAL PARTNERS.—Section 121(b)(2)(B) (29 U.S.C. 2841(b)(2)(B)) is amended—

[(i) by redesignating clauses (iv) and (v) as clauses (v) and (vi), respectively; and

[(ii) by striking clauses (i) through (iii) and inserting the following:

[''(i) employment and training programs administered by the Social Security Administration, including the Ticket to Work and Self-Sufficiency program established under section 1148 of the Social Security Act (42 U.S.C. 1320b–19);

[''(ii) programs carried out in the local area for individuals with disabilities, including programs carried out by State agencies relating to mental retardation and developmental disabilities, Statewide Independent Living Councils established under section 705 of the Rehabilitation Act of 1973 (29 U.S.C. 796d), and centers for independent living defined in section 702 of the Rehabilitation Act of 1973 (29 U.S.C. 796a);

[''(iii) employment and training programs carried out by the Small Business Administration;

[''(iv) programs authorized under section 6(d)(4) of the Food Stamp Act of 1977 (7 U.S.C. 2015(d)(4));''.

[(b) LOCAL MEMORANDUM OF UNDERSTANDING.—

[(1) CONTENTS OF MEMORANDUM.—Section 121(c)(2)(A) (29 U.S.C. 2841(c)(2)(A)) is amended to read as follows:

[''(A) provisions describing—

[''(i) the services to be provided through the one-stop delivery system consistent with the requirements of this section, including the manner in which the services will be coordinated through such system;

[''(ii) how the costs of such services and the operating costs of such system will be funded to provide a stable and equitable funding stream for ongoing one-stop system operations, including the funding of the infrastructure costs of one-stop centers in accordance with subsection (h);

[''(iii) methods of referral of individuals between the one-stop operator and the one-stop partners for appropriate services and activities;

[''(iv) methods to ensure the needs of hard-to-serve populations are addressed in accessing services through the one-stop system; and

[''(v) the duration of the memorandum of understanding and the procedures for amending the memorandum during the term of the memorandum, and assurances that such memorandum shall be reviewed not less than once every 2-year period to ensure appropriate funding and delivery of services; and''.

[(c) CONFORMING AMENDMENT.—Section 121(d)(2) (29 U.S.C. 2841(d)(2)) is amended by striking ''section 134(c)'' and inserting ''section 121(e)''.

[(d) PROVISION OF SERVICES.—

[(1) ELIMINATION OF PROVISIONS CONCERNING ESTABLISHED SYSTEMS.—Section 121 (29 U.S.C. 2841) is amended by striking subsection (e).

[(2) REDESIGNATION.—Subtitle B of title I is amended—

[(A) in section 134 (29 U.S.C. 2864), by redesignating subsection (c) as subsection (e); and

[(B) by transferring that subsection (e) so that the subsection appears after subsection (d) of section 121.

[(3) ONE-STOP DELIVERY SYSTEMS.—Paragraph (1) of section 121(e) (29 U.S.C. 2841(e)) (as redesignated by paragraph (2)) is amended—

[(A) in subparagraph (A), by striking ''subsection (d)(2)'' and inserting ''section 134(d)(2)'';

[(B) in subparagraph (B)—

[(i) by striking ''subsection (d)'' and inserting ''section 134(d)'';

[(ii) by striking ''individual training accounts'' and inserting ''career scholarship accounts''; and

[(iii) by striking ''subsection (d)(4)(G)'' and inserting ''section 134(d)(4)(G)'';

[(C) in subparagraph (C), by striking ''subsection (e)'' and inserting ''section 134(e)'';

[(D) in subparagraph (D), by striking ''section 121(b)'' and inserting ''subsection (b)''; and

[(E) in subparagraph (E), by striking ''information described in section 15'' and inserting ''data, information, and analysis described in section 15(a)''.

[(e) CONTINUOUS IMPROVEMENT OF ONE-STOP CENTERS.—Section 121 (29 U.S.C. 2841) is amended by adding at the end the following:

[''(g) CONTINUOUS IMPROVEMENT OF ONE-STOP CENTERS.—

[''(1) IN GENERAL.—The State board, in consultation with chief local elected officials and local boards, shall establish procedures and objective criteria for use by local boards in periodically assessing the effectiveness, physical and programmatic accessibility, and continuous improvement of one-stop centers and one-stop delivery systems.

[''(2) CRITERIA.—The procedures and criteria developed under this subsection shall include minimum standards relating to the scope and degree of service coordination achieved by the one-stop delivery system with respect to the programs administered by the one-stop partners at the one-stop centers, consistent with the guidance provided by the Governor and by the State board, in consultation with the chief elected official and local boards, for such partners' participation under subsections (h)(1)(B) and subsection (i), respectively, and such other factors relating to the quality, accessibility, and effectiveness of the one-stop delivery system as the State board determines appropriate.

[''(3) LOCAL BOARDS.—Consistent with the criteria developed by the State, the local board may develop additional criteria of higher standards to respond to local labor market and demographic conditions and trends.

[''(h) FUNDING OF ONE-STOP INFRASTRUCTURE AND OTHER COSTS.—

[''(1) IN GENERAL.—

[''(A) OPTIONS FOR INFRASTRUCTURE FUNDING.—

[''(i) LOCAL OPTIONS.—The local board, chief elected officials, and one-stop partners in a local area may choose to fund the costs of the infrastructure of one-stop centers through—

[''(I) alternative methods described in the local memorandum of understanding, if one-stop partners, the local board, and chief elected official agree to such alternative methods; or

[''(II) the State infrastructure funding mechanism described in paragraph (2).

[''(ii) FAILURE TO REACH AGREEMENT ON FUNDING METHODS.—If, as of July 1, 2004, the local board, chief elected official, and one-stop partners in a local area fail to reach agreement on methods of funding the infrastructure costs of one-stop centers, the State infrastructure funding mechanism described in paragraph (2) shall be applicable to such local area.''.

[''(B) GUIDANCE FOR INFRASTRUCTURE FUNDING.—In addition to carrying out the requirements relating to the State mechanism for one-stop center infrastructure funding described in paragraph (2), the Governor, after consultation with chief local elected official, local boards, and the State board, and consistent with the guidelines provided by the State board under subsection (i), shall provide—

[''(i) guidelines for State administered one-stop partner programs in determining

such program's contributions to and participation in the one-stop delivery system, including funding for the costs of infrastructure as described in paragraph (4), negotiated pursuant to the local memorandum of understanding under subsection (b); and

[''(ii) guidance to assist local areas in identifying equitable and stable alternative methods of funding of the costs of the infrastructure of one-stop centers in local areas.

[''(2) STATE ONE-STOP INFRASTRUCTURE FUNDING.—

[''(A) PARTNER CONTRIBUTIONS.—

[''(i) IN GENERAL.—Notwithstanding any other provision of law, but subject to clause (iii), a portion determined under clause (ii) of the Federal funds provided to the State and areas within the State under the Federal laws authorizing the programs described in subsection (b) and administered by one-stop partners for a fiscal year shall be provided to the Governor from such programs to assist in paying the costs of infrastructure of one-stop centers in those local areas of the State not funded under the option described in paragraph (1)(B)(i)(I).

[''(ii) DETERMINATION OF GOVERNOR.—

[''(I) IN GENERAL.—Subject to subclause (II) and clause (iii), the Governor, after consultation with chief local elected officials, local boards, and the State board, shall determine the portion of funds to be provided under clause (i) by each one-stop partner from each program described in clause (i). In making such determination, the Governor shall consider the proportionate use of the one-stop centers pursuant to clause (i)(II) or (ii) of paragraph (1)(A) by each partner, the costs of administration for purposes not related to one-stop centers for each partner, and other relevant factors described in paragraph (3). The Governor shall exclude from such determination the portion of funds and use of one-stop centers attributable to the programs of one-stop partners for those local areas of the State where the infrastructure of one-stop centers is funded under the option described in paragraph (1)(B)(i)(I).

[''(II) SPECIAL RULE.—In a State in which the State constitution places policymaking authority that is independent of the authority of the Governor in an entity or official with respect to the funds provided for adult education and literacy activities authorized under title II and for postsecondary vocational and technical education activities authorized under the Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C. 2301 et seq.), or vocational rehabilitation services offered under the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), the determination described in subclause (I) with respect to the programs authorized under that title and that Act shall be made by the Governor and the appropriate entity or official with such independent policymaking authority.

[''(III) APPEAL BY ONE-STOP PARTNERS.—The Governor shall establish a procedure for the one-stop partner administering a program described in subsection (b) to appeal a determination regarding the portion of funds to be contributed under this paragraph on the basis that such determination is inconsistent with the criteria described in the State plan or with the requirements of this paragraph. Such procedure shall ensure prompt resolution of the appeal.

[''(iii) LIMITATIONS.—

[''(I) PROVISION FROM ADMINISTRATIVE FUNDS.—The funds provided under this paragraph by each one-stop partner shall be provided only from funds available for the costs of administration under the program administered by such partner, and shall be subject to the program limitations with respect to the portion of funds under such program that may be used for administration.

[''(II) CAP ON REQUIRED CONTRIBUTIONS.—

[''(aa) WIA FORMULA PROGRAMS AND EMPLOYMENT SERVICE.—The portion of funds required to be contributed under this paragraph by the programs authorized under chapters 4 and 5 of this title and under the Wagner-Peyser Act shall not be in excess of 3 percent of the amount of Federal funds provided to carry out each such program in the State for a fiscal year.

[''(bb) OTHER ONE-STOP PARTNERS.—The portion of funds required to be contributed under paragraph (1)(B)(ii) by a one-stop partner from a program described in subsection (b)(1) other than the programs described under item (aa) shall not be in excess of 1 and ½ percent of the amount of Federal funds provided to carry out such program in the State for a fiscal year.

[''(cc) SPECIAL RULE.—Notwithstanding items (aa) and (bb), an agreement, including local memorandums of understanding, entered into prior to the date of enactment of the Workforce Investment Act Amendments of 2003 by an entity regarding contributions under this title that permits the percentages described in such items to be exceeded, may continue to be in effect until terminated by the parties.

[''(dd) VOCATIONAL REHABILITATION.—Notwithstanding items (aa) and (bb), an entity administering a program under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.) shall not be required to provide, for the purposes of this paragraph, an amount in excess of—

[''(AA) 0.75 percent of the amount provided for such program in the State for the second program year that begins after the date of enactment of the Workforce Investment Act Amendments of 2003;

[''(BB) 1.0 percent of the amount provided for such program in the State for the third program year that begins after such date;

[''(CC) 1.25 percent of the amount provided for such program in the State for the fourth program year that begins after such date; and

[''(DD) 1.5 percent of the amount provided for such program in the State for the fifth and each succeeding program year that begins after such date.

[''(III) FEDERAL DIRECT SPENDING PROGRAMS.—An entity administering a program funded with direct spending as defined in section 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900(c)(8)) shall not be required to provide, for purposes of this paragraph, an amount in excess of the amount determined to be equivalent to the cost of the proportionate use of the one-stop centers for such program in the State.

[''(IV) NATIVE AMERICAN PROGRAMS.—Native American programs established under section 166 shall not be subject to the provisions of this subsection or subsection (i). The method for determining the appropriate portion of funds to be provided by such Native American programs to pay for the costs of infrastructure of a one-stop center certified under subsection (g) shall be determined as part of the development of the memorandum of understanding under subsection (c) for the one-stop center and shall be stated in the memorandum.

[''(B) ALLOCATION BY GOVERNOR.—From the funds provided under subparagraph (A), the Governor shall allocate the funds to local areas in accordance with the formula established under subparagraph (C) for the purposes of assisting in paying the costs of infrastructure of one-stop centers.

[''(C) ALLOCATION FORMULA.—The State board shall develop a formula to be used by the Governor to allocate the funds provided under subparagraph (A) to local areas not funding infrastructure costs under the option described in paragraph (1)(B)(i)(II). The formula shall be based on factors including the number of one-stop centers in a local area, the population served by such centers, the services provided by such centers, and other factors relating to the performance of such centers that the State board determines are appropriate.

[''(D) COSTS OF INFRASTRUCTURE.—In this subsection, the term 'costs of infrastructure', used with respect to a one-stop center, means the nonpersonnel costs that are necessary for the general operation of the one-stop center, including the rental costs of the facilities, the costs of utilities and maintenance, equipment (including adaptive technology for individuals with disabilities), and technology to facilitate remote access to the one-stop center's strategic planning activities, and common outreach activities.

[''(i) OTHER FUNDS.—

[''(1) IN GENERAL.—In addition to the funds provided to carry out subsection (h), a portion of funds made available under Federal law authorizing the programs described in subsection (b) and administered by one-stop partners, or the noncash resources available under such programs, shall be used to pay the additional costs relating to the operation of the one-stop delivery system involved that are not paid from the funds provided under subsection (h), as determined in accordance with paragraph (2), to the extent not inconsistent with the Federal law involved. Such costs shall include the costs of the provision of core services described in section 134(d)(2) applicable to each program and may include—

[''(A) costs of infrastructure, as defined in subsection (h), that are in excess of the amount of funds provided under subsection (h); and

[''(B) common costs that are in addition to the costs of infrastructure that are not paid from the funds provided under subsection (h).

[''(2) DETERMINATION AND GUIDANCE.—The method for determining the appropriate portion of funds and noncash resources to be provided by each program under paragraph (1) for a one-stop center shall be determined as part of the development of the memorandum of understanding under subsection (c) for the one-stop center and shall be stated in the memorandum. The State board shall provide guidance to facilitate the determination of an appropriate allocation of the funds and noncash resources in local areas.''.

[SEC. 118. ELIGIBLE PROVIDERS OF TRAINING SERVICES.

[Section 122 (29 U.S.C. 2842) is amended to read as follows:

[''SEC. 122. IDENTIFICATION OF ELIGIBLE PROVIDERS OF TRAINING SERVICES.

[''(a) IN GENERAL.—The Governor, after consultation with the State board, shall establish criteria and procedures regarding the eligibility of providers of training services described in section 134(d)(4) (referred to in this section as 'training services') to receive funds provided under section 133(b) for the provision of training services.

[''(b) CRITERIA.—

[''(1) IN GENERAL.—The criteria established by the Governor pursuant to subsection (a) shall take into account—

[''(A) the performance of providers of training services with respect to the performance measures described in section 136 or other appropriate measures of performance outcomes for those individuals receiving training services under this subtitle (taking into consideration the characteristics of the population served and relevant economic conditions);

[''(B) the need to ensure access to training services throughout the State, including any rural areas;

[''(C) the information such providers are required to report to State agencies with respect to Federal and State programs (other than the program carried out under this subtitle), including partner programs;

[''(D) the requirements for State licensing of providers of training services, and the licensing status of each provider of training services if applicable;

[''(E) to the extent practicable, encouraging the use of industry recognized standards and certification;

[''(F) the ability to provide training services to hard-to-serve populations, including individuals with disabilities; and

[''(G) such other factors as the Governor determines are appropriate to ensure—

[''(i) the quality of services provided;

[''(ii) the accountability of the providers;

[''(iii) that the one-stop centers in the State will ensure that such providers meet the needs of local employers and participants;

[''(iv) the informed choice of participants under chapter 5; and

[''(v) that the collection of information required is not unduly burdensome or costly to providers.

[''(2) INFORMATION AND RENEWAL.—The criteria established by the Governor shall require that a provider of training services submit appropriate, accurate, and timely information to the State for purposes of carrying out subsection (d). The criteria shall also provide for annual review and renewal of eligibility under this section for providers of training services.

[''(3) LOCAL CRITERIA.—A local board in the State may establish criteria in addition to the criteria established by the Governor, or may require higher levels of performance than required under the criteria established by the Governor, for purposes of determining the eligibility of providers of training services to receive funds described in subsection (a) to provide the services in the local areas involved.

[''(c) PROCEDURES.—The procedures established under subsection (a) shall identify the application process for a provider of training services to become eligible to receive funds provided under section 133(b) for the provision of training services, and identify the respective roles of the State and local areas in receiving and reviewing the applications and in making determinations of such eligibility based on the criteria established under this section. The procedures shall also establish a process for a provider of training services to appeal a denial or termination of eligibility under this section, that includes an opportunity for a hearing and prescribes appropriate time limits to ensure prompt resolution of the appeal.

[''(d) INFORMATION TO ASSIST PARTICIPANTS IN CHOOSING PROVIDERS.—

[''(1) IN GENERAL.—In order to facilitate and assist participants in choosing employment and training activities under chapter 5 and in choosing providers of training services, the Governor shall ensure that an appropriate list of providers determined to be eligible under this section in the State, accompanied by appropriate information provided by providers of training in the State in accordance with subsection (b) and such other information as the Governor determines is appropriate, including information on program costs for participants in applicable programs, is provided to the one-stop delivery system in the State. The list and the information shall be made available to such participants and to members of the public through the one-stop delivery system in the State.

[''(2) SPECIAL RULE.—An entity that carries out programs under the Act of August 16, 1937 (commonly known as the 'National Apprenticeship Act', 50 Stat. 664, chapter 663; 29 U.S.C. 50 et seq.) shall be included on the list of eligible providers described in paragraph (1) for so long as such entity remains certified by the Department of Labor.

[''(e) ENFORCEMENT.—

[''(1) IN GENERAL.—The criteria and procedures established under this section shall provide the following:

[''(A) INTENTIONALLY SUPPLYING INACCURATE INFORMATION.—Upon a determination that a provider of training services, or individual providing information on behalf of the provider, intentionally supplied inaccurate information under this section, the eligibility of such provider to receive funds under chapter 5 shall be terminated for a period of time that is not less than 2 years.

[''(B) SUBSTANTIAL VIOLATIONS.—Upon a determination that a provider of training services substantially violated any requirement under this title, the eligibility of such provider to receive funds under the program involved may be terminated, or other appropriate action may be taken.

[''(C) REPAYMENT.—A provider of training services whose eligibility is terminated under subparagraph (A) or (B) shall be liable for the repayment of funds received under chapter 5 during a period of noncompliance described in such paragraph.

[''(2) CONSTRUCTION.—Paragraph (1) shall be construed to provide remedies and penalties that supplement, but do not supplant, other civil and criminal remedies and penalties.''.

[''(f) AGREEMENTS WITH OTHER STATES.—States may enter into agreements, on a reciprocal basis, to permit eligible providers of training services to accept career scholarship accounts provided in another State.

[''(g) OPPORTUNITY TO SUBMIT COMMENTS.—In establishing criteria, procedures, and information required under this section, the Governor shall provide an opportunity for interested members of the public to make recommendations and submit comments regarding such criteria, procedures, and information.

[''(h) TRANSITION PERIOD FOR IMPLEMENTATION.—The requirements of this section shall be implemented not later than December 31, 2004. In order to facilitate early implementation of this section, the Governor may establish transition procedures under which providers eligible to provide training services under chapter 5 of this title as such chapter was in effect on the day before the date of enactment of the Workforce Investment Act Amendments of 2003 may continue to be eligible to provide such services until December 31, 2004, or until such earlier date as the Governor determines appropriate.

[''(i) ON-THE-JOB TRAINING OR CUSTOMIZED TRAINING EXCEPTION.—

[''(1) IN GENERAL.—Providers of on-the-job training or customized training shall not be subject to the requirements of subsections (a) through (h).

[''(2) COLLECTION AND DISSEMINATION OF INFORMATION.—A one-stop operator in a local area shall collect such performance information from on-the-job training and customized training providers as the Governor may require, determine whether the providers meet such performance criteria as the Governor may require, and disseminate information identifying providers that meet the criteria as eligible providers, and the performance information, through the one-stop delivery system. Providers determined to meet the criteria shall be considered to be identified as eligible providers of training services.''.

[SEC. 119. ELIGIBLE PROVIDERS OF YOUTH ACTIVITIES.

[Section 123 (29 U.S.C. 2843) is amended to read as follows:

["SEC. 123. ELIGIBLE PROVIDERS OF YOUTH ACTIVITIES.

[''(a) IN GENERAL.—From the funds allocated under section 128(b) to a local area, the local board for such area shall award grants or contracts on a competitive basis to providers of youth activities identified based on the criteria in the State plan described in section 112 and shall conduct oversight with respect to such providers.

[''(b) EXCEPTIONS.—A local board may award grants or contracts on a sole-source basis if such board determines there is an insufficient number of eligible providers of youth activities in the local area involved (such as a rural area) for grants and contracts to be awarded on a competitive basis under subsection (a).''.

[SEC. 120. YOUTH ACTIVITIES.

[(a) STATE ALLOTMENTS.—Section 127 (29 U.S.C. 2852) is amended—

[(1) in subsection (a)(1), by striking ''opportunity'' and inserting ''challenge''; and

[(2) by striking subsection (b) and inserting the following:

[''(b) ALLOTMENT AMONG STATES.—

[''(1) YOUTH ACTIVITIES.—

[''(A) YOUTH CHALLENGE GRANTS.—

[''(i) IN GENERAL.—For each fiscal year in which the amount appropriated under section 137(a) exceeds $1,000,000,000, the Secretary shall reserve a portion of the amount to provide youth challenge grants and other activities under section 169 (relating to youth challenge grants) and provide youth activities under section 167 (relating to migrant and seasonal farmworker programs).

[''(ii) PORTION.—The portion referred to in clause (i) shall equal, for a fiscal year—

[''(I) except as provided in subclause (II), the difference obtained by subtracting $1,000,000,000 from the amount appropriated under section 137(a) for the fiscal year; or

[''(II) for any fiscal year in which the amount is $1,250,000,000 or greater, $250,000,000.

[''(iii) YOUTH ACTIVITIES FOR FARMWORKERS.—The Secretary shall reserve the greater of $10,000,000 or 4 percent of the portion described in clause (i) for a fiscal year to provide youth activities under section 167.

[''(iv) NATIVE AMERICANS.—From the remainder of the amount appropriated under section 137(a) for each fiscal year the Secretary shall reserve not more than 1½ percent of such amount to provide youth activities under section 166 (relating to native Americans).

[''(B) OUTLYING AREAS.—

[''(i) IN GENERAL.—From the amount made available under subsection (a)(2) for each fiscal year the Secretary shall reserve not more than ¼ of 1 percent of the amount appropriated under section 137(a) for the fiscal year to provide assistance to the outlying areas to carry out youth activities and statewide workforce investment activities.

[''(ii) LIMITATION FOR FREELY ASSOCIATED STATES.—

[''(I) COMPETITIVE GRANTS.—The Secretary shall use funds described in clause (i)(II) to award grants to Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Freely Associated States to carry out youth activities and statewide workforce investment activities.

[''(II) AWARD BASIS.—The Secretary shall award grants pursuant to subclause (I) on a competitive basis and pursuant to the recommendations of experts in the field of employment and training, working through the Pacific Region Educational Laboratory in Honolulu, Hawaii.

[''(III) ASSISTANCE REQUIREMENTS.—Any Freely Associated State that desires to receive assistance under this subparagraph shall submit an application to the Secretary

and shall include in the application for assistance—

[''(aa) information demonstrating that the Freely Associated State will meet all conditions that apply to States under this title;

[''(bb) an assurance that, notwithstanding any other provision of this title, the Freely Associated State will use such assistance only for the direct provision of services; and

[''(cc) such other information and assurances as the Secretary may require.

[''(IV) ADMINISTRATIVE COSTS.—The Secretary may provide not more than 5 percent of the funds made available for grants under subclause (I) to pay the administrative costs of the Pacific Region Educational Laboratory in Honolulu, Hawaii, regarding activities assisted under this clause.

[''(iii) ADDITIONAL REQUIREMENT.—The provisions of Public Law 95–134, permitting the consolidation of grants by the outlying areas, shall not apply to assistance provided to those areas, including the Freely Associated States, under this subparagraph.

[''(C) STATES.—

[''(i) IN GENERAL.—From the remainder of the amount appropriated under section 137(a) for a fiscal year that exists after the Secretary determines the amounts to be reserved under subparagraphs (A) and (B), the Secretary shall allot to the States—

[''(I) an amount of the remainder that is less than or equal to the total amount that was allotted to States for fiscal year 2003 under section 127(b)(1)(C) of this Act (as in effect on the day before the date of enactment of the Workforce Investment Act Amendments of 2003), in accordance with the requirements of such section 127(b)(1)(C); and

[''(II) the amount of the remainder, if any, in excess of the amount referred to in subclause (I), in accordance with clause (ii).

[''(ii) FORMULA.—Subject to clauses (iii) and (iv), of the amount described in clause (i)(II)—

[''(I) 33⅓ percent shall be allotted on the basis of the relative number of individuals in the civilian labor force who are ages 16 through 21 in each State, compared to the total number of individuals in the civilian labor force who are ages 16 through 21 in all States;

[''(II) 33⅓ percent shall be allotted on the basis of the relative number of unemployed individuals in each State, compared to the total number of unemployed individuals in all States; and

[''(III) 33⅓ percent shall be allotted on the basis of the relative number of disadvantaged youth who are ages 16 through 21 in each State, compared to the total number of disadvantaged youth who are ages 16 through 21 in all States.

[''(iii) MINIMUM AND MAXIMUM PERCENTAGES.—

[''(I) MINIMUM PERCENTAGE.—The Secretary shall ensure that no State shall receive an allotment percentage under this subparagraph for a fiscal year that is less than 90 percent of the allotment percentage of the State for the preceding fiscal year.

[''(II) MAXIMUM PERCENTAGE.—Subject to subclause (I), the Secretary shall ensure that no State shall receive an allotment percentage under this subparagraph for a fiscal year that is more than 130 percent of the allotment percentage of the State for the preceding fiscal year.

[''(iv) SMALL STATE MINIMUM ALLOTMENT.—Subject to clause (iii), the Secretary shall ensure that no State shall receive an allotment under this subparagraph that is less than the total of—

[''(I) 3/10 of 1 percent of $1,000,000,000 of the remainder described in clause (i) for the fiscal year; and

[''(II) if the remainder described in clause (i) for the fiscal year exceeds $1,000,000,000, 2/5 of 1 percent of the excess.

[''(2) DEFINITIONS.—For the purposes of paragraph (1):

[''(A) ALLOTMENT PERCENTAGE.—The term 'allotment percentage', used with respect to fiscal year 2004 or a subsequent fiscal year, means a percentage of the remainder described in paragraph (1)(C)(i) that is received by the State involved through an allotment made under this subsection for the fiscal year. The term, used with respect to fiscal year 2003, means the percentage of the amounts allotted to States under this chapter (as in effect on the day before the date of enactment of the Workforce Investment Act Amendments of 2003) that is received by the State involved for fiscal year 2003.

[''(B) DISADVANTAGED YOUTH.—Subject to paragraph (3), the term 'disadvantaged youth' means an individual who is age 16 through 21 who received an income, or is a member of a family that received a total family income, that, in relation to family size, does not exceed the poverty line.

[''(C) FREELY ASSOCIATED STATES.—The term 'Freely Associated States' means the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

[''(3) SPECIAL RULE.—For purposes of the formula specified in paragraph (1)(C), the Secretary shall, as appropriate and to the extent practicable, exclude college students and members of the Armed Forces from the determination of the number of disadvantaged youth.''.

[(b) REALLOTMENT.—

[(1) AMENDMENT.—Section 127(c) (29 U.S.C. 2852(c)) is amended—

[(A) by striking paragraph (2) and inserting the following:

[''(2) AMOUNT.—The amount available for reallotment for a program year is equal to the amount by which the unexpended balance at the end of the program year prior to the program year for which the determination is made exceeds 30 percent of the total amount of funds available to the State under this section during such prior program year (including amounts allotted to the State in all prior program years that remained available). For purposes of this paragraph, the unexpended balance is the amount that is the difference between—

[''(A) the total amount of funds available to the State under this section during the program year prior to the program year for which the determination is made (including amounts allotted to the State in all prior program years that remained available); and

[''(B) the accrued expenditures during such prior program year.'';

[(B) in paragraph (3)—

[(i) by striking ''for the prior program year'' and inserting ''for the program year for which the determination is made''; and

[(ii) by striking ''such prior program year'' and inserting ''such program year'';

[(C) by striking paragraph (4) and inserting the following:

[''(4) ELIGIBILITY.—For purposes of this subsection, an eligible State means a State that does not have an amount available for reallotment under paragraph (2) for the program year for which the determination under paragraph (2) is made.''; and

[(D) in paragraph (5), by striking ''obligation'' and inserting ''expenditure''.

[(2) EFFECTIVE DATE.—The amendments made by paragraph (1)(C) shall take effect for the later of—

[(A) the program year that begins after the date of enactment of this Act; or

[(B) program year 2004.

[(c) WITHIN STATE ALLOCATIONS.—

[(1) RESERVATION FOR STATEWIDE ACTIVITIES.—Section 128(a) (29 U.S.C. 2853(a)) is amended to read as follows:

[''(a) RESERVATIONS FOR STATEWIDE ACTIVITIES.—

[''(1) IN GENERAL.—The Governor of a State shall reserve not more than 15 percent of each of the amounts allotted to the State under section 127(b)(1)(C) and paragraphs (1)(B) and (2)(B) of section 132(b) for a fiscal year for statewide workforce investment activities.

[''(2) USE OF FUNDS.—Regardless of whether the reserved amounts were allotted under section 127(b)(1)(C), or under paragraph (1)(B) or (2)(B) of section 132(b), the Governor may use the reserved amounts to carry out statewide youth activities under section 129(b) or statewide employment and training activities, for adults or dislocated workers, under section 134(a).''.

[(2) WITHIN STATE ALLOCATION.—Section 128(b) (29 U.S.C. 2853(b)) is amended to read as follows:

[''(b) WITHIN STATE ALLOCATIONS.—

[''(1) IN GENERAL.—Of the amount allotted to the State under section 127(b)(1)(C) and not reserved under subsection (a)(1)—

[''(A) a portion equal to not less than 80 percent of such amount shall be allocated by the Governor to local areas in accordance with paragraph (2); and

[''(B) a portion equal to not more than 20 percent of such amount may be allocated by the Governor to local areas in accordance with paragraph (3).

[''(2) ESTABLISHED FORMULA.—

[''(A) IN GENERAL.—Of the portion described in paragraph (1)(A), the Governor shall allocate—

[''(i) 33⅓ percent on the basis of the relative number of individuals in the civilian labor force who are ages 16 through 21 in each local area, compared to the total number of individuals in the civilian labor force who are ages 16 through 21 in all local areas in the State;

[''(ii) 33⅓ percent on the basis of the relative number of unemployed individuals in each local area, compared to the total number of unemployed individuals in all local areas in the State; and

[''(iii) 33⅓ percent on the basis of the relative number of disadvantaged youth who are ages 16 through 21 in each local area, compared to the total number of disadvantaged youth who are ages 16 through 21 in all local areas in the State.

[''(B) MINIMUM AND MAXIMUM PERCENTAGES.—

[''(i) MINIMUM PERCENTAGE.—The Governor shall ensure that no local area shall receive an allocation percentage under this paragraph for a fiscal year that is less than 90 percent of the allocation percentage of the local area for the preceding fiscal year.

[''(ii) MAXIMUM PERCENTAGE.—Subject to clause (i), the Governor shall ensure that no local area shall receive an allocation percentage under this paragraph for a fiscal year that is more than 130 percent of the allocation percentage of the local area for the preceding fiscal year.

[''(C) DEFINITIONS.—In this paragraph:

[''(i) ALLOCATION PERCENTAGE.—The term 'allocation percentage', used with respect to fiscal year 2004 or a subsequent fiscal year, means a percentage of the portion described in paragraph (1)(A) that is received by the local area involved through an allocation made under this paragraph for the fiscal year. The term, used with respect to fiscal year 2003, means the percentage of the amounts allocated to local areas under this chapter (as in effect on the day before the

date of enactment of the Workforce Investment Act Amendments of 2003) that is received by the local area involved for fiscal year 2003.

[''(ii) DISADVANTAGED YOUTH.—The term 'disadvantaged youth' means an individual who—

[''(I) is age 16 through 21;

[''(II) is not a college student or member of the Armed Forces; and

[''(III) received an income, or is a member of a family that received a total family income, that, in relation to family size, does not exceed the poverty line.

[''(3) YOUTH DISCRETIONARY ALLOCATION.—The Governor may allocate the portion described in paragraph (1)(B) to local areas where there are a significant number of eligible youth, after consultation with the State board and local board.

[''(4) LOCAL ADMINISTRATIVE COST LIMIT.—

[''(A) IN GENERAL.—Of the amount allocated to a local area under this subsection and section 133(b) for a fiscal year, not more than 10 percent of the amount may be used by the local board involved for the administrative costs of carrying out local workforce investment activities under this chapter or chapter 5.

[''(B) USE OF FUNDS.—Funds made available for administrative costs under subparagraph (A) may be used for the administrative costs of any of the local workforce investment activities described in this chapter or chapter 5, regardless of whether the funds were allocated under this subsection or section 133(b).''.

[(3) REALLOCATION.—

[(A) AMENDMENT.—Section 128(c) (29 U.S.C. 2853(c)) is amended—

[(i) in paragraph (1), by striking ''paragraph (2)(A) or (3) of'';

[(ii) by striking paragraph (2) and inserting the following:

[''(2) AMOUNT.—The amount available for reallocation for a program year is equal to the amount by which the unexpended balance at the end of the program year prior to the program year for which the determination is made exceeds 30 percent of the total amount of funds available to the local area under this section during such prior program year (including amounts allocated to the local area in all prior program years that remained available). For purposes of this paragraph, the unexpended balance is the amount that is the difference between—

[''(A) the total amount of funds available to the local area under this section during the program year prior to the program year for which the determination is made (including amounts allocated to the local area in all prior program years that remained available); and

[''(B) the accrued expenditures during such prior program year.'';

[(iii) by amending paragraph (3)—

[(I) by striking ''subsection (b)(3)'' each place it appears and inserting ''subsection (b)'';

[(II) by striking ''for the prior program year'' and inserting ''for the program year for which the determination is made'';

[(III) by striking ''such prior program year'' and inserting ''such program year''; and

[(IV) by striking the last sentence; and

[(iv) by striking paragraph (4) and inserting the following:

[''(4) ELIGIBILITY.—For purposes of this subsection, an eligible local area means a local area that does not have an amount available for reallocation under paragraph (2) for the program year for which the determination under paragraph (2) is made.''.

[(B) EFFECTIVE DATE.—The amendments made by subparagraph (A) shall take effect for the later of—

[(i) the program year that begins after the date of enactment of this Act; or

[(ii) program year 2004.

[(d) YOUTH PARTICIPANT ELIGIBILITY.—Section 129(a) (29 U.S.C. 2854(a)) is amended to read as follows:

[''(a) YOUTH PARTICIPANT ELIGIBILITY.—

[''(1) ELIGIBILITY.—

[''(A) IN GENERAL.—To be eligible to participate in activities carried out under this chapter during any program year an individual shall, at the time the eligibility determination is made, be an out-of-school youth or an in-school youth.

[''(B) OUT-OF-SCHOOL YOUTH.—In this section the term 'out-of-school youth' means an individual who is—

[''(i) not younger than age 16 (subject to paragraph (3)) nor older than age 21; and

[''(ii) one of the following:

[''(I) A school dropout.

[''(II) A youth who is within the age for compulsory school attendance, but has not attended school for at least 1 school year calendar quarter.

[''(III) A recipient of a secondary school diploma or its equivalent who is—

[''(aa) deficient in basic skills, including limited English proficiency;

[''(bb) a low-income individual; and

[''(cc) not attending any school; or

[''(IV) Subject to the juvenile justice system or ordered by a court to an alternative school.

[''(V) A low-income individual who is pregnant or parenting and not attending any school.

[''(VI) A youth who is not attending school or a youth attending an alternative school, who is homeless, a runaway, a foster child, a child eligible for assistance under section 477 of the Social Security Act, or in an out-of-home placement.

[''(C) IN-SCHOOL YOUTH.—In this section the term 'in-school youth' means an individual who is—

[''(i) not younger than age 14 nor older than age 21;

[''(ii) a low-income individual; and

[''(iii) one or more of the following:

[''(I) Deficient in basic literacy skills, including limited English proficiency.

[''(II) Homeless, a runaway, a foster child, a child eligible for assistance under section 477 of the Social Security Act, or in an out-of-home placement.

[''(III) Pregnant or parenting.

[''(IV) An offender (other than an individual described in subparagraph (B)(ii)(IV)).

[''(V) An individual who requires additional assistance to complete an educational program, or to secure or hold employment.

[''(2) EXCEPTION.—Not more than 5 percent of the individuals assisted under this section in each local area may be individuals who are not low-income with respect to individuals for whom low-income is a requirement for eligibility under this section.

[''(3) LIMITATIONS ON ACTIVITIES FOR IN-SCHOOL YOUTH.—

[''(A) IN GENERAL.—For any program year, not more than 60 percent of the funds available for statewide activities that serve youth under subsection (b), and not more than 60 percent of funds available to local areas under subsection (c), may be used to provide activities for in-school youth meeting the requirements of paragraph (1)(B).

[''(B) EXCEPTION.—A State that receives a minimum allotment under section 127(b)(1) in accordance with section 127(b)(1)(C)(iv)(II) or under section 132(b)(1) in accordance with section 132(b)(1)(B)(iv)(II) may increase the percentage described in subparagraph (A) for a local area in the State, if—

[''(i) after an analysis of the eligible youth population in the local area, the State determines that the local area will be unable to use at least 40 percent of the funds available for activities that serve youth under subsection (b) to serve out-of-school youth due to a low number of out-of-school youth; and

[''(ii)(I) the State submits to the Secretary, for the local area, a request including a proposed reduced percentage for purposes of subparagraph (A), and the summary of the eligible youth population analysis; and

[''(II) the request is approved by the Secretary.

[''(4) CONSISTENCY WITH COMPULSORY SCHOOL ATTENDANCE LAWS.—In providing assistance under this section to an individual who is required to attend school under applicable State compulsory school attendance laws, the priority in providing such assistance shall be for the individual to attend school regularly.''.

[(e) STATEWIDE ACTIVITIES.—Section 129(b) (29 U.S.C. 2854(b)) is amended to read as follows:

[''(b) STATEWIDE ACTIVITIES.—

[''(1) IN GENERAL.—Funds reserved by a Governor for a State as described in sections 128(a) and 133(a)(1) shall be used, regardless of whether the funds were allotted to the State under section 127(b)(1)(C) or under paragraph (1) or (2) of section 132(b) for statewide activities, which may include—

[''(A) conducting—

[''(i) evaluations under section 136(e) of activities authorized under this chapter and chapter 5 in coordination with evaluations carried out by the Secretary under section 172;

[''(ii) research; and

[''(iii) demonstration projects;

[''(B) providing incentive grants to local areas for regional cooperation among local boards (including local boards in a designated region as described in section 116(c)), for local coordination of activities carried out under this title, and for exemplary performance by local areas under section 136(i)(2);

[''(C) providing technical assistance and capacity building activities to local areas, one-stop operators, one-stop partners, and eligible providers, including the development and training of staff, the development of exemplary program activities, the provision of technical assistance to local areas that fail to meet local performance measures described in section 136(c), and the provision of technology to facilitate remote access to services provided through one-stop delivery systems;

[''(D) operating a fiscal and management accountability information system under section 136(f);

[''(E) carrying out monitoring and oversight of activities carried out under this chapter and chapter 5, which may include a review comparing the services provided to male and female youth;

[''(F) providing additional assistance to local areas that have high concentrations of eligible youth;

[''(G) supporting the development of alternative programs and other activities that enhance the choices available to eligible youth and encourage such youth to reenter secondary education, enroll in postsecondary education and advanced training, and obtain career path employment; and

[''(H) supporting the provision of core services described in section 134(d)(2) in the one-stop delivery system in the State;

[''(2) LIMITATION.—Not more than 5 percent of the funds allotted to a State under section 127(b)(1)(C) shall be used by the State for administrative activities carried out under this subsection or section 134(a).

[''(3) PROHIBITION.—No funds described in this subsection may be used to develop or implement education curricula for school systems in the State.''.

[(f) LOCAL ELEMENTS AND REQUIREMENTS.—

[(1) PROGRAM DESIGN.—Section 129(c)(1) (29 U.S.C. 2854(c)(1)) is amended—

[(A) in the matter that precedes subparagraph (A), by striking ''paragraph (2)(A) or (3), as appropriate, of'';

[(B) in subparagraph (B), by inserting ''are directly linked to 1 or more of the performance measures relating to this chapter under section 136, and that'' after ''for each participant that''; and

[(C) in subparagraph (C)—

[(i) by redesignating clauses (i) through (iv) as clauses (ii) through (v), respectively;

[(ii) by inserting before clause (ii) (as redesignated by clause (i)) the following:

[''(i) activities leading to the attainment of a secondary school diploma or its equivalent, or another recognized credential;'';

[(iii) in clause (ii) (as redesignated by clause (i)), by inserting ''and advanced training'' after ''opportunities'';

[(iv) in clause (iii) (as redesignated by clause (i))—

[(I) by inserting ''instruction based on State academic content and student academic achievement standards established under section 1111 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311)'' after ''academic''; and

[(II) by inserting ''that lead to the attainment of recognized credentials'' after ''learning''; and

[(v) by striking clause (v) (as redesignated by clause (i)) and inserting the following:

[''(v) effective connections to all employers, including small employers, in sectors of the local and regional labor markets that are experiencing high growth in employment opportunities.''.

[(2) PROGRAM ELEMENTS.—Section 129(c)(2) (29 U.S.C. 2854(c)(2)) is amended—

[(A) in subparagraph (A), by striking ''secondary school, including dropout prevention strategies'' and inserting ''the requirements for a secondary school diploma or its recognized equivalent (including recognized alternative standards for individuals with disabilities) or for another recognized credential, including dropout prevention strategies'';

[(B) in subparagraph (B), by inserting '', with a priority on exposing youth to technology and nontraditional jobs'' before the semicolon;

[(C) in subparagraph (F), by striking ''during nonschool hours'';

[(D) in subparagraph (I), by striking ''and'' at the end;

[(E) in subparagraph (J), by striking the period at the end and inserting a semicolon; and

[(F) by adding at the end the following:

[''(K) on-the-job training opportunities;

[''(L) opportunities to acquire financial literacy skills;

[''(M) entrepreneurial skills training and microenterprise services; and

[''(N) information about average wages for a range of jobs available in the local area, including technology jobs.''.

[(3) ADDITIONAL REQUIREMENTS.—Section 129(c)(3)(A) (29 U.S.C. 2854(c)(3)(A)) is amended in the matter preceding clause (i) by striking ''or applicant who meets the minimum income criteria to be considered an eligible youth''.

[(4) PRIORITY AND EXCEPTIONS.—Section 129(c) (29 U.S.C. 2854(c)) is amended by striking paragraphs (4) and (5).

[(5) PROHIBITIONS AND LINKAGES.—Section 129(c) (29 U.S.C. 2854(c)), as amended by paragraph (4), is further amended—

[(A) by redesignating paragraphs (6), (7), and (8) as paragraphs (4), (5), and (6), respectively;

[(B) in paragraph (4) (as redesignated by subparagraph (A))—

[(i) by striking subparagraph (B); and

[(ii) by redesignating subparagraph (C) as subparagraph (B); and

[(C) in paragraph (5) (as redesignated by subparagraph (A)), by striking ''youth councils'' and inserting ''local boards''.

[SEC. 121. ADULT AND DISLOCATED WORKER EMPLOYMENT AND TRAINING ACTIVITIES.

[(a) STATE ALLOTMENTS.—

[(1) RESERVATIONS.—Section 132(a)(2)(A) is amended by striking ''national emergency grants'' and inserting ''national dislocated worker grants''.

[(2) ALLOTMENT AMONG STATES.—Section 132(b) (29 U.S.C. 2862(b)) is amended—

[(A) in paragraph (1)(A)(ii), by striking ''section 127(b)(1)(B)'' and all that follows and inserting ''section 127(b)(1)(D).'';

[(B) by striking paragraph (1)(B)(ii) and inserting the following:

[''(ii) FORMULA.—Subject to clauses (iii) and (iv), of the remainder—

[''(I) 40 percent shall be allotted on the basis of the relative number of unemployed individuals in areas of substantial unemployment in each State, compared to the total number of unemployed individuals in areas of substantial unemployment in all States;

[''(II) 25 percent shall be allotted on the basis of the relative number of individuals in the civilian labor force in each State, compared to the total number of such individuals in all States; and

[''(III) 35 percent shall be allotted on the basis of the relative number of disadvantaged adults in each State, compared to the total number of disadvantaged adults in all States, except as described in clause (iii).'';

[(C) in paragraph (1)(B)(iii), by striking ''section 116(a)(2)(B)'' and inserting ''section 116(a)(2)(A)(ii)''; and

[(D) in paragraph (2)(A)(ii), by striking ''section 127(b)(1)(B)'' and all that follows and inserting ''section 127(b)(1)(D).''.

[(3) REALLOTMENT.—Section 132(c) (29 U.S.C. 2862(c)) is amended—

[(A) by striking paragraph (2) and inserting the following:

[''(2) AMOUNT.—The amount available for reallotment for a program year for programs funded under subsection (b)(1)(B) (relating to adult employment and training) and subsection (b)(2)(B) (relating to dislocated worker employment and training), respectively, is equal to the amount by which the unexpended balance at the end of the program year prior to the program year for which the determination is made exceeds 30 percent of the total amount of funds available to the State under subsection (b)(1)(B) or (b)(2)(B), respectively, during such prior program year (including amounts allotted to the State in all prior program years under such provisions that remained available). For purposes of this paragraph, the unexpended balance is the amount that is the difference between—

[''(A) the total amount of funds available to the State under subsection (b)(1)(B) or (b)(2)(B), respectively, during the program year prior to the program year for which the determination is made (including amounts allotted to the State in all prior program years under such provisions that remained available); and

[''(B) the accrued expenditures from such total amount of funds available under subsection (b)(1)(B) or (b)(2)(B), respectively, during such prior program year.'';

[(B) in paragraph (3)—

[(i) by striking ''under this section for such activities for the prior program year'' and inserting ''under subsection (b)(1)(B) or (b)(2)(B), as appropriate, for the program year for which the determination is made''; and

[(ii) by striking ''under this subsection for such activities for such prior program year'' and inserting ''under subsection (b)(1)(B) or (b)(2)(B), as appropriate, for such program year'';

[(C) by striking paragraph (4) and inserting the following:

[''(4) ELIGIBILITY.—For purposes of this subsection, an eligible State means—

[''(A) with respect to funds allotted under subsection (b)(1)(B), a State that does not have an amount of such funds available for reallotment under paragraph (2) for the program year for which the determination under paragraph (2) is made; and

[''(B) with respect to funds allotted under subsection (b)(2)(B), a State that does not have an amount of such funds available for reallotment under paragraph (2) for the program year for which the determination under paragraph (2) is made.''; and

[(D) in paragraph (5), by striking ''obligation'' and inserting ''expenditure''.

[(4) EFFECTIVE DATE.—The amendments made by paragraph (3) shall take effect for the later of—

[(A) the program year that begins after the date of enactment of this Act; or

[(B) program year 2004.

[(b) WITHIN STATE ALLOCATIONS.—

[(1) ALLOCATION.—Section 133(b)(5)(B)(ii) (29 U.S.C. 2863(b)(5)(B)(ii)) is amended by striking ''section 134(c)'' and inserting ''section 121(e)''.

[(2) REALLOCATION.—Section 133(c) (29 U.S.C. 2863(c)) is amended—

[(A) in paragraph (1), by inserting '', and under subsection (b)(2)(B) for dislocated worker employment and training activities,'' after ''activities'';

[(B) by striking paragraph (2) and inserting the following:

[''(2) AMOUNT.—The amount available for reallocation for a program year for programs funded under paragraphs (2)(A) and (3) of subsection (b) (relating to adult employment and training) and subsection (b)(2)(B) (relating to dislocated worker employment and training), respectively, is equal to the amount by which the unexpended balance at the end of the program year prior to the program year for which the determination is made exceeds 30 percent of the total amount of funds available to the local area under paragraphs (2)(A) and (3) of subsection (b), or subsection (b)(2)(B), respectively, during such prior program year (including amounts allocated to the local area in all prior program years under such provisions that remained available). For purposes of this paragraph, the unexpended balance is the amount that is the difference between—

[''(A) the total amount of funds available to the local area under paragraphs (2)(A) and (3) of subsection (b), or subsection (b)(2)(B), respectively, during the program year prior to the program year for which the determination is made (including amounts allotted to the local area in all prior program years under such provisions that remained available); and

[''(B) the accrued expenditures from such total amount of funds available under paragraphs (2)(A) and (3) of subsection (b), or subsection (b)(2)(B), respectively, during such prior program year.'';

[(C) by striking paragraph (3) and inserting the following:

[''(3) REALLOCATION.—In making reallocations to eligible local areas of amounts available pursuant to paragraph (2) for a program year, the Governor shall allocate to each eligible local area within the State—

[''(A) with respect to amounts that are available for reallocation under paragraph (2) that were allocated under paragraphs (2)(A) or (3) of subsection (b), an amount based on the relative amount allocated to such local area under paragraphs (2)(A) or (3) of subsection (b), as appropriate, for the program year for which the determination is

made, as compared to the total amount allocated to all eligible local areas under paragraphs (2)(A) or (3) of subsection (b), as appropriate, of such program year; and

[''(B) with respect to amounts that are available for reallocation under paragraph (2) that were allocated under subsection (b)(2)(B), an amount based on the relative amount allocated to such local area under subsection (b)(2)(B) for the program year for which the determination is made, as compared to the total amount allocated to all eligible local areas under subsection (b)(2)(B) for such program year.''; and

[(D) by striking paragraph (4) and inserting the following:

[''(4) ELIGIBILITY.—For purposes of this subsection, an eligible local area means—

[''(A) with respect to funds allocated under paragraphs (2)(A) or (3) of subsection (b), a local area that does not have an amount of such funds available for reallocation under paragraph (2) for the program year for which the determination under paragraph (2) is made; and

[''(B) with respect to funds allocated under subsection (b)(2)(B), a local area that does not have an amount of such funds available for reallocation under paragraph (2) for the program year for which the determination under paragraph (2) is made.''.

[(3) EFFECTIVE DATE.—The amendments made by paragraph (2) shall take effect for the later of—

[(A) the program year that begins after the date of enactment of this Act; or

[(B) program year 2004.

[(c) USE OF FUNDS FOR EMPLOYMENT AND TRAINING ACTIVITIES.—

[(1) STATEWIDE EMPLOYMENT AND TRAINING ACTIVITIES.—

[(A) STATEWIDE RAPID RESPONSE ACTIVITIES.—Section 134(a)(2)(A) (29 U.S.C. 2864(a)(2)(A)) is amended to read as follows:

[''(A) STATEWIDE RAPID RESPONSE ACTIVITIES.—

[''(i) IN GENERAL.—A State shall carry out statewide rapid response activities using funds reserved by a Governor for a State under section 133(a)(2). Such activities shall include—

[''(I) provision of rapid response activities, carried out in local areas by the State or by an entity designated by the State, working in conjunction with the local boards and the chief elected officials for the local areas; and

[''(II) provision of additional assistance to local areas that experience disasters, mass layoffs, or plant closings, or other events that precipitate substantial increases in the number of unemployed individuals, carried out in local areas by the State, working in conjunction with the local boards and the chief elected officials for the local areas.

[''(ii) USE OF UNEXPENDED FUNDS.—Funds reserved under section 133(a)(2) to carry out this subparagraph that remain unexpended after the first program year for which such funds were allotted may be used by the Governor to carry out statewide activities authorized under subparagraphs (B) and (C) in addition to activities under this subparagraph.''.

[(B) STATEWIDE EMPLOYMENT AND TRAINING ACTIVITIES.—Section 134(a)(2) (29 U.S.C. 2864(a)(2)) is amended by striking subparagraph (B) and inserting the following:

[''(B) STATEWIDE EMPLOYMENT AND TRAINING ACTIVITIES.—Funds reserved by a Governor for a State under sections 128(a)(1) and 133(a)(1) and not used under paragraph (1)(A) shall be used for statewide employment and training activities, including—

[''(i) disseminating—

[''(I) the State list of eligible providers of training services, including eligible providers of nontraditional training services;

[''(II) information identifying eligible providers of on-the-job training and customized training;

[''(III) performance information and program cost information, as described in subsections (e) and (h) of section 122; and

[''(IV) information on physical and programmatic assessability for individuals with disabilities;

[''(ii) conducting evaluations under section 136(e) of activities authorized under this chapter and chapter 5 in coordination with evaluations carried out by the Secretary under section 172;

[''(iii) providing incentive grants to local areas in recognition of exceptional achievement relating to—

[''(I) regional cooperation among local boards (including local boards in a designated region as described in section 116(c));

[''(II) expanded local coordination of programs and activities carried out as part of a comprehensive workforce investment system, including—

[''(aa) coordination of employment services under the Wagner-Peyser Act and core activities under this title; and

[''(bb) partner programs described in section 121;

[''(III) exemplary performance by local areas as described in section 136(i)(2); and

[''(IV) providing expanded access to education and training services, especially through increased leveraging of resources other than those provided through programs under this title;

[''(iv) providing technical assistance and capacity building to local areas, one-stop operators, one-stop partners, and eligible providers, including the development and training of staff, the development of exemplary program activities, and the provision of technical assistance to local areas that fail to meet local performance measures described in section 136(c), which may include the development and training of staff to provide opportunities for hard-to-serve populations to enter high-wage, high-skilled, and nontraditional occupations;

[''(v) operating a fiscal and management accountability system under section 136(f); and

[''(vi) carrying out monitoring and oversight of activities carried out under this chapter and chapter 4.''.

[(C) ALLOWABLE STATEWIDE EMPLOYMENT AND TRAINING ACTIVITIES.—Section 134(a)(3)(A) (29 U.S.C. 2864(a)(3)(A) is amended to read as follows:

[''(A) IN GENERAL.—A State may use funds reserved as described in sections 128(a) and 133(a)(1) (regardless of whether the funds were allotted to the State under section 127(b)(1) or paragraph (1) or (2) of section 132(b)) to carry out additional statewide employment and training activities, which may include—

[''(i) implementing innovative programs and strategies designed to meet the needs of all businesses in the State, including small businesses, which may include incumbent worker training programs, sectoral and industry cluster strategies and partnerships, including regional skills alliances, career ladder programs, micro-enterprise and entrepreneurial training and support programs, utilization of effective business intermediaries, activities to improve linkages between the one-stop delivery systems in the State and all employers (including small employers), in the State and other business services and strategies that better engage employers in workforce activities and make the workforce investment system more relevant to the needs of State and local businesses, consistent with the purposes of this Act;

[''(ii) developing strategies for effectively serving hard-to-serve populations and for coordinating programs and services among one-stop partners;

[''(iii) implementing innovative programs for displaced homemakers, which for purposes of this subparagraph may include an individual who is receiving public assistance and is within 2 years of exhausting lifetime eligibility under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.);

[''(iv) developing strategies for ensuring that activities carried out under this section are placing men and women in jobs, education, and training that lead to comparable pay;

[''(v) implementing programs to increase the number of individuals training for and placed in nontraditional employment;

[''(vi) carrying out activities to facilitate remote access to services, including training services described in subsection (d)(4), provided through a one-stop delivery system, including facilitating access through the use of technology;

[''(vii) supporting the provision of core services described in subsection (d)(2) in the one-stop delivery system in the State;

[''(viii) coordinating with the child welfare system to facilitate services for children in foster care and those who are eligible for assistance under section 477 of the Social Security Act;

[''(ix) activities—

[''(I) to improve coordination between workforce investment activities carried out within the State involved and economic development activities;

[''(II) to improve coordination between employment and training assistance and child support services and assistance provided by State and local agencies carrying out part D of title IV of the Social Security Act (42 U.S.C. 651 et seq.);

[''(III) to improve coordination between employment and training assistance and cooperative extension programs carried out by the Department of Agriculture; and

[''(IV) to develop and disseminate workforce and labor market information;

[''(x) conducting—

[''(I) research; and

[''(II) demonstration projects; and

[''(xi) adopting, calculating, or commissioning a minimum self-sufficiency standard that specifies the income needs of families, by family size, the number and ages of children in the family, and sub-State geographical considerations.''.

[(2) REQUIRED LOCAL EMPLOYMENT AND TRAINING ACTIVITIES.—

[(A) ALLOCATED FUNDS.—Section 134(d)(1) (29 U.S.C. 2864(d)(1)) is amended—

[(i) in clause (i), by striking ''described in subsection (c)'';

[(ii) in clause (iii), by striking ''and'' at the end;

[(iii) in clause (iv), by striking the period and inserting a semicolon; and

[(iv) by adding at the end the following:

[''(v) to designate a dedicated business liaison in the local area who may be funded with funds provided under this title or from other sources to establish and develop relationships and networks with large and small employers and their intermediaries; and

[''(vi) in order to avoid duplication of services and enhance coordination of services, to require the colocation of employment services provided under the Wagner-Peyser Act at the comprehensive one-stop centers.''.

[(B) CORE SERVICES.—Section 134(d)(2) (29 U.S.C. 2864(d)(2)) is amended—

[(i) in the matter preceding subparagraph (A), by striking ''paragraph (1)(A)'' and inserting ''paragraph (1)'';

[(ii) in subparagraph (A), by striking ''under this subtitle'' and inserting ''under

the programs described in section 121(b) and administered by one-stop partners, consistent with the requirements of such programs''; [(iii) by striking subparagraph (D) and inserting the following: [''(D) labor exchange services, including— [''(i) job search and placement assistance and, in appropriate cases, career counseling, including— [''(I) exposure to high wage, high skill jobs; and [''(II) nontraditional employment; and [''(ii) appropriate recruitment and other business services for all employers, including small employers, in the local area, which may include services described in this subsection, including information and referral to specialized business services not traditionally offered through the one-stop delivery system;''; [(iv) in subparagraph (E)(iii)— [(I) by inserting '', career ladders,'' after ''earnings''; and [(II) by striking ''and'' at the end; [(v) in subparagraph (F)— [(I) by striking ''and program cost information''; and [(II) by striking ''described in section 123''; [(vi) by striking subparagraph (H) and inserting the following: [''(H) provision of accurate information, in formats that are usable and understandable to all one-stop customers, relating to the availability of supportive services or assistance, including childcare, child support, medical or child health assistance under title XIX or XXI of the Social Security Act, benefits under the Food Stamp Act of 1977, the earned income tax credit under section 32 of the Internal Revenue Code of 1986, and assistance under a State program funded under part A of title IV of the Social Security Act and other supportive services and transportation provided through funds made available under such part, available in the local area, and referral to such services or assistance as appropriate;''; and [(vii) in subparagraph (J), by striking ''for—'' and all that follows through ''(ii) programs'' and inserting ''for programs''.

[(C) INTENSIVE SERVICES.—Section 134(d)(3) (29 U.S.C. 2864(d)(3)) is amended—

[(i) by striking subparagraph (A) and inserting the following:

[''(A) IN GENERAL.—

[''(i) ELIGIBILITY.—Except as provided in clause (ii), funds allocated to a local area for adults under paragraph (2)(A) or (3), as appropriate, of section 133(b), and funds allocated to the local area for dislocated workers under section 133(b)(2)(B), shall be used to provide intensive services to adults and dislocated workers, respectively—

[''(I) who are unemployed and who, after an interview, evaluation, or assessment, have been determined by a one-stop operator or one-stop partner to be—

[''(aa) unlikely or unable to obtain employment, that leads to self-sufficiency or wages comparable to or higher than previous employment, through core services described in paragraph (2); and

[''(bb) in need of intensive services in order to obtain employment that leads to self-sufficiency or wages comparable to or higher than previous employment; or

[''(II) who are employed, but who, after an interview, evaluation, or assessment are determined by a one-stop operator or one-stop partner to be in need of intensive services to obtain or retain employment that leads to self-sufficiency.

[''(ii) SPECIAL RULE.—A new interview, evaluation, or assessment of a participant is not required under clause (i) if the one-stop operator or one-stop partner determines that it is appropriate to use a recent assessment of the participant conducted pursuant to another education or training program.''; and

[(ii) in subparagraph (C)—

[(I) in clause (v), by striking ''for participants seeking training services under paragraph (4)''; and

[(II) by adding at the end the following:

[''(vii) Internships and work experience.

[''(viii) Literacy activities relating to basic work readiness, and financial literacy activities.

[''(ix) Out-of-area job search assistance and relocation assistance.

[''(x) English language acquisition and integrated training programs.''.

[(D) TRAINING SERVICES.—Section 134(d)(4) (29 U.S.C. 2864(d)(4)) is amended—

[(i) by striking subparagraph (A) and inserting the following:

[''(A) IN GENERAL.—

[''(i) ELIGIBILITY.—Except as provided in clause (ii), funds allocated to a local area for adults under paragraph (2)(A) or (3), as appropriate, of section 133(b), and funds allocated to the local area for dislocated workers under section 133(b)(2)(B), shall be used to provide training services to adults and dislocated workers, respectively—

[''(I) who, after an interview, evaluation, or assessment, and case management, have been determined by a one-stop operator or one-stop partner, as appropriate, to—

[''(aa) be unlikely or unable to obtain or retain employment, that leads to self-sufficiency or wages comparable to or higher than previous employment, through the intensive services described in paragraph (3);

[''(bb) be in need of training services to obtain or retain employment that leads to self-sufficiency or wages comparable to or higher than previous employment; and

[''(cc) have the skills and qualifications to successfully participate in the selected program of training services;

[''(II) who select programs of training services that are directly linked to the employment opportunities in the local area or region involved or in another area to which the adults or dislocated workers are willing to commute or relocate;

[''(III) who meet the requirements of subparagraph (B); and

[''(IV) who are determined to be eligible in accordance with the priority system in effect under subparagraph (E).

[''(ii) SPECIAL RULE.—A new interview, evaluation, or assessment of a participant is not required under clause (i) if the one-stop operator or one-stop partner determines that it is appropriate to use a recent assessment of the participant conducted pursuant to another education or training program.'';

[(ii) in subparagraph (B)(i), by striking ''Except'' and inserting ''Notwithstanding section 479B of the Higher Education Act of 1965 (20 U.S.C. 1087uu) and except'';

[(iii) in subparagraph (D)—

[(I) in clause (viii), by striking ''and'' after the semicolon;

[(II) in clause (ix), by striking the period and inserting ''; and''; and

[(III) by adding at the end the following:

[''(x) English language acquisition and integrated training programs.'';

[(iv) in subparagraph (F)—

[(I) in clause (ii), by striking ''referred to in subsection (c), shall make available—'' and all that follows and inserting ''shall make available a list of eligible providers of training services, and accompanying information, in accordance with section 122(d).'';

[(II) in the heading of clause (iii), by striking ''INDIVIDUAL TRAINING ACCOUNTS'' and inserting ''CAREER SCHOLARSHIP ACCOUNTS'';

[(III) in clause (iii)—

[(aa) by striking ''identifying information'' and inserting ''accompanying information'';

[(bb) by striking ''clause (ii)(I)'' and inserting ''clause (ii)''; and

[(cc) by striking ''individual training account'' and inserting ''career scholarship account''; and

[(IV) by adding the following clause after clause (iii):

[''(iv) COORDINATION.—Each local board may, through one-stop centers, coordinate career scholarship accounts with other Federal, State, local, or private job training programs or sources to assist the individual in obtaining training services.''; and

[(v) in subparagraph (G)—

[(I) in the subparagraph heading, by striking ''INDIVIDUAL TRAINING ACCOUNTS'' and inserting ''CAREER SCHOLARSHIP ACCOUNTS'';

[(II) in clause (i), by striking ''individual training accounts'' and inserting ''career scholarship accounts'';

[(III) in clause (ii)—

[(aa) by striking ''individual training account'' and inserting ''career scholarship account''; and

[(bb) in subclause (II), by striking ''individual training accounts'' and inserting ''career scholarship accounts'';

[(cc) in subclause (II), by striking ''or'' after the semicolon;

[(dd) in subclause (III), by striking the period and inserting ''''; or''; and

[(ee) by adding at the end the following:

[''(IV) the local board determines that it would be most appropriate to award a contract to an institution of higher education in order to facilitate the training of multiple individuals in high-demand occupations, if such contract does not limit customer choice.''; and

[(IV) in clause (iv)—

[(aa) by redesignating subclause (IV) as subclause (V); and

[(bb) by inserting after subclause (III) the following:

[''(IV) Individuals with disabilities.''.

[(3) PERMISSIBLE ACTIVITIES.—Section 134(e) (29 U.S.C. 2864(e)) is amended—

[(A) by striking the matter preceding paragraph (2) and inserting the following:

[''(e) PERMISSIBLE LOCAL EMPLOYMENT AND TRAINING ACTIVITIES.—

[''(1) IN GENERAL.—

[''(A) ACTIVITIES.—Funds allocated to a local area for adults under paragraph (2)(A) or (3), as appropriate, of section 133(b), and funds allocated to the local area for dislocated workers under section 133(b)(2)(B), may be used to provide, through the one-stop delivery system involved—

[''(i) customized screening and referral of qualified participants in training services described in subsection (d)(4) to employment;

[''(ii) customized employment-related services to employers on a fee-for-service basis;

[''(iii) customer support to enable members of hard-to-serve populations, including individuals with disabilities, to navigate among multiple services and activities for such populations;

[''(iv) technical assistance and capacity building for serving individuals with disabilities in local areas, and by one-stop operators, one-stop partners, and eligible providers, including the development and training of staff, the provision of outreach, intake, assessments, and service delivery, and the development of performance measures;

[''(v) employment and training assistance provided in coordination with child support enforcement activities of the State and local agencies carrying out part D of title IV of the Social Security Act (42 U.S.C. 601 et seq.);

[''(vi) activities to improve coordination between employment and training assistance and child support services and assistance

provided by State and local agencies carrying out part D of title IV of the Social Security Act (42 U.S.C. 651 et seq.);

[''(vii) activities to improve coordination between employment and training assistance and cooperative extension programs carried out by the Department of Agriculture;

[''(viii) activities to facilitate remote access to services provided through a one-stop delivery system, including facilitating access through the use of technology;

[''(ix) activities—

[''(I) to improve coordination between workforce investment activities carried out within the local area involved and economic development activities; and

[''(II) to improve services and linkages between the local workforce investment system including the local one-stop delivery system, and all employers, including small employers in the local area, through services described under this section, including subparagraph (B);

[''(x) training programs for displaced homemakers and for individuals training for nontraditional occupations, in conjunction with programs operated in the local area;

[''(xi) using a portion of the funds allocated under section 133(b), activities to carry out business services and strategies that meet the workforce development needs of local area employers, as determined by the local board, consistent with the local plan under section 118, which services—

[''(I) may be provided through effective business intermediaries working in conjunction with the local board, and may also be provided on a fee for service basis or through the leveraging of economic development and other resources as determined appropriate by the local board; and

[''(II) may include—

[''(aa) identifying for and disseminating to business, educators, and job seekers, information related to the workforce, economic and community development needs, and opportunities of the local economy;

[''(bb) development and delivery of innovative workforce investment services and strategies for area businesses, which may include sectoral, industry cluster, regional skills alliances, career ladder, skills upgrading, skill standard development and certification, apprenticeship, and other effective initiatives for meeting the workforce development needs of area employers and workers;

[''(cc) participation in seminars and classes offered in partnership with relevant organizations focusing on the workforce-related needs of area employers and job seekers;

[''(dd) training consulting, needs analysis, and brokering services for area businesses, including the organization and aggregation of training (which may be paid for with funds other than those provided under this title), for individual employers and coalitions of employers with similar interests, products, or workforce needs;

[''(ee) assistance to area employers in the aversion of layoffs and in managing reductions in force in coordination with rapid response activities;

[''(ff) the marketing of business services offered under this Act, to appropriate area employers, including small and mid-sized employers;

[''(gg) information referral on concerns affecting local employers; and

[''(hh) other business services and strategies designed to better engage employers in workforce development activities and to make the workforce investment system more relevant to the workforce development needs of area businesses, as determined by the local board to be consistent with the purposes of this Act; and

[''(xii) activities to adjust the self-sufficiency standards for local factors, or activities to adopt, calculate, or commission a self-sufficiency standard that specifies the income needs of families, by family size, the number and ages of children in the family, and sub-State geographical considerations.

[''(B) WORK SUPPORT ACTIVITIES FOR LOW-WAGE WORKERS.—

[''(i) IN GENERAL.—Funds allocated to a local area for adults under paragraph (2)(A) or (3), as appropriate, of section 133(b), and funds allocated to the local area for dislocated workers under section 133(b)(2)(B), may be used to provide, through the one-stop delivery system involved, work support activities designed to assist low-wage workers in retaining and enhancing employment. The one-stop partners shall coordinate the appropriate programs and resources of the partners with the activities and resources provided under this subparagraph.

[''(ii) ACTIVITIES.—The activities described in clause (i) may include the provision of activities described in this section through the one-stop delivery system in a manner that enhances the opportunities of such workers to participate in the activities, such as the provision of activities described in this section during nontraditional hours and the provision of on-site child care while such activities are being provided.'';

[(B) in paragraph (2), by striking the matter preceding subparagraph (A) and inserting the following:

[''(2) SUPPORTIVE SERVICES.—Funds allocated to a local area for adults under paragraph (2)(A) or (3), as appropriate, of section 133(b), and funds allocated to the local area for dislocated workers under section 133(b)(2)(B), may be used to provide supportive services to adults and dislocated workers, respectively—'';

[(C) by adding at the end the following:

[''(4) INCUMBENT WORKER TRAINING PROGRAMS.—

[''(A) IN GENERAL.—The local board may use up to 10 percent of the funds allocated to the local area involved under section 133(b) to pay for the Federal share of the cost of providing training through an incumbent worker training program carried out in accordance with this paragraph. The Governor or State board may make recommendations to the local board regarding incumbent worker training with statewide impact.

[''(B) TRAINING ACTIVITIES.—The training program for incumbent workers carried out under this paragraph shall be carried out by the local board in conjunction with the employers or groups of employers of such workers for the purpose of assisting such workers in obtaining the skills necessary to retain employment or avert layoffs.

[''(C) EMPLOYER SHARE REQUIRED.—

[''(i) IN GENERAL.—Employers participating in the program carried out under this paragraph shall be required to pay the non-Federal share of the costs of providing the training to incumbent workers of the employers. The local board shall establish the non-Federal share of such costs, which may include in kind contributions. The non-Federal share shall not be less than—

[''(I) 10 percent of the costs, for employers with 50 or fewer employees;

[''(II) 25 percent of the costs, for employers with more than 50 employees but fewer than 100 employees; and

[''(III) 50 percent of the costs, for employers with 100 or more employees.

[''(ii) CALCULATION OF EMPLOYER SHARE.—The non-Federal share paid by such an employer may include the amount of the wages paid by the employer to a worker while the worker is attending a training program under this paragraph.''.

[SEC. 122. PERFORMANCE ACCOUNTABILITY SYSTEM.

[(a) STATE PERFORMANCE MEASURES.—

[(1) INDICATORS OF PERFORMANCE.—Section 136(b)(2)(A) (29 U.S.C. 2871(b)(2)(A)) is amended—

[(A) in clause (i)—

[(i) in the matter preceding subclause (I), by striking ''and (for participants who are eligible youth age 19 through 21) for youth activities authorized under section 129'';

[(ii) by striking subclause (III) and inserting the following:

[''(III) increases in earnings from unsubsidized employment; and''; and

[(iii) in subclause (IV), by striking '', or by participants'' and all that follows through ''unsubsidized employment''; and

[(B) by striking clause (ii) and inserting the following:

[''(ii) CORE INDICATORS FOR ELIGIBLE YOUTH.—The core indicators of performance for youth activities authorized under section 129 shall consist of—

[''(I) entry into employment, education or advanced training, or military service;

[''(II) attainment of secondary school diplomas or their recognized equivalents, and postsecondary certificates; and

[''(III) literacy or numeracy gains.''.

[(2) ADDITIONAL INDICATORS.—Section 136(b)(2)(C) (29 U.S.C. 2871(b)(2)(C)) is amended to read as follows:

[''(C) ADDITIONAL INDICATORS.—A State may identify in the State plan additional indicators for workforce investment activities under this subtitle, including indicators identified in collaboration with State business and industry associations, with employee representatives where applicable, and with local boards, to measure the performance of the workforce investment system in serving the workforce needs of business and industry in the State.''.

[(3) LEVELS OF PERFORMANCE.—Section 136(b)(3)(A) (29 U.S.C. 2871(b)(3)(A)) is amended—

[(A) in clause (iii)—

[(i) in the heading, by striking ''FOR FIRST 3 YEARS'';

[(ii) by striking ''and the customer satisfaction indicator of performance, for the first 3'' and inserting ''described in clauses (i) and (ii) of paragraph (2)(A) and the customer satisfaction indicator of performance, for the first 2''; and

[(iii) by inserting at the end the following: ''Agreements on levels of performance for each of the core indicators of performance for the third and fourth program years covered by the State plan shall be reached prior to the beginning of the third program year covered by the State plan, and incorporated as a modification to the State plan.'';

[(B) in clause (iv)—

[(i) in subclause (II)—

[(I) by striking ''taking into account'' and inserting ''and shall ensure that the levels involved are adjusted, using objective statistical methods, based on'';

[(II) by inserting ''(such as differences in unemployment rates and job losses or gains in particular industries)'' after ''economic conditions'';

[(III) by inserting ''(such as indicators of poor work history, lack of work experience, educational or occupational skills attainment, dislocation from high-wage and benefit employment, low levels of literacy or English proficiency, disability status, homelessness, and welfare dependency)'' after ''program''; and

[(IV) by striking ''and'' at the end;

[(ii) in subclause (III), by striking the period and inserting ''; and''; and

[(iii) by adding at the end the following:

[''(IV) the extent to which the levels involved will assist the State in meeting the national goals described in clause (v).'';

[(C) by striking clause (v) and inserting the following:

[''(v) ESTABLISHMENT OF NATIONAL GOALS.—In order to promote enhanced performance outcomes on the performance measures and to facilitate the process of reaching agreements with the States under clause (iii) and to measure systemwide performance for the one-stop delivery systems of the States, the Secretary shall establish long-term national goals for the adjusted levels of performance for that systemwide performance to be achieved by the programs assisted under chapters 4 and 5 on the core indicators of performance described in subparagraphs (A) and (B) of subsection (b)(2). Such goals shall be established in accordance with the Government Performance and Results Act of 1993 in consultation with the States and other appropriate parties.''; and

[(D) in clause (vi)—

[(i) by striking ''or (v)''; and

[(ii) by striking ''with the representatives described in subsection (i)'' and inserting ''with the States and other interested parties''.

[(b) LOCAL PERFORMANCE MEASURES.—Section 136(c)(3) (29 U.S.C. 2871(c)(3))—

[(1) by striking ''shall take into account'' and inserting ''shall ensure such levels are adjusted based on'';

[(2) by inserting ''(characteristics such as unemployment rates and job losses or gains in particular industries)'' after ''economic''; and

[(3) by inserting ''(characteristics such as indicators of poor work history, lack of work experience, educational and occupational skills attainment, dislocation from high-wage and benefit employment, low levels of literacy or English proficiency, disability status, homelessness, and welfare dependency)'' after ''demographic''.

[(c) REPORT.—Section 136(d) (29 U.S.C. 2871(d)) is amended—

[(1) in paragraph (1), by adding at the end the following: ''In the case of a State or local area that chooses to expend funds under section 134(a)(3)(A)(i) or 134(e)(1)(A)(vii), respectively, the report also shall include the amount of such funds so expended and the percentage that such funds are of the funds available under section 134;

[(2) in paragraph (2)—

[(A) in subparagraph (E)—

[(i) by striking ''(excluding participants who received only self-service and informational activities)''; and

[(ii) by striking ''and'' after the semicolon;

[(B) in subparagraph (F)—

[(i) by inserting ''noncustodial parents with child support obligations, homeless individuals,'' after ''displaced homemakers,''; and

[(ii) by striking the period and inserting a semicolon; and

[(C) by adding at the end the following:

[''(G) the number of participants served and the cost per participant; and

[''(H) the amount of adult and dislocated worker funds spent on—

[''(i) core, intensive, and training services, respectively; and

[''(ii) services provided under section 134(a)(3)(A)(i) or 134(e)(1)(A)(iii), if applicable.''; and

[(3) by adding at the end the following:

[''(4) DATA VALIDATION.—In preparing the reports described in this subsection, the States shall establish procedures, consistent with guidelines issued by the Secretary, to ensure that the information contained in the reports is valid and reliable.''.

[(d) SANCTIONS FOR STATE.—Section 136(g) is amended—

[(1) in paragraph (1)(B), by striking ''If such failure continues for a second consecutive year'' and inserting ''If a State performs at less than 80 percent of the adjusted level of performance for a core indicator of performance described in subsection (b)(2)(A) for 2 consecutive years with respect to the same indicator of performance''; and

[(2) in paragraph (2), by striking ''section 503'' and inserting ''subsection (i)(1)''.

[(e) SANCTIONS FOR LOCAL AREA.—Section 136(h)(2)(A) (29 U.S.C. 2871(h)(2)(A)) is amended—

[(1) in the matter preceding clause (i), by striking ''If such failure continues for a second consecutive year'' and inserting ''If a local area performs at less than 80 percent of the adjusted level of performance for a core indicator of performance described in subsection (b)(2)(A) for 2 consecutive years with respect to the same indicator of performance'';

[(2) in clause (ii), by striking ''or'' after the semicolon;

[(3) by redesignating clause (iii) as clause (iv); and

[(4) by inserting after clause (ii) the following:

[''(iii) redesignate the local area in accordance with section 116(a)(2); or''.

[(f) INCENTIVE GRANTS.—Section 136(i) (29 U.S.C. 2871(i)) is amended to read as follows:

[''(i) INCENTIVE GRANTS FOR STATES AND LOCAL AREAS.—

[''(1) INCENTIVE GRANTS FOR STATES.—

[''(A) IN GENERAL.—From funds appropriated under section 174(b) and made available under subsection (g)(2), the Secretary may award incentive grants to States for exemplary performance in carrying out programs under chapters 4 and 5.

[''(B) BASIS.—The Secretary shall award the grants on the basis—

[''(i) of the States meeting or exceeding the performance measures established under subsection (b)(3)(A)(iii);

[''(ii) of exemplary performance of the States in serving hard-to-serve populations (including performance relating to the levels of service provided and the performance outcomes on such performance measures with respect to the populations);

[''(iii) of States that are effectively—

[''(I) coordinating multiple systems into a more effective workforce development system, including coordination of employment services under the Wagner-Peyser Act and core activities under this title as well as partner programs described in section 121;

[''(II) expanding access to training, including through increased leveraging of resources other than those funded through programs under this title; or

[''(III) implementing innovative business and economic development initiatives.

[''(iv) of such other factors relating to the performance of the States under this title as the Secretary determines are appropriate.

[''(C) USE OF FUNDS.—The funds awarded to a State under this paragraph may be used to carry out any activities authorized for States under chapters 4 and 5, title II of this Act, and the Carl D. Perkins Vocational and Technical Education Act of 1998, including demonstration projects and innovative programs for hard-to-serve populations.

[''(2) INCENTIVE GRANTS FOR LOCAL AREAS.—

[''(A) IN GENERAL.—From funds reserved under sections 128(a) and 133(a)(1), the Governor involved shall award incentive grants to local areas for exemplary performance in carrying out programs under chapters 4 and 5.

[''(B) BASIS.—The Governor shall award the grants on the basis—

[''(i) that the local areas met or exceeded the performance measures established under subsection (c)(2) relating to indicators described in subsection (b)(3)(A)(iii);

[''(ii) of exemplary performance of the local areas in serving hard-to-serve populations; or

[''(iii) of States and local areas that are effectively—

[''(I) coordinating multiple systems into a comprehensive workforce development system, including coordination of employment services under the Wagner-Peyser Act and core activities under this title as well as partner programs described in section 121;

[''(II) expanding access to training, including through increased leveraging of resources other than those funded through programs under this title; or

[''(III) implementing innovative business and economic development initiatives.

[''(C) USE OF FUNDS.—The funds awarded to a local area under this paragraph may be used to carry out activities authorized for local areas under chapters 4 and 5, and such demonstration projects or innovative programs for hard-to-serve populations as may be approved by the Governor.''.

[(g) USE OF CORE MEASURES IN OTHER DEPARTMENT OF LABOR PROGRAMS.—Section 136 (29 U.S.C. 2871) is amended by adding at the end the following:

[''(j) USE OF CORE INDICATORS FOR OTHER PROGRAMS.—In addition to the programs carried out under chapters 4 and 5, and consistent with the requirements of the applicable authorizing laws, the Secretary shall use the indicators of performance described in subparagraphs (A) and (B) of subsection (b)(2) to assess the effectiveness of the programs described in clauses (i), (ii), and (vi) of section 121(b)(1)(B) that are carried out by the Secretary.''.

[(h) PREVIOUS DEFINITIONS OF CORE INDICATORS AND INCENTIVE GRANTS.—Sections 502 and 503 (29 U.S.C. 9272 and 9273) are repealed.

[SEC. 123. AUTHORIZATION OF APPROPRIATIONS.

[(a) YOUTH ACTIVITIES.—Section 137(a) (29 U.S.C. 2872(a)) is amended by striking ''such sums as may be necessary for each of fiscal years 1999 through 2003'' and inserting ''such sums as may be necessary for each of fiscal years 2004 through 2009''.

[(b) ADULT EMPLOYMENT AND TRAINING ACTIVITIES.—Section 137(b) (29 U.S.C. 2872(b)) is amended by striking ''such sums as may be necessary for each of fiscal years 1999 through 2003'' and inserting ''such sums as may be necessary for each of fiscal years 2004 through 2009''.

[(c) DISLOCATED WORKER EMPLOYMENT AND TRAINING ACTIVITIES.—Section 137(c) (29 U.S.C. 2872(c)) is amended by striking ''such sums as may be necessary for each of fiscal years 1999 through 2003'' and inserting ''such sums as may be necessary for each of fiscal years 2004 through 2009''.

[Subtitle C—Job Corps

[SEC. 131. JOB CORPS.

[(a) ELIGIBILITY.—Section 144(3) (29 U.S.C. 2884(3)) is amended by adding at the end the following:

[''(F) A child eligible for assistance under section 477 of the Social Security Act.''.

[(b) IMPLEMENTATION OF STANDARDS AND PROCEDURES.—Section 145(a)(3) (29 U.S.C. 2885(a)(3)) is amended—

[(1) in subparagraph (B), by striking ''and'' after the semicolon;

[(2) in subparagraph (C), by striking the period and inserting ''; and''; and

[(3) by adding at the end the following:

[''(D) child welfare agencies that are responsible for children in foster care and children eligible for assistance under section 477 of the Social Security Act.''.

[(c) INDUSTRY COUNCILS.—Section 154(b) (29 U.S.C. 2894(b)) is amended—

[(1) in paragraph (1)(A), by striking ''local and distant''; and

[(2) by adding at the end the following:

[''(3) EMPLOYERS OUTSIDE OF LOCAL AREA.—The industry council may include, or otherwise provide for consultation with, employers from outside the local area who are likely to hire a significant number of enrollees from the Job Corps center.

[''(4) SPECIAL RULE FOR SINGLE LOCAL AREA STATES.—In the case of a single local area State designated under section 116(b), the industry council shall include a representative of the State Board.''.

[(d) INDICATORS OF PERFORMANCE.—Section 159 (29 U.S.C. 2983) is amended—

[(1) in subsection (c)—

[(A) by striking paragraph (1) and inserting the following:

[''(1) PERFORMANCE INDICATORS.—The Secretary shall annually establish expected levels of performance for Job Corps centers and the Job Corps program relating to each of the core indicators of performance for youth activities identified in section 136(b)(2)(A)(ii).'';

[(B) in paragraph (2), by striking ''measures'' each place it appears and inserting ''indicators''; and

[(C) in paragraph (3)—

[(i) in the first sentence, by striking ''core performance measures, as compared to the expected performance level for each performance measure'' and inserting ''performance indicators described in paragraph (1), as compared to the expected level of performance established under paragraph (1) for each performance measure''; and

[(ii) in the second sentence, by striking ''measures'' each place it appears and inserting ''indicators''; and

[(2) in subsection (f)(2), in the first sentence, by striking ''core performance measures'' and inserting ''indicators of performance''.

[(e) AUTHORIZATION OF APPROPRIATIONS.—Section 161 (29 U.S.C. 2901) is amended by striking ''1999 through 2003'' and inserting ''2004 through 2009''.

[Subtitle D—National Programs

[SEC. 141. NATIVE AMERICAN PROGRAMS.

[(a) ADVISORY COUNCIL.—Section 166(h)(4)(C) (29 U.S.C. 2911(h)(4)(C)) is amended to read as follows:

[''(C) DUTIES.—The Council shall advise the Secretary on the operation and administration of the programs assisted under this section, including the selection of the individual appointed as head of the unit established under paragraph (1).''.

[(b) ASSISTANCE TO UNIQUE NATIVE POPULATIONS IN ALASKA AND HAWAII.—Section 166(j) (29 U.S.C. 2911(j)) is amended to read as follows:

[''(j) ASSISTANCE TO UNIQUE NATIVE POPULATIONS IN ALASKA AND HAWAII.—

[''(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary is authorized to provide assistance to unique native populations who reside in Alaska or Hawaii to improve job training and workforce investment activities.

[''(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection such sums as may be necessary for fiscal year 2004.''.

[(c) PERFORMANCE INDICATORS.—Section 166 (29 U.S.C. 2911 is amended by adding at the end the following:

[''(c) PERFORMANCE INDICATORS.—

[''(1) DEVELOPMENT OF INDICATORS.—The Secretary, in consultation with the Native American Employment and Training Council, shall develop a set of performance indicators and standards which shall be applicable to programs under this section.

[''(2) SPECIAL CONSIDERATIONS.—Such performance indicators and standards shall take into account—

[''(A) the purposes of the programs under this section as described in paragraph (a)(1);

[''(B) the needs of the groups served by this section, including the differences in needs among such groups in various geographic service areas; and

[''(C) the economic circumstances of the communities served, including differences in circumstances among various geographic service areas.''.

[SEC. 142. MIGRANT AND SEASONAL FARMWORKER PROGRAMS.

[Section 167(d) (29 U.S.C. 2912(d)) is amended by inserting ''(including permanent housing)'' after ''housing''.

[SEC. 143. VETERANS' WORKFORCE INVESTMENT PROGRAMS.

[Section 168(a)(3)(C) (29 U.S.C. 2913(a)(3)(C)) is amended by striking ''section 134(c)'' and inserting ''section 121(e)''.

[SEC. 144. YOUTH CHALLENGE GRANTS.

[Section 169 (29 U.S.C. 2914) is amended to read as follows:

[''SEC. 169. YOUTH CHALLENGE GRANTS.

[''(a) IN GENERAL.—Of the amounts reserved by the Secretary under section 127(a)(1)(A) for a fiscal year—

[''(1) the Secretary shall use not less than 80 percent to award competitive grants under subsection (b); and

[''(2) the Secretary may use not more than 20 percent to award discretionary grants under subsection (c).

[''(b) COMPETITIVE GRANTS TO STATES AND LOCAL AREAS.—

[''(1) ESTABLISHMENT.—From the funds described in subsection (a)(1), the Secretary shall award competitive grants to eligible entities to carry out activities authorized under this subsection to assist eligible youth in acquiring the skills, credentials, and employment experience necessary to achieve the performance outcomes for youth described in section 136.

[''(2) ELIGIBLE ENTITY.—In this subsection, the term 'eligible entity' means—

[''(A) a State or consortium of States;

[''(B) a local board or consortium of local boards;

[''(C) a recipient of a grant under section 166 (relating to Native American programs); or

[''(D) a public or private entity (including a consortium of such entities) with expertise in the provision of youth activities, applying in partnership with a local board or consortium of local boards.

[''(3) APPLICATIONS.—To be eligible to receive a grant under this subsection, an eligible entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require, including—

[''(A) a description of the activities the eligible entity will provide to eligible youth under this subsection, and how the eligible entity will collaborate with State and local workforce investments systems established under this title in the provision of such activities;

[''(B) a description of the programs of demonstrated effectiveness on which the provision of the activities under subparagraph (A) are based, and a description of how such activities will expand the base of knowledge relating to the provision of activities for youth;

[''(C) a description of the State, local, and private resources that will be leveraged to provide the activities described under subparagraph (A) in addition to funds provided under this subsection, and a description of the extent of the involvement of employers in the activities;

[''(D) the levels of performance the eligible entity expects to achieve with respect to the indicators of performance for youth specified in section 136(b)(2)(A)(ii); and

[''(E) an assurance that the State board of each State in which the proposed activities are to be carried out had the opportunity to review the application, and including the comments, if any, of the affected State boards on the application, except that this subparagraph shall not apply to an eligible entity described in paragraph (2)(C).

[''(4) FACTORS FOR AWARD.—

[''(A) IN GENERAL.—In awarding grants under this subsection the Secretary shall consider—

[''(i) the quality of the proposed activities;

[''(ii) the goals to be achieved;

[''(iii) the likelihood of successful implementation;

[''(iv) the extent to which the proposed activities are based on proven strategies or the extent to which the proposed activities will expand the base of knowledge relating to the provision of activities for youth;

[''(v) the extent of collaboration with the State and local workforce investment systems in carrying out the proposed activities;

[''(vi) the extent of employer involvement in the proposed activities;

[''(vii) whether there are other Federal and non-Federal funds available for similar activities to the proposed activities, and the additional State, local, and private resources that will be provided to carry out the proposed activities; and

[''(viii) the quality of proposed activities in meeting the needs of the youth to be served.

[''(B) EQUITABLE GEOGRAPHIC DISTRIBUTION.—In awarding grants under this subsection the Secretary shall ensure an equitable distribution of such grants across geographically diverse areas.

[''(5) USE OF FUNDS.—

[''(A) IN GENERAL.—An eligible entity that receives a grant under this subsection shall use the grant funds to carry out activities that are designed to assist youth in acquiring the skills, credentials, and employment experience that are necessary to succeed in the labor market, including the activities identified in section 129.

[''(B) ACTIVITIES.—The activities carried out pursuant to subparagraph (A) may include the following:

[''(i) Training and internships for out-of-school youth in sectors of the economy experiencing, or projected to experience, high growth.

[''(ii) Dropout prevention activities for in-school youth.

[''(iii) Activities designed to assist special youth populations, such as court-involved youth and youth with disabilities.

[''(iv) Activities combining remediation of academic skills, work readiness training, and work experience, and including linkages to postsecondary education, apprenticeships, and career-ladder employment.

[''(v) Activities, including work experience, paid internships, and entrepreneurial training, in areas where there is a migration of youth out of the areas.

[''(C) PARTICIPANT ELIGIBILITY.—Youth who are 14 years of age through 21 years of age, as of the time the eligibility determination is made, may be eligible to participate in activities carried out under this subsection.

[''(6) GRANT PERIOD.—The Secretary shall make a grant under this subsection for a period of 2 years and may renew the grant, if the eligible entity has performed successfully, for a period of not more than 3 succeeding years.

[''(7) MATCHING FUNDS REQUIRED.—The Secretary shall require that an eligible entity that receives a grant under this subsection provide non-Federal matching funds in an amount to be determined by the Secretary that is not less than 10 percent of the cost of activities carried out under the grant. The

Secretary may require that such non-Federal matching funds be provided in cash resources, noncash resources, or a combination of cash and noncash resources.

[''(8) EVALUATION.—The Secretary shall reserve not more than 3 percent of the funds described in subsection (a)(1) to provide technical assistance to, and conduct evaluations of (using appropriate techniques as described in section 172(c)), the projects funded under this subsection.

[''(c) DISCRETIONARY GRANTS FOR YOUTH ACTIVITIES.—

[''(1) IN GENERAL.—From the funds described in subsection (a)(2), the Secretary may award grants to eligible entities to provide activities that will assist youth in preparing for, and entering and retaining, employment.

[''(2) ELIGIBLE ENTITY.—In this subsection, the term 'eligible entity' means a public or private entity that the Secretary determines would effectively carry out activities relating to youth under this subsection.

[''(3) EQUITABLE DISTRIBUTION TO RURAL AREAS.—In awarding grants under this subsection the Secretary shall ensure an equitable distribution of such grants to rural areas.

[''(4) APPLICATIONS.—To be eligible to receive a grant under this subsection, an eligible entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

[''(5) USE OF FUNDS.—

[''(A) IN GENERAL.—An eligible entity that receives a grant under this subsection shall use the grant funds to carry out—

[''(i) activities that will assist youth in preparing for, and entering and retaining, employment, including the activities described in section 129 for out-of-school youth;

[''(ii) activities designed to assist in-school youth to stay in school and gain work experience;

[''(iii) activities designed to assist youth in economically distressed areas; and

[''(iv) such other activities that the Secretary determines are appropriate to ensure that youth entering the workforce have the skills needed by employers.

[''(B) PARTICIPANT ELIGIBILITY.—Youth who are 14 years of age through 21 years of age, as of the time the eligibility determination is made, may be eligible to participate in activities carried out under this subsection.

[''(6) MATCHING FUNDS REQUIRED.—The Secretary shall require that an eligible entity that receives a grant under this subsection provide non-Federal matching funds in an amount to be determined by the Secretary that is not less than 10 percent of the cost of activities carried out under the grant. The Secretary may require that such non-Federal matching funds be provided in cash resources, noncash resources, or a combination of cash and noncash resources.

[''(7) EVALUATIONS.—The Secretary may require that an eligible entity that receives a grant under this subsection participate in an evaluation of activities carried out under this subsection, including an evaluation using the techniques described in section 172(c).''.

[SEC. 145. TECHNICAL ASSISTANCE.

[Section 170 (29 U.S.C. 2915) is amended—

[(1) in subsection (a)(1), by—

[(A) inserting ''the training of staff providing rapid response services, the training of other staff of recipients of funds under this title, the training of members of State boards and local boards, peer review activities under this title,'' after ''localities,''; and

[(B) striking ''from carrying out activities'' and all that follows through the period and inserting ''to implement the amendments made by the Workforce Investment Act Amendments of 2003.'';

[(2) in subsection (a)(2), by adding at the end the following: ''The Secretary shall also hire staff qualified to provide the assistance described in paragraph (1).'';

[(3) in subsection (b)(2), by striking the last sentence and inserting ''Such projects shall be administered by the Employment and Training Administration.''; and

[(4) by adding at the end the following:

[''(c) BEST PRACTICES COORDINATION.—The Secretary shall—

[''(1) establish a system through which States may share information regarding best practices with regard to the operation of workforce investment activities under this Act;

[''(2) evaluate and disseminate information regarding best practices and identify knowledge gaps; and

[''(3) commission research under section 172 to address knowledge gaps identified under paragraph (2).''.

[SEC. 146. DEMONSTRATION, PILOT, MULTISERVICE, RESEARCH, AND MULTISTATE PROJECTS.

[(a) DEMONSTRATION AND PILOT PROJECTS.—Section 171(b) (29 U.S.C. 2916(b)) is amended—

[(1) in paragraph (1)—

[(A) by striking ''Under a'' and inserting ''Consistent with the priorities specified in the'';

[(B) by striking subparagraphs (A) through (E) and inserting the following:

[''(A) projects that assist national employers in connecting with the workforce investment system established under this title in order to facilitate the recruitment and employment of needed workers for career ladder jobs and to provide information to such system on skills and occupations in demand;

[''(B) projects that promote the development of systems that will improve the maximum effectiveness of programs carried out under this title;

[''(C) projects that focus on opportunities for employment in industries and sectors of industries that are experiencing, or are likely to experience, high rates of growth and jobs with wages leading to self-sufficiency;

[''(D) projects that establish and implement innovative integrated systems training programs targeted to dislocated, disadvantaged incumbent workers that utilize equipment and curriculum designed in partnership with local, regional, or national industries that is computerized, individualized, self-paced, and interactive that delivers skills and proficiencies that are measurable to train workers for employment in the operations, repair, and maintenance of high-tech equipment that is used in integrated systems technology;

[''(E) projects carried out by States and local areas to test innovative approaches to delivering employment-related services;'';

[(C) in subparagraph (G), by striking ''and'' after the semicolon; and

[(D) by striking subparagraph (H) and inserting the following:

[''(H) projects that provide retention grants to qualified job training programs upon placement or retention of a low-income individual trained by the program in employment with a single employer for a period of 1 year, if such employment provides the low-income individual with an annual salary that is not less than twice the poverty line applicable to the individual;

[''(I) targeted innovation projects that improve access to and delivery of employment and training services, with emphasis given to projects that incorporate advanced technologies to facilitate the connection of individuals to the information and tools they need to upgrade skills; and

[''(J) projects that promote the use of distance learning, enabling students to take courses through the use of media technology such as videos, teleconferencing computers, and the Internet.''; and

[(2) in paragraph (2)—

[(A) by striking subparagraph (B); and

[(B) by redesignating subparagraph (C) as subparagraph (B).

[(b) MULTISERVICE PROJECTS.—Section 171(c)(2)(B) (29 U.S.C. 2916(c)(2)(B)) is amended to read as follows:

[''(B) STUDIES AND REPORTS.—

[''(i) NET IMPACT STUDIES AND REPORTS.—

[''(I) IN GENERAL.—The Secretary shall conduct studies to determine the net impacts of programs, services, and activities carried out under this title.

[''(II) REPORTS.—The Secretary shall prepare and disseminate to the public reports containing the results of the studies conducted under subclause (I).

[''(ii) STUDY ON RESOURCES AVAILABLE TO ASSIST OUT-OF-SCHOOL YOUTH.—The Secretary, in coordination with the Secretary of Education, may conduct a study examining the resources available at the Federal, State, and local levels to assist out-of-school youth in obtaining the skills, credentials, and work experience necessary to become successfully employed, including the availability of funds provided through average daily attendance and other methodologies used by States and local areas to distribute funds.

[''(iii) STUDY OF INDUSTRY-BASED CERTIFICATION AND CREDENTIALS.—

[''(I) IN GENERAL.—The Secretary shall conduct a study concerning the role and benefits of credentialing and certification to businesses and workers in the economy and the implications of certification to the services provided through the workforce investment system. The study may examine issues such as—

[''(aa) the characteristics of successful credentialing and certification systems that serve business and individual needs;

[''(bb) the relative proportions of certificates and credentials attained with assistance from the public sector, with private-sector training of new hires or incumbent workers, and by individuals on their own initiative without other assistance, respectively;

[''(cc) the return on human capital investments from occupational credentials and industry-based skill certifications, including the extent to which acquisition of such credentials or certificates enhances outcomes such as entry into employment, retention, earnings (including the number and amount of wage increases), career advancement, and layoff aversion;

[''(dd) the implications of the effects of skill certifications and credentials to the types and delivery of services provided through the workforce investment system;

[''(ee) the role that Federal and State governments play in fostering the development of and disseminating credentials and skill standards; and

[''(ff) the use of credentials by businesses to achieve goals for workforce skill upgrading and greater operating efficiency.

[''(II) REPORT TO CONGRESS.—The Secretary shall prepare and submit to Congress a report containing the results of the study conducted pursuant to subclause (I). Such report may include any recommendations that the Secretary determines are appropriate to include in such report relating to promoting the acquisition of industry-based certification and credentials, and the appropriate role of the Department of Labor and the workforce investment system in supporting

the needs of business and individuals with respect to such certification and credentials.

[''(iv) STUDY OF EFFECTIVENESS OF WORKFORCE INVESTMENT SYSTEM IN MEETING BUSINESS NEEDS.—

[''(I) IN GENERAL.—Using funds available to carry out this section jointly with funds available to the Secretary of Commerce and Administrator of the Small Business Administration, the Secretary, in coordination with the Secretary of Commerce and the Administrator of the Small Business Administration, may conduct a study of the effectiveness of the workforce investment system in meeting the needs of business, with particular attention to the needs of small business, including in assisting workers to obtain the skills needed to utilize emerging technologies. In conducting the study, the Secretary, in coordination with the Secretary of Commerce and the Administrator of the Small Business Administration, may examine issues such as—

[''(aa) methods for identifying the workforce needs of businesses and how the requirements of small businesses may differ from larger establishments;

[''(bb) business satisfaction with the workforce investment system, with particular emphasis on the satisfaction of small businesses;

[''(cc) the extent to which business is engaged as a collaborative partner in the workforce investment system, including the extent of business involvement as members of State boards and local boards, and the extent to which such boards and one-stop centers effectively collaborate with business and industry leaders in developing workforce investment strategies, including strategies to identify high growth opportunities;

[''(dd) ways in which the workforce investment system addresses changing skill needs of business that result from changes in technology and work processes;

[''(ee) promising practices for serving small businesses;

[''(ff) the extent and manner in which the workforce investment system uses technology to serve business and individual needs, and how uses of technology could enhance efficiency and effectiveness in providing services; and

[''(gg) the extent to which various segments of the labor force have access to and utilize technology to locate job openings and apply for jobs, and characteristics of individuals utilizing such technology (such as age, gender, race or ethnicity, industry sector, and occupational groups).

[''(II) REPORT TO CONGRESS.—The Secretary shall prepare and submit to Congress a report containing the results of the study described in clause (I). Such report may include any recommendations the Secretary determines are appropriate to include in such report, including ways to enhance the effectiveness of the workforce investment system in meeting the needs of business for skilled workers.''.

[(c) CONFORMING AMENDMENT.—Section 171(d) (29 U.S.C. 2916(d)) is amended by striking the last sentence.

[(d) WAIVER AUTHORITY TO CARRY OUT DEMONSTRATIONS AND EVALUATIONS.—Section 171 (29 U.S.C. 2916) is amended by adding at the end the following:

[''(d) WAIVER AUTHORITY.—In carrying out demonstration, pilot, multiservice, research, and multistate projects under this section and evaluations under section 172, the Secretary may waive any provisions of this section that the Secretary determines would prevent the Secretary from carrying out such projects and evaluations, except for provisions relating to wage and labor standards such as nondisplacement protections, grievance procedures and judicial review, and nondiscrimination provisions.''.

[(e) NEXT GENERATION TECHNOLOGIES.—Section 171 (29 U.S.C. 2916) is amended further by adding at the end the following:

[''(e) SKILL CERTIFICATION PILOT PROJECTS.—

[''(1) PILOT PROJECTS.—In accordance with subsection (b) and from funds appropriated pursuant to paragraph (10), the Secretary of Labor shall establish and carry out not more than 10 pilot projects to establish a system of industry-validated national certifications of skills, including—

[''(A) not more than 8 national certifications of skills in high-technology industries, including biotechnology, telecommunications, highly automated manufacturing (including semiconductors), nanotechnology, and energy technology; and

[''(B) not more than 2 cross-disciplinary national certifications of skills in homeland security technology.

[''(2) GRANTS TO ELIGIBLE ENTITIES.—In carrying out the pilot projects, the Secretary of Labor shall make grants to eligible entities, for periods of not less than 36 months and not more than 48 months, to carry out the authorized activities described in paragraph (7) with respect to the certifications described in paragraph (1). In awarding grants under this subsection the Secretary of Labor shall take into consideration awarding grants to eligible entities from diverse geographic areas, including rural areas.

[''(3) ELIGIBLE ENTITIES.—

[''(A) DEFINITION OF ELIGIBLE ENTITY.—In this subsection the term 'eligible entity' means an entity that shall work in conjunction with a local board and shall include as a principal participant one or more of the following:

[''(i) A community college or consortium of community colleges.

[''(ii) An advanced technology education center.

[''(iii) A local workforce investment board.

[''(iv) A representative of a business in a target industry for the certification involved.

[''(v) A representative of an industry association, labor organization, or community development organization.

[''(B) HISTORY OF DEMONSTRATED CAPABILITY REQUIRED.—To be eligible to receive a grant under this subsection, an eligible entity shall have a history of demonstrated capability for effective collaboration with industry on workforce development activities that is consistent with the goals of this Act.

[''(4) APPLICATIONS.—To be eligible to receive a grant under this subsection, an eligible entity shall submit an application to the Secretary of Labor at such time, in such manner, and containing such information as the Secretary may require.

[''(5) CRITERIA.—The Secretary of Labor shall establish criteria, consistent with paragraph (6), for awarding grants under this subsection.

[''(6) PRIORITY.—In selecting eligible entities to receive grants under this subsection, the Secretary of Labor shall give priority to eligible entities that demonstrate the availability of and ability to provide matching funds from industry or nonprofit sources. Such matching funds may be provided in cash or in kind.

[''(7) AUTHORIZED ACTIVITIES.—

[''(A) IN GENERAL.—An eligible entity that receives a grant under this subsection shall use the funds made available through the grant—

[''(i) to facilitate the establishment of certification requirements for a certification described in paragraph (1) for an industry;

[''(ii) to develop and initiate a certification program that includes preparatory courses, course materials, procedures, and examinations, for the certification; and

[''(iii) to collect and analyze data related to the program at the program's completion, and to identify best practices (consistent with paragraph (8)) that may be used by local and State workforce investment boards in the future.

[''(B) BASIS FOR REQUIREMENTS.—The certification requirements shall be based on applicable skill standards for the industry involved that have been developed by or linked to national centers of excellence under the National Science Foundation's Advanced Technological Education Program. The requirements shall require an individual to demonstrate an identifiable set of competencies relevant to the industry in order to receive certification. The requirements shall be designed to provide evidence of a transferable skill set that allows flexibility and mobility of workers within a high technology industry.

[''(C) RELATIONSHIP TO TRAINING AND EDUCATION PROGRAMS.—The eligible entity shall ensure that—

[''(i) a training and education program related to competencies for the industry involved, that is flexible in mode and timeframe for delivery and that meets the needs of those seeking the certification, is offered; and

[''(ii) the certification program is offered at the completion of the training and education program.

[''(D) RELATIONSHIP TO THE ASSOCIATE DEGREE.—The eligible entity shall ensure that the certification program is consistent with the requirements for a 2-year associate degree.

[''(E) AVAILABILITY.—The eligible entity shall ensure that the certification program is open to students pursuing associate degrees, employed workers, and displaced workers.

[''(8) CONSULTATION.—The Secretary of Labor shall consult with the Director of the National Science Foundation to ensure that the pilot projects build on the expertise and information about best practices gained through the implementation of the National Science Foundation's Advanced Technological Education Program.

[''(9) CORE COMPONENTS; GUIDELINES; REPORTS.—After collecting and analyzing the data obtained from the pilot programs, the Secretary of Labor shall—

[''(A) establish the core components of a model high-technology certification program;

[''(B) establish guidelines to assure development of a uniform set of standards and policies for such programs;

[''(C) submit and prepare a report on the pilot projects to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and the Workforce of the House of Representatives; and

[''(D) make available to the public both the data and the report.

[''(10) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts authorized to be appropriated under section 174(b), there is authorized to be appropriated $30,000,000 for fiscal year 2004 to carry out this subsection.''.

[(f) INTEGRATED WORKFORCE TRAINING PROGRAMS FOR ADULTS WITH LIMITED ENGLISH PROFICIENCY.—Section 171 (29 U.S.C. 2916) is amended further by adding at the end the following:

[''(f) INTEGRATED WORKFORCE TRAINING PROGRAMS FOR ADULTS WITH LIMITED ENGLISH PROFICIENCY.—

[''(1) DEFINITIONS.—In this subsection:

[''(A) INTEGRATED WORKFORCE TRAINING.—The term 'integrated workforce training'

means training that integrates occupational skills training with language acquisition.

[''(B) SECRETARY.—The term 'Secretary' means the Secretary of Labor in consultation with the Secretary of Education.

[''(2) DEMONSTRATION PROJECT.—In accordance with subsection (b) and from funds appropriated pursuant to paragraph (11), the Secretary shall establish and implement a national demonstration project designed to both analyze and provide data on workforce training programs that integrate English language acquisition and occupational training.

[''(3) GRANTS.—

[''(A) IN GENERAL.—In carrying out the demonstration project, the Secretary shall make not less than 10 grants, on a competitive basis, to eligible entities to provide the integrated workforce training programs. In awarding grants under this subsection the Secretary shall take into consideration awarding grants to eligible entities from diverse geographic areas, including rural areas.

[''(B) PERIODS.—The Secretary shall make the grants for periods of not less than 24 months and not more than 48 months.

[''(4) ELIGIBLE ENTITIES.—

[''(A) IN GENERAL.—To be eligible to receive a grant under this subsection, an eligible entity shall work in conjunction with a local board and shall include as a principal participant one or more of the following:

[''(i) An employer or employer association.

[''(ii) A nonprofit provider of English language instruction.

[''(iii) A provider of occupational or skills training.

[''(iv) A community-based organization.

[''(v) An educational institution, including a 2- or 4-year college, or a technical or vocational school.

[''(vi) A labor organization.

[''(vii) A local board.

[''(B) EXPERTISE.—To be eligible to receive a grant under this subsection, an eligible entity shall have proven expertise in—

[''(i) serving individuals with limited English proficiency, including individuals with lower levels of oral and written English; and

[''(ii) providing workforce programs with training and English language instruction.

[''(5) APPLICATIONS.—

[''(A) IN GENERAL.—To be eligible to receive a grant under this subsection, an eligible entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

[''(B) CONTENTS.—Each application submitted under subparagraph (A) shall—

[''(i) contain information, including capability statements, that demonstrates that the eligible entity has the expertise described in paragraph (4)(B); and

[''(ii) include an assurance that the program to be assisted shall—

[''(I) establish a generalized adult bilingual workforce training and education model that integrates English language acquisition and occupational training, and incorporates the unique linguistic and cultural factors of the participants;

[''(II) establish a framework by which the employer, employee, and other relevant members of the eligible entity can create a career development and training plan that assists both the employer and the employee to meet their long-term needs;

[''(III) ensure that this framework takes into consideration the knowledge, skills, and abilities of the employee with respect to both the current and economic conditions of the employer and future labor market conditions relevant to the local area; and

[''(IV) establish identifiable measures so that the progress of the employee and employer and the relative efficacy of the program can be evaluated and best practices identified.

[''(6) CRITERIA.—The Secretary of Labor shall establish criteria for awarding grants under this subsection.

[''(7) INTEGRATED WORKFORCE TRAINING PROGRAMS.—

[''(A) PROGRAM COMPONENTS.—

[''(i) REQUIRED COMPONENTS.—Each program that receives funding under this subsection shall—

[''(I) test an individual's English language proficiency levels to assess oral and literacy gains from the beginning and throughout program enrollment;

[''(II) combine training specific to a particular occupation or occupational cluster, with—

[''(aa) English language instruction, such as instruction through English as a Second Language program, or English for Speakers of Other Languages;

[''(bb) basic skills instruction; and

[''(cc) supportive services;

[''(III) effectively integrate public and private sector entities, including the local workforce investment system and its functions, to achieve the goals of the program; and

[''(IV) require matching or in-kind resources from private and nonprofit entities.

[''(ii) PERMISSIBLE COMPONENTS.—The program may offer other services, as necessary to promote successful participation and completion, including work-based learning, substance abuse treatment, and mental health services.

[''(B) GOAL.—Each program that receives funding under this subsection shall be designed to prepare limited English proficient adults for and place such adults in employment in growing industries with identifiable career ladder paths.

[''(C) PROGRAM TYPES.—In selecting programs to receive funding under this subsection, the Secretary shall select programs that meet 1 or more of the following criteria:

[''(i) A program that—

[''(I) serves unemployed, limited English proficient individuals with significant work experience or substantial education but persistently low wages; and

[''(II) aims to prepare such individuals for and place such individuals in higher paying employment, defined for purposes of this subparagraph as employment that provides at least 75 percent of the median wage in the local area.

[''(ii) A program that—

[''(I) serves limited English proficient individuals with lower levels of oral and written fluency, who are working but at persistently low wages; and

[''(II) aims to prepare such individuals for and place such individuals in higher paying employment, through services provided at the worksite, or at a location central to several worksites, during work hours.

[''(iii) A program that—

[''(I) serves unemployed, limited English proficient individuals with lower levels of oral and written fluency, who have little or no work experience; and

[''(II) aims to prepare such individuals for and place such individuals in employment through services that include subsidized employment, in addition to the components required in subparagraph (A)(i).

[''(iv) A program that includes funds from private and nonprofit entities.

[''(D) PROGRAM APPROACHES.—In selecting programs to receive funding under this subsection, the Secretary shall select programs with different approaches to integrated workforce training, in different contexts, in order to obtain comparative data on multiple approaches to integrated workforce training and English language instruction, to ensure programs are tailored to characteristics of individuals with varying skill levels and to assess how different curricula work for limited English proficient populations. Such approaches may include—

[''(i) bilingual programs in which the workplace language component and the training are conducted in a combination of an individual's native language and English;

[''(ii) integrated workforce training programs that combine basic skills, language instruction, and job specific skills training; or

[''(iii) sequential programs that provide a progression of skills, language, and training to ensure success upon an individual's completion of the program.

[''(8) EVALUATION BY ELIGIBLE ENTITY.—Each eligible entity that receives a grant under this subsection for a program shall carry out a continuous program evaluation and an evaluation specific to the last phase of the program operations.

[''(9) EVALUATION BY SECRETARY.—

[''(A) IN GENERAL.—The Secretary shall conduct an evaluation of program impacts of the programs funded under the demonstration project, with a random assignment, experimental design impact study done at each worksite at which such a program is carried out.

[''(B) DATA COLLECTION AND ANALYSIS.—The Secretary shall collect and analyze the data from the demonstration project to determine program effectiveness, including gains in language proficiency, acquisition of skills, and job advancement for program participants.

[''(C) REPORT.—The Secretary shall prepare and submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and the Workforce of the House of Representatives, and make available to the public, a report on the demonstration project, including the results of the evaluation.

[''(10) TECHNICAL ASSISTANCE.—The Secretary shall provide technical assistance to recipients of grants under this subsection throughout the grant periods.

[''(11) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts authorized to be appropriated under section 174(b), there is authorized to be appropriated $10,000,000 for fiscal year 2004 to carry out this subsection.''.

[SEC. 147. NATIONAL DISLOCATED WORKER GRANTS.

[(a) IN GENERAL.—Section 173 (29 U.S.C. 2918) is amended—

[(1) by striking the heading and inserting the following:

["SEC. 173. NATIONAL DISLOCATED WORKER GRANTS.";

[and

[(2) in subsection (a)—

[(A) by striking ''national emergency grants'' and inserting ''national dislocated worker grants'';

[(B) in paragraph (1), by striking ''subsection (c)'' and inserting ''subsection (b)'';

[(C) in paragraph (3), by striking ''and'' after the semicolon; and

[(D) by striking paragraph (4) and inserting the following:

[''(4) to a State or entity (as defined in subsection (b)(1)(B)) to carry out subsection (d), including providing assistance to eligible individuals;

[''(5) to a State or entity (as defined in subsection (b)(1)(B)) to carry out subsection (e), including providing assistance to eligible individuals; and

[''(6) to provide additional assistance to a State board or local board where a higher

than average demand for employment and training services for dislocated members of the Armed Forces, or spouses of members of the Armed Forces as described in subsection (c)(2)(A)(iv), exceeds State and local resources for providing such services, and where such programs are to be carried out in partnership with the Departments of Defense and Veterans Affairs transition assistance programs.''.

[(b) ADMINISTRATION AND ADDITIONAL ASSISTANCE.—Section 173 (29 U.S.C. 2918) is amended—

[(1) by striking subsection (b);

[(2) by redesignating subsections (c) through (g) as subsections (b) through (f), respectively;

[(3) by striking subsection (d) (as redesignated by paragraph (2)) and inserting the following:

[''(d) ADDITIONAL ASSISTANCE.—

[''(1) IN GENERAL.—From the amount appropriated and made available to carry out this section for any program year, the Secretary shall use not more than $20,000,000 to make grants to States to provide employment and training activities under section 134, in accordance with subtitle B.

[''(2) ELIGIBLE STATES.—The Secretary shall make a grant under paragraph (1) to a State for a program year if—

[''(A) the amount of the allotment that would be made to the State for the program year 2003 under the formula specified in section 132(b)(1)(B) as such section was in effect on July 1, 2003, is greater than

[''(B) the amount of the allotment that would be made to the State for the program year under the formula specified in section 132(b)(1)(B).

[''(3) AMOUNT OF GRANTS.—Subject to paragraph (1), the amount of the grant made under paragraph (1) to a State for a program year shall be based on the difference between—

[''(A) the amount of the allotment that would be made to the State for the program year 2003 under the formula specified in section 132(b)(1)(B) as such section was in effect on July 1, 2003; and

[''(B) the amount of the allotment that would be made to the State for the program year under the formula specified in section 132(b)(1)(B).'';

[(4) in subsection (e) (as redesignated by paragraph (2))—

[(A) in paragraph (1), by striking ''paragraph (4)(A)'' and inserting ''paragraph (4)'';

[(B) in paragraph (2), by striking ''subsection (g)'' and inserting ''subsection (e)'';

[(C) in paragraph (4), by striking ''subsection (g)'' and inserting ''subsection (e)'';

[(D) in paragraph (5), by striking ''subsection (g)'' and inserting ''subsection (e)''; and

[(E) in paragraph (6)—

[(i) by striking ''subsection (g)'' and inserting ''subsection (e)''; and

[(ii) by striking ''subsection (c)(1)(B)'' and inserting ''subsection (b)(1)(B)''; and

[(5) in subsection (f)(1) (as redesignated by paragraph (2))—

[(A) by striking ''paragraph (4)(B)'' and inserting ''paragraph (4)''; and

[(B) by striking ''subsection (f)(1)(A)'' and inserting ''subsection (d)(1)(A)''.

[SEC. 148. AUTHORIZATION OF APPROPRIATIONS FOR NATIONAL ACTIVITIES.

[(a) IN GENERAL.—Section 174(a)(1) (29 U.S.C. 2919(a)(1)) is amended by striking ''1999 through 2003'' and inserting ''2004 through 2009''.

[(b) RESERVATIONS.—Section 174(b) (29 U.S.C. 2919(b)) is amended to read as follows:

[''(b) TECHNICAL ASSISTANCE; DEMONSTRATION AND PILOT PROJECTS, EVALUATIONS, INCENTIVE GRANTS.—There are authorized to be appropriated to carry out sections 170 through 172 and section 136(i) such sums as may be necessary for each of fiscal years 2004 through 2009.''.

[Subtitle E—Administration

[SEC. 151. REQUIREMENTS AND RESTRICTIONS.

[Section 181(e) (29 U.S.C. 2931(e)) is amended by striking ''economic development activities,''.

[SEC. 152. COST PRINCIPLES.

[The matter preceding clause (i) of section 184(a)(2)(B) (29 U.S.C. 2934(a)(2)(B)) is amended by striking ''section 134(a)(3)(B)'' and inserting ''section 134(a)(4)''.

[SEC. 153. REPORTS.

[Section 185(c) (29 U.S.C. 2935(c)) is amended—

[(1) in paragraph (2), by striking ''and'' after the semicolon''

[(2) in paragraph (3), by striking the period and inserting ''; and''; and

[(3) by adding at the end the following:

[''(4) shall have the option to submit or disseminate electronically any reports, records, plans, or any other data that are required to be collected or disseminated under this Act.''.

[SEC. 154. ADMINISTRATIVE PROVISIONS.

[(a) ANNUAL REPORT.—Section 189(d) (29 U.S.C. 2939(d)) is amended—

[(1) in paragraph (3), by striking ''and'' after the semicolon;

[(2) by redesignating paragraph (4) as paragraph (5); and

[(3) by inserting after paragraph (3) the following:

[''(4) the negotiated levels of performance of the States, the States' requests for adjustments of such levels, and the adjustments of such levels that are made; and''.

[(b) PROGRAM YEAR.—Section 189(g)(1)(B) (29 U.S.C. 2939(g)(1)(B)) is amended—

[(1) by striking ''The'' and inserting ''For fiscal years preceding fiscal year 2005, the''; and

[(2) by inserting ''such'' after ''any''.

[(c) AVAILABILITY.—Section 189(g)(2) (29 U.S.C. 2939(g)(2)) is amended, in the first sentence—

[(1) by striking ''Funds'' and inserting ''Except as otherwise provided in this paragraph, funds''; and

[(2) by striking ''each State receiving'' and inserting ''each recipient of''.

[(d) GENERAL WAIVERS.—Section 189(i)(4) (29 U.S.C. 2939(i)(4)) is amended by adding at the end the following:

[''(D) EXPEDITED REQUESTS.—The Secretary shall expedite requests for waivers of statutory or regulatory requirements that have been approved for a State pursuant to subparagraph (B), provided the requirements of this section have been satisfied.''.

[SEC. 155. USE OF CERTAIN REAL PROPERTY.

[Section 193 (29 U.S.C. 2943) is amended to read as follows:

[''SEC. 193. TRANSFER OF FEDERAL EQUITY IN STATE EMPLOYMENT SECURITY AGENCY REAL PROPERTY TO THE STATES.

[''(a) TRANSFER OF FEDERAL EQUITY.—Notwithstanding any other provision of law, any Federal equity acquired in real property through grants to States awarded under title III of the Social Security Act (42 U.S.C. 501 et seq.) or under the Wagner-Peyser Act is transferred to the States that used the grants for the acquisition of such equity. The portion of any real property that is attributable to the Federal equity transferred under this section shall be used to carry out activities authorized under title III of the Social Security Act or the Wagner-Peyser Act. Any disposition of such real property shall be carried out in accordance with the procedures prescribed by the Secretary and the portion of the proceeds from the disposition of such real property that is attributable to the Federal equity transferred under this section shall be used to carry out activities authorized under title III of the Social Security Act or the Wagner-Peyser Act.

[''(b) LIMITATION ON USE.—A State shall not use funds awarded under title III of the Social Security Act or the Wagner-Peyser Act to amortize the costs of real property that is purchased by any State on or after the effective date of this provision.''.

[SEC. 156. TABLE OF CONTENTS.

[Section 1(b) (29 U.S.C. 9201 note) is amended—

[(1) by striking the item relating to section 123 and inserting the following:

[''Sec. 123. Eligible providers of youth activities.'';

[(2) by striking the item relating to section 169 and inserting the following:

[''Sec. 169. Youth challenge grants.'';

[(3) by striking the item relating to section 193 and inserting the following:

[''Sec. 193. Transfer of Federal equity in State employment security agency real property to the States.'';

[(4) by striking the item relating to section 173 and inserting the following:

[''Sec. 173. National dislocated worker grants.'';

[(5) by inserting after the item relating to section 212 the following:

[''Sec. 213. Incentive grants for States.'';

and

[(6) by inserting after the item relating to section 243 the following:

[''Sec. 244. Integrated english literacy and civics education.''.

[TITLE II—AMENDMENTS TO THE ADULT EDUCATION AND FAMILY LITERACY ACT

[SEC. 201. SHORT TITLE; PURPOSE.

[(a) SHORT TITLE.—This title may be cited as the ''Adult Education and Family Literacy Act Amendments of 2003''.

[(b) PURPOSE.—Section 202 of the Adult Education and Family Literacy Act (20 U.S.C. 9201) is amended—

[(1) in paragraph (2), by striking ''and'' after the semicolon;

[(2) in paragraph (3), by striking ''education.'' and inserting ''education and in the transition to postsecondary education; and''; and

[(3) by adding at the end the following:

[''(4) assist immigrants and other individuals with limited English proficiency in improving their reading, writing, speaking, and mathematics skills and acquiring an understanding of the American free enterprise system, individual freedom, and the responsibilities of citizenship.''.

[SEC. 202. DEFINITIONS.

[Section 203 of the Adult Education and Family Literacy Act (20 U.S.C. 9202) is amended—

[(1) in paragraph (1)—

[(A) in the matter preceding subparagraph (A), by striking ''services or instruction below the postsecondary level'' and inserting ''academic instruction and education services below the postsecondary level that increase an individual's ability to read, write, and speak in English and perform mathematics skills''; and

[(B) by striking subparagraph (C)(i) and inserting the following:

[''(i) are basic skills deficient as defined in section 101;'';

[(2) in paragraph (2), by striking ''activities described in section 231(b)'' and inserting ''programs and services which include reading, writing, speaking, or mathematics

skills, workplace literacy activities, family literacy activities, English language acquisition activities, or other activities necessary for the attainment of a secondary school diploma or its State recognized equivalent'';

[(3) in paragraph (5)—

[(A) by inserting ''an organization that has demonstrated effectiveness in providing adult education, that may include'' after ''means'';

[(B) in subparagraph (B), by striking ''of demonstrated effectiveness'';

[(C) in subparagraph (C), by striking ''of demonstrated effectiveness''; and

[(D) in subparagraph (I), by inserting ''or coalition'' after ''consortium'';

[(4) in paragraph (6)—

[(A) by striking ''LITERACY PROGRAM'' and inserting ''LANGUAGE ACQUISITION PROGRAM'';

[(B) by striking ''literacy program'' and inserting ''language acquisition program''; and

[(C) by inserting ''reading, writing, and speaking'' after ''competence in'';

[(5) by redesignating paragraphs (7) through (18) as paragraphs (8) through (19), respectively;

[(6) by inserting after paragraph (6) the following:

[''(7) ESSENTIAL COMPONENTS OF READING INSTRUCTION.—The term 'essential components of reading instruction' has the meaning given the term in section 1208 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6368).''; and

[(7) by striking paragraph (19), as redesignated by paragraph (4), and inserting the following:

[''(19) WORKPLACE LITERACY PROGRAM.—The term 'workplace literacy program' means an educational program designed to improve the productivity of the workforce through the improvement of literacy skills that is offered by an eligible provider in collaboration with an employer or an employee organization at a workplace, at an off-site location, or in a simulated workplace environment.''.

[SEC. 203. AUTHORIZATION OF APPROPRIATIONS.

[Section 205 of the Adult Education and Family Literacy Act (20 U.S.C. 9204) is amended—

[(1) by striking ''1999'' and inserting ''2004''; and

[(2) by striking ''2003'' and inserting ''2009''.

[SEC. 204. RESERVATION OF FUNDS; GRANTS TO ELIGIBLE AGENCIES; ALLOTMENTS.

[Section 211 of the Adult Education and Family Literacy Act (20 U.S.C. 9211) is amended—

[(1) by striking subsection (a) and inserting the following:

[''(a) RESERVATION OF FUNDS.—From the sum appropriated under section 205 for a fiscal year, the Secretary—

[''(1) shall reserve 1.5 percent to carry out section 242, except that the amount so reserved shall not exceed $10,000,000;

[''(2) shall reserve 1.5 percent to carry out section 243, except that the amount so reserved shall not exceed $8,000,000;

[''(3) shall make available, to the Secretary of Labor, 1.72 percent for incentive grants under section 136(i); and

[''(4) shall reserve 12 percent of the amount that remains after reserving funds under paragraphs (1), (2) and (3) to carry out section 244.'';

[(2) by striking subsection (d) and inserting the following:

[''(d) QUALIFYING ADULT.—For the purpose of subsection (c)(2), the term 'qualifying adult' means an adult who—

[''(1) is not less than 16 years of age;

[''(2) is beyond the age of compulsory school attendance under the law of the State or outlying area;

[''(3) does not have a secondary school diploma or its recognized equivalent (including recognized alternative standards for individuals with disabilities); and

[''(4) is not enrolled in secondary school.'';

[(3) in subsection (e)—

[(A) by striking paragraph (2) and inserting the following:

[''(2) AWARD BASIS.—The Secretary shall award grants pursuant to paragraph (1) on a competitive basis and pursuant to recommendations from the Pacific Region Educational Laboratory in Honolulu, Hawaii.''; and

[(B) in paragraph (3), by striking ''shall'' and all that follows through the period and inserting ''shall be eligible to receive a grant under this title until the date when an agreement for the extension of the United States education assistance under the Compact of Free Association for each of the Freely Associated States becomes effective.''; and

[(4) in subsection (f)—

[(A) in the heading, by inserting ''PROVISIONS'' after ''HOLD-HARMLESS'';

[(B) by redesignating paragraph (2) as paragraph (3); and

[(C) by striking paragraph (1) and inserting the following:

[''(1) IN GENERAL.—Notwithstanding subsection (c) and subject to paragraphs (2) and (3), for fiscal year 2004 and each succeeding fiscal year, no eligible agency shall receive an allotment under this title that is less than 90 percent of the allotment the eligible agency received for the preceding fiscal year under this title.

[''(2) 100 PERCENT ALLOTMENT.—An eligible agency shall receive an allotment under this title that is equal to 100 percent of the allotment the eligible agency received for the preceding fiscal year under this title if the eligible agency received, for the preceding fiscal year, only an initial allotment under subsection (c)(1) and did not receive an additional allotment under subsection (c)(2).''.

[SEC. 205. PERFORMANCE ACCOUNTABILITY SYSTEM.

[Section 212 of the Adult Education and Family Literacy Act (20 U.S.C. 9212) is amended—

[(1) in subsection (b)—

[(A) in paragraph (1)(A)(ii), by striking ''additional indicators of performance (if any)'' and inserting ''employment performance indicators'';

[(B) in paragraph (2)—

[(i) in subparagraph (A)—

[(I) in clause (i), by striking ''Demonstrated'' and inserting ''Measurable'';

[(II) by striking clause (ii) and inserting the following:

[''(ii) Placement in, retention in, or completion of, postsecondary education or other training programs.''; and

[(III) in clause (iii), by inserting ''(including recognized alternative standards for individuals with disabilities)'' after ''equivalent'';

[(ii) by redesignating subparagraph (B) as subparagraph (C);

[(iii) by inserting after subparagraph (A), the following:

[''(B) EMPLOYMENT PERFORMANCE INDICATORS.—An eligible agency shall identify in the State plan individual participant employment performance indicators, including entry into unsubsidized employment, retention in unsubsidized employment, and career advancement. The State workforce investment board shall assist the eligible agency in obtaining and using quarterly wage records to collect data for such indicators, consistent with applicable Federal and State privacy laws.'';

[(iv) in subparagraph (C), as redesignated by clause (ii), by inserting ''relevant'' after ''additional''; and

[(v) by adding at the end the following:

[''(D) INDICATORS FOR WORKPLACE LITERACY PROGRAMS.—Special accountability measures may be negotiated for workplace literacy programs.''; and

[(C) in paragraph (3)—

[(i) in subparagraph (A)—

[(I) in clause (i)(II), by striking ''in performance'' and inserting ''the agency's performance outcomes in an objective, quantifiable, and measurable form'';

[(II) in clause (ii), by striking ''3 programs years'' and inserting ''2 program years'';

[(III) in clause (iii), by striking ''FIRST 3 YEARS'' and inserting ''FIRST 2 YEARS'';

[(IV) in clause (iii), by striking ''first 3 program years'' and inserting ''first 2 program years'';

[(V) in clause (v), by striking ''4TH AND 5TH'' and inserting ''3RD AND 4TH'';

[(VI) in clause (v), by striking ''to the fourth'' and inserting ''to the third'';

[(VII) in clause (v), by striking ''fourth and fifth'' and inserting ''third and fourth''; and

[(VIII) in clause (vi), by striking ''(II)'' and inserting ''(I)'';

[(ii) in subparagraph (B)—

[(I) by striking the heading and inserting ''LEVELS OF EMPLOYMENT PERFORMANCE'';

[(II) by striking ''may'' and inserting ''shall''; and

[(III) by striking ''additional'' and inserting ''employment''; and

[(iii) by adding at the end the following:

[''(C) ALTERNATIVE ASSESSMENT SYSTEMS.—Eligible agencies may approve the use of assessment systems that are not commercially available standardized systems if such systems meet the Standards for Educational and Psychological Testing issued by the Joint Committee on Standards for Educational and Psychological Testing of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education.'';

[(2) in subsection (c)—

[(A) in paragraph (1)—

[(i) by inserting ''the Governor, the State legislature, and the State workforce investment board'' after ''Secretary''; and

[(ii) by striking ''including'' and all that follows through the period and inserting ''including the following:

[''(A) Information on the levels of performance achieved by the eligible agency with respect to the core indicators of performance, and employment performance indicators.

[''(B) The number and type of each eligible provider that receives funding under such grant.

[''(C) The number of enrollees 16 to 18 years of age who enrolled in adult education not later than 1 year after participating in secondary school education.'';

[(B) in paragraph (2)(A), by inserting ''eligible providers and'' after ''available to''; and

[(C) by adding at the end the following:

[''(3) DATA ACCESS.—The report made available under paragraph (2) shall indicate which eligible agencies did not have access to State unemployment insurance wage data in measuring employment performance indicators.''; and

[(3) by adding at the end the following:

[''(d) PROGRAM IMPROVEMENT.—

[''(1) IN GENERAL.—If the Secretary determines that an eligible agency did not meet its adjusted levels of performance for the core indicators of performance described in subsection (b)(2)(A) for any program year, the eligible agency shall—

[''(A) work with the Secretary to develop and implement a program improvement plan for the 2 program years succeeding the program year in which the eligible agency did

not meet its adjusted levels of performance; and

[''(B) revise its State plan under section 224, if necessary, to reflect the changes agreed to in the program improvement plan.

[''(2) FURTHER ASSISTANCE.—If, after the period described in paragraph (1)(A), the Secretary has provided technical assistance to the eligible agency but determines that the eligible agency did not meet its adjusted levels of performance for the core indicators of performance described in subsection (b)(2)(A), the Secretary may require the eligible agency to make further revisions to the program improvement plan described in paragraph (1). Such further revisions shall be accompanied by further technical assistance from the Secretary.''.

[SEC. 206. STATE ADMINISTRATION.

[Section 221(1) of the Adult Education and Family Literacy Act (20 U.S.C. 9221(1)) is amended by striking ''and implementation'' and inserting ''implementation, and monitoring''.

[SEC. 207. STATE DISTRIBUTION OF FUNDS; MATCHING REQUIREMENT.

[Section 222 of the Adult Education and Family Literacy Act (20 U.S.C. 9222) is amended—

[(1) in subsection (a)—

[(A) in paragraph (1)—

[(i) by striking ''82.5'' the first place such term appears and inserting ''80''; and

[(ii) by striking ''the 82.5 percent'' and inserting ''such amount'';

[(B) in paragraph (2), by striking ''not more than 12.5 percent'' and inserting ''not more than 15 percent''; and

[(C) in paragraph (3), by striking ''$65,000'' and inserting ''$75,000''; and

[(2) in subsection (b)(1), by striking ''equal to'' and inserting ''that is not less than''.

[SEC. 208. STATE LEADERSHIP ACTIVITIES.

[Section 223 of the Adult Education and Family Literacy Act (20 U.S.C. 9223) is amended—

[(1) in subsection (a)—

[(A) in the matter preceding paragraph (1), by inserting ''to develop or enhance the adult education system of the State'' after ''activities'';

[(B) in paragraph (1), by striking ''instruction incorporating'' and all that follows through the period and inserting ''instruction incorporating the essential components of reading instruction and instruction provided by volunteers or by personnel of a State or outlying area.'';

[(C) in paragraph (2), by inserting '', including development and dissemination of instructional and programmatic practices based on the most rigorous research available in reading, writing, speaking, mathematics, English language acquisition programs, distance learning and staff training'' after ''activities'';

[(D) in paragraph (5), by striking ''monitoring and'';

[(E) by striking paragraph (6) and inserting the following:

[''(6) The development and implementation of technology applications, translation technology, or distance learning, including professional development to support the use of instructional technology.''; and

[(F) by striking paragraph (7) through paragraph (11) and inserting the following:

[''(7) Coordination with—

[''(A) other partners carrying out activities authorized under this Act; and

[''(B) existing support services, such as transportation, child care, mental health services, and other assistance designed to increase rates of enrollment in, and successful completion of adult education and literacy activities, for adults enrolled in such activities.

[''(8) Developing and disseminating curricula, including curricula incorporating the essential components of reading instruction as they relate to adults.

[''(9) The provision of assistance to eligible providers in developing, implementing, and reporting measurable progress in achieving the objectives of this subtitle.

[''(10) The development and implementation of a system to assist in the transition from adult basic education to postsecondary education, including linkages with postsecondary educational institutions.

[''(11) Integration of literacy and English language instruction with occupational skill training, and promoting linkages with employers.

[''(12) Activities to promote workplace literacy programs.

[''(13) Activities to promote and complement local outreach initiatives described in section 243(c)(2)(H).

[''(14) In cooperation with efforts funded under sections 242 and 243, the development of curriculum frameworks and rigorous content standards that—

[''(A) specify what adult learners should know and be able to do in the areas of reading and language arts, mathematics, and English language acquisition; and

[''(B) take into consideration the following:

[''(i) State academic standards established under section 1111(b) of the Elementary and Secondary Education Act of 1965.

[''(ii) The current adult skills and literacy assessments used in the State.

[''(iii) The core indicators of performance established under section 212(b)(2)(A).

[''(iv) Standards and academic requirements for enrollment in non-remedial, for-credit, courses in State supported postsecondary education institutions.

[''(v) Where appropriate, the basic and literacy skill content of occupational and industry skill standards widely used by business and industry in the State.

[''(15) In cooperation with efforts funded under sections 242 and 243, development and piloting of—

[''(A) new assessment tools and strategies that identify the needs and capture the gains of students at all levels, with particular emphasis on—

[''(i) students at the lowest achievement level;

[''(ii) students who have limited English proficiency; and

[''(iii) adults with learning disabilities;

[''(B) options for improving teacher quality and retention; and

[''(C) assistance in converting research into practice.

[''(16) The development and implementation of programs and services to meet the needs of adult learners with learning disabilities or limited English proficiency.

[''(17) Other activities of statewide significance that promote the purpose of this title.''; and

[(2) in subsection (c), by striking ''being State- or outlying area-imposed'' and inserting ''being imposed by the State or outlying area''.

[SEC. 209. STATE PLAN.

[Section 224 of the Adult Education and Family Literacy Act (20 U.S.C. 9224) is amended—

[(1) in subsection (a)—

[(A) by striking the heading and inserting ''4-YEAR PLANS''; and

[(B) in paragraph (1), by striking ''5'' and inserting ''4'';

[(2) in subsection (b)—

[(A) in paragraph (1), by inserting ''and the role of provider and cooperating agencies in preparing the assessment'' after ''serve'';

[(B) by striking paragraph (2) and inserting the following:

[''(2) a description of how the eligible agency will address the adult education and literacy needs identified under paragraph (1) in each workforce development area of the State, using funds received under this subtitle, as well as other Federal, State, or local funds received in partnership with other agencies for the purpose of adult literacy as applicable;'';

[(C) in paragraph (3)—

[(i) by inserting ''and measure'' after ''evaluate'';

[(ii) by inserting ''and improvement'' after ''effectiveness''; and

[(iii) by striking ''212'' and inserting ''212, including—

[''(A) how the eligible agency will evaluate and measure annually such effectiveness on a grant-by-grant basis; and

[''(B) how the eligible agency—

[''(i) will hold eligible providers accountable regarding the progress of such providers in improving the academic achievement of participants in adult education programs under this subtitle and regarding the core indicators of performance described in section 212(b)(2)(A); and

[''(ii) will use technical assistance, sanctions, and rewards (including allocation of grant funds based on performance and termination of grant funds based on performance)'';

[(D) in paragraph (4), by striking ''will ensure the improvement of'' and inserting ''improved'';

[(E) by redesignating paragraphs (5) through (12) as paragraphs (6) through (13), respectively;

[(F) by inserting after paragraph (4) the following:

[''(5) a description of how the eligible agency will improve teacher quality, the professional development of eligible providers, and instruction;'';

[(G) in paragraph (6) (as redesignated by subparagraph (E)), by striking ''who'' and all that follows through the semicolon and inserting ''that—

[''(A) offers flexible schedules and coordinates with necessary Federal, State, and local support services (such as child care, transportation, mental health services, and case management) to enable individuals, including individuals with disabilities or individuals with other special needs, to participate in adult education and literacy activities; and

[''(B) attempts to coordinate with support services that are not provided under this subtitle prior to using funds for adult education and literacy activities provided under this subtitle for support services;'';

[(H) in paragraph (10) (as redesignated by subparagraph (E)), by striking ''plan'' and inserting ''plan, which process—

[''(A) shall include the State Workforce Investment Board, the Governor, State officials representing public schools, community colleges, welfare agencies, agencies that provide services to individuals with disabilities, other State agencies that promote or operate adult education and literacy activities, and direct providers of such adult literacy services; and

[''(B) may include consultation with the State agency for higher education, institutions responsible for professional development of adult education and literacy education program instructors, institutions of higher education, representatives of business and industry, refugee assistance programs, and community-based organizations, as defined in section 101;'';

[(I) in paragraph (11) (as redesignated by subparagraph (E))—

[(i) by inserting ''assess potential population needs and'' after ''will'';

[(ii) in subparagraph (A), by striking ''students'' and inserting ''individuals'';

[(iii) in subparagraph (C), by striking ''and'' after the semicolon; and

[(iv) by adding at the end the following:

[''(E) the unemployed; and

[''(F) those who are employed, but at levels below self-sufficiency, as defined in section 101.'';

[(J) in paragraph (12) (as redesignated by subparagraph (E))—

[(i) by inserting ''and how the plan submitted under this subtitle is coordinated with the plan submitted by the State under title I'' after ''eligible agency''; and

[(ii) by striking ''and'' after the semicolon;

[(K) in paragraph (13) (as redesignated by subparagraph (E)), by striking ''231(c)(1).'' and inserting ''231(c)(1), including—

[''(A) how the State will build the capacity of organizations that provide adult education and literacy activities; and

[''(B) how the State will increase the participation of business and industry in adult education and literacy activities;''; and

[(L) by adding at the end the following:

[''(14) a description of how the eligible agency will consult with any State agency responsible for postsecondary education to develop adult education programs and services (including academic skill development and support services) that prepare students to enter postsecondary education upon completion of secondary school programs or their recognized equivalent;

[''(15) a description of how the eligible agency will consult with the State agency responsible for workforce development to develop adult education programs and services that are designed to prepare students to enter the workforce; and

[''(16) a description of how the eligible agency will improve the professional development of eligible providers of adult education and literacy activities.'';

[(3) in subsection (c), by adding at the end the following: ''At a minimum, such revision shall occur every 2 years.''; and

[(4) in subsection (d)—

[(A) in paragraph (1), by inserting '', the chief State school officer, the State officer responsible for administering community and technical colleges, and the State Workforce Investment Board'' after ''Governor''; and

[(B) in paragraph (2), by striking ''comments'' and all that follows through the period and inserting ''comments regarding the State plan by the Governor, the chief State school officer, the State officer responsible for administering community and technical colleges, and the State Workforce Investment Board, and any revision to the State plan, are submitted to the Secretary.''.

[SEC. 210. PROGRAMS FOR CORRECTIONS EDUCATION AND OTHER INSTITUTIONALIZED INDIVIDUALS.

[Section 225 of the Adult Education and Family Literacy Act (20 U.S.C. 9225) is amended—

[(1) in subsection (b)—

[(A) in paragraph (1), by striking ''basic education'' and inserting ''adult education and literacy activities'';

[(B) in paragraph (2) by inserting ''and'' after the semicolon;

[(C) by striking paragraph (3); and

[(D) by redesignating paragraph (4) as paragraph (3); and

[(2) in subsection (d), by striking ''DEFINITION OF CRIMINAL OFFENDER.—'' and inserting ''DEFINITIONS.—In this section:''.

[SEC. 211. GRANTS AND CONTRACTS FOR ELIGIBLE PROVIDERS.

[Section 231 of the Adult Education and Family Literacy Act (20 U.S.C. 9241) is amended—

[(1) in subsection (b)—

[(A) in paragraph (1), by striking ''workplace literacy services'' and inserting ''workplace literacy programs''; and

[(B) in paragraph (3), by striking ''literacy'' and inserting ''language acquisition'';

[(2) in subsection (e)—

[(A) in paragraph (1), by inserting ''to be achieved annually on the core indicators of performance and employment performance indicators described in section 212(b)(2)'' after ''outcomes'';

[(B) by striking paragraph (3) and inserting the following:

[''(3) the commitment of the eligible provider to be responsive to local needs and to serve individuals in the community who were identified by the assessment as most in need of adult literacy services, including individuals who are low-income, have minimal literacy skills, have learning disabilities, or have limited English proficiency;'';

[(C) in paragraph (4)(B), by striking '', such as'' and all that follows through the semicolon and inserting ''that include the essential components of reading instruction;'';

[(D) in paragraph (5), by striking ''research'' and inserting ''the most rigorous research available'';

[(E) in paragraph (7), by inserting '', when appropriate and based on the most rigorous research available,'' after ''real life contexts'';

[(F) in paragraph (9), by inserting ''education, job-training, and social service'' after ''other available'';

[(G) in paragraph (10)—

[(i) by inserting ''coordination with Federal, State, and local'' after ''schedules and''; and

[(ii) by striking ''and transportation'' and inserting '', transportation, mental health services, and case management'';

[(H) in paragraph (11)—

[(i) by inserting ''measurable'' after ''report'';

[(ii) by striking ''eligible agency'';

[(iii) by inserting ''established by the eligible agency'' after ''performance measures''; and

[(iv) by striking ''and'' after the semicolon;

[(I) in paragraph (12), by striking ''literacy programs.'' and inserting ''language acquisition programs and civics education programs;''; and

[(J) by adding at the end the following:

[''(13) the capacity of the eligible provider to produce information on performance results, including enrollments and measurable participant outcomes;

[''(14) whether reading, writing, speaking, mathematics, and English language acquisition instruction provided by the eligible provider are based on the best practices derived from the most rigorous research available;

[''(15) whether the eligible provider's applications of technology and services to be provided are sufficient to increase the amount and quality of learning and lead to measurable learning gains within specified time periods; and

[''(16) the capacity of the eligible provider to serve adult learners with learning disabilities.''.

[SEC. 212. LOCAL APPLICATION.

[Section 232 of the Adult Education and Family Literacy Act (20 U.S.C. 9242) is amended—

[(1) in paragraph (1)—

[(A) by inserting ''consistent with the requirements of this subtitle'' after ''spent''; and

[(B) by striking ''and'' after the semicolon;

[(2) in paragraph (2), by striking the period at the end and inserting ''; and''; and

[(3) by adding at the end the following:

[''(3) each of the demonstrations required under section 231(e).''.

[SEC. 213. LOCAL ADMINISTRATIVE COST LIMITS.

[Section 233 of the Adult Education and Family Literacy Act (20 U.S.C. 9243) is amended—

[(1) in subsection (a)(2)—

[(A) by inserting ''and professional'' after ''personnel''; and

[(B) by inserting ''development of measurable goals in reading, writing, and speaking the English language, and in mathematical computation,'' after ''development,''; and

[(2) in subsection (b)—

[(A) by inserting ''and professional'' after ''personnel''; and

[(B) by inserting ''development of measurable goals in reading, writing, and speaking the English language, and in mathematical computation,'' after ''development,''.

[SEC. 214. ADMINISTRATIVE PROVISIONS.

[Section 241(b) of the Adult Education and Family Literacy Act (20 U.S.C. 9251(b)) is amended—

[(1) in paragraph (1)(A)—

[(A) by striking ''adult education and literacy activities'' both places such terms appear and inserting ''activities under this subtitle''; and

[(B) by striking ''was'' and inserting ''were''; and

[(2) in paragraph (4)—

[(A) by inserting ''not more than'' after ''this subsection for''; and

[(B) by striking ''only''.

[SEC. 215. NATIONAL INSTITUTE FOR LITERACY.

[Section 242 of the Adult Education and Family Literacy Act (20 U.S.C. 9252) is amended—

[(1) in subsection (a)—

[(A) in paragraph (1), by striking ''literacy'' and inserting ''effective literacy programs for children, youth, adults, and families'';

[(B) in paragraph (2), by inserting ''and disseminates information on'' after ''coordinates''; and

[(C) by striking paragraph (3)(A) and inserting the following:

[''(A) coordinating and participating in the Federal effort to identify and disseminate information on literacy that is derived from scientifically based research, or the most rigorous research available and effective programs that serve children, youth, adults, and families.'';

[(2) by striking subsection (b)(3) and inserting the following:

[''(3) RECOMMENDATIONS.—The Interagency Group, in consultation with the National Institute for Literacy Advisory Board (in this section referred to as the 'Board') established under subsection (e), shall plan the goals of the Institute and the implementation of any programs to achieve the goals. The Board may also request a meeting of the Interagency Group to discuss any recommendations the Board may make.'';

[(3) in subsection (c)—

[(A) in paragraph (1)—

[(i) in subparagraph (A)—

[(I) by striking ''to establish'' and inserting ''to maintain'';

[(II) in clause (i), by striking ''phonemic awareness, systematic phonics, fluency, and reading comprehension'' and inserting ''the essential components of reading instruction'';

[(III) in clause (iii), by striking ''and'' after the semicolon;

[(IV) in clause (iv), by inserting ''and'' after the semicolon; and

[(V) by adding at the end the following:

[''(v) a list of local adult education and literacy programs;'';

[(ii) in subparagraph (C)—

[(I) by striking ''reliable and replicable research'' and inserting ''reliable and replicable research as defined by the Institute of Education Sciences''; and

[(II) by striking ''especially with the Office of Educational Research and Improvement in the Department of Education,'';

[(iii) in subparagraph (D), by striking ''phonemic awareness, systematic phonics, fluency, and reading comprehension based on'' and inserting ''the essential components of reading instruction and'';

[(iv) in subparagraph (H), by striking ''and'' after the semicolon;

[(v) in subparagraph (I), by striking the period at the end and inserting a semicolon; and

[(vi) by adding at the end the following:

[''(J) to work cooperatively with the Department of Education to assist States that are pursuing the implementation of standards-based educational improvements for adults through the dissemination of training, technical assistance, and related support and through the development and dissemination of related standards-based assessment instruments; and

[''(K) to identify rigorous research on the effectiveness of instructional practices and organizational strategies relating to literacy programs on the acquisition of skills in reading, writing, English acquisition, and mathematics.''; and

[(B) by adding at the end the following:

[''(3) COORDINATION.—In identifying the reliable and replicable research the Institute will support, the Institute shall use standards for research quality that are consistent with those of the Institute of Education Sciences.'';

[(4) in subsection (e)—

[(A) in paragraph (1)(B)—

[(i) in clause (i), by striking ''literacy programs'' and inserting ''language acquisition programs'';

[(ii) in clause (ii), by striking ''literacy programs'' and inserting ''or have participated in or partnered with workplace literacy programs'';

[(iii) in clause (iv), by inserting '', including adult literacy research'' after ''research'';

[(iv) in clause (vi), by striking ''and'' after the semicolon;

[(v) in clause (vii), by striking the period at the end and inserting ''; and''; and

[(vi) by adding at the end the following:

[''(viii) institutions of higher education.'';

[(B) in paragraph (2)—

[(i) in subparagraph (B), by striking ''and'' after the semicolon;

[(ii) in subparagraph (C), by striking the period at the end and inserting ''; and''; and

[(iii) by adding at the end the following:

[''(D) review the biennial report submitted to Congress pursuant to subsection (k).''; and

[(C) in paragraph (5), by striking the second sentence and inserting the following: ''A recommendation of the Board may be passed only by a majority of the Board's members present at a meeting for which there is a quorum.''; and

[(5) in subsection (k)—

[(A) by striking ''Labor and Human Resources'' and inserting ''Health, Education, Labor, and Pensions''; and

[(B) by striking ''The Institute shall submit a report biennially to'' and inserting ''Not later than 1 year after the date of enactment of the Adult Education and Family Literacy Act Amendments of 2003, and biennially thereafter, the Institute shall submit a report to''.

[SEC. 216. NATIONAL LEADERSHIP ACTIVITIES.

[Section 243 of the Adult Education and Family Literacy Act (20 U.S.C. 9253) is amended to read as follows:

[''SEC. 243. NATIONAL LEADERSHIP ACTIVITIES.

[''(a) IN GENERAL.—The Secretary shall establish and carry out a program of national leadership activities to enhance the quality of adult education and literacy programs nationwide.

[''(b) PERMISSIVE ACTIVITIES.—The national leadership activities described in subsection (a) may include the following:

[''(1) Technical assistance, including—

[''(A) assistance provided to eligible providers in developing and using performance measures for the improvement of adult education and literacy activities, including family literacy services;

[''(B) assistance related to professional development activities, and assistance for the purposes of developing, improving, identifying, and disseminating the most successful methods and techniques for providing adult education and literacy activities, including family literacy services, based on scientific evidence where available;

[''(C) assistance in distance learning and promoting and improving the use of technology in the classroom;

[''(D) assistance in developing valid, measurable, and reliable performance data, including data around employment and employment outcome, and using performance information for the improvement of adult education and literacy programs; and

[''(E) assistance to help States, particularly low-performing States, meet the requirements of section 212.

[''(2) A program of grants, contracts, or cooperative agreements awarded on a competitive basis to national, regional, or local networks of private nonprofit organizations, public libraries, or institutions of higher education to build the capacity of such networks' members to meet the performance requirements of eligible providers under this title and involve adult learners in program improvement.

[''(3) Funding national leadership activities that are not described in paragraph (1), either directly or through grants, contracts, or cooperative agreements awarded on a competitive basis to or with postsecondary educational institutions, public or private organizations or agencies, or consortia of such institutions, organizations, or agencies, such as—

[''(A) developing, improving, and identifying the most successful methods and techniques for addressing the education needs of adults, including instructional practices using the essential components of reading instruction based on the work of the National Institute of Child Health and Human Development;

[''(B) increasing the effectiveness of, and improving the quality of, adult education and literacy activities, including family literacy services;

[''(C) carrying out research on national literacy basic skill acquisition for adult learning, including estimating the number of adults functioning at the lowest levels of literacy proficiency;

[''(D)(i) carrying out demonstration programs;

[''(ii) disseminating best practices information, including information regarding promising practices resulting from federally funded demonstration programs; and

[''(iii) developing and replicating best practices and innovative programs, including—

[''(I) the development of models for basic skill certificates;

[''(II) the identification of effective strategies for working with adults with learning disabilities and with adults with limited English proficiency;

[''(III) integrated basic and workplace skills education programs;

[''(IV) coordinated literacy and employment services; and

[''(V) postsecondary education transition programs;

[''(E) providing for the conduct of an independent evaluation and assessment of adult education and literacy activities through studies and analyses conducted independently through grants and contracts awarded on a competitive basis, which evaluation and assessment shall include descriptions of—

[''(i) the effect of performance measures and other measures of accountability on the delivery of adult education and literacy activities, including family literacy services;

[''(ii) the extent to which the adult education and literacy activities, including family literacy services, increase the literacy skills of adults (and of children, in the case of family literacy services), lead the participants in such activities to involvement in further education and training, enhance the employment and earnings of such participants, and, if applicable, lead to other positive outcomes, such as reductions in recidivism in the case of prison-based adult education and literacy activities;

[''(iii) the extent to which the provision of support services to adults enrolled in adult education and family literacy programs increase the rate of enrollment in, and successful completion of, such programs; and

[''(iv) the extent to which different types of providers measurably improve the skills of participants in adult education and literacy programs;

[''(F) supporting efforts aimed at capacity building of programs at the State and local levels such as technical assistance in program planning, assessment, evaluation, and monitoring of activities carried out under this subtitle;

[''(G) collecting data, such as data regarding the improvement of both local and State data systems, through technical assistance and development of model performance data collection systems;

[''(H) supporting the development of an entity that would produce and distribute technology-based programs and materials for adult education and literacy programs using an interconnection system (as defined in section 397 of the Communications Act of 1934 (47 U.S.C. 397)) and expand the effective outreach and use of such programs and materials to adult education eligible providers;

[''(I) determining how participation in adult education and literacy activities prepares individuals for entry into postsecondary education and employment and, in the case of prison-based services, has an effect on recidivism; and

[''(J) other activities designed to enhance the quality of adult education and literacy activities nationwide.''.

[SEC. 217. INTEGRATED ENGLISH LITERACY AND CIVICS EDUCATION.

[Chapter 4 of subtitle A of title II (29 U.S.C. 9251 et seq.) is amended by adding at the end the following:

[''SEC. 244. INTEGRATED ENGLISH LITERACY AND CIVICS EDUCATION.

[''(a) IN GENERAL.—From funds made available under section 211(a)(4) for each fiscal year the Secretary shall award grants to States, from allotments under subsection (b), for integrated English literacy and civics education.

[''(b) ALLOTMENT.—

[''(1) IN GENERAL.—Subject to paragraph (2), from amounts made available under section 211(a)(4) for a fiscal year the Secretary shall allocate—

[''(A) 65 percent to the States on the basis of a State's need for integrated English literacy and civics education as determined by calculating each State's share of a 10-year average of the Immigration and Naturalization Service data for immigrants admitted for legal permanent residence for the 10 most recent years; and

[''(B) 35 percent to the States on the basis of whether the State experienced growth as measured by the average of the 3 most recent years for which Immigration and Naturalization Service data for immigrants admitted for legal permanent residence are available.

[''(2) MINIMUM.—No State shall receive an allotment under paragraph (1) in an amount that is less than $60,000.''.

[SEC. 218. TRANSITION.

[The Secretary shall take such steps as the Secretary determines to be appropriate to provide for the orderly transition to the authority of the Adult Education and Family Literacy Act (as amended by this title) from any authority under provisions of the Adult Education and Family Literacy Act (as such Act was in effect on the day before the date of enactment of the Adult Education and Family Literacy Act Amendments of 2003).

[TITLE III—AMENDMENTS TO OTHER PROVISIONS OF LAW

[SEC. 301. WAGNER-PEYSER ACT.

[(a) CONFORMING AMENDMENT.—Section 2(3) of the Wagner-Peyser Act (29 U.S.C. 49a(3)) is amended by striking ''section 134(c)'' and inserting ''section 121(e)''.

[(b) COLOCATION.—Section 3 of the Wagner-Peyser Act (29 U.S.C. 49b) is amended by adding at the end the following:

[''(d) In order to avoid duplication of services and enhance integration of services, employment services offices in each State shall be colocated with comprehensive one-stop centers established under title I of the Workforce Investment Act of 1998.''.

[(c) COOPERATIVE STATISTICAL PROGRAM.—Section 14 of the Wagner-Peyser Act (29 U.S.C. 49l–1) is amended by striking the section heading and all that follows through ''There'' and inserting the following:

[''SEC. 14. COOPERATIVE STATISTICAL PROGRAM.

[''There''.

[(d) WORKFORCE AND LABOR MARKET INFORMATION SYSTEM.—Section 15 of the Wagner-Peyser Act (29 U.S.C. 49l–2) is amended—

[(1) by striking the section heading and inserting the following:

[''SEC. 15. WORKFORCE AND LABOR MARKET INFORMATION SYSTEM.'';

[(2) by striking ''employment statistics system'' each place it appears and inserting ''workforce and labor market information system'';

[(3) in subsection (a)(1), by striking ''of employment statistics'';

[(4) in subsection (b)(2)(E)—

[(A) in clause (i), by adding ''and'' at the end;

[(B) in clause (ii), by striking ''; and'' and inserting a period; and

[(C) by striking clause (iii);

[(5) by striking subsections (c) and (d) and inserting the following:

[''(c) NATIONAL ELECTRONIC TOOLS TO PROVIDE SERVICES.—The Secretary, in consultation with States, is authorized to assist in the development of national electronic tools that may be used to improve access to workforce information for individuals through—

[''(1) the one-stop delivery systems established under section 121(e); and

[''(2) such other delivery systems as the Secretary determines to be appropriate.

[''(d) TWO-YEAR PLAN.—The Secretary, working through the Bureau of Labor Statistics, and in cooperation with the States and with the assistance of the Employment and Training Administration and other appropriate Federal agencies, shall prepare a 2-year plan which shall be the mechanism for achieving cooperative management of the nationwide workforce and labor market information system described in subsection (a) and the statewide workforce and labor market information systems that comprise the nationwide system. The plan shall—

[''(1) describe the steps to be taken in the following 2 years to carry out the duties described in subsection (b)(2);

[''(2) evaluate the performance of the system and recommend needed improvements, with particular attention to the improvements needed at the State and local levels; and

[''(3) describe the involvement of States in the development of the plan, pursuant to a process established by the Secretary in cooperation with the States in accordance with subsection (d).

[''(e) COORDINATION WITH THE STATES.—The Secretary, working though the Bureau of Labor Statistics and in coordination with the Employment and Training Administration, shall consult at least annually with representatives of each of the 10 Federal regions of the Department of Labor, elected (pursuant to a process established by the Secretary) by and from the State workforce and labor market information directors affiliated with the State agencies that perform the duties described in subsection (e)(2).'';

[(6) in subsection (e)(2)—

[(A) in subparagraph (G), by adding ''and'' at the end;

[(B) by striking subparagraph (H); and

[(C) by redesignating subparagraph (I) as subparagraph (H); and

[(7) in subsection (g), by striking ''1999 through 2004'' and inserting ''2004 through 2009 to enable the Secretary to carry out the provisions of this section through grants or cooperative agreements with the States''.

[TITLE IV—REHABILITATION ACT AMENDMENTS

[SEC. 401. SHORT TITLE.

[This title may be cited as the ''Rehabilitation Act Amendments of 2003''.

[SEC. 402. TECHNICAL AMENDMENTS TO TABLE OF CONTENTS.

[(a) INCENTIVE GRANTS.—Section 1(b) of the Rehabilitation Act of 1973 (29 U.S.C. 701 note) is amended by inserting after the item relating to section 112 the following:

[''Sec. 113. Incentive grants.''.

[(b) INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND.—Section 1(b) of the Rehabilitation Act of 1973 (29 U.S.C. 701 note) is amended by striking the items relating to sections 752 and 753 and inserting the following:

[''Sec. 752. Training and technical assistance.

[''Sec. 753. Program of grants.

[''Sec. 754. Authorization of appropriations.''.

[SEC. 403. PURPOSE.

[Section 2(b) of the Rehabilitation Act of 1973 (29 U.S.C. 701(b)) is amended—

[(1) in paragraph (1)(F), by striking ''and'' after the semicolon;

[(2) in paragraph (2), by striking the period at the end and inserting ''; and''; and

[(3) by adding at the end the following:

[''(3) to provide opportunities for employers and rehabilitation service providers to provide meaningful input at all levels of government to ensure successful employment of individuals with disabilities.''.

[SEC. 404. DEFINITIONS.

[Section 7 of the Rehabilitation Act of 1973 (29 U.S.C. 705) is amended—

[(1) in paragraph (2)(B)—

[(A) in the matter preceding clause (i), by inserting ''and literacy services'' after ''supported employment''; and

[(B) in clause (iii), by inserting ''and literacy skills'' after ''educational achievements'';

[(2) in paragraph (17)—

[(A) in subparagraph (C), by striking ''and'' after the semicolon;

[(B) in subparagraph (D), by striking the period at the end and inserting ''; and''; and

[(C) by adding at the end the following:

[''(E) maintaining individuals with disabilities in, or transitioning individuals with disabilities to, community-based living.'';

[(3) by redesignating paragraphs (24) through (28), (29) through (34), and (35) through (39), as paragraphs (25) through (29), (31) through (36), and (38) through (42), respectively;

[(4) by inserting after paragraph (23) the following:

[''(24) LITERACY.—The term 'literacy' has the meaning given the term in section 203 of the Adult Education and Family Literacy Act (20 U.S.C. 9202).'';

[(5) by inserting after paragraph (29), as redesignated by paragraph (3), the following:

[''(30) POST-EMPLOYMENT SERVICE.—The term 'post-employment' service means a service identified in section 103(a) that is—

[''(A) provided subsequent to the achievement of an employment outcome; and

[''(B) necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.'';

[(6) by inserting after paragraph (36), as redesignated by paragraph (3), the following:

[''(37) STUDENT WITH A DISABILITY.—

[''(A) IN GENERAL.—The term 'student with a disability' means an individual with a disability who attends an elementary school or secondary school and who—

[''(i) is not younger than 14 years of age;

[''(ii) is not older than 21 years of age;

[''(iii) has been determined to be eligible under section 102(a) for assistance under title I; and

[''(iv)(I) is eligible for, and receiving, special education and related services under part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.); or

[''(II) is an individual with a disability, for purposes of section 504.

[''(B) STUDENTS WITH DISABILITIES.—The term 'students with disabilities' means more than 1 student with a disability.''; and

[(7) in paragraph (38)(A)(ii), as redesignated by paragraph (3), by striking ''paragraph (36)(C)'' and inserting ''paragraph (39)(C)''.

[SEC. 405. ADMINISTRATION OF THE ACT.

[Section 12(a)(1) of the Rehabilitation Act of 1973 (29 U.S.C. 709(a)(1)) is amended—

[(1) by inserting ''(A)'' after ''(1)'';

[(2) by striking the semicolon and inserting ''; and''; and

[(3) by adding at the end the following:

[''(B) provide technical assistance to the designated State units on developing successful partnerships with employers;''.

[SEC. 406. CARRYOVER.

[Section 19 of the Rehabilitation Act of 1973 (29 U.S.C. 716) is amended—

[(1) in subsection (a)(1)—

[(A) by striking '', section 509 (except as provided in section 509(b))'';

[(B) by striking ''or (C)''; and

[(C) by striking ''752(b)'' and inserting ''753(b)''; and

[(2) by adding at the end the following:

[''(c) PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS.—

[''(1) APPROPRIATED AMOUNTS.—Notwithstanding any other provision of law, any

funds appropriated for a fiscal year to carry out a grant program under section 509 (except as provided in section 509(b)), including any funds reallotted under such grant program, that are not obligated and expended by recipients prior to the beginning of the succeeding fiscal year shall remain available for obligation and expenditure by such recipients during such succeeding fiscal year.

[''(2) PROGRAM INCOME.—Notwithstanding any other provision of law, any amounts of program income received by recipients under a grant program under section 509 that are not obligated and expended by recipients prior to the beginning of the fiscal year succeeding the fiscal year in which such amounts were received, shall remain available for obligation and expenditure by such recipients during any of the 4 succeeding fiscal years.''.

[Subtitle A—Vocational Rehabilitation Services

[SEC. 411. DECLARATION OF POLICY; AUTHORIZATION OF APPROPRIATIONS.

[Section 100(b)(1) of the Rehabilitation Act of 1973 (29 U.S.C. 720(b)(1)) is amended by striking ''fiscal years 1999 through 2003'' and inserting ''fiscal years 2004 through 2009''.

[SEC. 412. STATE PLANS.

[Section 101(a) of the Rehabilitation Act of 1973 (29 U.S.C. 721(a)) is amended—

[(1) in paragraph (6)(B), by striking ''to employ and advance in employment'' and inserting ''to recruit, employ, and advance in employment'';

[(2) in paragraph (8)(A), by adding at the end the following:

[''(iii) SERVICES IDENTIFIED IN INDIVIDUALIZED WORK PLAN.—For purposes of clause (i), for an individual who receives assistance under the Ticket to Work and Self-Sufficiency Program established under section 1148 of the Social Security Act (42 U.S.C. 1320b–19), comparable benefits and services available under such program only include those benefits and services identified in the individual's individualized work plan developed by an employment network pursuant to such section.'';

[(3) in paragraph (11)—

[(A) by striking subparagraph (D)(ii) and inserting the following:

[''(ii) transition planning by personnel of the designated State agency and the State educational agency that will facilitate the development and completion of the individualized education programs under section 614(d) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)) and, as appropriate, the development and completion of the individualized plan for employment, in order to achieve post-school employment outcomes of students with disabilities;''; and

[(B) by adding at the end the following:

[''(G) COORDINATION WITH TICKET TO WORK AND SELF-SUFFICIENCY PROGRAM.—The State plan shall provide that the designated State unit will coordinate activities with any other State agency that administers a Ticket to Work and Self-Sufficiency Program established under section 1148 of the Social Security Act (42 U.S.C. 1320b–19).''; and

[(4) in paragraph (20)—

[(A) by redesignating subparagraph (B) as subparagraph (D);

[(B) by inserting after subparagraph (A) the following:

[''(B) INFORMATION ON ASSISTANCE FOR BENEFICIARIES OF ASSISTANCE UNDER TITLE II OR XVI OF THE SOCIAL SECURITY ACT.—The State plan shall include an assurance that the designated State agency will make available to individuals entitled to benefits under title II or XVI of the Social Security Act (42 U.S.C. 401 et seq., 1381 et seq.) on the basis of a disability or blindness, information on the availability of—

[''(i) medical assistance under the State medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.);

[''(ii) benefits under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.);

[''(iii) assistance through benefits planning and assistance programs under section 1149 of the Social Security Act (42 U.S.C. 1320b–20) and protection and advocacy programs under section 1150 of the Social Security Act (42 U.S.C. 1320b–21); and

[''(iv) medical assistance under other federally-funded programs.

[''(C) INFORMATION FOR INDIVIDUALS UNDER THE TICKET TO WORK PROGRAM.—The State plan shall include an assurance that the designated State agency will make available to individuals entitled to benefits under title II or XVI of the Social Security Act (42 U.S.C. 401 et seq., 1381 et seq.) on the basis of a disability or blindness and eligible for assistance under the Ticket to Work and Self-Sufficiency Program established under section 1148 of the Social Security Act (42 U.S.C. 1320b–19), general information regarding the Ticket to Work and Self-Sufficiency Program and specific information on how to contact the program manager of the Ticket to Work and Self-Sufficiency Program to obtain information on approved employment networks.''; and

[(C) in subparagraph (D)(ii), as redesignated by subparagraph (A)—

[(i) in subclause (II), by inserting '', to the maximum extent possible,'' after ''point of contact''; and

[(ii) in subclause (III), by striking ''or regain'' and inserting ''regain, or advance in''.

[SEC. 413. ELIGIBILITY AND INDIVIDUALIZED PLAN FOR EMPLOYMENT.

[Section 102 of the Rehabilitation Act of 1973 (29 U.S.C. 722) is amended—

[(1) in subsection (b)—

[(A) in paragraph (1)—

[(i) in subparagraph (A), by striking the semicolon at the end and inserting '', including a listing of all the community resources (including resources from organizations of individuals with disabilities), to the maximum extent possible, to assist in the development of such individual's individualized plan for employment to enable the individual to make informed and effective choices in developing the individualized plan for employment;''; and

[(ii) in subparagraph (D)—

[(I) in clause (i), by striking ''and'' after the semicolon;

[(II) in clause (ii), by striking the period at the end and inserting a semicolon; and

[(III) by adding at the end the following:

[''(iii) for individuals entitled to benefits under title II or XVI of the Social Security Act (42 U.S.C. 401 et seq., 1381 et seq.) on the basis of a disability or blindness, information on the availability of—

[''(I) medical assistance under the State medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.);

[''(II) benefits under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.);

[''(III) assistance through benefits planning and assistance programs under section 1149 of the Social Security Act (42 U.S.C. 1320b–20) and protection and advocacy programs under section 1150 of the Social Security Act (42 U.S.C. 1320b–21); and

[''(IV) medical assistance under other federally-funded programs; and

[''(iv) for individuals entitled to benefits under title II or XVI of the Social Security Act (42 U.S.C. 401 et seq., 1381 et seq.) on the basis of a disability or blindness and eligible for assistance under the Ticket to Work and Self-Sufficiency Program established under section 1148 of the Social Security Act (42 U.S.C. 1320b–19), information—

[''(I) on the options under the Ticket to Work and Self-Sufficiency Program; and

[''(II) on how to contact the program manager of the Ticket to Work and Self-Sufficiency Program who has contact information on approved employment networks, the benefits planning and assistance programs in the area, and the protection and advocacy programs in the area.'';

[(B) in paragraph (2)(E)—

[(i) in clause (i)(II), by striking ''and'' after the semicolon;

[(ii) in clause (ii), by striking the period at the end and inserting ''; and''; and

[(iii) by adding at the end the following:

[''(iii) amended, as necessary, to include the post-employment services and service providers that are necessary for the individual to maintain, regain, or advance in employment, consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.''; and

[(C) in paragraph (3)—

[(i) in subparagraph (B)(i)(I), by striking ''and personal assistance services'' and inserting ''mentoring services, and personal assistance services'';

[(ii) in subparagraph (F)(ii), by striking ''and'' after the semicolon;

[(iii) in subparagraph (G), by striking the period at the end and inserting a semicolon; and

[(iv) by adding at the end the following:

[''(H) for a student with a disability, the description—

[''(i) in paragraph (3)(A), may be a description of the student's projected post-school employment outcome; and

[''(ii) in paragraph (3)(B), shall include the specific transition services (including, as appropriate, work experience and mentoring activities) needed to achieve the student's employment outcome or projected employment outcome; and

[''(I) for an individual who is receiving assistance under the Ticket to Work and Self-Sufficiency Program established under section 1148 of the Social Security Act (42 U.S.C. 1320b–19), a list of services such individual receives from an employment network other than the designated State unit.''; and

[(2) in subsection (c)(7), by inserting ''that take into consideration the informed choice of the individual,'' after ''plan development,''.

[SEC. 414. VOCATIONAL REHABILITATION SERVICES.

[Section 103(a) of the Rehabilitation Act of 1973 (29 U.S.C. 723(a)) is amended—

[(1) in paragraph (5), by inserting ''literacy services,'' after ''vocational adjustment services,'';

[(2) in paragraph (17), by striking ''and'' after the semicolon;

[(3) in paragraph (18), by striking the period at the end and inserting ''; and''; and

[(4) by adding at the end the following:

[''(19) mentoring services.''.

[SEC. 415. STATE REHABILITATION COUNCIL.

[Section 105(b)(1)(A)(ix) of the Rehabilitation Act of 1973 (29 U.S.C. 725(b)(1)(A)(ix)) is amended to read as follows:

[''(ix) in a State in which 1 or more projects provide services under section 121, not less than 1 representative of the directors of the projects;''.

[SEC. 416. EVALUATION STANDARDS AND PERFORMANCE INDICATORS.

[Section 106(b)(2)(B)(i) of the Rehabilitation Act of 1973 (29 U.S.C. 726(b)(2)(B)(i)) is amended by striking '', if necessary'' and all that follows through the semicolon and inserting ''if the State has not improved its

performance to acceptable levels, as determined by the Commissioner, direct the State to make further revisions to the plan to improve performance, which may include allocating a higher proportion of the State's resources for services to individuals with disabilities if the State's spending on such services is low in comparison to spending on such services in comparable agencies in other States;''.

[SEC. 417. STATE ALLOTMENTS.

[Section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730) is amended—

[(1) by striking subsection (b) and inserting the following:

[''(b) REALLOTMENT.—

[''(1) DETERMINATION.—Not later than 45 days prior to the end of the fiscal year, the Commissioner shall determine, after reasonable opportunity for the submission to the Commissioner of comments by the State agency administering or supervising the program established under this title, that any payment of an allotment to a State under section 111(a) for any fiscal year will not be utilized by such State in carrying out the purposes of this title.

[''(2) FORMULA.—

[''(A) IN GENERAL.—As soon as practicable but not later than the end of the fiscal year, the Commissioner shall reallot the amount available under paragraph (1) to other States, consistent with subparagraphs (B) and (C), for carrying out the purposes of this title to the extent the Commissioner determines such other State will be able to use such additional amount during that fiscal year or the subsequent fiscal year for carrying out such purposes.

[''(B) FORMULA.—

[''(i) ELIGIBLE STATES.—The Commissioner shall reallot the amount available under paragraph (1) for a fiscal year to each State whose allotment under subsection (a) for such fiscal year is less than such State's allotment under subsection (a) for the immediately preceding fiscal year increased by the percentage change in the funds available for subsection (a) from the immediately preceding fiscal year.

[''(ii) AMOUNT.—

[''(I) IN GENERAL.—A State that is eligible to receive a reallotment under clause (i) shall receive an amount for a fiscal year from the amount available for reallotment under paragraph (1) that is equal to the difference between—

[''(aa) the amount such State received for such fiscal year; and

[''(bb) the amount such State was allotted under subsection (a) for the immediately preceding fiscal year adjusted by the percentage change in the funds available for subsection (a) from the immediately preceding fiscal year.

[''(II) INSUFFICIENT FUNDS.—If the amount available for reallotment under paragraph (1) is insufficient to provide each State eligible to receive a reallotment with the amount described in subclause (I), the amount reallotted to each eligible State shall be determined by the Commissioner.

[''(C) REMAINING FUNDS.—If there are funds remaining after each State eligible to receive a reallotment under subparagraph (B)(i) receives the amount described in subparagraph (B)(ii), the Commissioner shall reallot the remaining funds among the States requesting a reallotment.

[''(3) NON-FEDERAL SHARE.—The Commissioner shall reallot an amount to a State under this subsection only if the State will be able to make sufficient payments from non-Federal sources to pay for the non-Federal share of the cost of vocational rehabilitation services under the State plan for the fiscal year for which the amount was appropriated.

[''(4) INCREASE IN ALLOTMENT.—For the purposes of this part, any amount made available to a State for any fiscal year pursuant to this subsection shall be regarded as an increase of such State's allotment (as determined under the preceding provisions of this section) for such year.''; and

[(2) by striking subsection (c)(2) and inserting the following:

[''(2)(A) In this paragraph:

[''(i) The term 'appropriated amount' means the amount appropriated under section 100(b)(1) for allotment under this section.

[''(ii) The term 'covered year' means a fiscal year—

[''(I) that begins after September 30, 2003; and

[''(II) for which the appropriated amount exceeds the total of—

[''(aa) the appropriated amount for the preceding fiscal year; and

[''(bb) 0.1 percent of the appropriated amount for the preceding fiscal year.

[''(B) For each covered year, the sum referred to in paragraph (1) shall be, as determined by the Secretary, the lesser of—

[''(i) the total of the sum reserved under this subsection for the preceding fiscal year and 0.1 percent of the appropriated amount for the covered year; and

[''(ii) 1.5 percent of the appropriated amount for the covered year.''.

[SEC. 418. CLIENT ASSISTANCE PROGRAM.

[Section 112 of the Rehabilitation Act of 1973 (29 U.S.C. 732) is amended—

[(1) in subsection (a), by striking ''States'' and inserting ''agencies designated under subsection (c)'';

[(2) in subsection (e)—

[(A) in paragraph (1)—

[(i) in subparagraph (A), by striking ''The Secretary'' and all that follows through the period and inserting the following: ''After reserving funds under subparagraphs (E) and (F), the Secretary shall allot the remainder of the sums appropriated for each fiscal year under this section among the agencies designated under subsection (c) within the States on the basis of relative population of each State, except that no such agency shall receive less than $50,000.'';

[(ii) in subparagraph (B), by inserting ''the designated agencies located in'' after ''each to'';

[(iii) in subparagraph (D)(i)—

[(I) by inserting ''the designated agencies located in'' after ''$100,000 for''; and

[(II) by inserting ''the designated agencies located in'' after ''$45,000 for''; and

[(iv) by adding at the end the following:

[''(E)(i) Beginning on October 1, 2004, for any fiscal year for which the amount appropriated to carry out this section equals or exceeds $13,000,000, the Secretary shall reserve funds appropriated under this section to make grants to the protection and advocacy system serving the American Indian Consortium to provide client assistance services in accordance with this section. The amount of such grants shall be the same amount as provided to territories under subparagraph (B), as increased under clauses (i) and (ii) of subparagraph (D).

[''(ii) In this subparagraph:

[''(I) The term 'American Indian Consortium' has the meaning given the term in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15002).

[''(II) The term 'protection and advocacy system' means a protection and advocacy system established under subtitle C of title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15041 et seq.).

[''(F) For any fiscal year for which the amount appropriated to carry out this section equals or exceeds $14,000,000, the Secretary shall reserve not less than 1.8 percent and not more than 2.2 percent of such amount to provide training and technical assistance to the programs established under this section. Such training and technical assistance shall be coordinated with funds available under section 509(c)(1)(A).'';

[(B) in paragraph (2)—

[(i) by striking ''State'' each place such term appears and inserting ''designated agency''; and

[(ii) by striking ''States'' each place such term appears and inserting ''designated agencies''; and

[(C) in paragraph (3), by striking ''Except as specifically prohibited by or as otherwise provided in State law, the Secretary shall pay'' and inserting ''The Secretary shall pay directly'';

[(3) in subsection (f), by striking ''State'' and inserting ''agency designated under subsection (c)''; and

[(4) in subsection (h), by striking ''fiscal years 1999 through 2003'' and inserting ''fiscal years 2004 through 2009''.

[SEC. 419. INCENTIVE GRANTS.

[Part B of title I of the Rehabilitation Act of 1973 (29 U.S.C. 730 et seq.) is amended by adding at the end the following:

[''SEC. 113. INCENTIVE GRANTS.

[''(a) AUTHORITY.—The Commissioner is authorized to make incentive grants to States that, based on the criteria established under subsection (b)(1), demonstrate—

[''(1) a high level of performance; or

[''(2) a significantly improved level of performance as compared to the previous reporting period or periods.

[''(b) CRITERIA.—

[''(1) ESTABLISHMENT.—Not later than 180 days after the date of enactment of this section, the Commissioner shall establish, and publish in the Federal Register, criteria for making grant awards under subsection (a).

[''(2) DEVELOPMENT AND EVALUATION STANDARDS.—The criteria under paragraph (1) shall—

[''(A) be developed with input from State vocational rehabilitation agencies and other vocational rehabilitation stakeholders, including vocational rehabilitation consumers and consumer organizations; and

[''(B) be based upon the evaluation standards and performance indicators established under section 106 and other performance related measures that the Commissioner determines to be appropriate.

[''(c) USE OF FUNDS.—A State that receives a grant under subsection (a) shall use the grant funds for any approved activities in the State's State plan submitted under section 101.

[''(d) NO NON-FEDERAL SHARE REQUIREMENT.—The provisions of sections 101(a)(3) and 111(a)(2) shall not apply to this section.

[''(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2004 through 2009.''.

[SEC. 420. VOCATIONAL REHABILITATION SERVICES GRANTS.

[Section 121 of the Rehabilitation Act of 1973 (29 U.S.C. 741) is amended—

[(1) in subsection (a), in the first sentence, by inserting '', consistent with such individuals' strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, so that such individuals may prepare for, and engage in, gainful employment'' before the period at the end; and

[(2) in subsection (b)—

[(A) in paragraph (1)—

[(i) in subparagraph (B), by striking ''and'' after the semicolon;

[(ii) in subparagraph (C), by striking the period at the end and inserting ''; and''; and

[(iii) by adding at the end the following:

[''(D) contains assurances that—

[''(i) all decisions affecting eligibility for vocational rehabilitation services, the nature and scope of available services, and the provision of such services, will be made by a representative of the tribal vocational rehabilitation program; and

[''(ii) such decisions will not be delegated to another agency or individual.'';

[(B) in paragraph (3), by striking the first sentence and inserting the following: ''An application approved under this part that complies with the program requirements set forth in the regulations promulgated to carry out this part shall be effective for 5 years and shall be renewed for additional 5-year periods if the Commissioner determines that the grantee demonstrated acceptable past performance and the grantee submits a plan, including a proposed budget, to the Commissioner that the Commissioner approves that identifies future performance criteria, goals, and objectives.''; and

[(C) by striking paragraph (4) and inserting the following:

[''(4) In allocating funds under this part, the Secretary shall give priority to paying the continuation costs of existing projects and may provide for increases in funding for such projects as determined necessary.''.

[SEC. 421. GAO STUDIES.

[(a) STUDY ON TITLE I AND TICKET TO WORK.—

[(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study on the interaction of title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.) with the Ticket to Work and Self-Sufficiency Program established under section 1148 of the Social Security Act (42 U.S.C. 1320b–19), including the impact of the interaction on beneficiaries, community rehabilitation programs, and State vocational rehabilitation agencies.

[(2) CONDUCT OF STUDY.—In conducting the study under paragraph (1), the Comptroller General of the United States shall consult with all participants in the Ticket to Work and Self-Sufficiency Program, including the Social Security Administration, the Rehabilitation Services Administration, ticketholders, State agencies, community rehabilitation programs (including employment networks and nonemployment networks), protection and advocacy agencies, MAXIMUS, and organizations representing the interests of ticketholders.

[(3) REPORT TO CONGRESS.—Not later than 18 months after the date of enactment of this title, the Comptroller General of the United States shall submit the study conducted pursuant to this subsection to the appropriate committees of Congress.

[(b) STUDY ON THE ALLOTMENT FORMULA.—

[(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study on the relationship between the State allotment formula under section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730) and the ability of States to provide vocational rehabilitation services in accordance with the State's State plan under section 101 of such Act.

[(2) CONDUCT OF STUDY.—In conducting the study under paragraph (1), the Comptroller General of the United States shall consult with appropriate entities.

[(3) REPORT TO CONGRESS.—Not later than 12 months after the date of enactment of this title, the Comptroller General of the United States shall submit the study conducted pursuant to this subsection to the appropriate committees of Congress.

[Subtitle B—Research and Training

[SEC. 431. AUTHORIZATION OF APPROPRIATIONS.

[Section 201(a) of the Rehabilitation Act of 1973 (29 U.S.C. 761(a)) is amended—

[(1) in paragraph (1), by striking ''fiscal years 1999 through 2003'' and inserting ''fiscal years 2004 through 2009''; and

[(2) in paragraph (2), by striking ''fiscal years 1999 through 2003'' and inserting ''fiscal years 2004 through 2009''.

[SEC. 432. NATIONAL INSTITUTE ON DISABILITY AND REHABILITATION RESEARCH.

[Section 202(f)(1) of the Rehabilitation Act of 1973 (29 U.S.C. 762(f)(1)) is amended by striking ''Federal employees'' and inserting ''Department of Education employees''.

[SEC. 433. RESEARCH AND OTHER COVERED ACTIVITIES.

[Section 204(c)(2) of the Rehabilitation Act of 1973 (29 U.S.C. 764(c)(2)) is amended by striking ''$500,000'' and inserting ''$750,000''.

[SEC. 434. REHABILITATION RESEARCH ADVISORY COUNCIL.

[Section 205(c) of the Rehabilitation Act of 1973 (29 U.S.C. 765(c)) is amended by adding at the end the following: ''The Council also shall include a representative from the business community who has experience with the vocational rehabilitation system and hiring individuals with disabilities.''.

[Subtitle C—Professional Development and Special Projects and Demonstrations

[SEC. 441. TRAINING.

[Section 302 of the Rehabilitation Act of 1973 (29 U.S.C. 772) is amended—

[(1) in subsection (b)(1)(B)(i), by striking ''or prosthetics and orthotics'' and inserting ''prosthetics and orthotics, rehabilitation for the blind, or orientation and mobility instruction''; and

[(2) in subsection (i), by striking ''fiscal years 1999 through 2003'' and inserting ''fiscal years 2004 through 2009''.

[SEC. 442. DEMONSTRATION AND TRAINING PROGRAMS.

[Section 303 of the Rehabilitation Act of 1973 (29 U.S.C. 773) is amended—

[(1) by redesignating subsection (e) as subsection (f);

[(2) in subsection (f), as redesignated by paragraph (1), by striking ''fiscal years 1999 through 2003'' and inserting ''fiscal years 2004 through 2009''; and

[(3) by inserting after subsection (d) the following:

[''(e) ACCESS TO TELEWORK.—

[''(1) DEFINITION OF TELEWORK.—In this subsection, the term 'telework' means to work from home and other telework sites with the assistance of a computer and with reasonable accommodations, including the necessary equipment to facilitate successful work from home and other telework sites.

[''(2) AUTHORIZATION OF PROGRAM.—The Commissioner is authorized to make grants to States and governing bodies of American Indian tribes located on Federal and State reservations (and consortia of such governing bodies) to pay for the Federal share of the cost of establishing or expanding a telework program.

[''(3) APPLICATION.—A State that desires to receive a grant under this subsection shall submit an application to the Commissioner at such time, in such manner, and containing such information as the Commissioner may require.

[''(4) USE OF FUNDS.—A State that receives a grant under this subsection shall establish or expand a telework program that shall provide loans or other alternative financing mechanisms to individuals with disabilities to enable such individuals to purchase computers or other equipment, including adaptive equipment, that facilitates work from home and other telework sites so that such individuals are able to telework.

[''(5) ANNUAL REPORT.—

[''(A) IN GENERAL.—A State that receives a grant under this subsection shall submit an annual report to the Commissioner.

[''(B) CONTENTS.—The report under subparagraph (A) shall include the following:

[''(i) The characteristics of each individual with a disability that receives a loan or other alternative financing mechanism under the program, including information about the individual such as the following:

[''(I) Age.

[''(II) Ethnicity.

[''(III) Type of disability.

[''(IV) Employment status at the time of application for a loan or other alternative financing mechanism under this subsection.

[''(V) Whether the individual attempted to secure financial support from other sources to enable the individual to telework and, if so, a description of such sources.

[''(VI) Whether the individual is working and, if so, whether the individual teleworks, the occupation in which the individual is working, the hourly salary the individual receives, and the hourly salary of the individual prior to receiving a loan or other alternative financing mechanism under the program.

[''(VII) Whether the individual has repaid the loan or other alternative financing mechanism received under the program, is in repayment status, is delinquent on repayments, or has defaulted on the loan or other alternative financing mechanism.

[''(ii) Any other information that the Commissioner may require.

[''(6) FEDERAL SHARE.—The Federal share of the cost of establishing a telework program shall be 10 percent of the cost.''.

[SEC. 443. MIGRANT AND SEASONAL FARMWORKERS.

[Section 304(b) of the Rehabilitation Act of 1973 (29 U.S.C. 774(b)) is amended by striking ''fiscal years 1999 through 2003'' and inserting ''fiscal years 2004 through 2009''.

[SEC. 444. RECREATIONAL PROGRAMS.

[Section 305 of the Rehabilitation Act of 1973 (29 U.S.C. 775) is amended—

[(1) in subsection (a)(1)(B), by striking ''construction of facilities for aquatic rehabilitation therapy,''; and

[(2) in subsection (b), by striking ''fiscal years 1999 through 2003'' and inserting ''fiscal years 2004 through 2009''.

[Subtitle D—National Council on Disability

[SEC. 451. AUTHORIZATION OF APPROPRIATIONS.

[Section 405 of the Rehabilitation Act of 1973 (29 U.S.C. 785) is amended by striking ''fiscal years 1999 through 2003'' and inserting ''fiscal years 2004 through 2009''.

[Subtitle E—Rights and Advocacy

[SEC. 461. ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD.

[Section 502(j) of the Rehabilitation Act of 1973 (29 U.S.C. 792(j)) is amended by striking ''fiscal years 1999 through 2003'' and inserting ''fiscal years 2004 through 2009''.

[SEC. 462. PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS.

[Section 509 of the Rehabilitation Act of 1973 (29 U.S.C. 794e) is amended—

[(1) in subsection (g)(2), by striking ''was paid'' and inserting ''was paid, except that program income generated from the amount paid to an eligible system shall remain available to such system for obligation during any succeeding fiscal year''; and

[(2) in subsection (*l*), by striking ''fiscal years 1999 through 2003'' and inserting ''fiscal years 2004 through 2009''.

[Subtitle F—Employment Opportunities for Individuals With Disabilities

[SEC. 471. PROJECTS WITH INDUSTRY AUTHORIZATION OF APPROPRIATIONS.

[Section 612 of the Rehabilitation Act of 1973 (29 U.S.C. 795a) is amended by striking ''fiscal years 1999 through 2003'' and inserting ''fiscal years 2004 through 2009''.

[SEC. 472. SERVICES FOR INDIVIDUALS WITH SIGNIFICANT DISABILITIES AUTHORIZATION OF APPROPRIATIONS.

[Section 628 of the Rehabilitation Act of 1973 (29 U.S.C. 795n) is amended by striking ''fiscal years 1999 through 2003'' and inserting ''fiscal years 2004 through 2009''.

[Subtitle G—Independent Living Services and Centers for Independent Living

[SEC. 481. STATE PLAN.

[Section 704 of the Rehabilitation Act of 1973 (42 U.S.C. 795c) is amended by adding at the end the following:

[''(o) PROMOTING FULL ACCESS TO COMMUNITY LIFE.—The plan shall describe how the State will provide independent living services that promote full access to community life for individuals with significant disabilities. The services shall include, as appropriate, facilitating transitions from nursing homes and other institutions, including institutions serving individuals with cognitive disabilities, to community-based residences, assisting individuals with significant disabilities at risk of entering institutions to remain in the community, and promoting home ownership among individuals with significant disabilities.''.

[SEC. 482. STATEWIDE INDEPENDENT LIVING COUNCIL.

[Section 705(b)(5) of the Rehabilitation Act of 1973 (29 U.S.C. 796d(b)(5)) is amended to read as follows:

[''(5) CHAIRPERSON.—The Council shall select a chairperson from among the voting membership of the Council.''.

[SEC. 483. INDEPENDENT LIVING SERVICES AUTHORIZATION OF APPROPRIATIONS.

[Section 714 of the Rehabilitation Act of 1973 (29 U.S.C. 796e–3) is amended by striking ''fiscal years 1999 through 2003'' and inserting ''fiscal years 2004 through 2009''.

[SEC. 484. PROGRAM AUTHORIZATION.

[Section 721 of the Rehabilitation Act of 1973 (42 U.S.C. 796f) is amended—

[(1) by striking subsection (c) and inserting the following:

[''(c) ALLOTMENTS TO STATES.—

[''(1) DEFINITIONS.—In this subsection:

[''(A) ADDITIONAL APPROPRIATION.—The term 'additional appropriation' means the amount (if any) by which the appropriation for a fiscal year exceeds the total of—

[''(i) the amount reserved under subsection (b) for that fiscal year; and

[''(ii) the appropriation for fiscal year 2003.

[''(B) APPROPRIATION.—The term 'appropriation' means the amount appropriated to carry out this part.

[''(C) BASE APPROPRIATION.—The term 'base appropriation' means the portion of the appropriation for a fiscal year that is equal to the lesser of—

[''(i) an amount equal to 100 percent of the appropriation, minus the amount reserved under subsection (b) for that fiscal year; or

[''(ii) the appropriation for fiscal year 2003.

[''(2) ALLOTMENTS TO STATES FROM BASE APPROPRIATION.—After the reservation required by subsection (b) has been made, the Commissioner shall allot to each State whose State plan has been approved under section 706 an amount that bears the same ratio to the base appropriation as the amount the State received under this subsection for fiscal year 2003 bears to the total amount that all States received under this subsection for fiscal year 2003.

[''(3) ALLOTMENTS TO STATES OF ADDITIONAL APPROPRIATION.—From any additional appropriation for each fiscal year, the Commissioner shall allot to each State whose State plan has been approved under section 706 an amount equal to the sum of—

[''(A) an amount that bears the same ratio to 50 percent of the additional appropriation as the population of the State bears to the population of all States; and

[''(B) 1/56 of 50 percent of the additional appropriation.''; and

[(2) by adding at the end the following:

[''(e) CARRYOVER AUTHORITY.—Any amount paid to an agency to operate a center for independent living under this chapter for a fiscal year and any amount of program income that remains unobligated at the end of such year shall remain available to such agency for obligation during the next 2 fiscal years for the purposes for which such amount was paid.''.

[SEC. 485. GRANTS TO CENTERS FOR INDEPENDENT LIVING IN STATES IN WHICH FEDERAL FUNDING EXCEEDS STATE FUNDING.

[Section 722(c) of the Rehabilitation Act of 1973 (29 U.S.C. 796f–1(c)) is amended by striking ''by September 30, 1997'' and inserting ''during the preceding year''.

[SEC. 486. GRANTS TO CENTERS FOR INDEPENDENT LIVING IN STATES IN WHICH STATE FUNDING EQUALS OR EXCEEDS FEDERAL FUNDING.

[Section 723(c) of the Rehabilitation Act of 1973 (29 U.S.C. 796f–2(c)) is amended by striking ''by September 30, 1997'' and inserting ''during the preceding year''.

[SEC. 487. STANDARDS AND ASSURANCES FOR CENTERS FOR INDEPENDENT LIVING.

[Section 725(b) of the Rehabilitation Act of 1973 (29 U.S.C. 796f–4(b)) is amended—

[(1) in paragraph (4), by striking ''disabilities.'' and inserting ''disabilities, including maintaining individuals with disabilities in, or transitioning individuals with disabilities to, community-based living.''; and

[(2) by adding at the end the following:

[''(8) PROMOTING FULL ACCESS TO COMMUNITY LIFE.—The center shall provide independent living services that promote full access to community life for individuals with significant disabilities. The services shall include, as appropriate, facilitating transitions from nursing homes and other institutions, including institutions serving individuals with cognitive disabilities, to community-based residences, assisting individuals with significant disabilities at risk of entering institutions to remain in the community, and promoting home ownership among individuals with significant disabilities.''.

[SEC. 488. CENTERS FOR INDEPENDENT LIVING AUTHORIZATION OF APPROPRIATIONS.

[Section 727 of the Rehabilitation Act of 1973 (29 U.S.C. 796f–6) is amended by striking ''fiscal years 1999 through 2003'' and inserting ''fiscal years 2004 through 2009''.

[SEC. 489. INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND.

[Chapter 2 of title VII of the Rehabilitation Act of 1973 (29 U.S.C. 796j et seq.) is amended—

[(1) by redesignating sections 752 and 753 as sections 753 and 754, respectively; and

[(2) by inserting after section 751 the following:

[''SEC. 752. TRAINING AND TECHNICAL ASSISTANCE.

[''(a) GRANTS; CONTRACTS; OTHER ARRANGEMENTS.—For any fiscal year for which the funds appropriated to carry out this chapter exceed the funds appropriated to carry out this chapter for fiscal year 2003, the Commissioner shall first reserve from such excess, to provide training and technical assistance to eligible entities for such fiscal year, not less than 1.8 percent, and not more than 2 percent, of the funds appropriated to carry out this chapter for the fiscal year involved.

[''(b) ALLOCATION.—From the funds reserved under subsection (a), the Commissioner shall make grants to, and enter into contracts and other arrangements with, entities that demonstrate expertise in the provision of services to older individuals who are blind to provide training and technical assistance with respect to planning, developing, conducting, administering, and evaluating independent living programs for older individuals who are blind.

[''(c) FUNDING PRIORITIES.—The Commissioner shall conduct a survey of designated State agencies that receive grants under section 753 regarding training and technical assistance needs in order to determine funding priorities for grants, contracts, and other arrangements under this section.

[''(d) REVIEW.—To be eligible to receive a grant or enter into a contract or other arrangement under this section, an eligible entity shall submit an application to the Commissioner at such time, in such manner, containing a proposal to provide such training and technical assistance, and containing such additional information as the Commissioner may require.

[''(e) PROHIBITION ON COMBINED FUNDS.—No funds reserved by the Commissioner under this section may be combined with funds appropriated under any other Act or part of this Act if the purpose of combining funds is to make a single discretionary grant or a single discretionary payment, unless such funds appropriated under this chapter are separately identified in such grant or payment and are used for the purposes of this chapter.''.

[SEC. 490. PROGRAM OF GRANTS.

[Section 753 of the Rehabilitation Act of 1973, as redesignated by section 489, is amended—

[(1) in subsection (g), by inserting '', or contracts with,'' after ''grants to'';

[(2) by striking subsection (h);

[(3) by redesignating subsections (i) and (j) as subsections (h) and (i), respectively;

[(4) in subsection (b), by striking ''section 753'' and inserting ''section 754'';

[(5) in subsection (c)—

[(A) in paragraph (1), by striking ''section 753'' and inserting ''section 754''; and

[(B) in paragraph (2)—

[(i) by striking ''subsection (i)'' and inserting ''subsection (h)''; and

[(ii) by striking ''subsection (j)'' and inserting ''subsection (i)'';

[(6) in subsection (h), as redesignated by paragraph (3)—

[(A) in paragraph (1), by striking ''subsection (j)(4)'' and inserting ''subsection (i)(4)''; and

[(B) in paragraph (2)—

[(i) in subparagraph (A)(vi), by adding ''and'' after the semicolon;

[(ii) in subparagraph (B)(ii)(III), by striking ''; and'' and inserting a period; and

[(iii) by striking subparagraph (C); and

[(7) in subsection (i), as redesignated by paragraph (3)—

[(A) by striking paragraph (2) and inserting the following:

[''(2) MINIMUM ALLOTMENT.—

[''(A) STATES.—In the case of the several States, the District of Columbia, and the Commonwealth of Puerto Rico, the amount referred to in paragraph (1)(A) for a fiscal year is the greater of—

[''(i) $350,000;

[''(ii) an amount equal to the amount the State, the District of Columbia, or the Commonwealth of Puerto Rico received to carry out this chapter for fiscal year 2003; or

[''(iii) an amount equal to 1/3 of 1 percent of the amount appropriated under section 754, and not reserved under section 752, for the fiscal year and available for allotments under subsection (a).

[''(B) CERTAIN TERRITORIES.—In the case of Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands, the amount

referred to in paragraph (1)(A) for a fiscal year is $60,000.'';

[(B) in paragraph (3)(A), by striking ''section 753'' and inserting ''section 754, and not reserved under section 752,''; and

[(C) in paragraph (4)(B)(i), by striking ''subsection (i)'' and inserting ''subsection (h)''.

[SEC. 491. INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND AUTHORIZATION OF APPROPRIATIONS.

[Section 754 of the Rehabilitation Act of 1973, as redesignated by section 489, is amended by striking ''fiscal years 1999 through 2003'' and inserting ''fiscal years 2004 through 2009''.

[Subtitle H—Miscellaneous

[SEC. 495. HELEN KELLER NATIONAL CENTER ACT.

[(a) GENERAL AUTHORIZATION OF APPROPRIATIONS.—The first sentence of section 205(a) of the Helen Keller National Center Act (29 U.S.C. 1904(a)) is amended by striking ''1999 through 2003'' and inserting ''2004 through 2009''.

[(b) HELEN KELLER NATIONAL CENTER FEDERAL ENDOWMENT FUND.—The first sentence of section 208(h) of the Helen Keller National Center Act (29 U.S.C. 1907(h)) is amended by striking ''1999 through 2003'' and inserting ''2004 through 2009''.

[TITLE V—TRANSITION AND EFFECTIVE DATE

[SEC. 501. TRANSITION PROVISIONS.

[The Secretary of Labor shall, at the discretion of the Secretary, take such actions as the Secretary determines to be appropriate to provide for the orderly implementation of this Act.

[SEC. 502. EFFECTIVE DATE.

[Except as otherwise provided in this Act, this Act and the amendments made by this Act, shall take effect on the date of enactment of this Act.]

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Workforce Investment Act Amendments of 2003''.

SEC. 2. TABLE OF CONTENTS.

The table of contents of this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.
Sec. 3. References.

TITLE I—AMENDMENTS TO TITLE I OF THE WORKFORCE INVESTMENT ACT OF 1998

Subtitle A—Definitions

Sec. 101. Definitions.

Subtitle B—Statewide and Local Workforce Investment Systems

Sec. 111. Purpose.
Sec. 112. State workforce investment boards.
Sec. 113. State plan.
Sec. 114. Local workforce investment areas.
Sec. 115. Local workforce investment boards.
Sec. 116. Local plan.
Sec. 117. Establishment of one-stop delivery systems.
Sec. 118. Eligible providers of training services.
Sec. 119. Eligible providers of youth activities.
Sec. 120. Youth activities.
Sec. 121. Adult and dislocated worker employment and training activities.
Sec. 122. Performance accountability system.
Sec. 123. Authorization of appropriations.

Subtitle C—Job Corps

Sec. 131. Job Corps.

Subtitle D—National Programs

Sec. 141. Native American programs.
Sec. 142. Migrant and seasonal farmworker programs.
Sec. 143. Veterans' workforce investment programs.
Sec. 144. Youth challenge grants.
Sec. 145. Technical assistance.
Sec. 146. Demonstration, pilot, multiservice, research, and multistate projects.
Sec. 147. National dislocated worker grants.
Sec. 148. Authorization of appropriations for national activities.

Subtitle E—Administration

Sec. 151. Requirements and restrictions.
Sec. 152. Reports.
Sec. 153. Administrative provisions.
Sec. 154. Use of certain real property.
Sec. 155. Table of contents.

Subtitle F—Incentive Grants

Sec. 161. Incentive grants.

TITLE II—AMENDMENTS TO THE ADULT EDUCATION AND FAMILY LITERACY ACT

Sec. 201. Short title; purpose.
Sec. 202. Definitions.
Sec. 203. Authorization of appropriations.
Sec. 204. Home schools.
Sec. 205. Reservation of funds; grants to eligible agencies; allotments.
Sec. 206. Performance accountability system.
Sec. 207. State administration.
Sec. 208. State distribution of funds; matching requirement.
Sec. 209. State leadership activities.
Sec. 210. State plan.
Sec. 211. Programs for corrections education and other institutionalized individuals.
Sec. 212. Grants and contracts for eligible providers.
Sec. 213. Local application.
Sec. 214. Local administrative cost limits.
Sec. 215. Administrative provisions.
Sec. 216. National Institute for Literacy.
Sec. 217. National leadership activities.
Sec. 218. Integrated English literacy and civics education.
Sec. 219. Transition.

TITLE III—AMENDMENTS TO OTHER PROVISIONS OF LAW

Sec. 301. Wagner-Peyser Act.

TITLE IV—REHABILITATION ACT AMENDMENTS

Sec. 401. Short title.
Sec. 402. Technical amendments to table of contents.
Sec. 403. Purpose.
Sec. 404. Definitions.
Sec. 405. Administration of the Act.
Sec. 406. Carryover.

Subtitle A—Vocational Rehabilitation Services

Sec. 411. Declaration of policy; authorization of appropriations.
Sec. 412. State plans.
Sec. 413. Eligibility and individualized plan for employment.
Sec. 414. Vocational rehabilitation services.
Sec. 415. State rehabilitation council.
Sec. 416. Evaluation standards and performance indicators.
Sec. 417. State allotments.
Sec. 418. Client assistance program.
Sec. 419. Incentive grants.
Sec. 420. Vocational rehabilitation services grants.
Sec. 421. GAO studies.

Subtitle B—Research and Training

Sec. 431. Authorization of appropriations.
Sec. 432. National Institute on Disability and Rehabilitation Research.
Sec. 433. Research and other covered activities.
Sec. 434. Rehabilitation research advisory council.

Subtitle C—Professional Development and Special Projects and Demonstrations

Sec. 441. Training.
Sec. 442. Demonstration and training programs.
Sec. 443. Migrant and seasonal farmworkers.
Sec. 444. Recreational programs.

Subtitle D—National Council on Disability

Sec. 451. Authorization of appropriations.

Subtitle E—Rights and Advocacy

Sec. 461. Architectural and transportation barriers compliance board.
Sec. 462. Protection and advocacy of individual rights.

Subtitle F—Employment Opportunities for Individuals With Disabilities

Sec. 471. Projects with industry authorization of appropriations.
Sec. 472. Services for individuals with significant disabilities authorization of appropriations.

Subtitle G—Independent Living Services and Centers for Independent Living

Sec. 481. State plan.
Sec. 482. Statewide independent living council.
Sec. 483. Independent living services authorization of appropriations.
Sec. 484. Program authorization.
Sec. 485. Grants to centers for independent living in States in which Federal funding exceeds State funding.
Sec. 486. Grants to centers for independent living in States in which State funding equals or exceeds Federal funding.
Sec. 487. Standards and assurances for centers for independent living.
Sec. 488. Centers for independent living authorization of appropriations.
Sec. 489. Independent living services for older individuals who are blind.
Sec. 490. Program of grants.
Sec. 491. Independent living services for older individuals who are blind authorization of appropriations.

Subtitle H—Miscellaneous

Sec. 495. Helen Keller National Center Act.

TITLE V—TRANSITION AND EFFECTIVE DATE

Sec. 501. Transition provisions.
Sec. 502. Effective date.

SEC. 3. REFERENCES.

Except as otherwise expressly provided, wherever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Workforce Investment Act of 1998 (29 U.S.C. 2801 et seq.).

TITLE I—AMENDMENTS TO TITLE I OF THE WORKFORCE INVESTMENT ACT OF 1998

Subtitle A—Definitions

SEC. 101. DEFINITIONS.

Section 101 (29 U.S.C. 2801) is amended—

(1) by redesignating paragraphs (1) through (4), (5) through (16), (17), (18) through (41), and (42) through (53) as paragraphs (2) through (5), (7) through (18), (20), (23) through (46), and (48) through (59), respectively;

(2) by inserting before paragraph (2) (as redesignated by paragraph (1)) the following:

''(1) ACCRUED EXPENDITURES.—The term 'accrued expenditures' means charges incurred by recipients of funds under this title for a given period requiring the provision of funds for—

''(A) goods or other tangible property received;

''(B) services performed by employees, contractors, subgrantees, subcontractors, and other payees; and

''(C) other amounts becoming owed under programs assisted under this title for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.'';

(3) in paragraph (2) (as redesignated by paragraph (1)), by striking ''Except in sections 127 and 132,'' and inserting ''Except in section 132,'';

(4) by striking paragraph (5) (as redesignated by paragraph (1)) and inserting the following:

''(5) BASIC SKILLS DEFICIENT.—The term 'basic skills deficient' means, with respect to an individual, that the individual—

''(A) has English reading, writing, or computing skills at or below the 8th grade level on a generally accepted standardized test or a comparable score on a criterion-referenced test; or

''(B) is unable to compute or solve problems, read, write, or speak English at a level necessary to function on the job, in the individual's family, or in society.'';

(5) by inserting after paragraph (5) (as redesignated by paragraph (1)) the following:

''(6) BUSINESS INTERMEDIARY.—The term 'business intermediary' means an entity that brings together various stakeholders with an expertise in an industry or business sector.'';

(6) in paragraph (9) (as redesignated by paragraph (1)), by inserting '', including a faith-based organization,'' after ''nonprofit organization'';

(7) in paragraph (10) (as redesignated by paragraph (1))—

(A) in subparagraph (B), by striking ''and'' after the semicolon;

(B) in subparagraph (C)—

(i) by striking ''for not less than 50 percent of the cost of the training.'' and inserting ''for—

''(i) a significant portion of the cost of training as determined by the local board, taking into account the size of the employer and such other factors as the local board determines to be appropriate; and

''(ii) for customized training (as defined in subparagraphs (A) and (B)) with an employer in multiple local areas in the State, a significant portion of the cost of the training, as determined by the Governor, taking into account the size of the employer and such other factors as the Governor determines to be appropriate.'';

(8) in paragraph (11) (as redesignated by paragraph (1))—

(A) in subparagraph (A)(ii)(II), by striking ''section 134(c)'' and inserting ''section 121(e)'';

(B) in subparagraph (C), by striking ''or'' after the semicolon;

(C) in subparagraph (D), by striking the period and inserting ''; or''; and

(D) by adding at the end the following:

''(E)(i) is the spouse of a member of the Armed Forces on active duty for a period of more than 30 days (as defined in section 101(d)(2) of title 10, United States Code) who has experienced a loss of employment as a direct result of relocation to accommodate a permanent change in duty station of such member; or

''(ii) is the spouse of a member of the Armed Forces on active duty who meets the criteria described in paragraph (12)(B).'';

(9) in paragraph (12)(A) (as redesignated by paragraph (1))—

(A) by striking ''and'' after the semicolon and inserting ''or'';

(B) by striking ''(A)'' and inserting ''(A)(i)''; and

(C) by adding at the end the following:

''(ii) is the dependent spouse of a member of the Armed Forces on active duty for a period of more than 30 days (as defined in section 101(d)(2) of title 10, United States Code) whose family income is significantly reduced because of a deployment (as defined in section 991(b) of title 10, United States Code, or pursuant to paragraph (4) of such section), a call or order to active duty pursuant to a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code, a permanent change of station, or the service-connected (as defined in section 101(16) of title 38, United States Code) death or disability of the member; and'';

(10) in paragraph (14)(A) (as redesignated by paragraph (1)), by striking ''section 122(e)(3)'' and inserting ''section 122'';

(11) by inserting after paragraph (18) (as redesignated by paragraph (1)) the following:

''(19) HARD-TO-SERVE POPULATIONS.—The term 'hard-to-serve populations' means populations of individuals who are hard to serve, including displaced homemakers, low-income individuals, Native Americans, individuals with disabilities, older individuals, ex-offenders, homeless individuals, individuals with limited English proficiency, individuals who do not meet the definition of literacy in section 203, individuals facing substantial cultural barriers, migrant and seasonal farmworkers, individuals within 2 years of exhausting lifetime eligibility under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), and such other groups as the Governor determines to be hard to serve.'';

(12) by inserting after paragraph (20) (as redesignated by paragraph (1)) the following:

''(21) INTEGRATED TRAINING PROGRAM.—The term 'integrated training program' means a program that combines occupational skills training with English language acquisition.

''(22) INSTITUTION OF HIGHER EDUCATION.—The term 'institution of higher education' has the meaning given the term in section 101(a), and subparagraphs (A) and (B) of section 102(a)(1), of the Higher Education Act of 1965 (20 U.S.C. 1001(a), 1002(a)(1)).'';

(13) in paragraph (30) (as redesignated by paragraph (1))—

(A) by redesignating subparagraphs (D) through (F) as subparagraphs (E) through (G), respectively; and

(B) by inserting after subparagraph (C) the following:

''(D) receives or is eligible to receive a free or reduced price lunch under the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.);'';

(14) in paragraph (35) (as redesignated by paragraph (1)), by inserting '', subject to section 121(b)(1)(C)'' after ''121(b)(1)'';

(15) by striking paragraph (38) (as redesignated by paragraph (1)) and inserting the following:

''(38) OUT-OF-SCHOOL YOUTH.—The term 'out-of-school youth' means an out-of-school youth as defined in section 129(a)(1)(B).'';

(16) in paragraph (46) (as redesignated by paragraph (1)), by striking '', and the term means such Secretary for purposes of section 503'';

(17) by inserting after paragraph (46) (as redesignated by paragraph (1)) the following:

''(47) SELF-SUFFICIENCY.—The term 'self-sufficiency' means self-sufficiency within the meaning of subsections (a)(3)(A)(x) and (e)(1)(A)(xii) of section 134.'';

(18) in paragraph (49) (as redesignated by paragraph (1)), by striking ''clause (iii) or (v) of section 136(b)(3)(A)'' and inserting ''section 136(b)(3)(A)(iii)'';

(19) in paragraph (58) (as redesignated by paragraph (1)), by striking ''(or as described in section 129(c)(5))'' and inserting ''(or as described in section 129(a)(2))''; and

(20) in paragraph (59) (as redesignated by paragraph (1)), by striking ''established under section 117(h)'' and inserting ''that may be established under section 117(h)(2)''.

Subtitle B—Statewide and Local Workforce Investment Systems

SEC. 111. PURPOSE.

Section 106 (29 U.S.C. 2811) is amended to read as follows:

''SEC. 106. PURPOSES.

''The purposes of this subtitle are the following:

''(1)(A) Primarily, to provide workforce investment activities, through statewide and local workforce investment systems, that increase the employment, retention, self-sufficiency, and earnings of participants, and increase occupational skill attainment by participants.

''(B) As a result of the provision of the activities, to improve the quality of the workforce, reduce welfare dependency, increase self-sufficiency, and enhance the productivity and competitiveness of the Nation.

''(2) To enhance the workforce investment system of the Nation by strengthening one-stop centers, providing for more effective governance arrangements, promoting access to a more comprehensive array of employment and training and related services, establishing a targeted approach to serving youth, improving performance accountability, and promoting State and local flexibility.

''(3) To provide workforce investment activities in a manner that promotes the informed choice of participants and actively involves participants in decisions affecting their participation in such activities.

''(4) To provide workforce investment systems that are demand-driven and responsive to the needs of all employers, including small employers.

''(5) To provide workforce investment systems that work in all areas of the Nation, including urban and rural areas.

''(6) To allow flexibility to meet State, local, regional, and individual workforce investment needs.

''(7) To recognize and reinforce the vital link between economic development and workforce investment activities.

''(8) To provide for accurate data collection, reporting, and performance measures that are not unduly burdensome.

''(9) To address the ongoing shortage of essential skills in the United States workforce related to both manufacturing and knowledge-based economies to ensure that the United States remains competitive in the global economy.

''(10) To equip workers with higher skills and contribute to lifelong education.

''(11) To eliminate training disincentives for hard-to-serve populations and minority workers, including effectively utilizing community programs, services, and agencies.

''(12) To educate limited English proficient individuals about skills and language so the individuals are employable.

''(13) To increase the employment, retention and earnings of individuals with disabilities.''.

SEC. 112. STATE WORKFORCE INVESTMENT BOARDS.

(a) MEMBERSHIP.—

(1) IN GENERAL.—Section 111(b) (29 U.S.C. 2821(b)) is amended—

(A) in paragraph (1), by striking subparagraph (C) and inserting the following:

''(C) representatives appointed by the Governor, who—

''(i) are the lead State agency officials with responsibility for the programs and activities that are described in section 121(b) and carried out by one-stop partners, except that—

''(I) in any case in which no lead State agency official has responsibility for such a program or activity, the representative shall be a representative in the State with expertise relating to such program or activity; and

''(II) in the case of the programs authorized under title I of the Rehabilitation Act of 1973, the representative shall be the director of the designated State unit, as defined in section 7 of the Rehabilitation Act of 1973 (29 U.S.C. 705);

''(ii) are the State agency officials responsible for economic development;

''(iii) are representatives of business in the State, including small businesses, who—

''(I) are owners of businesses, chief executive or operating officers of businesses, or other business executives or employers with optimum policymaking or hiring authority;

''(II) represent businesses with employment opportunities that reflect employment opportunities in the State; and

''(III) are appointed from among individuals nominated by State business organizations, business trade associations, and local boards;

''(iv) are chief elected officials (representing cities and counties, where appropriate);

''(v) are representatives of labor organizations, who have been nominated by State labor federations; and

''(vi) are such other State agency officials and other representatives as the Governor may designate.''; and

(B) in paragraph (3), by striking ''paragraph (1)(C)(i)'' and inserting ''paragraph (1)(C)(iii)''.

(2) CONFORMING AMENDMENT.—Section 111(c) (29 U.S.C. 2821(c)) is amended by striking ''subsection (b)(1)(C)(i)'' and inserting ''subsection (b)(1)(C)(iii)''.

(b) FUNCTIONS.—Section 111(d) (29 U.S.C. 2811(d)) is amended—

(1) in paragraph (1), by striking ''development'' and inserting ''development, implementation, and revision'';

(2) in paragraph (2), by striking ''section 134(c)'' and inserting ''section 121(e)'';

(3) by striking paragraph (3) and inserting the following:

''(3) reviewing and providing comment on the State plans of all one-stop partner programs, where applicable, in order to provide effective strategic leadership in the development of a high quality, comprehensive statewide workforce investment system, including commenting at least once annually on the measures taken pursuant to section 113(b)(3) of the Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C 2323(b)(3)) and title II of this Act;

(4) by redesignating paragraphs (4) through (9) as paragraphs (5) through (10), respectively;

(5) by inserting after paragraph (3) the following:

''(4) development and review of statewide policies affecting the coordinated provision of services through the one-stop delivery systems described in section 121(e) within the State, including—

''(A) the development of objective criteria and procedures for use by local boards in assessing the effectiveness and continuous improvement of one-stop centers under section 121(g);

''(B) the development of guidance for the allocation of one-stop center infrastructure funds under section 121(h)(1)(B);

''(C) the development of—

''(i) statewide policies relating to the appropriate roles and contributions of one-stop partner programs within the one-stop delivery system, including approaches to facilitating equitable and efficient cost allocation in the one-stop delivery system;

''(ii) statewide strategies for providing effective outreach to individuals, including hard-to-serve populations, and employers who could benefit from services provided through the one-stop delivery system; and

''(iii) strategies for technology improvements to facilitate access to services provided through the one-stop delivery system, in remote areas, and for individuals with disabilities, which may be utilized throughout the State;

''(D) identification and dissemination of information on best practices for effective operation of one-stop centers, including use of innovative business outreach, partnerships, and service delivery strategies, including for hard-to-serve populations; and

''(E) conduct of such other matters as may promote statewide objectives for, and enhance the performance of, the one-stop delivery systems;'';

(6) in paragraph (5) (as redesignated by paragraph (4)), by inserting ''and the development of statewide criteria to be used by chief elected officials for the appointment of local boards consistent with section 117'' after ''section 116'';

(7) in paragraph (6) (as redesignated by paragraph (4)), by striking ''sections 128(b)(3)(B) and 133(b)(3)(B)'' and inserting ''sections 128(b)(3) and 133(b)(3)(B)'';

(8) in paragraph (9) (as redesignated by paragraph (4)), by striking ''and'' after the semicolon;

(9) in paragraph (10) (as redesignated by paragraph (4))—

(A) by striking ''section 503'' and inserting ''section 136(i)(1)''; and

(B) by striking the period and inserting ''; and''; and

(10) by adding at the end the following:

''(11) increasing the availability of skills training, employment opportunities, and career advancement, for hard-to-serve populations.''.

(c) ALTERNATIVE ENTITY.—Section 111(e) (29 U.S.C. 2811(e)) is amended—

(1) in paragraph (1), by striking ''For'' and inserting ''Subject to paragraph (3), for''; and

(2) by adding at the end the following:

''(3) FAILURE TO MEET PERFORMANCE MEASURES.—If a State fails to have performed successfully, as defined in section 116(a)(2), the Secretary may require the State to establish a State board in accordance with subsections (a), (b), and (c) in lieu of the alternative entity established under paragraph (1).''.

(d) SUNSHINE PROVISION.—Section 111(g) (29 U.S.C. 2822(g)) is amended—

(1) by inserting '', and modifications to the State plan,'' before ''prior''; and

(2) by inserting '', and modifications to the State plan'' after ''the plan''.

(e) AUTHORITY TO HIRE STAFF.—Section 111 (29 U.S.C. 2811)) is amended by adding at the end the following:

''(h) AUTHORITY TO HIRE STAFF.—The State board may hire staff to assist in carrying out the functions described in subsection (d) using funds allocated under sections 127(b)(1)(C) and 132(b).''.

SEC. 113. STATE PLAN.

(a) PLANNING CYCLE.—Section 112(a) (29 U.S.C. 2822(a)) is amended—

(1) by striking ''5-year strategy'' and inserting ''4-year strategy''; and

(2) by adding at the end the following: ''At the end of the first 2-year period of the 4-year State plan, the State board shall review and, as needed, amend the 4-year State plan to reflect labor market and economic conditions. In addition, the State shall submit a modification to the State plan at the end of the first 2-year period of the State plan, which may include redesignation of local areas pursuant to section 116(a) and specification of the levels of performance under sections 136 for the third and fourth years of the plan.''.

(b) CONTENTS.—Section 112(b) (29 U.S.C. 2822(b)) is amended—

(1) in paragraph (8)(A)—

(A) in clause (ix), by striking ''and'' after the semicolon; and

(B) by adding at the end the following:

''(xi) programs authorized under title II of the Social Security Act (42 U.S.C. 401 et seq.) (relating to Federal old-age, survivors, and disability insurance benefits), title XVI of such Act (42 U.S.C. 1381 et seq.) (relating to supplemental security income), title XIX of such Act (42 U.S.C. 1396 et seq.) (relating to medicaid), and title XX of such Act (relating to block grants to States for social services), programs authorized under title VII of the Rehabilitation Act of 1973 (29 U.S.C. 796 et seq.), and programs carried out by State agencies relating to mental retardation and developmental disabilities; and'';

(2) by striking paragraph (10) and inserting the following:

''(10) a description of how the State will use funds the State received under this subtitle to leverage other Federal, State, local, and private resources, in order to maximize the effectiveness of such resources, expand resources for the provision of education and training services, and expand the participation of businesses, employees, and individuals in the statewide workforce investment system, including a description of incentives and technical assistance the State will provide to local areas for such purposes;'';

(3) in paragraph (12)(A), by striking ''sections 128(b)(3)(B) and 133(b)(3)(B)'' and inserting ''sections 128(b)(3) and 133(b)(3)(B)'';

(4) in paragraph (14), by striking ''section 134(c)'' and inserting ''section 121(e)'';

(5) in paragraph (17)—

(A) in subparagraph (A)—

(i) in clause (iii)—

(I) by inserting ''local'' before ''customized training''; and

(II) by striking ''and'' at the end;

(ii) in clause (iv), by striking ''(including displaced homemakers),'' and all that follows through ''disabilities)'' and inserting '', hard-to-serve populations and individuals training for nontraditional employment''; and

(iii) by adding after clause (iv) the following:

''(v) how the State will serve the employment and training needs of individuals with disabilities, consistent with section 188 and Executive Order 13217 (42 U.S.C. 12131 note; relating to community-based alternatives for individuals with disabilities), including the provision of outreach, intake, the conduct of assessments, service delivery, the development of adjustments to performance measures established under section 136, and the training of staff; and''; and

(B) in subparagraph (B), by striking ''and'' at the end;

(6) in paragraph (18)(D)—

(A) by striking ''youth opportunity grants'' and inserting ''youth challenge grants authorized under section 169 and other federally funded youth programs''; and

(B) by striking the period and inserting a semicolon; and

(7) by adding at the end the following:

''(19) a description of how the State will utilize technology to facilitate access to services in remote areas, which may be utilized throughout the State;

''(20) a description of the State strategy for coordinating workforce investment activities and economic development activities;

''(21) a description of the State strategy and assistance to be provided for ensuring regional cooperation within the State and across State borders as appropriate;

''(22) a description of how the State will use funds the State receives under this subtitle to—

''(A) implement innovative programs and strategies designed to meet the needs of all businesses in the State, including small businesses, which may include incumbent worker training programs, sectoral and industry cluster strategies, regional skills alliances, career ladder programs, utilization of effective business intermediaries, and other business services and strategies that better engage employers in workforce investment activities and make the statewide workforce investment system more relevant to the needs of State and local businesses, consistent with the objectives of this title; and

''(B) provide incentives and technical assistance to assist local areas in more fully engaging all employers, including small employers, in local workforce investment activities, to make the workforce investment system more relevant to the needs of area businesses, and to better coordinate workforce investment and economic development efforts to contribute to the economic well-being of the local area, as determined appropriate by the local board;

''(23) a description of the State strategy—

''(A) for ensuring cooperation between transportation providers, including public transportation providers, and providers of workforce investment activities; and

''(B) for ensuring coordination among appropriate State agencies and programs to make available skills training, employment services and opportunities, and career advancement activities, that will assist ex-offenders in reentering the workforce;

''(24) a description of how the State will assist local areas in assuring physical and programmatic accessibility for individuals with disabilities at one-stop centers;

''(25) a description of the process and methodology that will be used by the State board to—

''(A) review statewide policies and provide guidance on the coordinated provision of services through the one-stop delivery system described in section 121;

''(B) establish, in consultation with chief elected officials and local boards, objective criteria and procedures for use by local boards in periodically assessing the effectiveness, physical and programmatic accessibility, and continuous improvement of one-stop centers and one-stop delivery systems as described in section 121(g); and

''(C) determine—

''(i) one-stop partner program contributions for the costs of the infrastructure of one-stop centers under section 121(h)(2); and

''(ii) the formula for allocating the funds described in section 121(h)(2) to local areas;

''(26) a description of the State strategy for ensuring that activities carried out under this title are placing men and women in jobs, education, or training that lead to comparable pay; and

''(27) a description of the technical assistance available to one-stop operators and providers of training services for strategies to serve hard-to-serve populations and promote placement in nontraditional employment.''.

(c) MODIFICATIONS TO PLAN.—Section 112(d) (29 U.S.C. 2822(d)) is amended—

(1) by striking ''5-year period'' and inserting ''4-year period''; and

(2) by adding at the end the following: ''In addition, the State shall submit the modifications to the State plan required under subsection (a), under circumstances prescribed by the Secretary that are due to changes in Federal law that significantly affect elements of the State plan.''.

SEC. 114. LOCAL WORKFORCE INVESTMENT AREAS.

(a) DESIGNATION OF AREAS.—

(1) CONSIDERATIONS.—Section 116(a)(1)(B) (29 U.S.C. 2831(a)(1)(B)) is amended by adding at the end the following:

''(vi) The extent to which such local areas will promote maximum effectiveness in the administration and provision of services.''.

(2) AUTOMATIC DESIGNATION.—Section 116(a)(2) (29 U.S.C. 2831(a)(2)) is amended to read as follows:

''(2) AUTOMATIC DESIGNATION.—

''(A) IN GENERAL.—The Governor shall approve a request for designation as a local area that is submitted prior to the submission of the State plan, or of a modification to the State plan relating to area designation, from any area that—

''(i) is a unit of general local government with a population of 500,000 or more, except that after the initial 2-year period following such designation pursuant to this clause that occurs after the date of enactment of the Workforce Investment Act Amendments of 2003, the Governor shall only be required to approve a request for designation from such area if such area—

''(I) performed successfully; and

''(II) sustained fiscal integrity;

''(ii) was a local area under this title for the preceding 2-year period, if such local area—

''(I) performed successfully; and

''(II) sustained fiscal integrity;

''(iii) is served by a rural concentrated employment program grant recipient, except that after the initial 2-year period following any such designation under the initial State plan submitted after the date of enactment of the Workforce Investment Act Amendments of 2003, the Governor shall only be required to approve a request for designation under this clause for such area if such area—

''(I) performed successfully; and

''(II) sustained fiscal integrity; or

''(iv) was a local area under section 116(a)(2)(C) (as in effect on the day before the date of enactment of the Workforce Investment Act Amendments of 2003), except that after the initial 2-year period following such designation pursuant to this clause that occurs after that date of enactment, the Governor shall only be required to approve a request for designation under this clause for such area if such area—

''(I) performed successfully; and

''(II) sustained fiscal integrity.

''(B) DEFINITIONS.—For purposes of this paragraph:

''(i) PERFORMED SUCCESSFULLY.—The term 'performed successfully', when used with respect to a local area, means the local area performed at 80 percent or more of the adjusted level of performance for core indicators of performance described in section 136(b)(2)(A) for 2 consecutive years.

''(ii) SUSTAINED FISCAL INTEGRITY.—The term 'sustained fiscal integrity', used with respect to an area, means that the Secretary has not made a formal determination during the preceding 2-year period that either the grant recipient or the administrative entity of the area misexpended funds provided under this title due to willful disregard of the requirements of the Act involved, gross negligence, or failure to comply with accepted standards of administration.''.

(3) CONFORMING AMENDMENTS.—Section 116(a) (29 U.S.C. 2831(a)) is amended—

(A) by striking paragraph (3);

(B) by redesignating paragraphs (4) and (5) as paragraph (3) and (4), respectively;

(C) in paragraph (3) (as redesignated by subparagraph (B))—

(i) by striking ''(including temporary designation)''; and

(ii) by striking ''(v)'' and inserting ''(vi)''; and

(D) in paragraph (4) (as redesignated by subparagraph (B))—

(i) by striking ''under paragraph (2) or (3)'' and inserting ''under paragraph (2)''; and

(ii) by striking the second sentence.

(b) SINGLE LOCAL AREA STATES.—Section 116(b) (29 U.S.C. 2831(b)) is amended to read as follows:

''(b) SINGLE LOCAL AREA STATES.—

''(1) CONTINUATION OF PREVIOUS DESIGNATION.—Notwithstanding subsection (a)(2), the Governor of any State that was a single local area for purposes of this title as of July 1, 2002, may continue to designate the State as a single local area for purposes of this title if the Governor identifies the State as a local area in the State plan under section 112(b)(5).

''(2) REDESIGNATION.—The Governor of a State not described in paragraph (1) may designate the State as a single local area if, prior to the submission of the State plan or modification to such plan so designating the State, no local area meeting the requirements for automatic designation under subsection (a)(2) requests such designation as a separate local area.

''(3) EFFECT ON LOCAL PLAN.—In any case in which a State is designated as a local area pursuant to this subsection, the local plan prepared under section 118 for the area shall be submitted to the Secretary for approval as part of the State plan under section 112.''.

(c) REGIONAL PLANNING.—Section 116(c) (29 U.S.C. 2831(c)) is amended—

(1) by striking paragraph (1) and inserting the following:

''(1) PLANNING.—

''(A) IN GENERAL.—As part of the process for developing the State plan, a State may require regional planning by local boards for a designated region in the State. The State may require the local boards for a designated region to participate in a regional planning process that results in the establishment of regional performance measures for workforce investment activities authorized under this subtitle. The State, after consultation with local boards and chief elected officials, may require the local boards for the designated region to prepare, submit, and obtain approval of a single regional plan that incorporates local plans for each of the local areas in the region, as required under section 118. The State may award regional incentive grants to the designated regions that meet or exceed the regional performance measures pursuant to section 134(a)(2)(B)(iii).

''(B) TECHNICAL ASSISTANCE.—If the State requires regional planning as provided in subparagraph (A), the State shall provide technical assistance and labor market information to such local areas in the designated regions to assist with such regional planning and subsequent service delivery efforts.'';

(2) in paragraph (2), by inserting ''information about the skill requirements of existing and emerging industries and industry clusters,'' after ''information about employment opportunities and trends,''; and

(3) in paragraph (3), by adding at the end the following: ''Such services may be required to be coordinated with regional economic development services and strategies.''.

SEC. 115. LOCAL WORKFORCE INVESTMENT BOARDS.

(a) COMPOSITION.—Section 117(b) (29 U.S.C. 2832(b)) is amended—

(1) in paragraph (2)(A)—

(A) in clause (i), by striking subclause (II) and inserting the following:

''(II) collectively, represent businesses with employment opportunities that reflect the employment opportunities of the local area, and include representatives of businesses that are in high-growth and emerging industries, and representatives of businesses, including small businesses, in the local area; and'';

(B) by striking clause (ii) and inserting the following:

''(ii)(I) a superintendent representing the local school districts involved or another high-level official from such districts;

''(II) the president or highest ranking official of an institution of higher education serving the local area; and

''(III) an administrator of local entities providing adult education and literacy activities in the local area;'';

(C) in clause (iv), by inserting '', hard-to-serve populations,'' after ''disabilities''; and

(D) by striking clause (vi) and inserting the following:

''(vi) if the local board does not establish or continue a youth council, representatives with experience serving out-of-school youth, particularly out-of-school youth facing barriers to employment; and''; and

(2) by adding at the end the following:

''(6) SPECIAL RULE.—In the case that there are multiple school districts or institutions of higher education serving a local area, the representatives described in subclause (I) or (II) of paragraph (2)(A)(ii), respectively, shall be appointed from among individuals nominated by regional or local educational agencies, institutions, or organizations representing such agencies or institutions.''.

(b) AUTHORITY OF BOARD MEMBERS.—Section 117(b)(3) (29 U.S.C. 2832(b)(3)) is amended—

(1) in the heading, by inserting ''AND REPRESENTATION'' after ''AUTHORITY''; and

(2) by adding at the end the following: ''The members of the board shall represent diverse geographic sections within the local area.''.

(c) CONFORMING AMENDMENT.—Section 117(c)(1)(C) (29 U.S.C. 2832(c)(1)(C)) is amended by striking ''section 116(a)(2)(B)'' and inserting ''section 116(a)(2)(A)(ii)''.

(d) FUNCTIONS.—Section 117(d) (29 U.S.C. 2832(d)) is amended—

(1) in paragraph (2)—

(A) in subparagraph (B)—

(i) by inserting ''(except as provided in section 123(b))'' after ''basis''; and

(ii) by inserting ''(where appropriate)'' after ''youth council''; and

(B) by adding at the end the following:

''(E) CONSUMER CHOICE REQUIREMENTS.—Consistent with sections 122 and paragraphs (3) and (4) of 134(d), the local board shall work to ensure there are sufficient providers of intensive services and training services serving the local area in a manner that maximizes consumer choice, including providers with expertise in assisting individuals with disabilities.'';

(2) in paragraph (4), by inserting '', and shall ensure the appropriate use and management of the funds provided under this subtitle for such programs, activities, and system'' after ''area'';

(3) in paragraph (8)—

(A) by inserting '', including small employers,'' after ''private sector employers''; and

(B) by striking the period and inserting '', taking into account the unique needs of small businesses.''; and

(4) by adding at the end the following:

''(9) TECHNOLOGY IMPROVEMENTS.—The local board shall develop strategies for technology improvements to facilitate access to services, in remote areas, for services authorized under this subtitle and carried out in the local area.''.

(e) CONFORMING AMENDMENT.—Section 117(f)(2) (29 U.S.C. 2832(f)(2)) is amended by striking ''described in section 134(c)''.

(f) AUTHORITY TO ESTABLISH COUNCILS AND ELIMINATION OF REQUIREMENT FOR YOUTH COUNCILS.—Section 117(h) (29 U.S.C. 2832(h)) is amended to read as follows:

''(h) COUNCILS.—The local board may establish or continue councils to provide information and advice to assist the local board in carrying out activities under this title. Such councils may include—

''(1) a council composed of one-stop partners to advise the local board on the operation of the one-stop delivery system involved;

''(2) a youth council composed of experts and stakeholders in youth programs to advise the local board on youth activities; and

''(3) such other councils as the local board determines are appropriate.''.

(g) ALTERNATIVE ENTITY PROVISION.—Section 117(i)(1) (29 U.S.C. 2832(i)(1)) is amended—

(1) by striking subparagraph (B) and inserting the following:

''(B) was in existence on August 7, 1998, pursuant to State law; and'';

(2) by striking subparagraph (C); and

(3) by redesignating subparagraph (D) as subparagraph (C).

SEC. 116. LOCAL PLAN.

(a) PLANNING CYCLE.—Section 118(a) (29 U.S.C. 2833(a)) is amended—

(1) by striking ''5-year'' and inserting ''4-year''; and

(2) by adding at the end the following: ''At the end of the first 2-year period of the 4-year plan, the local board shall review and, as needed, amend the 4-year plan to reflect labor market and economic conditions.''.

(b) CONTENTS.—Section 118(b) (29 U.S.C. 2833(b)) is amended—

(1) in paragraph (2)—

(A) in subparagraph (A), by striking ''and'' after the semicolon;

(B) by striking subparagraph (B) and inserting the following:

''(B) a description of how the local board will facilitate access to services provided through the one-stop delivery system, in remote areas, including facilitating access through the use of technology; and''; and

(C) by adding at the end the following:

''(C) a description of how the local board will ensure physical and programmatic accessibility for individuals with disabilities at one-stop centers;'';

(2) in paragraph (9), by striking ''; and'' and inserting a semicolon;

(3) by redesignating paragraph (10) as paragraph (14); and

(4) by inserting after paragraph (9) the following:

''(10) a description of how the local board will coordinate workforce investment activities carried out in the local area with economic development activities carried out in the local area;

''(11) a description of the strategies and services that will be initiated in the local area to more fully engage all employers, including small employers, in workforce investment activities, to make the workforce investment system more relevant to the needs of area businesses, and to better coordinate workforce investment and economic development efforts, which may include the implementation of innovative initiatives such as incumbent worker training programs, sectoral and industry cluster strategies, regional skills alliance initiatives, career ladder programs, utilization of effective business intermediaries, and other business services and strategies designed to meet the needs of area employers and contribute to the economic well-being of the local area, as determined appropriate by the local board, consistent with the objectives of this title;

''(12) a description of how the local board will expand access to education and training services for eligible individuals who are in need of such services through—

''(A) the utilization of programs funded under this title; and

''(B) the increased leveraging of resources other than those provided under this title, including tax credits, private sector-provided training, and other Federal, State, local, and private funds that are brokered through the one-stop centers for training services;

''(13) a description of how the local board will coordinate workforce investment activities carried out in the local area with the provision of transportation, including public transportation, in the local area; and''.

SEC. 117. ESTABLISHMENT OF ONE-STOP DELIVERY SYSTEMS.

(a) ONE-STOP PARTNERS.—

(1) REQUIRED PARTNERS.—Section 121(b)(1) (29 U.S.C. 2841(b)(1)) is amended—

(A) by striking subparagraph (A) and inserting the following:

''(A) ROLES AND RESPONSIBILITIES OF ONE-STOP PARTNERS.—Each entity that carries out a program or activities described in subparagraph (B) shall—

''(i) provide access through the one-stop delivery system to the programs and activities carried out by the entity, including making the core services described in section 134(d)(2) that are applicable to the program of the entity available at the comprehensive one-stop centers (in addition to any other appropriate locations);

''(ii) use a portion of the funds available to the program of the entity to maintain the one-stop delivery system, including payment of the infrastructure costs of one-stop centers in accordance with subsection (h);

''(iii) enter into a local memorandum of understanding with the local board relating to the operation of the one-stop system that meets the requirements of subsection (c);

''(iv) participate in the operation of the one-stop system consistent with the terms of the memorandum of understanding, the requirements of this title, and the requirements of the Federal laws authorizing the programs carried out by the entity; and

''(v) provide representation on the State board to the extent provided under section 111.'';

(B) in subparagraph (B)—

(i) by striking clause (v);

(ii) by redesignating clauses (vi) through (xii) as clauses (v) through (xi), respectively;

(iii) in clause (x) (as redesignated by clause (ii)), by striking ''and'' at the end;

(iv) in clause (xi) (as redesignated by clause (ii)), by striking the period and inserting ''; and''; and

(v) by adding at the end the following:

''(xii) programs authorized under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.), subject to subparagraph (C).''; and

(C) by adding at the end the following:

''(C) DETERMINATION BY THE GOVERNOR.—

''(i) IN GENERAL.—An entity that carries out programs referred to in subparagraph (B)(xii) shall be included in the one-stop partners for the local area, as a required partner, for purposes of this title unless the Governor of the State provides the notification described in clause (ii).

''(ii) NOTIFICATION.—The notification referred to in clause (i) is a notification that—

''(I) is made in writing of a determination by the Governor not to include such entity in the one-stop partners described in clause (i); and

''(II) is provided to the Secretary and the Secretary of Health and Human Services.''.

(2) ADDITIONAL PARTNERS.—

(A) IN GENERAL.—Section 121(b)(2)(A) (29 U.S.C. 2841(b)(2)(A)) is amended to read as follows:

''(A) IN GENERAL.—With the approval of the local board and chief elected official, in addition to the entities described in paragraph (1), other entities that carry out human resource programs described in subparagraph (B) may be one-stop partners and carry out the responsibilities described in paragraph (1)(A).''.

(B) ADDITIONAL PARTNERS.—Section 121(b)(2)(B) (29 U.S.C. 2841(b)(2)(B)) is amended by striking clauses (i) through (iii) and inserting the following:

''(i) employment and training programs administered by the Social Security Administration, including the Ticket to Work and Self-Sufficiency program established under section 1148 of the Social Security Act (42 U.S.C. 1320b–19);

''(ii) employment and training programs carried out by the Small Business Administration;

''(iii) programs authorized under section 6(d)(4) of the Food Stamp Act of 1977 (7 U.S.C. 2015(d)(4));''.

(b) LOCAL MEMORANDUM OF UNDERSTANDING.—Section 121(c)(2)(A) (29 U.S.C. 2841(c)(2)(A)) is amended to read as follows:

''(A) provisions describing—

''(i) the services to be provided through the one-stop delivery system consistent with the requirements of this section, including the manner in which the services will be coordinated through such system;

''(ii) how the costs of such services and the operating costs of such system will be funded to provide a stable and equitable funding stream for ongoing one-stop system operations, including the funding of the infrastructure costs of one-stop centers in accordance with subsection (h);

''(iii) methods of referral of individuals between the one-stop operator and the one-stop partners for appropriate services and activities;

''(iv) methods to ensure the needs of hard-to-serve populations are addressed in providing access to services through the one-stop system; and

''(v) the duration of the memorandum of understanding and the procedures for amending the memorandum during the term of the memorandum, and assurances that such memorandum shall be reviewed not less than once every 2-year period to ensure appropriate funding and delivery of services; and''.

(c) CONFORMING AMENDMENT.—Section 121(d)(2) (29 U.S.C. 2841(d)(2)) is amended by striking ''section 134(c)'' and inserting ''section 121(e)''.

(d) PROVISION OF SERVICES.—

(1) ELIMINATION OF PROVISIONS CONCERNING ESTABLISHED SYSTEMS.—Section 121 (29 U.S.C. 2841) is amended by striking subsection (e).

(2) REDESIGNATION.—Subtitle B of title I is amended—

(A) in section 134 (29 U.S.C. 2864), by redesignating subsection (c) as subsection (e); and

(B) by transferring that subsection (e) so that the subsection appears after subsection (d) of section 121.

(3) ONE-STOP DELIVERY SYSTEMS.—Paragraph (1) of section 121(e) (29 U.S.C. 2841(e)) (as redesignated by paragraph (2)) is amended—

(A) in subparagraph (A), by striking ''subsection (d)(2)'' and inserting ''section 134(d)(2)'';

(B) in subparagraph (B)—

(i) by striking ''subsection (d)'' and inserting ''section 134(d)'';

(ii) by striking ''individual training accounts'' and inserting ''career scholarship accounts''; and

(iii) by striking ''subsection (d)(4)(G)'' and inserting ''section 134(d)(4)(G)'';

(C) in subparagraph (C), by striking ''subsection (e)'' and inserting ''section 134(e)'';

(D) in subparagraph (D), by striking ''section 121(b)'' and inserting ''subsection (b)''; and

(E) in subparagraph (E), by striking ''information described in section 15'' and inserting ''data, information, and analysis described in section 15(a)''.

(e) CONTINUOUS IMPROVEMENT OF ONE-STOP CENTERS.—Section 121 (29 U.S.C. 2841) is amended by adding at the end the following:

''(g) CONTINUOUS IMPROVEMENT OF ONE-STOP CENTERS.—

''(1) IN GENERAL.—The State board, in consultation with chief local elected officials and local boards, shall establish objective criteria and procedures for use by local boards in periodically assessing the effectiveness, physical and programmatic accessibility, and continuous improvement of one-stop centers and one-stop delivery systems.

''(2) CRITERIA.—The procedures and criteria developed under this subsection shall include minimum standards relating to the scope and degree of service coordination achieved by the one-stop delivery system with respect to the programs administered by the one-stop partners at the one-stop centers, consistent with the guidelines and guidance provided by the Governor and by the State board, in consultation with the chief elected official and local boards, for such partners' participation under subsections (h)(1)(B) and subsection (i), respectively, and such other factors relating to the quality, accessibility, and effectiveness of the one-stop delivery system as the State board determines to be appropriate.

''(3) LOCAL BOARDS.—Consistent with the criteria developed by the State, the local board may develop additional criteria of higher standards to respond to local labor market and demographic conditions and trends.

''(h) FUNDING OF ONE-STOP INFRASTRUCTURE.—

''(1) IN GENERAL.—

''(A) OPTIONS FOR INFRASTRUCTURE FUNDING.—

''(i) LOCAL OPTIONS.—The local board, chief elected officials, and one-stop partners in a local area may choose to fund the costs of the infrastructure of one-stop centers through—

''(I) methods described in the local memorandum of understanding, if, the local board, chief elected officials, and one-stop partners agree to such methods; or

''(II) the State infrastructure funding mechanism described in paragraph (2).

''(ii) FAILURE TO REACH AGREEMENT ON FUNDING METHODS.—If, as of July 1, 2004, the local board, chief elected officials, and one-stop partners in a local area fail to reach agreement on methods of sufficient funding of the infrastructure costs of one-stop centers, as determined by the local area, the State infrastructure funding mechanism described in paragraph (2) shall be applicable to such local area.

''(B) GUIDANCE FOR INFRASTRUCTURE FUNDING.—In addition to carrying out the requirements relating to the State mechanism for one-stop center infrastructure funding described in paragraph (2), the Governor, after consultation with chief local elected officials, local boards, and the State board, and consistent with the guidelines provided by the State board under subsection (i), shall provide—

''(i) guidelines for State administered one-stop partner programs in determining such programs' contributions to and participation in the one-stop delivery system, including funding for the costs of infrastructure as defined in paragraph (2)(D), negotiated pursuant to the local memorandum of understanding under subsection (c); and

''(ii) guidance to assist local areas in identifying equitable and stable alternative methods of funding of the costs of the infrastructure of one-stop centers in local areas.

''(2) STATE ONE-STOP INFRASTRUCTURE FUNDING.—

''(A) PARTNER CONTRIBUTIONS.—

''(i) IN GENERAL.—Subject to clause (iii), a portion determined under clause (ii) of the Federal funds provided to the State and areas within the State under the Federal laws authorizing the programs described in subsection (b)(1) and administered by one-stop partners for a fiscal year shall be provided to the Governor from such programs to assist in paying the costs of infrastructure of one-stop centers in those local areas of the State not funded under the option described in paragraph (1)(A)(i)(I).

''(ii) DETERMINATION OF GOVERNOR.—

''(I) IN GENERAL.—Subject to subclause (II) and clause (iii), the Governor, after consultation with chief local elected officials, local boards, and the State board, shall determine the portion of funds to be provided under clause (i) by each one-stop partner from each program described in clause (i). In making such determination, the Governor shall calculate the proportionate use of the one-stop centers for the purpose of determining funding contributions pursuant to clause (i)(II) or (ii) of paragraph (1)(A) by each partner, and the costs of administration for purposes not related to one-stop centers for each partner. The Governor shall exclude from such determination the portion of funds and use of one-stop centers attributable to the programs of one-stop partners for those local areas of the State where the infrastructure of one-stop centers is funded under the option described in paragraph (1)(A)(i)(I).

''(II) SPECIAL RULE.—In a State in which the State constitution places policymaking authority that is independent of the authority of the Governor in an entity or official with respect to the funds provided for adult education and literacy activities authorized under title II and for postsecondary vocational and technical education activities authorized under the Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C. 2301 et seq.), or vocational rehabilitation services offered under the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), the determination described in subclause (I) with respect to the programs authorized under that title and those Acts shall be made by the chief officer of the entity with such authority in consultation with the Governor.

''(III) APPEAL BY ONE-STOP PARTNERS.—The Governor shall establish a procedure for the one-stop partner administering a program described in subsection (b) to appeal a determination regarding the portion of funds to be contributed under this paragraph on the basis that such determination is inconsistent with the criteria described in the State plan or with the requirements of this paragraph. Such procedure shall ensure prompt resolution of the appeal.

''(iii) LIMITATIONS.—

''(I) PROVISION FROM ADMINISTRATIVE FUNDS.—The funds provided under this paragraph by each one-stop partner shall be provided only from funds available for the costs of administration under the program administered by such partner, and shall be subject to the program limitations with respect to the portion of funds under such program that may be used for administration.

''(II) CAP ON REQUIRED CONTRIBUTIONS.—

''(aa) WIA FORMULA PROGRAMS AND EMPLOYMENT SERVICE.—The portion of funds required to be contributed under clause (i)(II) or (ii) of paragraph (1)(A) by the programs authorized under chapters 4 and 5 and under the Wagner-Peyser Act shall not be in excess of 3 percent of the amount of Federal funds provided to carry out each such program in the State for a fiscal year.

''(bb) OTHER ONE-STOP PARTNERS.—The portion of funds required to be contributed under clause (i)(II) or (ii) of paragraph (1)(A) by a one-stop partner from a program described in subsection (b)(1) other than the programs described under item (aa) shall not be in excess of 1½ percent of the amount of Federal funds provided to carry out such program in the State for a fiscal year.

''(cc) SPECIAL RULE.—Notwithstanding items (aa) and (bb), an agreement, including a local memorandum of understanding, entered into prior to the date of enactment of the Workforce Investment Act Amendments of 2003 by an entity regarding contributions under this title that permits the percentages described in such items to be exceeded, may continue to be in effect until terminated by the parties.

''(dd) VOCATIONAL REHABILITATION.—Notwithstanding items (aa) and (bb), an entity administering a program under title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.) shall not be required to provide, for the purposes of this paragraph, an amount in excess of—

''(AA) 0.75 percent of the amount provided for such program in the State for the second program year that begins after the date of enactment of the Workforce Investment Act Amendments of 2003;

''(BB) 1.0 percent of the amount provided for such program in the State for the third program year that begins after such date;

''(CC) 1.25 percent of the amount provided for such program in the State for the fourth program year that begins after such date; and

''(DD) 1.5 percent of the amount provided for such program in the State for the fifth and each succeeding program year that begins after such date.

''(III) FEDERAL DIRECT SPENDING PROGRAMS.—An entity administering a program funded with direct spending as defined in section 250(c)(8) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 900(c)(8)) shall not be required to provide, for purposes of this paragraph, an amount in excess of the amount determined to be equivalent to the cost of the proportionate use of the one-stop centers for such program in the State.

''(IV) NATIVE AMERICAN PROGRAMS.—Native American programs established under section 166 shall not be subject to the provisions of this subsection or subsection (i). The method for determining the appropriate portion of funds to be provided by such Native American programs to pay for the costs of infrastructure of a one-stop center shall be determined as part of the development of the memorandum of understanding under subsection (c) for the one-stop center and shall be stated in the memorandum.

''(B) ALLOCATION BY GOVERNOR.—From the funds provided under subparagraph (A), the Governor shall allocate the funds to local areas in accordance with the formula established under subparagraph (C) for the purposes of assisting in paying the costs of infrastructure of one-stop centers.

''(C) ALLOCATION FORMULA.—The State board shall develop a formula to be used by the Governor to allocate the funds provided under subparagraph (A) to local areas not funding infrastructure costs under the option described in paragraph (1)(A)(i)(I). The formula shall be based on factors including the number of one-stop centers in a local area, the population served by such centers, the services provided by such centers, and other factors relating to the performance of such centers that the State board determines are appropriate.

''(D) COSTS OF INFRASTRUCTURE.—In this subsection, the term 'costs of infrastructure', used with respect to a one-stop center, means the nonpersonnel costs that are necessary for the general operation of the one-stop center, including the rental costs of the facilities, the costs of utilities and maintenance, equipment (including adaptive technology for individuals with disabilities), and technology to facilitate remote access to the one-stop center's strategic planning activities, and common outreach activities.

''(i) OTHER FUNDS.—

''(1) IN GENERAL.—Subject to the memorandum of understanding described in subsection (c) for the one-stop delivery system involved, in addition to the funds provided to carry out subsection (h), a portion of funds made available under Federal law authorizing the programs described in subsection (b) and administered by one-stop partners, or the noncash resources available under such programs, shall be used to pay the additional costs relating to the operation of the one-stop delivery system that are not paid from the funds provided under subsection (h), as determined in accordance with paragraph (2), to the extent not inconsistent with the Federal law involved. Such costs shall

include the costs of the provision of core services described in section 134(d)(2) applicable to each program and may include common costs that are not paid from the funds provided under subsection (h).

''(2) DETERMINATION AND GUIDANCE.—The method for determining the appropriate portion of funds and noncash resources to be provided by each program under paragraph (1) for a one-stop center shall be determined as part of the development of the memorandum of understanding under subsection (c) for the one-stop center and shall be stated in the memorandum. The State board shall provide guidance to facilitate the determination of an appropriate allocation of the funds and noncash resources in local areas.''.

SEC. 118. ELIGIBLE PROVIDERS OF TRAINING SERVICES.

Section 122 (29 U.S.C. 2842) is amended to read as follows:

''SEC. 122. IDENTIFICATION OF ELIGIBLE PROVIDERS OF TRAINING SERVICES.

''(a) IN GENERAL.—The Governor, after consultation with the State board, shall establish criteria and procedures regarding the eligibility of providers of training services described in section 134(d)(4) (referred to in this section as 'training services') to receive funds provided under section 133(b) for the provision of training services.

''(b) CRITERIA.—

''(1) IN GENERAL.—The criteria established by the Governor pursuant to subsection (a) shall take into account—

''(A) the performance of providers of training services with respect to the performance measures described in section 136 or other appropriate measures of performance outcomes for those individuals receiving training services under this subtitle (taking into consideration the characteristics of the population served and relevant economic conditions);

''(B) the need to ensure access to training services throughout the State, including any rural areas;

''(C) the information such providers are required to report to State agencies with respect to Federal and State programs (other than the program carried out under this subtitle), including one-stop partner programs;

''(D) the requirements for State licensing of providers of training services, and the licensing status of each provider of training services if applicable;

''(E) to the extent practicable, encouraging the use of industry-recognized standards and certification;

''(F) the ability to provide training services to hard-to-serve populations, including individuals with disabilities; and

''(G) such other factors as the Governor determines are appropriate to ensure—

''(i) the quality of services provided;

''(ii) the accountability of the providers;

''(iii) that the one-stop centers in the State will ensure that such providers meet the needs of local employers and participants;

''(iv) the informed choice of participants under chapter 5; and

''(v) that the collection of information required is not unduly burdensome or costly to providers.

''(2) INFORMATION AND RENEWAL.—The criteria established by the Governor shall require that a provider of training services submit appropriate, accurate, and timely information to the State for purposes of carrying out subsection (d). The criteria shall also provide for annual review and renewal of eligibility under this section for providers of training services.

''(3) LOCAL CRITERIA.—A local board in the State may establish criteria in addition to the criteria established by the Governor, or may require higher levels of performance than required under the criteria established by the Governor, for purposes of determining the eligibility of providers of training services to receive funds described in subsection (a) to provide the services in the local area involved.

''(c) PROCEDURES.—The procedures established under subsection (a) shall identify the application process for a provider of training services to become eligible to receive funds provided under section 133(b) for the provision of training services, and identify the respective roles of the State and local areas in receiving and reviewing the applications and in making determinations of such eligibility based on the criteria established under this section. The procedures shall also establish a process for a provider of training services to appeal a denial or termination of eligibility under this section, that includes an opportunity for a hearing and prescribes appropriate time limits to ensure prompt resolution of the appeal.

''(d) INFORMATION TO ASSIST PARTICIPANTS IN CHOOSING PROVIDERS.—

''(1) IN GENERAL.—In order to facilitate and assist participants in choosing employment and training activities under chapter 5 and in choosing providers of training services, the Governor shall ensure that an appropriate list of providers determined to be eligible under this section in the State, accompanied by appropriate information provided by providers of training services in the State in accordance with subsection (b) and such other information as the Governor determines is appropriate, including information on program costs for participants in applicable programs, is provided to the one-stop delivery system in the State. The list and the information shall be made available to such participants and to members of the public through the one-stop delivery system in the State.

''(2) SPECIAL RULE.—An entity that carries out programs under the Act of August 16, 1937 (commonly known as the 'National Apprenticeship Act', 50 Stat. 664, chapter 663; 29 U.S.C. 50 et seq.) shall be included on the list of eligible providers described in paragraph (1) for so long as such entity remains certified by the Department of Labor.

''(e) ENFORCEMENT.—

''(1) IN GENERAL.—The criteria and procedures established under this section shall provide the following:

''(A) INTENTIONALLY SUPPLYING INACCURATE INFORMATION.—Upon a determination, by an individual or entity specified in the criteria or procedures, that a provider of training services, or individual providing information on behalf of the provider, intentionally supplied inaccurate information under this section, the eligibility of such provider to receive funds under chapter 5 shall be terminated for a period of time that is not less than 2 years.

''(B) SUBSTANTIAL VIOLATIONS.—Upon a determination, by an individual or entity specified in the criteria or procedures, that a provider of training services substantially violated any requirement under this title, the eligibility of such provider to receive funds under the program involved may be terminated, or other appropriate action may be taken.

''(C) REPAYMENT.—A provider of training services whose eligibility is terminated under subparagraph (A) or (B) shall be liable for the repayment of funds received under chapter 5 during a period of noncompliance described in such subparagraph.

''(2) CONSTRUCTION.—Paragraph (1) shall be construed to provide remedies and penalties that supplement, but do not supplant, other civil and criminal remedies and penalties.

''(f) AGREEMENTS WITH OTHER STATES.—States may enter into agreements, on a reciprocal basis, to permit eligible providers of training services to accept career scholarship accounts provided in another State.

''(g) OPPORTUNITY TO SUBMIT COMMENTS.—In establishing criteria, procedures, and information required under this section, the Governor shall provide an opportunity for interested members of the public to make recommendations and submit comments regarding such criteria, procedures, and information.

''(h) TRANSITION PERIOD FOR IMPLEMENTATION.—The requirements of this section shall be implemented not later than December 31, 2004. In order to facilitate early implementation of this section, the Governor may establish transition procedures under which providers eligible to provide training services under chapter 5 as such chapter was in effect on the day before the date of enactment of the Workforce Investment Act Amendments of 2003 may continue to be eligible to provide such services until December 31, 2004, or until such earlier date as the Governor determines to be appropriate.

''(i) ON-THE-JOB TRAINING OR CUSTOMIZED TRAINING EXCEPTION.—

''(1) IN GENERAL.—Providers of on-the-job training or customized training shall not be subject to the requirements of subsections (a) through (h).

''(2) COLLECTION AND DISSEMINATION OF INFORMATION.—A one-stop operator in a local area shall collect such performance information from on-the-job training and customized training providers as the Governor may require, determine whether the providers meet such performance criteria as the Governor may require, and disseminate information identifying providers that meet the criteria as eligible providers, and the performance information, through the one-stop delivery system. Providers determined to meet the criteria shall be considered to be identified as eligible providers of training services.''.

SEC. 119. ELIGIBLE PROVIDERS OF YOUTH ACTIVITIES.

Section 123 (29 U.S.C. 2843) is amended to read as follows:

''SEC. 123. ELIGIBLE PROVIDERS OF YOUTH ACTIVITIES.

''(a) IN GENERAL.—From the funds allocated under section 128(b) to a local area, the local board for such area shall award grants or contracts on a competitive basis to providers of youth activities identified based on the criteria in the State plan described in section 112 and shall conduct oversight with respect to such providers.

''(b) EXCEPTIONS.—A local board may award grants or contracts on a sole-source basis if such board determines there is an insufficient number of eligible providers of youth activities in the local area involved (such as a rural area) for grants and contracts to be awarded on a competitive basis under subsection (a).''.

SEC. 120. YOUTH ACTIVITIES.

(a) STATE ALLOTMENTS.—Section 127 (29 U.S.C. 2852) is amended—

(1) in subsection (a)(1), by striking ''opportunity'' and inserting ''challenge''; and

(2) by striking subsection (b) and inserting the following:

''(b) ALLOTMENT AMONG STATES.—

''(1) YOUTH ACTIVITIES.—

''(A) YOUTH CHALLENGE GRANTS.—

''(i) IN GENERAL.—For each fiscal year in which the amount appropriated under section 137(a) exceeds $1,000,000,000, the Secretary shall reserve a portion of the amount to provide youth challenge grants and other activities under section 169 (relating to youth challenge grants) and provide youth activities under section 167 (relating to migrant and seasonal farmworker programs).

''(ii) PORTION.—The portion referred to in clause (i) shall equal, for a fiscal year—

''(I) except as provided in subclause (II), the difference obtained by subtracting $1,000,000,000 from the amount appropriated under section 137(a) for the fiscal year; or

''(II) for any fiscal year in which the amount is $1,250,000,000 or greater, $250,000,000.

''(iii) YOUTH ACTIVITIES FOR FARMWORKERS.—The Secretary shall reserve the greater of $10,000,000 or 4 percent of the portion described in clause (i) for a fiscal year to provide youth activities under section 167.

''(iv) NATIVE AMERICANS.—From the remainder of the amount appropriated under section 137(a) for each fiscal year the Secretary shall reserve not more than 1½ percent of such amount to provide youth activities under section 166 (relating to Native Americans).

''(B) OUTLYING AREAS.—

''(i) IN GENERAL.—From the amount made available under subsection (a)(2) for each fiscal year the Secretary shall reserve not more than ¼ of 1 percent of the amount appropriated under section 137(a) for the fiscal year to provide assistance to the outlying areas to carry out youth activities and statewide workforce investment activities.

''(ii) LIMITATION FOR FREELY ASSOCIATED STATES.—

''(I) COMPETITIVE GRANTS.—The Secretary shall use funds described in clause (i) to award grants to Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Freely Associated States to carry out youth activities and statewide workforce investment activities.

''(II) AWARD BASIS.—The Secretary shall award grants pursuant to subclause (I) on a competitive basis and pursuant to the recommendations of experts in the field of employment and training, working through the Pacific Region Educational Laboratory in Honolulu, Hawaii.

''(III) ASSISTANCE REQUIREMENTS.—Any Freely Associated State that desires to receive assistance under this subparagraph shall submit an application to the Secretary and shall include in the application for assistance—

''(aa) information demonstrating that the Freely Associated State will meet all conditions that apply to States under this title;

''(bb) an assurance that, notwithstanding any other provision of this title, the Freely Associated State will use such assistance only for the direct provision of services; and

''(cc) such other information and assurances as the Secretary may require.

''(IV) ADMINISTRATIVE COSTS.—The Secretary may provide not more than 5 percent of the funds made available for grants under subclause (I) to pay the administrative costs of the Pacific Region Educational Laboratory in Honolulu, Hawaii, regarding activities assisted under this clause.

''(iii) ADDITIONAL REQUIREMENT.—The provisions of Public Law 95–134, permitting the consolidation of grants by the outlying areas, shall not apply to assistance provided to those areas, including the Freely Associated States, under this subparagraph.

''(C) STATES.—

''(i) IN GENERAL.—From the remainder of the amount appropriated under section 137(a) for a fiscal year that exists after the Secretary determines the amounts to be reserved under subparagraphs (A) and (B), the Secretary shall allot to the States—

''(I) an amount of the remainder that is less than or equal to the total amount that was allotted to States for fiscal year 2003 under section 127(b)(1)(C) of this Act (as in effect on the day before the date of enactment of the Workforce Investment Act Amendments of 2003), in accordance with the requirements of such section 127(b)(1)(C); and

''(II) the amount of the remainder, if any, in excess of the amount referred to in subclause (I), in accordance with clause (ii).

''(ii) FORMULA.—Subject to clauses (iii) and (iv), of the amount described in clause (i)(II)—

''(I) 33⅓ percent shall be allotted on the basis of the relative number of individuals in the civilian labor force who are ages 16 through 21 in each State, compared to the total number of individuals in the civilian labor force who are ages 16 through 21 in all States;

''(II) 33⅓ percent shall be allotted on the basis of the relative number of unemployed individuals in each State, compared to the total number of unemployed individuals in all States; and

''(III) 33⅓ percent shall be allotted on the basis of the relative number of disadvantaged youth who are ages 16 through 21 in each State, compared to the total number of disadvantaged youth who are ages 16 through 21 in all States.

''(iii) MINIMUM AND MAXIMUM PERCENTAGES.—

''(I) MINIMUM PERCENTAGE.—The Secretary shall ensure that no State shall receive an allotment percentage under this subparagraph for a fiscal year that is less than 90 percent of the allotment percentage of the State for the preceding fiscal year.

''(II) MAXIMUM PERCENTAGE.—Subject to subclause (I), the Secretary shall ensure that no State shall receive an allotment percentage under this subparagraph for a fiscal year that is more than 130 percent of the allotment percentage of the State for the preceding fiscal year.

''(iv) SMALL STATE MINIMUM ALLOTMENT.—Subject to clause (iii), the Secretary shall ensure that no State shall receive an allotment under this subparagraph that is less than the total of—

''(I) 3/10 of 1 percent of $1,000,000,000 of the remainder described in clause (i) for the fiscal year; and

''(II) if the remainder described in clause (i) for the fiscal year exceeds $1,000,000,000, ⅖ of 1 percent of the excess.

''(2) DEFINITIONS.—For the purposes of paragraph (1):

''(A) ALLOTMENT PERCENTAGE.—The term 'allotment percentage', used with respect to fiscal year 2004 or a subsequent fiscal year, means a percentage of the remainder described in paragraph (1)(C)(i) that is received by the State involved through an allotment made under this subsection for the fiscal year. The term, used with respect to fiscal year 2003, means the percentage of the amounts allotted to States under this chapter (as in effect on the day before the date of enactment of the Workforce Investment Act Amendments of 2003) that is received by the State involved for fiscal year 2003.

''(B) DISADVANTAGED YOUTH.—Subject to paragraph (3), the term 'disadvantaged youth' means an individual who is age 16 through 21 who received an income, or is a member of a family that received a total family income, that, in relation to family size, does not exceed the higher of—

''(i) the poverty line; or

''(ii) 70 percent of the lower living standard income level.

''(C) FREELY ASSOCIATED STATE.—The term 'Freely Associated State' means the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

''(3) SPECIAL RULE.—For purposes of the formula specified in paragraph (1)(C), the Secretary shall, as appropriate and to the extent practicable, exclude college students and members of the Armed Forces from the determination of the number of disadvantaged youth.''.

(b) REALLOTMENT.—

(1) AMENDMENT.—Section 127(c) (29 U.S.C. 2852(c)) is amended—

(A) by striking paragraph (2) and inserting the following:

''(2) AMOUNT.—The amount available for reallotment for a program year is equal to the amount by which the unexpended balance at the end of the program year prior to the program year for which the determination is made exceeds 30 percent of the total amount of funds available to the State under this section during such prior program year (including amounts allotted to the State in all prior program years that remained available). For purposes of this paragraph, the unexpended balance is the amount that is the difference between—

''(A) the total amount of funds available to the State under this section during the program year prior to the program year for which the determination is made (including amounts allotted to the State in all prior program years that remained available); and

''(B) the accrued expenditures during such prior program year.'';

(B) in paragraph (3)—

(i) by striking ''for the prior program year'' and inserting ''for the program year for which the determination is made''; and

(ii) by striking ''such prior program year'' and inserting ''such program year'';

(C) by striking paragraph (4) and inserting the following:

''(4) ELIGIBILITY.—For purposes of this subsection, an eligible State means a State that does not have an amount available for reallotment under paragraph (2) for the program year for which the determination under paragraph (2) is made.''; and

(D) in paragraph (5), by striking ''obligation'' and inserting ''accrued expenditure''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall take effect for the program year that begins after the date of enactment of this Act.

(c) WITHIN STATE ALLOCATIONS.—

(1) RESERVATION FOR STATEWIDE ACTIVITIES.—Section 128(a) (29 U.S.C. 2853(a)) is amended to read as follows:

''(a) RESERVATIONS FOR STATEWIDE ACTIVITIES.—

''(1) IN GENERAL.—The Governor of a State shall reserve not more than 15 percent of each of the amounts allotted to the State under section 127(b)(1)(C) and paragraphs (1)(B) and (2)(B) of section 132(b) for a fiscal year for statewide workforce investment activities.

''(2) USE OF FUNDS.—Regardless of whether the reserved amounts were allotted under section 127(b)(1)(C), or under paragraph (1)(B) or (2)(B) of section 132(b), the Governor may use the reserved amounts to carry out statewide activities under section 129(b) or statewide employment and training activities, for adults or dislocated workers, under section 134(a).''.

(2) WITHIN STATE ALLOCATION.—Section 128(b) (29 U.S.C. 2853(b)) is amended to read as follows:

''(b) WITHIN STATE ALLOCATIONS.—

''(1) IN GENERAL.—Of the amount allotted to the State under section 127(b)(1)(C) and not reserved under subsection (a)(1)—

''(A) a portion equal to not less than 80 percent of such amount shall be allocated by the Governor to local areas in accordance with paragraph (2); and

''(B) a portion equal to not more than 20 percent of such amount may be allocated by the Governor to local areas in accordance with paragraph (3).

''(2) ESTABLISHED FORMULA.—

''(A) IN GENERAL.—Of the portion described in paragraph (1)(A), the Governor shall allocate—

''(i) 33⅓ percent on the basis of the relative number of individuals in the civilian labor force who are ages 16 through 21 in each local area, compared to the total number of individuals in the civilian labor force who are ages 16 through 21 in all local areas in the State;

''(ii) 33⅓ percent on the basis of the relative number of unemployed individuals in each local area, compared to the total number of unemployed individuals in all local areas in the State; and

''(iii) 33⅓ percent on the basis of the relative number of disadvantaged youth who are ages 16 through 21 in each local area, compared to the total number of disadvantaged youth who are ages 16 through 21 in all local areas in the State.

''(B) MINIMUM AND MAXIMUM PERCENTAGES.—

''(i) MINIMUM PERCENTAGE.—The Governor shall ensure that no local area shall receive an allocation percentage under this paragraph for a fiscal year that is less than 90 percent of the allocation percentage of the local area for the preceding fiscal year.

''(ii) MAXIMUM PERCENTAGE.—Subject to clause (i), the Governor shall ensure that no local area shall receive an allocation percentage under this paragraph for a fiscal year that is more than 130 percent of the allocation percentage of the local area for the preceding fiscal year.

''(C) DEFINITIONS.—In this paragraph:

''(i) ALLOCATION PERCENTAGE.—The term 'allocation percentage', used with respect to fiscal year 2004 or a subsequent fiscal year, means a percentage of the portion described in paragraph (1)(A) that is received by the local area involved through an allocation made under this paragraph for the fiscal year. The term, used with respect to fiscal year 2003, means the percentage of the amounts allocated to local areas under this chapter (as in effect on the day before the date of enactment of the Workforce Investment Act Amendments of 2003) that is received by the local area involved for fiscal year 2003.

''(ii) DISADVANTAGED YOUTH.—The term 'disadvantaged youth' means an individual who—

''(I) is age 16 through 21;

''(II) is not a college student or member of the Armed Forces; and

''(III) received an income, or is a member of a family that received a total family income, that, in relation to family size, does not exceed the higher of—

''(aa) the poverty line; or

''(bb) 70 percent of the lower living standard income level.

''(3) YOUTH DISCRETIONARY ALLOCATION.—The Governor may allocate the portion described in paragraph (1)(B) to local areas where there are a significant number of eligible youth, after consultation with the State board and local boards.

''(4) LOCAL ADMINISTRATIVE COST LIMIT.—

''(A) IN GENERAL.—Of the amount allocated to a local area under this subsection and section 133(b) for a fiscal year, not more than 10 percent of the amount may be used by the local board involved for the administrative costs of carrying out local workforce investment activities under this chapter or chapter 5.

''(B) USE OF FUNDS.—Funds made available for administrative costs under subparagraph (A) may be used for the administrative costs of any of the local workforce investment activities described in this chapter or chapter 5, regardless of whether the funds were allocated under this subsection or section 133(b).''.

(3) REALLOCATION.—

(A) AMENDMENT.—Section 128(c) (29 U.S.C. 2853(c)) is amended—

(i) in paragraph (1), by striking ''paragraph (2)(A) or (3) of'';

(ii) by striking paragraph (2) and inserting the following:

''(2) AMOUNT.—The amount available for reallocation for a program year is equal to the amount by which the unexpended balance at the end of the program year prior to the program year for which the determination is made exceeds 30 percent of the total amount of funds available to the local area under this section during such prior program year (including amounts allocated to the local area in all prior program years that remained available). For purposes of this paragraph, the unexpended balance is the amount that is the difference between—

''(A) the total amount of funds available to the local area under this section during the program year prior to the program year for which the determination is made (including amounts allocated to the local area in all prior program years that remained available); and

''(B) the accrued expenditures during such prior program year.'';

(iii) by amending paragraph (3)—

(I) by striking ''subsection (b)(3)'' each place it appears and inserting ''subsection (b)'';

(II) by striking ''for the prior program year'' the first place it appears and inserting ''for the program year for which the determination is made'';

(III) by striking ''such prior program year'' and inserting ''such program year''; and

(IV) by striking the last sentence; and

(iv) by striking paragraph (4) and inserting the following:

''(4) ELIGIBILITY.—For purposes of this subsection, an eligible local area means a local area that does not have an amount available for reallocation under paragraph (2) for the program year for which the determination under paragraph (2) is made.''.

(B) EFFECTIVE DATE.—The amendments made by subparagraph (A) shall take effect for the later of—

(i) the program year that begins after the date of enactment of this Act; or

(ii) program year 2004.

(d) YOUTH PARTICIPANT ELIGIBILITY.—Section 129(a) (29 U.S.C. 2854(a)) is amended to read as follows:

''(a) YOUTH PARTICIPANT ELIGIBILITY.—

''(1) ELIGIBILITY.—

''(A) IN GENERAL.—To be eligible to participate in activities carried out under this chapter during any program year an individual shall, at the time the eligibility determination is made, be an out-of-school youth or an in-school youth.

''(B) OUT-OF-SCHOOL YOUTH.—In this title the term 'out-of-school youth' means an individual who is—

''(i) not younger than age 16 (subject to paragraph (3)) nor older than age 21; and

''(ii) one of the following:

''(I) A school dropout.

''(II) A youth who is within the age for compulsory school attendance, but has not attended school for at least 1 school year calendar quarter.

''(III) A recipient of a secondary school diploma or its equivalent who is—

''(aa) deficient in basic skills, including limited English proficiency;

''(bb) a low-income individual; and

''(cc) not attending any school.

''(IV) Subject to the juvenile justice system or ordered by a court to an alternative school.

''(V) A low-income individual who is pregnant or parenting and not attending any school.

''(VI) A youth who is not attending school or a youth attending an alternative school, who is homeless, a runaway, a foster child, a child eligible for assistance under section 477 of the Social Security Act, or in an out-of-home placement.

''(VII) A low-income individual who requires additional assistance to complete an educational program or to secure or hold employment.

''(C) IN-SCHOOL YOUTH.—In this section the term 'in-school youth' means an individual who is—

''(i) not younger than age 14 nor older than age 21;

''(ii) a low-income individual; and

''(iii) one or more of the following:

''(I) Deficient in basic literacy skills, including limited English proficiency.

''(II) Homeless, a runaway, a foster child, a child eligible for assistance under section 477 of the Social Security Act, or in an out-of-home placement.

''(III) Pregnant or parenting.

''(IV) An offender (other than an individual described in subparagraph (B)(ii)(IV)).

''(V) An individual who requires additional assistance to complete an educational program or to secure or hold employment.

''(2) EXCEPTION.—Not more than 5 percent of the individuals assisted under this section in each local area, in the case of individuals for whom low income is a requirement for eligibility under this section, may be individuals who are not low income.

''(3) LIMITATIONS ON ACTIVITIES FOR IN-SCHOOL YOUTH.—

''(A) IN GENERAL.—For any program year, not more than 60 percent of the funds available for statewide activities under subsection (b), and not more than 60 percent of funds available to local areas under subsection (c), may be used to provide activities for in-school youth meeting the requirements of paragraph (1)(B).

''(B) EXCEPTION.—A State that receives a minimum allotment under section 127(b)(1) in accordance with section 127(b)(1)(C)(iv) or under section 132(b)(1) in accordance with section 132(b)(1)(B)(iv)(II) may increase the percentage described in subparagraph (A) for a local area in the State, if—

''(i) after an analysis of the eligible youth population in the local area, the State determines that the local area will be unable to use at least 40 percent of the funds available for activities under subsection (b) or (c) to serve out-of-school youth due to a low number of out-of-school youth; and

''(ii)(I) the State submits to the Secretary, for the local area, a request including a proposed increased percentage for purposes of subparagraph (A), and the summary of the eligible youth population analysis; and

''(II) the request is approved by the Secretary.

''(4) CONSISTENCY WITH COMPULSORY SCHOOL ATTENDANCE LAWS.—In providing assistance under this section to an individual who is required to attend school under applicable State compulsory school attendance laws, the priority in providing such assistance shall be for the individual to attend school regularly.''.

(e) STATEWIDE ACTIVITIES.—Section 129(b) (29 U.S.C. 2854(b)) is amended to read as follows:

''(b) STATEWIDE ACTIVITIES.—

''(1) IN GENERAL.—Funds reserved by a Governor for a State as described in sections 128(a) and 133(a)(1) shall be used, regardless of whether the funds were allotted to the State under section 127(b)(1)(C) or under paragraph (1)(B) or (2)(B) of section 132(b) for statewide activities, which may include—

''(A) conducting—

''(i) evaluations under section 136(e) of activities authorized under this chapter and chapter 5 in coordination with evaluations carried out by the Secretary under section 172;

''(ii) research; and

''(iii) demonstration projects;

''(B) providing incentive grants to local areas for regional cooperation among local boards (including local boards in a designated region as described in section 116(c)), for local coordination of activities carried out under this title, and for performance by local areas as described in section 136(i)(2);

''(C) providing technical assistance and capacity building activities to local areas, one-stop operators, one-stop partners, and eligible providers, including the development and training of staff, the development of exemplary program activities, the provision of technical assistance to local areas that fail to meet local performance measures described in section 136(c), and the provision of technology to facilitate remote access to services provided through one-stop delivery systems;

''(D) operating a fiscal and management accountability information system under section 136(f);

''(E) carrying out monitoring and oversight of activities carried out under this chapter and chapter 5, which may include a review comparing the services provided to male and female youth;

''(F) providing additional assistance to local areas that have high concentrations of eligible youth;

''(G) supporting the development of alternative programs and other activities that enhance the choices available to eligible youth and encourage such youth to reenter secondary education, enroll in postsecondary education and advanced training, and obtain career path employment; and

''(H) supporting the provision of core services described in section 134(d)(2) in the one-stop delivery system in the State.

''(2) LIMITATION.—Not more than 5 percent of the funds allotted to a State under section 127(b)(1)(C) shall be used by the State for administrative activities carried out under this subsection or section 134(a).

''(3) PROHIBITION.—No funds described in this subsection may be used to develop or implement education curricula for school systems in the State.''.

(f) LOCAL ELEMENTS AND REQUIREMENTS.—

(1) PROGRAM DESIGN.—Section 129(c)(1) (29 U.S.C. 2854(c)(1)) is amended—

(A) in the matter that precedes subparagraph (A), by striking ''paragraph (2)(A) or (3), as appropriate, of'';

(B) in subparagraph (B), by inserting ''are directly linked to 1 or more of the performance measures relating to this chapter under section 136, and that'' after ''for each participant that''; and

(C) in subparagraph (C)—

(i) by redesignating clauses (i) through (iv) as clauses (ii) through (v), respectively;

(ii) by inserting before clause (ii) (as redesignated by clause (i)) the following:

''(i) activities leading to the attainment of a secondary school diploma or its equivalent, or another recognized credential;'';

(iii) in clause (ii) (as redesignated by clause (i)), by inserting ''and advanced training'' after ''opportunities'';

(iv) in clause (iii) (as redesignated by clause (i))—

(I) by inserting ''instruction based on State academic content and student academic achievement standards established under section 1111 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311)'' after ''academic''; and

(II) by inserting ''that lead to the attainment of recognized credentials'' after ''learning''; and

(v) by striking clause (v) (as redesignated by clause (i)) and inserting the following:

''(v) effective connections to all employers, including small employers, in sectors of the local and regional labor markets that are experiencing high growth in employment opportunities.''.

(2) PROGRAM ELEMENTS.—Section 129(c)(2) (29 U.S.C. 2854(c)(2)) is amended—

(A) in subparagraph (A), by striking ''secondary school, including dropout prevention strategies'' and inserting ''the requirements for a secondary school diploma or its recognized equivalent (including recognized alternative standards for individuals with disabilities) or for another recognized credential, including dropout prevention strategies'';

(B) in subparagraph (B), by inserting '', with a priority on exposing youth to technology and nontraditional jobs'' before the semicolon;

(C) in subparagraph (F), by striking ''during nonschool hours'';

(D) in subparagraph (I), by striking ''and'' at the end;

(E) in subparagraph (J), by striking the period at the end and inserting a semicolon; and

(F) by adding at the end the following:

''(K) on-the-job training opportunities;

''(L) opportunities to acquire financial literacy skills;

''(M) entrepreneurial skills training and microenterprise services; and

''(N) information about average wages for a range of jobs available in the local area, including technology jobs.''.

(3) ADDITIONAL REQUIREMENTS.—Section 129(c)(3)(A) (29 U.S.C. 2854(c)(3)(A)) is amended in the matter preceding clause (i) by striking ''or applicant who meets the minimum income criteria to be considered an eligible youth''.

(4) PRIORITY AND EXCEPTIONS.—Section 129(c) (29 U.S.C. 2854(c)) is amended by striking paragraphs (4) and (5).

(5) PROHIBITIONS AND LINKAGES.—Section 129(c) (29 U.S.C. 2854(c)), as amended by paragraph (4), is further amended—

(A) by redesignating paragraphs (6), (7), and (8) as paragraphs (4), (5), and (6), respectively;

(B) in paragraph (4) (as redesignated by subparagraph (A))—

(i) by striking subparagraph (B); and

(ii) by redesignating subparagraph (C) as subparagraph (B); and

(C) in paragraph (5) (as redesignated by subparagraph (A)), by striking ''youth councils'' and inserting ''local boards''.

SEC. 121. ADULT AND DISLOCATED WORKER EMPLOYMENT AND TRAINING ACTIVITIES.

(a) STATE ALLOTMENTS.—

(1) RESERVATIONS.—Section 132(a)(2)(A) is amended by striking ''national emergency grants'' and inserting ''national dislocated worker grants''.

(2) ALLOTMENT AMONG STATES.—Section 132(b) (29 U.S.C. 2862(b)) is amended—

(A) in paragraph (1)(A)(ii), by striking ''section 127(b)(1)(B)'' and all that follows and inserting ''section 127(b)(1)(B).'';

(B) by striking paragraph (1)(B)(ii) and inserting the following:

''(ii) FORMULA.—Subject to clauses (iii) and (iv), of the remainder—

''(I) 40 percent shall be allotted on the basis of the relative number of unemployed individuals in areas of substantial unemployment in each State, compared to the total number of unemployed individuals in areas of substantial unemployment in all States;

''(II) 25 percent shall be allotted on the basis of the relative number of individuals in the civilian labor force in each State, compared to the total number of such individuals in all States; and

''(III) 35 percent shall be allotted on the basis of the relative number of disadvantaged adults in each State, compared to the total number of disadvantaged adults in all States, except as described in clause (iii).'';

(C) in paragraph (1)(B)—

(i) in clause (iii), by striking ''section 116(a)(2)(B)'' and inserting ''section 116(a)(2)(A)(iii)''; and

(ii) in clause (iv)—

(I) in subclause (II), by striking ''subclauses (I), (III), and (IV)'' and inserting ''subclauses (I) and (III)''; and

(II) by striking subclause (IV); and

(D) in paragraph (2)(A)(ii), by striking ''section 127(b)(1)(B)'' and all that follows and inserting ''section 127(b)(1)(B).''.

(3) REALLOTMENT.—Section 132(c) (29 U.S.C. 2862(c)) is amended—

(A) by striking paragraph (2) and inserting the following:

''(2) AMOUNT.—The amount available for reallotment for a program year for programs funded under subsection (b)(1)(B) (relating to adult employment and training) and subsection (b)(2)(B) (relating to dislocated worker employment and training), respectively, is equal to the amount by which the unexpended balance at the end of the program year prior to the program year for which the determination is made exceeds 30 percent of the total amount of funds available to the State under subsection (b)(1)(B) or (b)(2)(B), respectively, during such prior program year (including amounts allotted to the State in all prior program years under such provisions that remained available). For purposes of this paragraph, the unexpended balance is the amount that is the difference between—

''(A) the total amount of funds available to the State under subsection (b)(1)(B) or (b)(2)(B), respectively, during the program year prior to the program year for which the determination is made (including amounts allotted to the State in all prior program years under such provisions that remained available); and

''(B) the accrued expenditures from such total amount of funds available under subsection (b)(1)(B) or (b)(2)(B), respectively, during such prior program year.'';

(B) in paragraph (3)—

(i) by striking ''under this section for such activities for the prior program year'' and inserting ''under subsection (b)(1)(B) or (b)(2)(B), as appropriate, for the program year for which the determination is made''; and

(ii) by striking ''under this subsection for such activities for such prior program year'' and inserting ''under subsection (b)(1)(B) or (b)(2)(B), as appropriate, for such program year'';

(C) by striking paragraph (4) and inserting the following:

''(4) ELIGIBILITY.—For purposes of this subsection, an eligible State means—

''(A) with respect to funds allotted under subsection (b)(1)(B), a State that does not have an amount of such funds available for reallotment under paragraph (2) for the program year for which the determination under paragraph (2) is made; and

''(B) with respect to funds allotted under subsection (b)(2)(B), a State that does not have an amount of such funds available for reallotment under paragraph (2) for the program year for which the determination under paragraph (2) is made.''; and

(D) in paragraph (5), by striking ''obligation'' and inserting ''accrued expenditure''.

(4) EFFECTIVE DATE.—The amendments made by paragraph (3) shall take effect for the later of—

(A) the program year that begins after the date of enactment of this Act; or

(B) program year 2004.

(b) WITHIN STATE ALLOCATIONS.—

(1) ALLOCATION.—Section 133(b)(5)(B)(ii) (29 U.S.C. 2863(b)(5)(B)(ii)) is amended by striking ''section 134(c)'' and inserting ''section 121(e)''.

(2) REALLOCATION.—Section 133(c) (29 U.S.C. 2863(c)) is amended—

(A) in paragraph (1), by inserting '', and under subsection (b)(2)(B) for dislocated worker employment and training activities,'' after ''activities'';

(B) by striking paragraph (2) and inserting the following:

''(2) AMOUNT.—The amount available for reallocation for a program year for programs funded under paragraphs (2)(A) and (3) of subsection (b) (relating to adult employment and training) and subsection (b)(2)(B) (relating to dislocated worker employment and training), respectively, is equal to the amount by which the unexpended balance at the end of the program year prior to the program year for which the determination is made exceeds 30 percent of the total amount of funds available to the local area under paragraphs (2)(A) and (3) of subsection (b), or subsection (b)(2)(B), respectively, during such prior program year (including amounts allocated to the local area in all prior program years under such provisions that remained available). For purposes of this paragraph, the unexpended balance is the amount that is the difference between—

''(A) the total amount of funds available to the local area under paragraphs (2)(A) and (3) of subsection (b), or subsection (b)(2)(B), respectively, during the program year prior to the program year for which the determination is made (including amounts allotted to the local area in all prior program years under such provisions that remained available); and

''(B) the accrued expenditures from such total amount of funds available under paragraphs (2)(A) and (3) of subsection (b), or subsection (b)(2)(B), respectively, during such prior program year.'';

(C) by striking paragraph (3) and inserting the following:

''(3) REALLOCATION.—In making reallocations to eligible local areas of amounts available pursuant to paragraph (2) for a program year, the Governor shall allocate to each eligible local area within the State—

''(A) with respect to amounts that are available for reallocation under paragraph (2) that were allocated under paragraphs (2)(A) or (3) of subsection (b), an amount based on the relative amount allocated to such local area under paragraphs (2)(A) or (3) of subsection (b), as appropriate, for the program year for which the determination is made, as compared to the total amount allocated to all eligible local areas under paragraphs (2)(A) or (3) of subsection (b), as appropriate, of such program year; and

''(B) with respect to amounts that are available for reallocation under paragraph (2) that were allocated under subsection (b)(2)(B), an amount based on the relative amount allocated

to such local area under subsection (b)(2)(B) for the program year for which the determination is made, as compared to the total amount allocated to all eligible local areas under subsection (b)(2)(B) for such program year.''; and

(D) by striking paragraph (4) and inserting the following:

''(4) ELIGIBILITY.—For purposes of this subsection, an eligible local area means—

''(A) with respect to funds allocated under paragraphs (2)(A) or (3) of subsection (b), a local area that does not have an amount of such funds available for reallocation under paragraph (2) for the program year for which the determination under paragraph (2) is made; and

''(B) with respect to funds allocated under subsection (b)(2)(B), a local area that does not have an amount of such funds available for reallocation under paragraph (2) for the program year for which the determination under paragraph (2) is made.''.

(3) EFFECTIVE DATE.—The amendments made by paragraph (2) shall take effect for the later of—

(A) the program year that begins after the date of enactment of this Act; or

(B) program year 2004.

(c) USE OF FUNDS FOR EMPLOYMENT AND TRAINING ACTIVITIES.—

(1) STATEWIDE EMPLOYMENT AND TRAINING ACTIVITIES.—

(A) STATEWIDE RAPID RESPONSE ACTIVITIES.—Section 134(a)(2)(A) (29 U.S.C. 2864(a)(2)(A)) is amended to read as follows:

''(A) STATEWIDE RAPID RESPONSE ACTIVITIES.—

''(i) IN GENERAL.—A State shall carry out statewide rapid response activities using funds reserved by a Governor for a State under section 133(a)(2). Such activities shall include—

''(I) provision of rapid response activities, carried out in local areas by the State or by an entity designated by the State, working in conjunction with the local boards and the chief elected officials for the local areas; and

''(II) provision of additional assistance to local areas that experience disasters, mass layoffs, or plant closings, or other events that precipitate substantial increases in the number of unemployed individuals, carried out in local areas by the State, working in conjunction with the local boards and the chief elected officials for the local areas.

''(ii) USE OF UNEXPENDED FUNDS.—Funds reserved under section 133(a)(2) to carry out this subparagraph that remain unexpended after the first program year for which such funds were allotted may be used by the Governor to carry out statewide activities authorized under subparagraph (B) and paragraph (3)(A) in addition to activities under this subparagraph.''.

(B) STATEWIDE EMPLOYMENT AND TRAINING ACTIVITIES.—Section 134(a)(2) (29 U.S.C. 2864(a)(2)) is amended by striking subparagraph (B) and inserting the following:

''(B) STATEWIDE EMPLOYMENT AND TRAINING ACTIVITIES.—Funds reserved by a Governor for a State under sections 128(a)(1) and 133(a)(1) and not used under paragraph (1)(A) (regardless of whether the funds were allotted to the States under section 127(b)(1)(C) or paragraphs (1)(B) or (2)(B) of section 132(b)) shall be used for statewide employment and training activities, including—

''(i) disseminating—

''(I) the State list of eligible providers of training services, including eligible providers of nontraditional training services;

''(II) information identifying eligible providers of on-the-job training and customized training;

''(III) performance information and program cost information, as described in subsections (d) and (i) of section 122; and

''(IV) information on physical and programmatic accessibility for individuals with disabilities;

''(ii) conducting evaluations under section 136(e) of activities authorized under this chapter and chapter 5 in coordination with evaluations carried out by the Secretary under section 172;

''(iii) providing incentive grants to local areas in recognition of exceptional achievement relating to—

''(I) regional cooperation among local boards (including local boards in a designated region as described in section 116(c));

''(II) expanded local coordination of programs and activities carried out as part of a comprehensive workforce investment system, including—

''(aa) employment services under the Wagner-Peyser Act and core activities under this title; and

''(bb) one-stop partner programs described in section 121;

''(III) performance by local areas as described in section 136(i)(2); and

''(IV) providing expanded access to education and training services, especially through increased leveraging of resources other than those provided through programs under this title;

''(iv) developing strategies for ensuring that activities carried out under this section are placing men and women in jobs, education, and training that lead to comparable pay;

''(v) providing technical assistance and capacity building to local areas, one-stop operators, one-stop partners, and eligible providers, including the development and training of staff, the development of exemplary program activities, and the provision of technical assistance to local areas that fail to meet local performance measures described in section 136(c), which may include the development and training of staff to provide opportunities for hard-to-serve populations to enter high-wage, high-skilled, and nontraditional occupations;

''(vi) operating a fiscal and management accountability system under section 136(f); and

''(vii) carrying out monitoring and oversight of activities carried out under this chapter and chapter 4.''.

(C) ALLOWABLE STATEWIDE EMPLOYMENT AND TRAINING ACTIVITIES.—Section 134(a)(3)(A) (29 U.S.C. 2864(a)(3)(A) is amended to read as follows:

''(A) IN GENERAL.—Funds reserved by a Governor for a State under sections 128(a)(1) and 133(a)(1) and not used under paragraph (1)(A) or (2)(B) (regardless of whether the funds were allotted to the State under section 127(b)(1)(C) or paragraph (1)(B) or (2)(B) of section 132(b)) may be used to carry out additional statewide employment and training activities, which may include—

''(i) implementing innovative programs and strategies designed to meet the needs of all businesses in the State, including small businesses, which may include incumbent worker training programs, sectoral and industry cluster strategies and partnerships, including regional skills alliances, career ladder programs, micro-enterprise and entrepreneurial training and support programs, utilization of effective business intermediaries, activities to improve linkages between the one-stop delivery systems in the State and all employers (including small employers) in the State, and other business services and strategies that better engage employers in workforce investment activities and make the workforce investment system more relevant to the needs of State and local businesses, consistent with the objectives of this title;

''(ii) developing strategies for effectively serving hard-to-serve populations and for coordinating programs and services among one-stop partners;

''(iii) implementing innovative programs for displaced homemakers, which for purposes of this clause may include an individual who is receiving public assistance and is within 2 years of exhausting lifetime eligibility under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.);

''(iv) implementing programs to increase the number of individuals training for and placed in nontraditional employment;

''(v) carrying out activities to facilitate remote access to services, including training services described in subsection (d)(4), provided through a one-stop delivery system, including facilitating access through the use of technology;

''(vi) supporting the provision of core services described in subsection (d)(2) in the one-stop delivery system in the State;

''(vii) coordinating with the child welfare system to facilitate services for children in foster care and those who are eligible for assistance under section 477 of the Social Security Act;

''(viii) activities—

''(I) to improve coordination between workforce investment activities carried out within the State involved and economic development activities;

''(II) to improve coordination between employment and training assistance, child support services, and assistance provided by State and local agencies carrying out part D of title IV of the Social Security Act (42 U.S.C. 651 et seq.);

''(III) to improve coordination between employment and training assistance and cooperative extension programs carried out by the Department of Agriculture;

''(IV) to improve coordination between employment and training assistance and programs carried out in the local area for individuals with disabilities, including programs carried out by State agencies relating to mental retardation and developmental disabilities, Statewide Independent Living Councils established under section 705 of the Rehabilitation Act of 1973 (29 U.S.C. 796d), and centers for independent living defined in section 702 of the Rehabilitation Act of 1973 (29 U.S.C. 796a);

''(V) to develop and disseminate workforce and labor market information; and

''(VI) to improve coordination with the corrections system to facilitate provision of training services and employment opportunities that will assist ex-offenders in reentering the workforce;

''(ix) conducting—

''(I) research; and

''(II) demonstration projects; and

''(x) adopting, calculating, or commissioning a minimum self-sufficiency standard that specifies the income needs of families, by family size, the number and ages of children in the family, and sub-State geographical considerations.''.

(2) REQUIRED LOCAL EMPLOYMENT AND TRAINING ACTIVITIES.—

(A) ALLOCATED FUNDS.—Section 134(d)(1)(A) (29 U.S.C. 2864(d)(1)(A)) is amended—

(i) in clause (i), by striking ''described in subsection (c)'';

(ii) in clause (iii), by striking ''and'' at the end;

(iii) in clause (iv), by striking the period and inserting a semicolon; and

(iv) by adding at the end the following:

''(v) to designate a dedicated business liaison in the local area who may be funded with funds provided under this title or from other sources to establish and develop relationships and networks with large and small employers and their intermediaries; and

''(vi) in order to avoid duplication of services and enhance coordination of services, to require the colocation of employment services provided under the Wagner-Peyser Act at the comprehensive one-stop centers.''.

(B) CORE SERVICES.—Section 134(d)(2) (29 U.S.C. 2864(d)(2)) is amended—

(i) in the matter preceding subparagraph (A), by striking ''paragraph (1)(A)'' and inserting ''paragraph (1)'';

(ii) by striking subparagraph (D) and inserting the following:

''(D) labor exchange services, including—

''(i) job search and placement assistance and, in appropriate cases, career counseling, including—

''(I) exposure to high wage, high skill jobs; and

''(II) nontraditional employment; and

''(ii) appropriate recruitment and other business services for all employers, including small employers, in the local area, which may include

services described in this subsection, including information and referral to specialized business services not traditionally offered through the one-stop delivery system;'';

(iii) in subparagraph (E)(iii)—

(I) by inserting '', career ladders,'' after ''earnings''; and

(II) by striking ''and'' at the end;

(iv) in subparagraph (F)—

(I) by striking ''and program cost information''; and

(II) by striking ''described in section 123'';

(v) by striking subparagraph (H) and inserting the following:

''(H) provision of accurate information, in formats that are usable and understandable to all one-stop center customers, relating to the availability of supportive services or assistance, including child care, child support, medical or child health assistance under title XIX or XXI of the Social Security Act, benefits under the Food Stamp Act of 1977, the earned income tax credit under section 32 of the Internal Revenue Code of 1986, and assistance under a State program funded under part A of title IV of the Social Security Act and other supportive services and transportation provided through funds made available under such part, available in the local area, and referral to such services or assistance as appropriate;''; and

(vi) in subparagraph (J), by striking ''for—'' and all that follows through ''(ii) programs'' and inserting ''for programs''.

(C) INTENSIVE SERVICES.—Section 134(d)(3) (29 U.S.C. 2864(d)(3)) is amended—

(i) by striking subparagraph (A) and inserting the following:

''(A) IN GENERAL.—

''(i) ELIGIBILITY.—Except as provided in clause (ii), funds allocated to a local area for adults under paragraph (2)(A) or (3), as appropriate, of section 133(b), and funds allocated to the local area for dislocated workers under section 133(b)(2)(B), shall be used to provide intensive services to adults and dislocated workers, respectively—

''(I) who are unemployed and who, after an interview, evaluation, or assessment, have been determined by a one-stop operator or one-stop partner to be—

''(aa) unlikely or unable to obtain employment, that leads to self-fficiency or wages comparable to or higher than previous employment, through core services described in paragraph (2); and

''(bb) in need of intensive services to obtain employment that leads to self-sufficiency or wages comparable to or higher than previous employment; or

''(II) who are employed, but who, after an interview, evaluation, or assessment are determined by a one-stop operator or one-stop partner to be in need of intensive services to obtain or retain employment that leads to self-sufficiency.

''(ii) SPECIAL RULE.—A new interview, evaluation, or assessment of a participant is not required under clause (i) if the one-stop operator or one-stop partner determines that it is appropriate to use a recent assessment of the participant conducted pursuant to another education or training program.''; and

(ii) in subparagraph (C)—

(I) in clause (v), by striking ''for participants seeking training services under paragraph (4)''; and

(II) by adding at the end the following:

''(vii) Internships and work experience.

''(viii) Literacy activities relating to basic work readiness, and financial literacy activities.

''(ix) Out-of-area job search assistance and relocation assistance.

''(x) English language acquisition and integrated training programs.''.

(D) TRAINING SERVICES.—Section 134(d)(4) (29 U.S.C. 2864(d)(4)) is amended—

(i) by striking subparagraph (A) and inserting the following:

''(A) IN GENERAL.—

''(i) ELIGIBILITY.—Except as provided in clause (ii), funds allocated to a local area for adults under paragraph (2)(A) or (3), as appropriate, of section 133(b), and funds allocated to the local area for dislocated workers under section 133(b)(2)(B), shall be used to provide training services to adults and dislocated workers, respectively—

''(I) who, after an interview, evaluation, or assessment, and case management, have been determined by a one-stop operator or one-stop partner, as appropriate, to—

''(aa) be unlikely or unable to obtain or retain employment, that leads to self-sufficiency or wages comparable to or higher than previous employment, through the intensive services described in paragraph (3);

''(bb) be in need of training services to obtain or retain employment that leads to self-sufficiency or wages comparable to or higher than previous employment; and

''(cc) have the skills and qualifications to successfully participate in the selected program of training services;

''(II) who select programs of training services that are directly linked to the employment opportunities in the local area or region involved or in another area to which the adults or dislocated workers are willing to commute or relocate;

''(III) who meet the requirements of subparagraph (B); and

''(IV) who are determined to be eligible in accordance with the priority system in effect under subparagraph (E).

''(ii) SPECIAL RULE.—A new interview, evaluation, or assessment of a participant is not required under clause (i) if the one-stop operator or one-stop partner determines that it is appropriate to use a recent assessment of the participant conducted pursuant to another education or training program.'';

(ii) in subparagraph (B)(i), by striking ''Except'' and inserting ''Notwithstanding section 479B of the Higher Education Act of 1965 (20 U.S.C. 1087uu) and except'';

(iii) in subparagraph (D)—

(I) in clause (viii), by striking ''and'' after the semicolon;

(II) in clause (ix), by striking the period and inserting ''; and''; and

(III) by adding at the end the following:

''(x) English language acquisition and integrated training programs.'';

(iv) in subparagraph (F)—

(I) in clause (ii), by striking ''referred to in subsection (c), shall make available—'' and all that follows and inserting ''shall make available a list of eligible providers of training services, and accompanying information, in accordance with section 122(d).'';

(II) in the heading of clause (iii), by striking ''INDIVIDUAL TRAINING ACCOUNTS'' and inserting ''CAREER SCHOLARSHIP ACCOUNTS'';

(III) in clause (iii)—

(aa) by striking ''identifying information'' and inserting ''accompanying information'';

(bb) by striking ''clause (ii)(I)'' and inserting ''clause (ii)''; and

(cc) by striking ''individual training account'' and inserting ''career scholarship account''; and

(IV) by adding at the end the following:

''(iv) COORDINATION.—Each local board may, through one-stop centers, coordinate career scholarship accounts with other Federal, State, local, or private job training programs or sources to assist the individual in obtaining training services.''; and

(v) in subparagraph (G)—

(I) in the subparagraph heading, by striking ''INDIVIDUAL TRAINING ACCOUNTS'' and inserting ''CAREER SCHOLARSHIP ACCOUNTS'';

(II) in clause (i), by striking ''individual training accounts'' and inserting ''career scholarship accounts'';

(III) in clause (ii)—

(aa) by striking ''individual training account'' and inserting ''career scholarship account'';

(bb) in subclause (II), by striking ''individual training accounts'' and inserting ''career scholarship accounts'';

(cc) in subclause (II) by striking ''or'' after the semicolon;

(dd) in subclause (III), by striking ''special participant populations that face multiple barriers to employment'' and inserting ''hard-to-serve populations'';

(ee) in subclause (III), by striking the period and inserting '''; or''; and

(ff) by adding at the end the following:

''(IV) the local board determines that it would be most appropriate to award a contract to an institution of higher education in order to facilitate the training of multiple individuals in high-demand occupations, if such contract does not limit customer choice.''; and

(IV) in clause (iv)—

(aa) by redesignating subclause (IV) as subclause (V); and

(bb) by inserting after subclause (III) the following:

''(IV) Individuals with disabilities.''.

(3) PERMISSIBLE ACTIVITIES.—Section 134(e) (29 U.S.C. 2864(e)) is amended—

(A) by striking the matter preceding paragraph (2) and inserting the following:

''(e) PERMISSIBLE LOCAL EMPLOYMENT AND TRAINING ACTIVITIES.—

''(1) IN GENERAL.—

''(A) ACTIVITIES.—Funds allocated to a local area for adults under paragraph (2)(A) or (3), as appropriate, of section 133(b), and funds allocated to the local area for dislocated workers under section 133(b)(2)(B), may be used to provide, through the one-stop delivery system involved—

''(i) customized screening and referral of qualified participants in training services described in subsection (d)(4) to employment;

''(ii) customized employment-related services to employers on a fee-for-service basis;

''(iii) customer support to enable members of hard-to-serve populations, including individuals with disabilities, to navigate among multiple services and activities for such populations;

''(iv) technical assistance and capacity building for serving individuals with disabilities in local areas, for one-stop operators, one-stop partners, and eligible providers, including the development and training of staff, the provision of outreach, intake, assessments, and service delivery, and the development of performance measures;

''(v) employment and training assistance provided in coordination with child support enforcement activities of the State and local agencies carrying out part D of title IV of the Social Security Act (42 U.S.C. 601 et seq.);

''(vi) activities to improve coordination between employment and training assistance, child support services, and assistance provided by State and local agencies carrying out part D of title IV of the Social Security Act (42 U.S.C. 651 et seq.);

''(vii) activities to improve coordination between employment and training assistance and cooperative extension programs carried out by the Department of Agriculture;

''(viii) activities to facilitate remote access to services provided through a one-stop delivery system, including facilitating access through the use of technology;

''(ix) activities—

''(I) to improve coordination between workforce investment activities carried out within the local area involved and economic development activities; and

''(II) to improve services and linkages between the local workforce investment system including the local one-stop delivery system, and all employers, including small employers in the local area, through services described in this section, including subparagraph (B);

''(x) training programs for displaced homemakers and for individuals training for non-traditional occupations, in conjunction with programs operated in the local area;

''(xi) using a portion of the funds allocated under section 133(b), activities to carry out business services and strategies that meet the workforce investment needs of local area employers, as determined by the local board, consistent with the local plan under section 118, which services—

''(I) may be provided through effective business intermediaries working in conjunction with the local board, and may also be provided on a fee-for-service basis or through the leveraging of economic development and other resources as determined appropriate by the local board; and

''(II) may include—

''(aa) identifying and disseminating to business, educators, and job seekers, information related to the workforce, economic and community development needs, and opportunities of the local economy;

''(bb) development and delivery of innovative workforce investment services and strategies for area businesses, which may include sectoral, industry cluster, regional skills alliances, career ladder, skills upgrading, skill standard development and certification, apprenticeship, and other effective initiatives for meeting the workforce investment needs of area employers and workers;

''(cc) participation in seminars and classes offered in partnership with relevant organizations focusing on the workforce-related needs of area employers and job seekers;

''(dd) training consulting, needs analysis, and brokering services for area businesses, including the organization and aggregation of training (which may be paid for with funds other than those provided under this title), for individual employers and coalitions of employers with similar interests, products, or workforce needs;

''(ee) assistance to area employers in the aversion of layoffs and in managing reductions in force in coordination with rapid response activities;

''(ff) the marketing of business services offered under this title, to appropriate area employers, including small and mid-sized employers;

''(gg) information referral on concerns affecting local employers; and

''(hh) other business services and strategies designed to better engage employers in workforce investment activities and to make the workforce investment system more relevant to the workforce investment needs of area businesses, as determined by the local board to be consistent with the objectives of this title;

''(xii) activities to adjust the self-sufficiency standards for local factors, or activities to adopt, calculate, or commission a self-sufficiency standard that specifies the income needs of families, by family size, the number and ages of children in the family, and sub-State geographical considerations; and

''(xiii) improved coordination between employment and training assistance and programs carried out in the local area for individuals with disabilities, including programs carried out by State agencies relating to mental retardation and developmental disabilities, Statewide Independent Living Councils established under section 705 of the Rehabilitation Act of 1973 (29 U.S.C. 796d), and centers for independent living defined in section 702 of the Rehabilitation Act of 1973 (29 U.S.C. 796a).

''(B) WORK SUPPORT ACTIVITIES FOR LOW-WAGE WORKERS.—

''(i) IN GENERAL.—Funds allocated to a local area for adults under paragraph (2)(A) or (3), as appropriate, of section 133(b), and funds allocated to the local area for dislocated workers under section 133(b)(2)(B), may be used to provide, through the one-stop delivery system involved, work support activities designed to assist low-wage workers in retaining and enhancing employment. The one-stop partners shall coordinate the appropriate programs and resources of the partners with the activities and resources provided under this subparagraph.

''(ii) ACTIVITIES.—The activities described in clause (i) may include the provision of activities described in this section through the one-stop delivery system in a manner that enhances the opportunities of such workers to participate in the activities, such as the provision of activities described in this section during nontraditional hours and the provision of onsite child care while such activities are being provided.'';

(B) in paragraph (2), by striking the matter preceding subparagraph (A) and inserting the following:

''(2) SUPPORTIVE SERVICES.—Funds allocated to a local area for adults under paragraph (2)(A) or (3), as appropriate, of section 133(b), and funds allocated to the local area for dislocated workers under section 133(b)(2)(B), may be used to provide supportive services to adults and dislocated workers, respectively—''; and

(C) by adding at the end the following:

''(4) INCUMBENT WORKER TRAINING PROGRAMS.—

''(A) IN GENERAL.—The local board may use up to 10 percent of the funds allocated to the local area involved under section 133(b) to pay for the Federal share of the cost of providing training through an incumbent worker training program carried out in accordance with this paragraph. The Governor or State board may make recommendations to the local board regarding incumbent worker training with statewide impact.

''(B) TRAINING ACTIVITIES.—The training program for incumbent workers carried out under this paragraph shall be carried out by the local board in conjunction with the employers or groups of employers of such workers for the purpose of assisting such workers in obtaining the skills necessary to retain employment or avert layoffs.

''(C) EMPLOYER SHARE REQUIRED.—

''(i) IN GENERAL.—Employers participating in the program carried out under this paragraph shall be required to pay the non-Federal share of the costs of providing the training to incumbent workers of the employers. The local board shall establish the non-Federal share of such costs, which may include in-kind contributions. The non-Federal share shall not be less than—

''(I) 10 percent of the costs, for employers with 50 or fewer employees;

''(II) 25 percent of the costs, for employers with more than 50 employees but fewer than 100 employees; and

''(III) 50 percent of the costs, for employers with 100 or more employees.

''(ii) CALCULATION OF EMPLOYER SHARE.—The non-Federal share paid by such an employer may include the amount of the wages paid by the employer to a worker while the worker is attending a training program under this paragraph.''.

SEC. 122. PERFORMANCE ACCOUNTABILITY SYSTEM.

(a) STATE PERFORMANCE MEASURES.—

(1) INDICATORS OF PERFORMANCE.—Section 136(b)(2)(A) (29 U.S.C. 2871(b)(2)(A)) is amended—

(A) in clause (i)—

(i) in the matter preceding subclause (I), by striking ''and (for participants who are eligible youth age 19 through 21) for youth activities authorized under section 129'';

(ii) by striking subclause (III) and inserting the following:

''(III) increases in earnings from unsubsidized employment; and''; and

(iii) in subclause (IV), by striking '', or by participants'' and all that follows through ''unsubsidized employment''; and

(B) by striking clause (ii) and inserting the following:

''(ii) CORE INDICATORS FOR ELIGIBLE YOUTH.—The core indicators of performance for youth activities authorized under section 129 shall consist of—

''(I) entry into employment, education or advanced training, or military service;

''(II) attainment of secondary school diplomas or their recognized equivalents, and postsecondary certificates; and

''(III) literacy or numeracy gains.''.

(2) ADDITIONAL INDICATORS.—Section 136(b)(2)(C) (29 U.S.C. 2871(b)(2)(C)) is amended to read as follows:

''(C) ADDITIONAL INDICATORS.—A State may identify in the State plan additional indicators for workforce investment activities under this subtitle, including indicators identified in collaboration with State business and industry associations, with employee representatives where applicable, and with local boards, to measure the performance of the workforce investment system in serving the workforce needs of business and industry in the State.''.

(3) LEVELS OF PERFORMANCE.—Section 136(b)(3)(A) (29 U.S.C. 2871(b)(3)(A)) is amended—

(A) in clause (iii)—

(i) in the heading, by striking ''FOR FIRST 3 YEARS'';

(ii) by striking ''and the customer satisfaction indicator of performance, for the first 3'' and inserting ''described in clauses (i) and (ii) of paragraph (2)(A) and the customer satisfaction indicator of performance, for the first 2''; and

(iii) by inserting at the end the following: ''Agreements on levels of performance for each of the core indicators of performance for the third and fourth program years covered by the State plan shall be reached prior to the beginning of the third program year covered by the State plan, and incorporated as a modification to the State plan.'';

(B) in clause (iv)—

(i) in subclause (II)—

(I) by striking ''taking into account'' and inserting ''and shall ensure that the levels involved are adjusted, using objective statistical methods, based on'';

(II) by inserting ''(such as differences in unemployment rates and job losses or gains in particular industries)'' after ''economic conditions'';

(III) by inserting ''(such as indicators of poor work history, lack of work experience, lack of educational or occupational skills attainment, dislocation from high-wage and benefit employment, low levels of literacy or English proficiency, disability status, homelessness, and welfare dependency)'' after ''program''; and

(IV) by striking ''and'' at the end;

(ii) in subclause (III), by striking the period and inserting ''; and''; and

(iii) by adding at the end the following:

''(IV) the extent to which the levels involved will assist the State in meeting the national goals described in clause (v).'';

(C) by striking clause (v) and inserting the following:

''(v) ESTABLISHMENT OF NATIONAL GOALS.—In order to promote enhanced performance outcomes on the performance measures and to facilitate the process of reaching agreements with the States under clause (iii) and to measure systemwide performance for the one-stop delivery systems of the States, the Secretary shall establish long-term national goals for the adjusted levels of performance for that systemwide performance to be achieved by the programs assisted under chapters 4 and 5 on the core indicators of performance described in subparagraphs (A) and (B) of subsection (b)(2). Such goals shall be established in accordance with the Government Performance and Results Act of 1993 in consultation with the States and other appropriate parties.''; and

(D) in clause (vi)—

(i) by striking ''or (v)''; and

(ii) by striking ''with the representatives described in subsection (i)'' and inserting ''with the States and other interested parties''.

(b) LOCAL PERFORMANCE MEASURES.—Section 136(c)(3) (29 U.S.C 2871(c)(3))—

(1) by striking ''shall take into account'' and inserting ''shall ensure that the levels involved are adjusted, using objective statistical methods, based on'';

(2) by inserting ''(characteristics such as unemployment rates and job losses or gains in particular industries)'' after ''economic''; and

(3) by inserting ''(characteristics such as indicators of poor work history, lack of work experience, lack of educational and occupational skills attainment, dislocation from high-wage and benefit employment, low levels of literacy or English proficiency, disability status, homelessness, and welfare dependency)'' after ''demographic''.

(c) REPORT.—Section 136(d) (29 U.S.C. 2871(d)) is amended—

(1) in paragraph (1), by adding at the end the following: ''In the case of a State or local area that chooses to expend funds for activities under subsection (a)(3)(A)(i) or (e)(1)(A)(xi), respectively, of section 134, the report also shall include the amount of such funds so expended and the percentage that such funds are of the funds available for activities under section 134.'';

(2) in paragraph (2)—

(A) in subparagraph (E)—

(i) by striking ''(excluding participants who received only self-service and informational activities)''; and

(ii) by striking ''and'' after the semicolon;

(B) in subparagraph (F)—

(i) by inserting ''noncustodial parents with child support obligations, homeless individuals,'' after ''displaced homemakers,''; and

(ii) by striking the period and inserting a semicolon; and

(C) by adding at the end the following:

''(G) the number of participants served and the cost per participant; and

''(H) the amount of adult and dislocated worker funds spent on—

''(i) core, intensive, and training services, respectively; and

''(ii) services provided under subsection (a)(3)(A)(i) or (e)(1)(A)(xi) of section 134, if applicable.''; and

(3) by adding at the end the following:

''(4) DATA VALIDATION.—In preparing the reports described in this subsection, the States shall establish procedures, consistent with guidelines issued by the Secretary, to ensure that the information contained in the reports is valid and reliable.''.

(d) EVALUATION OF STATE PROGRAMS.—Section 136(e)(3) is amended by inserting '', including information on promoting self-sufficiency and comparable pay between men and women'' after ''employers''.

(e) SANCTIONS FOR STATE.—Section 136(g) is amended—

(1) in paragraph (1)(B), by striking ''If such failure continues for a second consecutive year'' and inserting ''If a State performs at less than 80 percent of the adjusted level of performance for core indicators of performance described in subsection (b)(2)(A) for 2 consecutive years''; and

(2) in paragraph (2), by striking ''section 503'' and inserting ''subsection (i)(1)''.

(f) SANCTIONS FOR LOCAL AREA.—Section 136(h)(2)(A) (29 U.S.C. 2871(h)(2)(A)) is amended—

(1) in the matter preceding clause (i), by striking ''If such failure continues for a second consecutive year'' and inserting ''If a local area performs at less than 80 percent of the adjusted level of performance for core indicators of performance described in subsection (b)(2)(A) for 2 consecutive years'';

(2) in clause (ii), by striking ''or'' after the semicolon;

(3) by redesignating clause (iii) as clause (iv); and

(4) by inserting after clause (ii) the following:

''(iii) redesignate the local area in accordance with section 116(b)(2); or''.

(g) INCENTIVE GRANTS.—Section 136(i) (29 U.S.C. 2871(i)) is amended to read as follows:

''(i) INCENTIVE GRANTS FOR LOCAL AREAS.—

''(1) IN GENERAL.—From funds reserved under sections 128(a) and 133(a)(1), the Governor involved shall award incentive grants to local areas for performance described in paragraph (2) in carrying out programs under chapters 4 and 5.

''(2) BASIS.—The Governor shall award the grants on the basis—

''(A) that the local areas met or exceeded the performance measures established under subsection (c)(2) relating to indicators described in subsection (b)(3)(A)(iii);

''(B) of exemplary performance of the local areas in serving hard-to-serve populations; or

''(C) that the local areas are effectively—

''(i) coordinating multiple systems into a comprehensive workforce investment system, including coordination of employment services under the Wagner-Peyser Act and core activities under this title as well as one-stop partner programs described in section 121;

''(ii) expanding access to training, including through increased leveraging of resources other than those funded through programs under this title; or

''(iii) implementing innovative business and economic development initiatives.

''(3) USE OF FUNDS.—The funds awarded to a local area under this paragraph may be used to carry out activities authorized for local areas under chapters 4 and 5, and such demonstration projects or innovative programs for hard-to-serve populations as may be approved by the Governor.''.

(g) USE OF CORE MEASURES IN OTHER DEPARTMENT OF LABOR PROGRAMS.—Section 136 (29 U.S.C. 2871) is amended by adding at the end the following:

''(j) USE OF CORE INDICATORS FOR OTHER PROGRAMS.—In addition to the programs carried out under chapters 4 and 5, and consistent with the requirements of the applicable authorizing laws, the Secretary shall use the indicators of performance described in subparagraphs (A) and (B) of subsection (b)(2) to assess the effectiveness of the programs described in clauses (i), (ii), and (vi) of section 121(b)(1)(B) that are carried out by the Secretary.''.

(h) PREVIOUS DEFINITIONS OF CORE INDICATORS.—Section 502 (29 U.S.C. 9272) is repealed.

SEC. 123. AUTHORIZATION OF APPROPRIATIONS.

(a) YOUTH ACTIVITIES.—Section 137(a) (29 U.S.C. 2872(a)) is amended by striking ''such sums as may be necessary for each of fiscal years 1999 through 2003'' and inserting ''such sums as may be necessary for each of fiscal years 2004 through 2009''.

(b) ADULT EMPLOYMENT AND TRAINING ACTIVITIES.—Section 137(b) (29 U.S.C. 2872(b)) is amended by striking ''such sums as may be necessary for each of fiscal years 1999 through 2003'' and inserting ''such sums as may be necessary for each of fiscal years 2004 through 2009''.

(c) DISLOCATED WORKER EMPLOYMENT AND TRAINING ACTIVITIES.—Section 137(c) (29 U.S.C. 2872(c)) is amended by striking ''such sums as may be necessary for each of fiscal years 1999 through 2003'' and inserting ''such sums as may be necessary for each of fiscal years 2004 through 2009''.

Subtitle C—Job Corps

SEC. 131. JOB CORPS.

(a) ELIGIBILITY.—Section 144(3) (29 U.S.C. 2884(3)) is amended by adding at the end the following:

''(F) A child eligible for assistance under section 477 of the Social Security Act.''.

(b) IMPLEMENTATION OF STANDARDS AND PROCEDURES.—Section 145(a)(3) (29 U.S.C. 2885(a)(3)) is amended—

(1) in subparagraph (B), by striking ''and'' after the semicolon;

(2) in subparagraph (C), by striking the period and inserting ''; and''; and

(3) by adding at the end the following:

''(D) child welfare agencies that are responsible for children in foster care and children eligible for assistance under section 477 of the Social Security Act.''.

(c) INDUSTRY COUNCILS.—Section 154(b) (29 U.S.C. 2894(b)) is amended—

(1) in paragraph (1)(A), by striking ''local and distant''; and

(2) by adding at the end the following:

''(3) EMPLOYERS OUTSIDE OF LOCAL AREA.—The industry council may include, or otherwise provide for consultation with, employers from outside the local area who are likely to hire a significant number of enrollees from the Job Corps center.

''(4) SPECIAL RULE FOR SINGLE LOCAL AREA STATES.—In the case of a single local area State designated under section 116(b), the industry council shall include a representative of the State Board.''.

(d) INDICATORS OF PERFORMANCE.—Section 159 (29 U.S.C. 2899) is amended—

(1) in subsection (c)—

(A) by striking paragraph (1) and inserting the following:

''(1) PERFORMANCE INDICATORS.—The Secretary shall annually establish expected levels of performance for Job Corps centers and the Job Corps program relating to each of the core indicators of performance for youth activities identified in section 136(b)(2)(A)(ii).'';

(B) in paragraph (2), by striking ''measures'' each place it appears and inserting ''indicators''; and

(C) in paragraph (3)—

(i) in the first sentence, by striking ''core performance measures, as compared to the expected performance level for each performance measure'' and inserting ''performance indicators described in paragraph (1), as compared to the expected level of performance established under paragraph (1) for each performance measure''; and

(ii) in the second sentence, by striking ''measures'' each place it appears and inserting ''indicators''; and

(2) in subsection (f)(2), in the first sentence, by striking ''core performance measures'' and inserting ''indicators of performance''.

(e) AUTHORIZATION OF APPROPRIATIONS.—Section 161 (29 U.S.C. 2901) is amended by striking ''1999 through 2003'' and inserting ''2004 through 2009''.

Subtitle D—National Programs

SEC. 141. NATIVE AMERICAN PROGRAMS.

(a) ADVISORY COUNCIL.—Section 166(h)(4)(C) (29 U.S.C. 2911(h)(4)(C)) is amended to read as follows:

''(C) DUTIES.—The Council shall advise the Secretary on the operation and administration of the programs assisted under this section, including the selection of the individual appointed as head of the unit established under paragraph (1).''.

(b) ASSISTANCE TO UNIQUE POPULATIONS IN ALASKA AND HAWAII.—Section 166(j) (29 U.S.C. 2911(j)) is amended to read as follows:

''(j) ASSISTANCE TO UNIQUE POPULATIONS IN ALASKA AND HAWAII.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, the Secretary is authorized to provide assistance to unique populations who reside in Alaska or Hawaii to improve job training and workforce investment activities.

''(2) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection such sums as may be necessary for fiscal year 2004.''.

(c) PERFORMANCE INDICATORS.—Section 166 (29 U.S.C. 2911) is amended by adding at the end the following':

''(k) PERFORMANCE INDICATORS.—

''(1) DEVELOPMENT OF INDICATORS.—The Secretary, in consultation with the Native American Employment and Training Council, shall develop a set of performance indicators and standards which shall be applicable to programs under this section.

''(2) SPECIAL CONSIDERATIONS.—Such performance indicators and standards shall take into account—

''(A) the purposes of the programs under this section as described in paragraph (a)(1);

''(B) the needs of the groups served by this section, including the differences in needs among such groups in various geographic service areas; and

''(C) the economic circumstances of the communities served, including differences in circumstances among various geographic service areas.''.

SEC. 142. MIGRANT AND SEASONAL FARMWORKER PROGRAMS.

Section 167(d) (29 U.S.C. 2912(d)) is amended by inserting ''(including permanent housing)'' after ''housing''.

SEC. 143. VETERANS' WORKFORCE INVESTMENT PROGRAMS.

Section 168(a)(3)(C) (29 U.S.C. 2913(a)(3)(C)) is amended by striking ''section 134(c)'' and inserting ''section 121(e)''.

SEC. 144. YOUTH CHALLENGE GRANTS.

Section 169 (29 U.S.C. 2914) is amended to read as follows:

''SEC. 169. YOUTH CHALLENGE GRANTS.

''(a) IN GENERAL.—Of the amounts reserved by the Secretary under section 127(b)(1)(A) for a fiscal year—

''(1) the Secretary shall use not less than 80 percent to award competitive grants under subsection (b); and

''(2) the Secretary may use not more than 20 percent to award discretionary grants under subsection (c).

''(b) COMPETITIVE GRANTS TO STATES AND LOCAL AREAS.—

''(1) ESTABLISHMENT.—From the funds described in subsection (a)(1), the Secretary shall award competitive grants to eligible entities to carry out activities authorized under this subsection to assist eligible youth in acquiring the skills, credentials, and employment experience necessary to achieve the performance outcomes for youth described in section 136

''(2) ELIGIBLE ENTITY.—In this subsection, the term 'eligible entity' means—

''(A) a State or consortium of States;

''(B) a local board or consortium of local boards;

''(C) a recipient of a grant under section 166 (relating to Native American programs); or

''(D) a public or private entity (including a consortium of such entities) with expertise in the provision of youth activities, applying in partnership with a local board or consortium of local boards.

''(3) APPLICATIONS.—To be eligible to receive a grant under this subsection, an eligible entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require, including—

''(A) a description of the activities the eligible entity will provide to eligible youth under this subsection, and how the eligible entity will collaborate with State and local workforce investment systems established under this title in the provision of such activities;

''(B) a description of the programs of demonstrated effectiveness on which the provision of the activities under subparagraph (A) are based, and a description of how such activities will expand the base of knowledge relating to the provision of activities for youth;

''(C) a description of the State, local, and private resources that will be leveraged to provide the activities described under subparagraph (A) in addition to funds provided under this subsection, and a description of the extent of the involvement of employers in the activities;

''(D) the levels of performance the eligible entity expects to achieve with respect to the indicators of performance for youth specified in section 136(b)(2)(A)(ii); and

''(E) an assurance that the State board of each State in which the proposed activities are to be carried out had the opportunity to review the application, and including the comments, if any, of the affected State boards on the application, except that this subparagraph shall not apply to an eligible entity described in paragraph (2)(C).

''(4) FACTORS FOR AWARD.—

''(A) IN GENERAL.—In awarding grants under this subsection the Secretary shall consider—

''(i) the quality of the proposed activities;

''(ii) the goals to be achieved;

''(iii) the likelihood of successful implementation;

''(iv) the extent to which the proposed activities are based on proven strategies or the extent to which the proposed activities will expand the base of knowledge relating to the provision of activities for youth;

''(v) the extent of collaboration with the State and local workforce investment systems in carrying out the proposed activities;

''(vi) the extent of employer involvement in the proposed activities;

''(vii) whether there are other Federal and non-Federal funds available for similar activities to the proposed activities, and the additional State, local, and private resources that will be provided to carry out the proposed activities; and

''(viii) the quality of proposed activities in meeting the needs of the youth to be served.

''(B) EQUITABLE GEOGRAPHIC DISTRIBUTION.—In awarding grants under this subsection the Secretary shall ensure an equitable distribution of such grants across geographically diverse areas.

''(5) USE OF FUNDS.—

''(A) IN GENERAL.—An eligible entity that receives a grant under this subsection shall use the grant funds to carry out activities that are designed to assist youth in acquiring the skills, credentials, and employment experience that are necessary to succeed in the labor market, including the activities identified in section 129.

''(B) ACTIVITIES.—The activities carried out pursuant to subparagraph (A) may include the following:

''(i) Training and internships for out-of-school youth in sectors of the economy experiencing, or projected to experience, high growth.

''(ii) Dropout prevention activities for in-school youth.

''(iii) Activities designed to assist special youth populations, such as court-involved youth and youth with disabilities.

''(iv) Activities combining remediation of academic skills, work readiness training, and work experience, and including linkages to postsecondary education, apprenticeships, and career-ladder employment.

''(v) Activities, including work experience, paid internships, and entrepreneurial training, in areas where there is a migration of youth out of the areas.

''(C) PARTICIPANT ELIGIBILITY.—Youth who are 14 years of age through 21 years of age, as of the time the eligibility determination is made, may be eligible to participate in activities carried out under this subsection.

''(6) GRANT PERIOD.—The Secretary shall make a grant under this subsection for a period of 2 years and may renew the grant, if the eligible entity has performed successfully, for a period of not more than 3 succeeding years.

''(7) MATCHING FUNDS REQUIRED.—The Secretary shall require that an eligible entity that receives a grant under this subsection provide non-Federal matching funds in an amount to be determined by the Secretary that is not less than 10 percent of the cost of activities carried out under the grant. The Secretary may require that such non-Federal matching funds be provided in cash resources, noncash resources, or a combination of cash and noncash resources.

''(8) EVALUATION.—The Secretary shall reserve not more than 3 percent of the funds described in subsection (a)(1) to provide technical assistance to, and conduct evaluations of (using appropriate techniques as described in section 172(c)), the projects funded under this subsection.

''(c) DISCRETIONARY GRANTS FOR YOUTH ACTIVITIES.—

''(1) IN GENERAL.—From the funds described in subsection (a)(2), the Secretary may award grants to eligible entities to provide activities that will assist youth in preparing for, and entering and retaining, employment.

''(2) ELIGIBLE ENTITY.—In this subsection, the term 'eligible entity' means a public or private entity that the Secretary determines would effectively carry out activities relating to youth under this subsection.

''(3) EQUITABLE DISTRIBUTION TO RURAL AREAS.—In awarding grants under this subsection the Secretary shall ensure an equitable distribution of such grants to rural areas.

''(4) APPLICATIONS.—To be eligible to receive a grant under this subsection, an eligible entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

''(5) USE OF FUNDS.—

''(A) IN GENERAL.—An eligible entity that receives a grant under this subsection shall use the grant funds to carry out—

''(i) activities that will assist youth in preparing for, and entering and retaining, employment, including the activities described in section 129 for out-of-school youth;

''(ii) activities designed to assist in-school youth to stay in school and gain work experience;

''(iii) activities designed to assist youth in economically distressed areas; and

''(iv) such other activities that the Secretary determines are appropriate to ensure that youth entering the workforce have the skills needed by employers.

''(B) PARTICIPANT ELIGIBILITY.—Youth who are 14 years of age through 21 years of age, as of the time the eligibility determination is made, may be eligible to participate in activities carried out under this subsection.

''(6) MATCHING FUNDS REQUIRED.—The Secretary shall require that an eligible entity that receives a grant under this subsection provide non-Federal matching funds in an amount to be determined by the Secretary that is not less than 10 percent of the cost of activities carried out under the grant. The Secretary may require that such non-Federal matching funds be provided in cash resources, noncash resources, or a combination of cash and noncash resources.

''(7) EVALUATIONS.—The Secretary may require that an eligible entity that receives a grant under this subsection participate in an evaluation of activities carried out under this subsection, including an evaluation using the techniques described in section 172(c).''.

SEC. 145. TECHNICAL ASSISTANCE.

Section 170 (29 U.S.C. 2915) is amended—

(1) in subsection (a)(1), by—

(A) inserting ''the training of staff providing rapid response services, the training of other staff of recipients of funds under this title, the training of members of State boards and local boards, peer review activities under this title,'' after ''localities,''; and

(B) striking ''from carrying out activities'' and all that follows through the period and inserting ''to implement the amendments made by the Workforce Investment Act Amendments of 2003.'';

(2) in subsection (a)(2), by adding at the end the following: ''The Secretary shall also hire staff qualified to provide the assistance described in paragraph (1).'';

(3) in subsection (b)(2), by striking the last sentence and inserting ''Such projects shall be administered by the Employment and Training Administration.''; and

(4) by adding at the end the following:

''(c) BEST PRACTICES COORDINATION.—The Secretary shall—

''(1) establish a system through which States may share information regarding best practices with regard to the operation of workforce investment activities under this Act;

''(2) evaluate and disseminate information regarding best practices and identify knowledge gaps; and

''(3) commission research under section 172 to address knowledge gaps identified under paragraph (2).''.

SEC. 146. DEMONSTRATION, PILOT, MULTISERVICE, RESEARCH, AND MULTISTATE PROJECTS.

(a) DEMONSTRATION AND PILOT PROJECTS.—Section 171(b) (29 U.S.C. 2916(b)) is amended—

(1) in paragraph (1)—

(A) by striking ''Under a'' and inserting ''Consistent with the priorities specified in the'';

(B) by striking subparagraphs (A) through (E) and inserting the following:

''(A) projects that assist national employers in connecting with the workforce investment system established under this title in order to facilitate the recruitment and employment of needed workers for career ladder jobs and to provide information to such system on skills and occupations in demand;

''(B) projects that promote the development of systems that will improve the maximum effectiveness of programs carried out under this title;

''(C) projects that focus on opportunities for employment in industries and sectors of industries that are experiencing, or are likely to experience, high rates of growth and jobs with wages leading to self-sufficiency;

''(D) computerized, individualized, self-paced training projects targeted to dislocated, disadvantaged, or incumbent workers utilizing equipment and curriculum designed in partnership with industries for employment in the operations, repair, and maintenance of high-tech equipment that is used in integrated systems technology;

''(E) projects carried out by States and local areas to test innovative approaches to delivering employment-related services;'';

(C) in subparagraph (G), by striking ''and'' after the semicolon; and

(D) by striking subparagraph (H) and inserting the following:

''(H) projects that provide retention grants, which shall—

''(i) be made to qualified job training programs offering instruction, assessment, or professional coaching, upon placement of a low-income individual trained by the program involved in employment with an employer and retention of the low-income individual in that employment with that employer for a period of 1 year, if that employment provides the low-income individual with an annual salary—

''(I) that is at least $10,000 more than the individual's federally adjusted income for the previous year; and

''(II) that is not less than twice the poverty line applicable to the individual; and

''(ii) be made taking into account the economic benefit received by the Federal Government from the employment and retention of the individual, including the economic benefit from tax revenue and decreased public subsidies;

''(I) targeted innovation projects that improve access to and delivery of employment and training services, with emphasis given to projects that incorporate advanced technologies to facilitate the connection of individuals to the information and tools they need to upgrade skills;

''(J) projects that promote the use of distance learning, enabling students to take courses through the use of media technology such as videos, teleconferencing computers, and the Internet; and

''(K) projects that provide comprehensive education and training services, and support services, in coordination with local boards, for populations in targeted high poverty areas where the greatest barriers to employment exist, including ex-offenders, out-of-school youth, and public assistance recipient populations.''; and

(2) in paragraph (2)—

(A) by striking subparagraph (B); and

(B) by redesignating subparagraph (C) as subparagraph (B).

(b) MULTISERVICE PROJECTS.—Section 171(c)(2)(B) (29 U.S.C. 2916(c)(2)(B)) is amended to read as follows:

''(B) STUDIES AND REPORTS.—

''(i) NET IMPACT STUDIES AND REPORTS.—

''(I) IN GENERAL.—The Secretary, in coordination with the Secretary of Education, shall conduct studies to determine the net impacts of programs, services, and activities carried out under this title.

''(II) REPORTS.—The Secretary shall prepare and disseminate to the public reports containing the results of the studies conducted under subclause (I).

''(ii) STUDY ON RESOURCES AVAILABLE TO ASSIST OUT-OF-SCHOOL YOUTH.—The Secretary, in coordination with the Secretary of Education, may conduct a study examining the resources available at the Federal, State, and local levels to assist out-of-school youth in obtaining the skills, credentials, and work experience necessary to become successfully employed, including the availability of funds provided through average daily attendance and other methodologies used by States and local areas to distribute funds.

''(iii) STUDY OF INDUSTRY-BASED CERTIFICATION AND CREDENTIALS.—

''(I) IN GENERAL.—The Secretary shall conduct a study concerning the role and benefits of credentialing and certification to businesses and workers in the economy and the implications of certification to the services provided through the workforce investment system. The study may examine issues such as—

''(aa) the characteristics of successful credentialing and certification systems that serve business and individual needs;

''(bb) the relative proportions of certificates and credentials attained with assistance from the public sector, with private-sector training of new hires or incumbent workers, and by individuals on their own initiative without other assistance, respectively;

''(cc) the return on human capital investments from occupational credentials and industry-based skill certifications, including the extent to which acquisition of such credentials or certificates enhances outcomes such as entry into employment, retention, earnings (including the number and amount of wage increases), career advancement, and layoff aversion;

''(dd) the implications of the effects of skill certifications and credentials to the types and delivery of services provided through the workforce investment system;

''(ee) the role that Federal and State governments play in fostering the development of and disseminating credentials and skill standards; and

''(ff) the use of credentials by businesses to achieve goals for workforce skill upgrading and greater operating efficiency.

''(II) REPORT TO CONGRESS.—The Secretary shall prepare and submit to Congress a report containing the results of the study conducted pursuant to subclause (I). Such report may include any recommendations that the Secretary determines are appropriate to include in such report relating to promoting the acquisition of industry-based certification and credentials, and the appropriate role of the Department of Labor and the workforce investment system in supporting the needs of business and individuals with respect to such certification and credentials.

''(iv) STUDY OF EFFECTIVENESS OF WORKFORCE INVESTMENT SYSTEM IN MEETING BUSINESS NEEDS.—

''(I) IN GENERAL.—Using funds available to carry out this section jointly with funds available to the Secretary of Commerce and Administrator of the Small Business Administration, the Secretary, in coordination with the Secretary of Commerce and the Administrator of the Small Business Administration, may conduct a study of the effectiveness of the workforce investment system in meeting the needs of business, with particular attention to the needs of small business, including in assisting workers to obtain the skills needed to utilize emerging technologies. In conducting the study, the Secretary, in coordination with the Secretary of Commerce and the Administrator of the Small Business Administration, may examine issues such as—

''(aa) methods for identifying the workforce needs of businesses and how the requirements of small businesses may differ from larger establishments;

''(bb) business satisfaction with the workforce investment system, with particular emphasis on the satisfaction of small businesses;

''(cc) the extent to which business is engaged as a collaborative partner in the workforce investment system, including the extent of business involvement as members of State boards and local boards, and the extent to which such boards and one-stop centers effectively collaborate with business and industry leaders in developing workforce investment strategies, including strategies to identify high growth opportunities;

''(dd) ways in which the workforce investment system addresses changing skill needs of business that result from changes in technology and work processes;

''(ee) promising practices for serving small businesses;

''(ff) the extent and manner in which the workforce investment system uses technology to serve business and individual needs, and how uses of technology could enhance efficiency and effectiveness in providing services; and

''(gg) the extent to which various segments of the labor force have access to and utilize technology to locate job openings and apply for jobs, and characteristics of individuals utilizing such technology (such as age, gender, race or ethnicity, industry sector, and occupational groups).

''(II) REPORT TO CONGRESS.—The Secretary shall prepare and submit to Congress a report containing the results of the study described in clause (I). Such report may include any recommendations the Secretary determines are appropriate to include in such report, including ways to enhance the effectiveness of the workforce investment system in meeting the needs of business for skilled workers.''.

(c) NEXT GENERATION TECHNOLOGIES.—Section 171 (29 U.S.C. 2916) is amended by adding at the end the following:

''(e) SKILL CERTIFICATION PILOT PROJECTS.—

''(1) PILOT PROJECTS.—In accordance with subsection (b) and from funds appropriated pursuant to paragraph (10), the Secretary shall establish and carry out not more than 10 pilot projects to establish a system of industry-validated national certifications of skills, including—

''(A) not more than 8 national certifications of skills in high-technology industries, including biotechnology, telecommunications, highly automated manufacturing (including semiconductors), nanotechnology, and energy technology; and

''(B) not more than 2 cross-disciplinary national certifications of skills in homeland security technology.

''(2) GRANTS TO ELIGIBLE ENTITIES.—In carrying out the pilot projects, the Secretary shall make grants to eligible entities, for periods of not less than 36 months and not more than 48 months, to carry out the authorized activities described in paragraph (7) with respect to the certifications described in paragraph (1). In awarding grants under this subsection the Secretary shall take into consideration awarding grants to eligible entities from diverse geographic areas, including rural areas.

''(3) ELIGIBLE ENTITIES.—

''(A) DEFINITION OF ELIGIBLE ENTITY.—In this subsection the term 'eligible entity' means an entity that shall work in conjunction with a local board and shall include as a principal participant one or more of the following:

''(i) An educational institution, including a 2- or 4-year college, or a technical or vocational school.

''(ii) An advanced technology education center.

''(iii) A local board.

''(iv) A representative of a business in a target industry for the certification involved.

''(v) A representative of an industry association, labor organization, or community development organization.

''(B) HISTORY OF DEMONSTRATED CAPABILITY REQUIRED.—To be eligible to receive a grant under this subsection, an eligible entity shall have a history of demonstrated capability for effective collaboration with industry on workforce investment activities that is consistent with the objectives of this title.

''(4) APPLICATIONS.—To be eligible to receive a grant under this subsection, an eligible entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

''(5) CRITERIA.—The Secretary shall establish criteria, consistent with paragraph (6), for awarding grants under this subsection.

''(6) PRIORITY.—In selecting eligible entities to receive grants under this subsection, the Secretary shall give priority to eligible entities that demonstrate the availability of and ability to provide matching funds from industry or nonprofit sources. Such matching funds may be provided in cash or in kind.

''(7) AUTHORIZED ACTIVITIES.—

''(A) IN GENERAL.—An eligible entity that receives a grant under this subsection shall use the funds made available through the grant—

''(i) to facilitate the establishment of certification requirements for a certification described in paragraph (1) for an industry;

''(ii) to develop and initiate a certification program that includes preparatory courses, course materials, procedures, and examinations, for the certification; and

''(iii) to collect and analyze data related to the program at the program's completion, and to identify best practices (consistent with paragraph (8)) that may be used by local and State workforce investment boards in the future.

''(B) BASIS FOR REQUIREMENTS.—The certification requirements established under the grant shall be based on applicable skill standards for the industry involved that have been developed by or linked to national centers of excellence under the National Science Foundation's Advanced Technological Education Program. The requirements shall require an individual to demonstrate an identifiable set of competencies relevant to the industry in order to receive certification. The requirements shall be designed to provide evidence of a transferable skill set that allows flexibility and mobility of workers within a high technology industry.

''(C) RELATIONSHIP TO TRAINING AND EDUCATION PROGRAMS.—The eligible entity shall ensure that—

''(i) a training and education program related to competencies for the industry involved, that is flexible in mode and timeframe for delivery and that meets the needs of those seeking the certification, is offered; and

''(ii) the certification program is offered at the completion of the training and education program.

''(D) RELATIONSHIP TO THE ASSOCIATE DEGREE.—The eligible entity shall ensure that the certification program is consistent with the requirements for a 2-year associate degree.

''(E) AVAILABILITY.—The eligible entity shall ensure that the certification program is open to students pursuing associate degrees, employed workers, and displaced workers.

''(8) CONSULTATION.—The Secretary shall consult with the Director of the National Science Foundation to ensure that the pilot projects build on the expertise and information about best practices gained through the implementation of the National Science Foundation's Advanced Technological Education Program.

''(9) CORE COMPONENTS; GUIDELINES; REPORTS.—After collecting and analyzing the data obtained from the pilot programs, the Secretary shall—

''(A) establish the core components of a model high-technology certification program;

''(B) establish guidelines to assure development of a uniform set of standards and policies for such programs;

''(C) prepare and submit a report on the pilot projects to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and the Workforce of the House of Representatives; and

''(D) make available to the public both the data and the report.

''(10) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts authorized to be appropriated under section 174(b), there is authorized to be appropriated $30,000,000 for fiscal year 2004 to carry out this subsection.''.

(d) INTEGRATED WORKFORCE TRAINING PROGRAMS FOR ADULTS WITH LIMITED ENGLISH PROFICIENCY.—Section 171 (29 U.S.C. 2916), as amended by subsection (c), is further amended by adding at the end the following:

''(f) INTEGRATED WORKFORCE TRAINING PROGRAMS FOR ADULTS WITH LIMITED ENGLISH PROFICIENCY.—

''(1) DEFINITIONS.—In this subsection:

''(A) INTEGRATED WORKFORCE TRAINING.—The term 'integrated workforce training' means training that integrates occupational skills training with language acquisition.

''(B) SECRETARY.—The term 'Secretary' means the Secretary of Labor in consultation with the Secretary of Education.

''(2) DEMONSTRATION PROJECT.—In accordance with subsection (b) and from funds appropriated pursuant to paragraph (11), the Secretary shall establish and implement a national demonstration project designed to both analyze and provide data on workforce training programs that integrate English language acquisition and occupational training.

''(3) GRANTS.—

''(A) IN GENERAL.—In carrying out the demonstration project, the Secretary shall make not less than 10 grants, on a competitive basis, to eligible entities to provide the integrated workforce training programs. In awarding grants under this subsection the Secretary shall take into consideration awarding grants to eligible entities from diverse geographic areas, including rural areas.

''(B) PERIODS.—The Secretary shall make the grants for periods of not less than 24 months and not more than 48 months.

''(4) ELIGIBLE ENTITIES.—

''(A) IN GENERAL.—To be eligible to receive a grant under this subsection, an eligible entity shall work in conjunction with a local board and shall include as a principal participant one or more of the following:

''(i) An employer or employer association.

''(ii) A nonprofit provider of English language instruction.

''(iii) A provider of occupational or skills training.

''(iv) A community-based organization.

''(v) An educational institution, including a 2- or 4-year college, or a technical or vocational school.

''(vi) A labor organization.

''(vii) A local board.

''(B) EXPERTISE.—To be eligible to receive a grant under this subsection, an eligible entity shall have proven expertise in—

''(i) serving individuals with limited English proficiency, including individuals with lower levels of oral and written English; and

''(ii) providing workforce programs with training and English language instruction.

''(5) APPLICATIONS.—

''(A) IN GENERAL.—To be eligible to receive a grant under this subsection, an eligible entity shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

''(B) CONTENTS.—Each application submitted under subparagraph (A) shall—

''(i) contain information, including capability statements, that demonstrates that the eligible entity has the expertise described in paragraph (4)(B); and

''(ii) include an assurance that the program to be assisted shall—

''(I) establish a generalized adult bilingual workforce training and education model that integrates English language acquisition and occupational training, and incorporates the unique linguistic and cultural factors of the participants;

''(II) establish a framework by which the employer, employee, and other relevant members of the eligible entity can create a career development and training plan that assists both the employer and the employee to meet their long-term needs;

''(III) ensure that the framework established under subclause (II) takes into consideration the knowledge, skills, and abilities of the employee with respect to both the current and economic conditions of the employer and future labor market conditions relevant to the local area; and

''(IV) establish identifiable measures so that the progress of the employee and employer and the relative efficacy of the program can be evaluated and best practices identified.

''(6) CRITERIA.—The Secretary shall establish criteria for awarding grants under this subsection.

''(7) INTEGRATED WORKFORCE TRAINING PROGRAMS.—

''(A) PROGRAM COMPONENTS.—

''(i) REQUIRED COMPONENTS.—Each program that receives funding under this subsection shall—

''(I) test an individual's English language proficiency levels to assess oral and literacy gains from the beginning and throughout program enrollment;

''(II) combine training specific to a particular occupation or occupational cluster, with—

''(aa) English language instruction, such as instruction through an English as a Second Language program, or an English for Speakers of Other Languages program;

''(bb) basic skills instruction; and

''(cc) supportive services;

''(III) effectively integrate public and private sector entities, including the local workforce investment system and its functions, to achieve the goals of the program; and

''(IV) require matching or in-kind resources from private and nonprofit entities.

''(ii) PERMISSIBLE COMPONENTS.—The program may offer other services, as necessary to promote successful participation and completion, including work-based learning, substance abuse treatment, and mental health services.

''(B) GOAL.—Each program that receives funding under this subsection shall be designed to prepare limited English proficient adults for, and place such adults in employment in, growing industries with identifiable career ladder paths.

''(C) PROGRAM TYPES.—In selecting programs to receive funding under this subsection, the Secretary shall select programs that meet 1 or more of the following criteria:

''(i) A program that—

''(I) serves unemployed, limited English proficient individuals with significant work experience or substantial education but persistently low wages; and

''(II) aims to prepare such individuals for, and place such individuals in, higher paying employment, defined for purposes of this subparagraph as employment that provides at least 75 percent of the median wage in the local area.

''(ii) A program that—

''(I) serves limited English proficient individuals with lower levels of oral and written fluency, who are working but at persistently low wages; and

''(II) aims to prepare such individuals for, and place such individuals in, higher paying

employment, through services provided at the worksite, or at a location central to several work sites, during work hours.

''(iii) A program that—

''(I) serves unemployed, limited English proficient individuals with lower levels of oral and written fluency, who have little or no work experience; and

''(II) aims to prepare such individuals for, and place such individuals in, employment through services that include subsidized employment, in addition to the components required in subparagraph (A)(i).

''(iv) A program that includes funds from private and nonprofit entities.

''(D) PROGRAM APPROACHES.—In selecting programs to receive funding under this subsection, the Secretary shall select programs with different approaches to integrated workforce training, in different contexts, in order to obtain comparative data on multiple approaches to integrated workforce training and English language instruction, to ensure programs are tailored to characteristics of individuals with varying skill levels and to assess how different curricula work for limited English proficient populations. Such approaches may include—

''(i) bilingual programs in which the workplace language component and the training are conducted in a combination of an individual's native language and English;

''(ii) integrated workforce training programs that combine basic skills, language instruction, and job specific skills training; or

''(iii) sequential programs that provide a progression of skills, language, and training to ensure success upon an individual's completion of the program.

''(8) EVALUATION BY ELIGIBLE ENTITY.—Each eligible entity that receives a grant under this subsection for a program shall carry out a continuous program evaluation and an evaluation specific to the last phase of the program operations.

''(9) EVALUATION BY SECRETARY.—

''(A) IN GENERAL.—The Secretary shall conduct an evaluation of program impacts of the programs funded under the demonstration project, with a random assignment, experimental design impact study done at each worksite at which such a program is carried out.

''(B) DATA COLLECTION AND ANALYSIS.—The Secretary shall collect and analyze the data from the demonstration project to determine program effectiveness, including gains in language proficiency, acquisition of skills, and job advancement for program participants.

''(C) REPORT.—The Secretary shall prepare and submit to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and the Workforce of the House of Representatives, and make available to the public, a report on the demonstration project, including the results of the evaluation.

''(10) TECHNICAL ASSISTANCE.—The Secretary shall provide technical assistance to recipients of grants under this subsection throughout the grant periods.

''(11) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts authorized to be appropriated under section 174(b), there is authorized to be appropriated $10,000,000 for fiscal year 2004 to carry out this subsection.''.

SEC. 147. NATIONAL DISLOCATED WORKER GRANTS.

(a) IN GENERAL.—Section 173 (29 U.S.C. 2918) is amended—

(1) by striking the heading and inserting the following:

''SEC. 173. NATIONAL DISLOCATED WORKER GRANTS.'';

and

(2) in subsection (a)—

(A) by striking the matter preceding paragraph (1) and inserting the following:

''(a) IN GENERAL.—The Secretary is authorized to award national dislocated worker grants—'';

(B) in paragraph (1), by striking ''subsection (c)'' and inserting ''subsection (b)'';

(C) in paragraph (3), by striking ''and'' after the semicolon; and

(D) by striking paragraph (4) and inserting the following:

''(4) to a State or entity (as defined in subsection (b)(1)(B)) to carry out subsection (e), including providing assistance to eligible individuals;

''(5) to a State or entity (as defined in subsection (b)(1)(B)) to carry out subsection (f), including providing assistance to eligible individuals;

''(6) to provide additional assistance to a State board or local board where a higher than average demand for employment and training services for dislocated members of the Armed Forces, or spouses, as defined in section 101(9)(E), of members of the Armed Forces as described in subsection (b)(2)(A)(iv), exceeds State and local resources for providing such services, and where such programs are to be carried out in partnership with the Department of Defense and Department of Veterans Affairs transition assistance programs; and

''(7) to provide assistance to a State for statewide or local use in order to—

''(A) address cases in which there have been worker dislocations across multiple sectors or across multiple local areas and such workers remain dislocated;

''(B) coordinate the State plan described in section 112 with emerging economic development needs; and

''(C) train eligible individuals who are dislocated workers described in subparagraph (A).

The Secretary shall issue a final decision on an application for a national dislocated worker grant under this subsection not later than 60 calendar days after receipt of the application. The Secretary shall issue a notice of obligation for such a grant not later than 10 days after the award of the grant.''.

(b) ADMINISTRATION AND ADDITIONAL ASSISTANCE.—Section 173 (29 U.S.C. 2918) is amended—

(1) by striking subsection (b);

(2) by redesignating subsections (c) through (g) as subsections (b) through (f), respectively;

(3) by striking subsection (d) (as redesignated by paragraph (2)) and inserting the following:

''(d) ADDITIONAL ASSISTANCE.—

''(1) IN GENERAL.—From the amount appropriated and made available to carry out this section for any program year, the Secretary shall use not more than $20,000,000 to make grants to States to provide employment and training activities under section 134, in accordance with subtitle B.

''(2) ELIGIBLE STATES.—The Secretary shall make a grant under paragraph (1) to a State for a program year if—

''(A) the amount of the allotment that was made to the State for the program year 2003 under the formula specified in section 132(b)(1)(B) as such section was in effect on July 1, 2003, is greater than

''(B) the amount of the allotment that would be made to the State for the program year under the formula specified in section 132(b)(1)(B).

''(3) AMOUNT OF GRANTS.—Subject to paragraph (1), the amount of the grant made under paragraph (1) to a State for a program year shall be based on the difference between—

''(A) the amount of the allotment that was made to the State for the program year 2003 under the formula specified in section 132(b)(1)(B) as such section was in effect on July 1, 2003; and

''(B) the amount of the allotment that would be made to the State for the program year under the formula specified in section 132(b)(1)(B).'';

(4) in subsection (e) (as redesignated by paragraph (2))—

(A) in paragraph (1), by striking ''paragraph (4)(A)'' and inserting ''paragraph (4)'';

(B) in paragraph (2), by striking ''subsection (g)'' and inserting ''subsection (f)'';

(C) in paragraph (4), by striking ''subsection (g)'' and inserting ''subsection (f)'';

(D) in paragraph (5), by striking ''subsection (g)'' and inserting ''subsection (f)''; and

(E) in paragraph (6)—

(i) by striking ''subsection (g)'' and inserting ''subsection (f)''; and

(ii) by striking ''subsection (c)(1)(B)'' and inserting ''subsection (b)(1)(B)''; and

(5) in subsection (f)(1) (as redesignated by paragraph (2))—

(A) by striking ''paragraph (4)(B)'' and inserting ''paragraph (4)''; and

(B) by striking ''subsection (f)(1)(A)'' and inserting ''subsection (e)(1)(A)''.

SEC. 148. AUTHORIZATION OF APPROPRIATIONS FOR NATIONAL ACTIVITIES.

(a) IN GENERAL.—Section 174(a)(1) (29 U.S.C. 2919(a)(1)) is amended by striking ''1999 through 2003'' and inserting ''2004 through 2009''.

(b) RESERVATIONS.—Section 174(b) (29 U.S.C. 2919(b)) is amended to read as follows:

''(b) TECHNICAL ASSISTANCE; DEMONSTRATION AND PILOT PROJECTS, EVALUATIONS, INCENTIVE GRANTS.—There are authorized to be appropriated to carry out sections 170 through 172 and section 136(i) such sums as may be necessary for each of fiscal years 2004 through 2009.''.

Subtitle E—Administration

SEC. 151. REQUIREMENTS AND RESTRICTIONS.

Section 181(e) (29 U.S.C. 2931(e)) is amended by striking ''economic development activities,''.

SEC. 152. REPORTS.

Section 185(c) (29 U.S.C. 2935(c)) is amended—

(1) in paragraph (2), by striking ''and'' after the semicolon;

(2) in paragraph (3), by striking the period and inserting ''; and''; and

(3) by adding at the end the following:

''(4) shall have the option to submit or disseminate electronically any reports, records, plans, or any other data that are required to be collected or disseminated under this title.''.

SEC. 153. ADMINISTRATIVE PROVISIONS.

(a) ANNUAL REPORT.—Section 189(d) (29 U.S.C. 2939(d)) is amended—

(1) in paragraph (3), by striking ''and'' after the semicolon;

(2) by redesignating paragraph (4) as paragraph (5); and

(3) by inserting after paragraph (3) the following:

''(4) the negotiated levels of performance of the States, the States' requests for adjustments of such levels, and the adjustments of such levels that are made; and''.

(b) AVAILABILITY.—Section 189(g)(2) (29 U.S.C. 2939(g)(2)) is amended, in the first sentence—

(1) by striking ''Funds'' and inserting ''Except as otherwise provided in this paragraph, funds''; and

(2) by striking ''each State receiving'' and inserting ''each recipient of''.

(c) GENERAL WAIVERS.—Section 189(i)(4) (29 U.S.C. 2939(i)(4)) is amended—

(1) in subparagraph (A)(i), by inserting ''the funding of infrastructure costs for one-stop centers,'' after ''local boards,''; and

(2) by adding at the end the following:

''(D) EXPEDITED REQUESTS.—The Secretary shall expedite requests for waivers of statutory or regulatory requirements that have been approved for a State pursuant to subparagraph (B), if the requirements of this paragraph have been satisfied.''.

SEC. 154. USE OF CERTAIN REAL PROPERTY.

Section 193 (29 U.S.C. 2943) is amended to read as follows:

''SEC. 193. TRANSFER OF FEDERAL EQUITY IN STATE EMPLOYMENT SECURITY AGENCY REAL PROPERTY TO THE STATES.

''(a) TRANSFER OF FEDERAL EQUITY.—Notwithstanding any other provision of law, any

Federal equity acquired in real property through grants to States awarded under title III of the Social Security Act (42 U.S.C. 501 et seq.) or under the Wagner-Peyser Act is transferred to the States that used the grants for the acquisition of such equity. The portion of any real property that is attributable to the Federal equity transferred under this section shall be used to carry out activities authorized under title III of the Social Security Act or the Wagner-Peyser Act. Any disposition of such real property shall be carried out in accordance with the procedures prescribed by the Secretary and the portion of the proceeds from the disposition of such real property that is attributable to the Federal equity transferred under this section shall be used to carry out activities authorized under title III of the Social Security Act or the Wagner-Peyser Act.

''(b) LIMITATION ON USE.—A State shall not use funds awarded under title III of the Social Security Act or the Wagner-Peyser Act to amortize the costs of real property that is purchased by any State on or after the effective date of this provision.''.

SEC. 155. TABLE OF CONTENTS.

Section 1(b) (29 U.S.C. 9201 note) is amended—

(1) by striking the item relating to section 106 and inserting the following:

''Sec. 106. Purposes.'';

(2) by striking the item relating to section 123 and inserting the following:

''Sec. 123. Eligible providers of youth activities.'';

(3) by striking the item relating to section 169 and inserting the following:

''Sec. 169. Youth challenge grants.'';

(4) by striking the item relating to section 173 and inserting the following:

''Sec. 173. National dislocated worker grants.'';

(5) by striking the item relating to section 193 and inserting the following:

''Sec. 193. Transfer of Federal equity in State employment security agency real property to the States.'';

and

(6) by inserting after the item relating to section 243 the following:

''Sec. 244. Integrated english literacy and civics education.''.

Subtitle F—Incentive Grants

SEC. 161. INCENTIVE GRANTS.

Section 503 (20 U.S.C. 9273) is amended—

(1) by striking subsection (a) and inserting the following:

''(a) IN GENERAL.—

''(1) PRIOR TO JULY 1, 2005.—Prior to July 1, 2005, the Secretary shall award a grant to each State in accordance with the provisions of this section as this section was in effect on July 1, 2003.

''(2) BEGINNING ON JULY 1, 2005.—Beginning on July 1, 2005, the Secretary shall award a grant to each State on the basis—

''(A) of the State's exceeding the State adjusted levels of performance for title I, the adjusted levels of performance for title II, and the levels of performance for programs under the Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C. 2301 et seq.), for the purpose of carrying out an innovative program consistent with the requirements of any one or more of the programs within title I, title II, or such Act, respectively;

''(B) of exemplary performance of the States in serving hard-to-serve populations (as defined in section 101) (including performance relating to the levels of service provided and the performance outcomes on such performance measures with respect to the populations);

''(C) of States that are effectively—

''(i) coordinating multiple systems into a more effective workforce investment system, including coordination of employment services under the Wagner-Peyser Act and core activities under title I as well as partner programs described in section 121;

''(ii) expanding access to training, including through increased leveraging of resources other than those funded through programs under title I; or

''(iii) implementing innovative business and economic development initiatives; or

''(D) of such other factors relating to the performance of the States under title I as the Secretary determines are appropriate.''; and

(2) in subsection (b)(2), by adding at the end the following:

''(D) USE OF FUNDS.—The funds awarded to a State under this section may be used to carry out any activities authorized for States under chapters 4 and 5 of subtitle B of title I, title II, and the Carl D. Perkins Vocational and Technical Education Act of 1998, including demonstration projects and innovative programs for hard-to-serve populations (as defined in section 101).''.

TITLE II—AMENDMENTS TO THE ADULT EDUCATION AND FAMILY LITERACY ACT

SEC. 201. SHORT TITLE; PURPOSE.

(a) SHORT TITLE.—This title may be cited as the ''Adult Education and Family Literacy Act Amendments of 2003''.

(b) PURPOSE.—Section 202 of the Adult Education and Family Literacy Act (20 U.S.C. 9201) is amended—

(1) in paragraph (2), by striking ''and'' after the semicolon;

(2) in paragraph (3), by striking ''education.'' and inserting ''education and in the transition to postsecondary education; and''; and

(3) by adding at the end the following:

''(4) assist immigrants and other individuals with limited English proficiency in improving their reading, writing, speaking, and mathematics skills and acquiring an understanding of the American free enterprise system, individual freedom, and the responsibilities of citizenship.''.

SEC. 202. DEFINITIONS.

Section 203 of the Adult Education and Family Literacy Act (20 U.S.C. 9202) is amended—

(1) in paragraph (1)—

(A) in the matter preceding subparagraph (A), by striking ''services or instruction below the postsecondary level'' and inserting ''academic instruction and education services below the postsecondary level that increase an individual's ability to read, write, and speak in English and perform mathematics''; and

(B) by striking subparagraph (C)(i) and inserting the following:

''(i) are basic skills deficient as defined in section 101;'';

(2) in paragraph (2), by striking ''activities described in section 231(b)'' and inserting ''programs and services which include reading, writing, speaking, or mathematics skills, workplace literacy activities, family literacy activities, English language acquisition activities, or other activities necessary for the attainment of a secondary school diploma or its State recognized equivalent'';

(3) in paragraph (5)—

(A) by inserting ''an organization that has demonstrated effectiveness in providing adult education, that may include'' after ''means'';

(B) in subparagraph (B), by striking ''of demonstrated effectiveness'';

(C) in subparagraph (C), by striking ''of demonstrated effectiveness''; and

(D) in subparagraph (I), by inserting ''or coalition'' after ''consortium'';

(4) in paragraph (6)—

(A) by striking ''LITERACY PROGRAM'' and inserting ''LANGUAGE ACQUISITION PROGRAM'';

(B) by striking ''literacy program'' and inserting ''language acquisition program''; and

(C) by inserting ''reading, writing, and speaking'' after ''competence in'';

(5) by redesignating paragraphs (7) through (18) as paragraphs (8) through (19), respectively;

(6) by inserting after paragraph (6) the following:

''(7) ESSENTIAL COMPONENTS OF READING INSTRUCTION.—The term 'essential components of reading instruction' has the meaning given the term in section 1208 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6368).''; and

(7) by striking paragraph (19), as redesignated by paragraph (4), and inserting the following:

''(19) WORKPLACE LITERACY PROGRAM.—The term 'workplace literacy program' means an educational program designed to improve the productivity of the workforce through the improvement of literacy skills that is offered by an eligible provider in collaboration with an employer or an employee organization at a workplace, at an off-site location, or in a simulated workplace environment.''.

SEC. 203. AUTHORIZATION OF APPROPRIATIONS.

Section 205 of the Adult Education and Family Literacy Act (20 U.S.C. 9204) is amended—

(1) by striking ''1999'' and inserting ''2004''; and

(2) by striking ''2003'' and inserting ''2009''.

SEC. 204. HOME SCHOOLS.

Section 204 of the Adult Education and Family Literacy Act (20 U.S.C. 9203) is amended to read as follows:

''SEC. 204. HOME SCHOOLS.

''Nothing in this title shall be construed to affect home schools, whether a home school is treated as a home school or a private school under State law, or to compel a parent engaged in home schooling to participate in an English literacy program, family literacy services, or adult education.''.

SEC. 205. RESERVATION OF FUNDS; GRANTS TO ELIGIBLE AGENCIES; ALLOTMENTS.

Section 211 of the Adult Education and Family Literacy Act (20 U.S.C. 9211) is amended—

(1) by striking subsection (a) and inserting the following:

''(a) RESERVATION OF FUNDS.—From the sum appropriated under section 205 for a fiscal year, the Secretary—

''(1) shall reserve 1.5 percent to carry out section 242, except that the amount so reserved shall not exceed $10,000,000;

''(2) shall reserve 1.5 percent to carry out section 243 and subsection (f)(4), except that the amount so reserved shall not exceed $8,000,000;

''(3) shall make available, to the Secretary of Labor, 1.72 percent for incentive grants under section 136(i); and

''(4) shall reserve 12 percent of the amount that remains after reserving funds under paragraphs (1), (2) and (3) to carry out section 244.'';

(2) in subsection (c)(1)(B), by striking ''$250,000'' and inserting ''$350,000'';

(3) by striking subsection (d) and inserting the following:

''(d) QUALIFYING ADULT.—For the purpose of subsection (c)(2), the term 'qualifying adult' means an adult who—

''(1) is not less than 16 years of age;

''(2) is beyond the age of compulsory school attendance under the law of the State or outlying area;

''(3) does not have a secondary school diploma or its recognized equivalent; and

''(4) is not enrolled in secondary school.'';

(4) in subsection (e)—

(A) by striking paragraph (2) and inserting the following:

''(2) AWARD BASIS.—The Secretary shall award grants pursuant to paragraph (1) on a competitive basis and pursuant to recommendations from the Pacific Region Educational Laboratory in Honolulu, Hawaii.''; and

(B) in paragraph (3), by striking ''shall'' and all that follows through the period and inserting ''shall be eligible to receive a grant under this title until the date when an agreement for the extension of the United States education assistance under the Compact of Free Association for each of the Freely Associated States becomes effective.''; and

(5) by striking subsection (f) and inserting the following:

''(f) HOLD-HARMLESS PROVISIONS.—

''(1) IN GENERAL.—Notwithstanding subsection (c) and subject to paragraph (2), for fiscal year 2004 and each succeeding fiscal year, no eligible agency shall receive an allotment under this section that is less than 90 percent of the allotment the eligible agency received for the preceding fiscal year under this section.

''(2) 100 PERCENT ALLOTMENT.—Notwithstanding paragraphs (1) and (2) of subsection (e), an eligible agency that receives only an initial allotment under subsection (c)(1) (and no additional allotment under subsection (c)(2)) shall receive an allotment under this section that is equal to 100 percent of the initial allotment under subsection (c)(1).

''(3) RATABLE REDUCTION.—If for any fiscal year the amount available for allotment under this subtitle is insufficient to satisfy the provisions of paragraphs (1) and (2), the Secretary shall ratably reduce the payments to all eligible agencies, as necessary.

''(4) ADDITIONAL ASSISTANCE.—

''(A) IN GENERAL.—From amounts reserved under subsection (a)(2), the Secretary shall make grants to eligible agencies described in subparagraph (B) to enable such agencies to provide activities authorized under chapter 2.

''(B) ELIGIBILITY.—An eligible agency is eligible to receive a grant under this paragraph for a fiscal year if the amount of the allotment such agency receives under this section for the fiscal year is less than the amount such agency would have received for the fiscal year if the allotment formula under this section as in effect on September 30, 2003, were in effect for such year.

''(C) AMOUNT OF GRANT.—The amount of a grant made to an eligible agency under this paragraph for a fiscal year shall be the difference between—

''(i) the amount of the allotment such agency would have received for the fiscal year if the allotment formula under this section as in effect on September 30, 2003, were in effect for such year; and

''(ii) the amount of the allotment such agency receives under this section for the fiscal year.''.

SEC. 206. PERFORMANCE ACCOUNTABILITY SYSTEM.

Section 212 of the Adult Education and Family Literacy Act (20 U.S.C. 9212) is amended—

(1) in subsection (b)—

(A) in paragraph (1)(A)(ii), by striking ''additional indicators of performance (if any)'' and inserting ''employment performance indicators'';

(B) in paragraph (2)—

(i) in subparagraph (A)—

(I) in clause (i), by striking ''Demonstrated'' and inserting ''Measurable'';

(II) by striking clause (ii) and inserting the following:

''(ii) Placement in, retention in, or completion of, postsecondary education or other training programs.''; and

(III) in clause (iii), by inserting ''(including recognized alternative standards for individuals with disabilities)'' after ''equivalent'';

(ii) by redesignating subparagraph (B) as subparagraph (C);

(iii) by inserting after subparagraph (A), the following:

''(B) EMPLOYMENT PERFORMANCE INDICATORS.—An eligible agency shall identify in the State plan individual participant employment performance indicators, including entry into unsubsidized employment, retention in unsubsidized employment, and career advancement. The State workforce investment board shall assist the eligible agency in obtaining and using quarterly wage records to collect data for such indicators, consistent with applicable Federal and State privacy laws.'';

(iv) in subparagraph (C), as redesignated by clause (ii), by inserting ''relevant'' after ''additional''; and

(v) by adding at the end the following:

''(D) INDICATORS FOR WORKPLACE LITERACY PROGRAMS.—Special accountability measures may be negotiated for workplace literacy programs.''; and

(C) in paragraph (3)—

(i) in subparagraph (A)—

(I) in clause (i)(II), by striking ''in performance'' and inserting ''the agency's performance outcomes in an objective, quantifiable, and measurable form'';

(II) in clause (ii), by striking ''3 programs years'' and inserting ''2 program years'';

(III) in clause (iii), by striking ''FIRST 3 YEARS'' and inserting ''FIRST 2 YEARS'';

(IV) in clause (iii), by striking ''first 3 program years'' and inserting ''first 2 program years'';

(V) in clause (v), by striking ''4TH AND 5TH'' and inserting ''3RD AND 4TH'';

(VI) in clause (v), by striking ''to the fourth'' and inserting ''to the third'';

(VII) in clause (v), by striking ''fourth and fifth'' and inserting ''third and fourth''; and

(VIII) in clause (vi), by striking ''(II)'' and inserting ''(I)'';

(ii) in subparagraph (B)—

(I) by striking the heading and inserting ''LEVELS OF EMPLOYMENT PERFORMANCE'';

(II) by striking ''may'' and inserting ''shall''; and

(III) by striking ''additional'' and inserting ''employment''; and

(iii) by adding at the end the following:

''(C) ALTERNATIVE ASSESSMENT SYSTEMS.—Eligible agencies may approve the use of assessment systems that are not commercially available standardized systems if such systems meet the Standards for Educational and Psychological Testing issued by the Joint Committee on Standards for Educational and Psychological Testing of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education.'';

(2) in subsection (c)—

(A) in paragraph (1)—

(i) by inserting ''the Governor, the State legislature, and the State workforce investment board'' after ''Secretary''; and

(ii) by striking ''including'' and all that follows through the period and inserting ''including the following:

''(A) Information on the levels of performance achieved by the eligible agency with respect to the core indicators of performance, and employment performance indicators.

''(B) The number and type of each eligible provider that receives funding under such grant.

''(C) The number of enrollees 16 to 18 years of age who enrolled in adult education not later than 1 year after participating in secondary school education.'';

(B) in paragraph (2)(A), by inserting ''eligible providers and'' after ''available to''; and

(C) by adding at the end the following:

''(3) DATA ACCESS.—The report made available under paragraph (2) shall indicate which eligible agencies did not have access to State unemployment insurance wage data in measuring employment performance indicators.''; and

(3) by adding at the end the following:

''(d) PROGRAM IMPROVEMENT.—

''(1) IN GENERAL.—If the Secretary determines that an eligible agency did not meet its adjusted levels of performance for the core indicators of performance described in subsection (b)(2)(A) for any program year, the eligible agency shall—

''(A) work with the Secretary to develop and implement a program improvement plan for the 2 program years succeeding the program year in which the eligible agency did not meet its adjusted levels of performance; and

''(B) revise its State plan under section 224, if necessary, to reflect the changes agreed to in the program improvement plan.

''(2) FURTHER ASSISTANCE.—If, after the period described in paragraph (1)(A), the Secretary has provided technical assistance to the eligible agency but determines that the eligible agency did not meet its adjusted levels of performance for the core indicators of performance described in subsection (b)(2)(A), the Secretary may require the eligible agency to make further revisions to the program improvement plan described in paragraph (1). Such further revisions shall be accompanied by further technical assistance from the Secretary.''.

SEC. 207. STATE ADMINISTRATION.

Section 221(1) of the Adult Education and Family Literacy Act (20 U.S.C. 9221(1)) is amended by striking ''and implementation'' and inserting ''implementation, and monitoring''.

SEC. 208. STATE DISTRIBUTION OF FUNDS; MATCHING REQUIREMENT.

Section 222 of the Adult Education and Family Literacy Act (20 U.S.C. 9222) is amended—

(1) in subsection (a)—

(A) in paragraph (1)—

(i) by striking ''82.5'' the first place such term appears and inserting ''80''; and

(ii) by striking ''the 82.5 percent'' and inserting ''such amount'';

(B) in paragraph (2), by striking ''not more than 12.5 percent'' and inserting ''not more than 15 percent''; and

(C) in paragraph (3), by striking ''$65,000'' and inserting ''$75,000''; and

(2) in subsection (b)(1), by striking ''equal to'' and inserting ''that is not less than''.

SEC. 209. STATE LEADERSHIP ACTIVITIES.

Section 223 of the Adult Education and Family Literacy Act (20 U.S.C. 9223) is amended—

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by inserting ''to develop or enhance the adult education system of the State'' after ''activities'';

(B) in paragraph (1), by striking ''instruction incorporating'' and all that follows through the period and inserting ''instruction incorporating the essential components of reading instruction and instruction provided by volunteers or by personnel of a State or outlying area.'';

(C) in paragraph (2), by inserting '', including development and dissemination of instructional and programmatic practices based on the most rigorous research available in reading, writing, speaking, mathematics, English language acquisition programs, distance learning and staff training'' after ''activities'';

(D) in paragraph (5), by striking ''monitoring and'';

(E) by striking paragraph (6) and inserting the following:

''(6) The development and implementation of technology applications, translation technology, or distance learning, including professional development to support the use of instructional technology.''; and

(F) by striking paragraph (7) through paragraph (11) and inserting the following:

''(7) Coordination with—

''(A) other partners carrying out activities authorized under this Act;

''(B) existing support services, such as transportation, child care, mental health services, and other assistance designed to increase rates of enrollment in, and successful completion of adult education and literacy activities, for adults enrolled in such activities.

''(8) Developing and disseminating curricula, including curricula incorporating the essential components of reading instruction as they relate to adults.

''(9) The provision of assistance to eligible providers in developing, implementing, and reporting measurable progress in achieving the objectives of this subtitle.

''(10) The development and implementation of a system to assist in the transition from adult basic education to postsecondary education, including linkages with postsecondary educational institutions.

''(11) Integration of literacy and English language instruction with occupational skill training, and promoting linkages with employers.

''(12) Activities to promote workplace literacy programs.

''(13) Activities to promote and complement local outreach initiatives described in section 243(b)(3)(F).

''(14) In cooperation with efforts funded under sections 242 and 243, the development of curriculum frameworks and rigorous content standards that—

''(A) specify what adult learners should know and be able to do in the areas of reading and language arts, mathematics, and English language acquisition; and

''(B) take into consideration the following:

''(i) State academic standards established under section 1111(b) of the Elementary and Secondary Education Act of 1965.

''(ii) The current adult skills and literacy assessments used in the State.

''(iii) The core indicators of performance established under section 212(b)(2)(A).

''(iv) Standards and academic requirements for enrollment in non-remedial, for-credit, courses in State supported postsecondary education institutions.

''(v) Where appropriate, the basic and literacy skill content of occupational and industry skill standards widely used by business and industry in the State.

''(15) In cooperation with efforts funded under sections 242 and 243, development and piloting of—

''(A) new assessment tools and strategies that identify the needs and capture the gains of students at all levels, with particular emphasis on—

''(i) students at the lowest achievement level;

''(ii) students who have limited English proficiency; and

''(iii) adults with learning disabilities;

''(B) options for improving teacher quality and retention; and

''(C) assistance in converting research into practice.

''(16) The development and implementation of programs and services to meet the needs of adult learners with learning disabilities or limited English proficiency.

''(17) Other activities of statewide significance that promote the purpose of this title.''; and

(2) in subsection (c), by striking ''being State- or outlying area-imposed'' and inserting ''being imposed by the State or outlying area''.

SEC. 210. STATE PLAN.

Section 224 of the Adult Education and Family Literacy Act (20 U.S.C. 9224) is amended—

(1) in subsection (a)—

(A) by striking the heading and inserting ''4-YEAR PLANS''; and

(B) in paragraph (1), by striking ''5'' and inserting ''4'';

(2) in subsection (b)—

(A) in paragraph (1), by inserting ''and the role of provider and cooperating agencies in preparing the assessment'' after ''serve'';

(B) by striking paragraph (2) and inserting the following:

''(2) a description of how the eligible agency will address the adult education and literacy needs identified under paragraph (1) in each workforce development area of the State, using funds received under this subtitle, as well as other Federal, State, or local funds received in partnership with other agencies for the purpose of adult literacy as applicable;'';

(C) in paragraph (3)—

(i) by inserting ''and measure'' after ''evaluate'';

(ii) by inserting ''and improvement'' after ''effectiveness''; and

(iii) by striking ''212'' and inserting ''212, including—

''(A) how the eligible agency will evaluate and measure annually such effectiveness on a grant-by-grant basis; and

''(B) how the eligible agency—

''(i) will hold eligible providers accountable regarding the progress of such providers in improving the academic achievement of participants in adult education programs under this subtitle and regarding the core indicators of performance described in section 212(b)(2)(A); and

''(ii) will use technical assistance, sanctions, and rewards (including allocation of grant funds based on performance and termination of grant funds based on performance)'';

(D) in paragraph (4), by striking ''will ensure the improvement of'' and inserting ''improved'';

(E) by redesignating paragraphs (5) through (12) as paragraphs (6) through (13), respectively;

(F) by inserting after paragraph (4) the following:

''(5) a description of how the eligible agency will improve teacher quality, the professional development of eligible providers, and instruction;'';

(G) in paragraph (6) (as redesignated by subparagraph (E)), by striking ''who'' and all that follows through the semicolon and inserting ''that—

''(A) offers flexible schedules and coordinates with necessary Federal, State, and local support services (such as child care, transportation, mental health services, and case management) to enable individuals, including individuals with disabilities or individuals with other special needs, to participate in adult education and literacy activities; and

''(B) attempts to coordinate with support services that are not provided under this subtitle prior to using funds for adult education and literacy activities provided under this subtitle for support services;'';

(H) in paragraph (10) (as redesignated by subparagraph (E)), by striking ''plan'' and inserting ''plan, which process—

''(A) shall include the State Workforce Investment Board, the Governor, State officials representing public schools, community colleges, welfare agencies, agencies that provide services to individuals with disabilities, other State agencies that promote or operate adult education and literacy activities, and direct providers of such adult literacy services;

''(B) may include consultation with the State agency for higher education, institutions responsible for professional development of adult education and literacy education program instructors, institutions of higher education, representatives of business and industry, refugee assistance programs, and community-based organizations, as defined in section 101;'';

(I) in paragraph (11) (as redesignated by subparagraph (E))—

(i) by inserting ''assess potential population needs and'' after ''will'';

(ii) in subparagraph (A), by striking ''students'' and inserting ''individuals'';

(iii) in subparagraph (C), by striking ''and'' after the semicolon; and

(iv) by adding at the end the following:

''(E) the unemployed; and

''(F) those who are employed, but at levels below self-sufficiency, as defined in section 101.'';

(J) in paragraph (12) (as redesignated by subparagraph (E))—

(i) by inserting ''and how the plan submitted under this subtitle is coordinated with the plan submitted by the State under title I'' after ''eligible agency''; and

(ii) by striking ''and'' after the semicolon;

(K) in paragraph (13) (as redesignated by subparagraph (E)), by striking ''231(c)(1).'' and inserting ''231(c)(1), including—

''(A) how the State will build the capacity of organizations that provide adult education and literacy activities; and

''(B) how the State will increase the participation of business and industry in adult education and literacy activities;''; and

(L) by adding at the end the following:

''(14) a description of how the eligible agency will consult with any State agency responsible for postsecondary education to develop adult education programs and services (including academic skill development and support services) that prepare students to enter postsecondary education upon completion of secondary school programs or their recognized equivalent;

''(15) a description of how the eligible agency will consult with the State agency responsible for workforce development to develop adult education programs and services that are designed to prepare students to enter the workforce; and

''(16) a description of how the eligible agency will improve the professional development of eligible providers of adult education and literacy activities.'';

(3) in subsection (c), by adding at the end the following: ''At the end of the first 2-year period of the 4-year State plan, the eligible agency shall review and, as needed, revise the 4-year State plan.''; and

(4) in subsection (d)—

(A) in paragraph (1), by inserting '', the chief State school officer, the State officer responsible for administering community and technical colleges, and the State Workforce Investment Board'' after ''Governor''; and

(B) in paragraph (2), by striking ''comments'' and all that follows through the period and inserting ''comments regarding the State plan by the Governor, the chief State school officer, the State officer responsible for administering community and technical colleges, and the State Workforce Investment Board, and any revision to the State plan, are submitted to the Secretary.''.

SEC. 211. PROGRAMS FOR CORRECTIONS EDUCATION AND OTHER INSTITUTIONALIZED INDIVIDUALS.

Section 225 of the Adult Education and Family Literacy Act (20 U.S.C. 9225) is amended—

(1) in subsection (b)—

(A) in paragraph (1), by striking ''basic education'' and inserting ''adult education and literacy activities'';

(B) in paragraph (2), by inserting ''and'' after the semicolon;

(C) by striking paragraph (3); and

(D) by redesignating paragraph (4) as paragraph (3); and

(2) in subsection (d), by striking ''DEFINITION OF CRIMINAL OFFENDER.—'' and inserting ''DEFINITIONS.—In this section:''.

SEC. 212. GRANTS AND CONTRACTS FOR ELIGIBLE PROVIDERS.

Section 231 of the Adult Education and Family Literacy Act (20 U.S.C. 9241) is amended—

(1) in subsection (b)—

(A) in paragraph (1), by striking ''workplace literacy services'' and inserting ''workplace literacy programs''; and

(B) in paragraph (3), by striking ''literacy'' and inserting ''language acquisition'';

(2) in subsection (e)—

(A) in paragraph (1), by inserting ''to be achieved annually on the core indicators of performance and employment performance indicators described in section 212(b)(2)'' after ''outcomes'';

(B) by striking paragraph (3) and inserting the following:

''(3) the commitment of the eligible provider to be responsive to local needs and to serve individuals in the community who were identified by the assessment as most in need of adult literacy services, including individuals who are low-income, have minimal literacy skills, have learning disabilities, or have limited English proficiency;'';

(C) in paragraph (4)(B), by striking '', such as'' and all that follows through the semicolon and inserting ''that include the essential components of reading instruction;'';

(D) in paragraph (5), by striking ''research'' and inserting ''the most rigorous research available'';

(E) in paragraph (7), by inserting '', when appropriate and based on the most rigorous research available,'' after ''real life contexts'';

(F) in paragraph (9), by inserting ''education, job-training, and social service'' after ''other available'';

(G) in paragraph (10)—

(i) by inserting ''coordination with Federal, State, and local'' after ''schedules and''; and

(ii) by striking ''and transportation'' and inserting '', transportation, mental health services, and case management'';

(H) in paragraph (11)—

(i) by inserting ''measurable'' after ''report'';

(ii) by striking ''eligible agency'';

(iii) by inserting ''established by the eligible agency'' after ''performance measures''; and

(iv) by striking ''and'' after the semicolon;

(I) in paragraph (12), by striking ''literacy programs.'' and inserting ''language acquisition programs and civics education programs;''; and

(J) by adding at the end the following:

''(13) the capacity of the eligible provider to produce information on performance results, including enrollments and measurable participant outcomes;

''(14) whether reading, writing, speaking, mathematics, and English language acquisition instruction provided by the eligible provider are based on the best practices derived from the most rigorous research available;

''(15) whether the eligible provider's applications of technology and services to be provided are sufficient to increase the amount and quality of learning and lead to measurable learning gains within specified time periods; and

''(16) the capacity of the eligible provider to serve adult learners with learning disabilities.''.

SEC. 213. LOCAL APPLICATION.

Section 232 of the Adult Education and Family Literacy Act (20 U.S.C. 9242) is amended—

(1) in paragraph (1)—

(A) by inserting ''consistent with the requirements of this subtitle'' after ''spent''; and

(B) by striking ''and'' after the semicolon;

(2) in paragraph (2), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(3) information that addresses each of the considerations required under section 231(e).''.

SEC. 214. LOCAL ADMINISTRATIVE COST LIMITS.

Section 233 of the Adult Education and Family Literacy Act (20 U.S.C. 9243) is amended—

(1) in subsection (a)(2)—

(A) by inserting ''and professional'' after ''personnel''; and

(B) by inserting ''development of measurable goals in reading, writing, and speaking the English language, and in mathematical computation,'' after ''development,''; and

(2) in subsection (b)—

(A) by inserting ''and professional'' after ''personnel''; and

(B) by inserting ''development of measurable goals in reading, writing, and speaking the English language, and in mathematical computation,'' after ''development,''.

SEC. 215. ADMINISTRATIVE PROVISIONS.

Section 241(b) of the Adult Education and Family Literacy Act (20 U.S.C. 9251(b)) is amended—

(1) in paragraph (1)(A)—

(A) by striking ''adult education and literacy activities'' both places such terms appear and inserting ''activities under this subtitle''; and

(B) by striking ''was'' and inserting ''were''; and

(2) in paragraph (4)—

(A) by inserting ''not more than'' after ''this subsection for''; and

(B) by striking ''only''.

SEC. 216. NATIONAL INSTITUTE FOR LITERACY.

Section 242 of the Adult Education and Family Literacy Act (20 U.S.C. 9252) is amended—

(1) in subsection (a)—

(A) in paragraph (1), by striking ''literacy'' and inserting ''effective literacy programs for children, youth, adults, and families'';

(B) in paragraph (2), by inserting ''and disseminates information on'' after ''coordinates''; and

(C) by striking paragraph (3)(A) and inserting the following:

''(A) coordinating and participating in the Federal effort to identify and disseminate information on literacy that is derived from scientifically based research, or the most rigorous research available and effective programs that serve children, youth, adults, and families; and'';

(2) by striking subsection (b)(3) and inserting the following:

''(3) RECOMMENDATIONS.—The Interagency Group, in consultation with the National Institute for Literacy Advisory Board (in this section referred to as the 'Board') established under subsection (e), shall plan the goals of the Institute and the implementation of any programs to achieve the goals. The Board may also request a meeting of the Interagency Group to discuss any recommendations the Board may make.'';

(3) in subsection (c)—

(A) in paragraph (1)—

(i) in subparagraph (A)—

(I) by striking ''to establish'' and inserting ''to maintain'';

(II) in clause (i), by striking ''phonemic awareness, systematic phonics, fluency, and reading comprehension'' and inserting ''the essential components of reading instruction'';

(III) in clause (iii), by striking ''and'' after the semicolon;

(IV) in clause (iv), by inserting ''and'' after the semicolon; and

(V) by adding at the end the following:

''(v) a list of local adult education and literacy programs;'';

(ii) in subparagraph (C)—

(I) by striking ''reliable and replicable research'' and inserting ''reliable and replicable research as defined by the Institute of Education Sciences''; and

(II) by striking ''especially with the Office of Educational Research and Improvement in the Department of Education,'';

(iii) in subparagraph (D), by striking ''phonemic awareness, systematic phonics, fluency, and reading comprehension based on'' and inserting ''the essential components of reading instruction and'';

(iv) in subparagraph (H), by striking ''and'' after the semicolon;

(v) in subparagraph (I), by striking the period at the end and inserting a semicolon; and

(vi) by adding at the end the following:

''(J) to work cooperatively with the Department of Education to assist States that are pursuing the implementation of standards-based educational improvements for adults through the dissemination of training, technical assistance, and related support and through the development and dissemination of related standards-based assessment instruments; and

''(K) to identify rigorous research on the effectiveness of instructional practices and organizational strategies relating to literacy programs on the acquisition of skills in reading, writing, English acquisition, and mathematics.''; and

(B) by adding at the end the following:

''(3) COORDINATION.—In identifying the reliable and replicable research the Institute will support, the Institute shall use standards for research quality that are consistent with those of the Institute of Education Sciences.'';

(4) in subsection (e)—

(A) in paragraph (1)(B)—

(i) in clause (i), by striking ''literacy programs'' and inserting ''language acquisition programs'';

(ii) in clause (ii), by striking ''literacy programs'' and inserting ''or have participated in or partnered with workplace literacy programs'';

(iii) in clause (iv), by inserting '', including adult literacy research'' after ''research'';

(iv) in clause (vi), by striking ''and'' after the semicolon;

(v) in clause (vii), by striking the period at the end and inserting ''; and''; and

(vi) by adding at the end the following:

''(viii) institutions of higher education.'';

(B) in paragraph (2)—

(i) in subparagraph (B), by striking ''and'' after the semicolon;

(ii) in subparagraph (C), by striking the period at the end and inserting ''; and''; and

(iii) by adding at the end the following:

''(D) review the biennial report submitted to Congress pursuant to subsection (k).''; and

(C) in paragraph (5), by striking the second sentence and inserting the following: ''A recommendation of the Board may be passed only by a majority of the Board's members present at a meeting for which there is a quorum.''; and

(5) in subsection (k)—

(A) by striking ''Labor and Human Resources'' and inserting ''Health, Education, Labor, and Pensions''; and

(B) by striking ''The Institute shall submit a report biennially to'' and inserting ''Not later than 1 year after the date of enactment of the Adult Education and Family Literacy Act Amendments of 2003, and biennially thereafter, the Institute shall submit a report to''.

SEC. 217. NATIONAL LEADERSHIP ACTIVITIES.

Section 243 of the Adult Education and Family Literacy Act (20 U.S.C. 9253) is amended to read as follows:

''SEC. 243. NATIONAL LEADERSHIP ACTIVITIES.

''(a) IN GENERAL.—The Secretary shall establish and carry out a program of national leadership activities to enhance the quality of adult education and literacy programs nationwide.

''(b) PERMISSIVE ACTIVITIES.—The national leadership activities described in subsection (a) may include the following:

''(1) Technical assistance, including—

''(A) assistance provided to eligible providers in developing and using performance measures for the improvement of adult education and literacy activities, including family literacy services;

''(B) assistance related to professional development activities, and assistance for the purposes of developing, improving, identifying, and disseminating the most successful methods and techniques for providing adult education and literacy activities, including family literacy services, based on scientific evidence where available;

''(C) assistance in distance learning and promoting and improving the use of technology in the classroom;

''(D) assistance in developing valid, measurable, and reliable performance data, including data around employment and employment outcome, and using performance information for the improvement of adult education and literacy programs; and

''(E) assistance to help States, particularly low-performing States, meet the requirements of section 212.

''(2) A program of grants, contracts, or cooperative agreements awarded on a competitive basis to national, regional, or local networks of private nonprofit organizations, public libraries, or institutions of higher education to build the capacity of such networks' members to meet the performance requirements of eligible providers under this title and involve adult learners in program improvement.

''(3) Funding national leadership activities that are not described in paragraph (1), either directly or through grants, contracts, or cooperative agreements awarded on a competitive basis to or with postsecondary educational institutions, public or private organizations or agencies, or consortia of such institutions, organizations, or agencies, such as—

''(A) developing, improving, and identifying the most successful methods and techniques for addressing the education needs of adults, including instructional practices using the essential components of reading instruction based on the work of the National Institute of Child Health and Human Development;

''(B) increasing the effectiveness of, and improving the quality of, adult education and literacy activities, including family literacy services;

''(C) carrying out research on national literacy basic skill acquisition for adult learning, including estimating the number of adults functioning at the lowest levels of literacy proficiency;

''(D)(i) carrying out demonstration programs;

''(ii) disseminating best practices information, including information regarding promising practices resulting from federally funded demonstration programs; and

''(iii) developing and replicating best practices and innovative programs, including—

''(I) the development of models for basic skill certificates;

''(II) the identification of effective strategies for working with adults with learning disabilities and with adults with limited English proficiency;

''(III) integrated basic and workplace skills education programs;

''(IV) coordinated literacy and employment services; and

''(V) postsecondary education transition programs;

''(E) providing for the conduct of an independent evaluation and assessment of adult education and literacy activities through studies and analyses conducted independently through grants and contracts awarded on a competitive basis, which evaluation and assessment shall include descriptions of—

''(i) the effect of performance measures and other measures of accountability on the delivery of adult education and literacy activities, including family literacy services;

''(ii) the extent to which the adult education and literacy activities, including family literacy services, increase the literacy skills of adults (and of children, in the case of family literacy services), lead the participants in such activities to involvement in further education and training, enhance the employment and earnings of such participants, and, if applicable, lead to other positive outcomes, such as reductions in recidivism in the case of prison-based adult education and literacy activities;

''(iii) the extent to which the provision of support services to adults enrolled in adult education and family literacy programs increase the rate of enrollment in, and successful completion of, such programs; and

''(iv) the extent to which different types of providers measurably improve the skills of participants in adult education and literacy programs;

''(F) supporting efforts aimed at capacity building of programs at the State and local levels such as technical assistance in program planning, assessment, evaluation, and monitoring of activities carried out under this subtitle;

''(G) collecting data, such as data regarding the improvement of both local and State data systems, through technical assistance and development of model performance data collection systems;

''(H) supporting the development of an entity that would produce and distribute technology-based programs and materials for adult education and literacy programs using an interconnection system (as defined in section 397 of the Communications Act of 1934 (47 U.S.C. 397)) and expand the effective outreach and use of such programs and materials to adult education eligible providers;

''(I) determining how participation in adult education and literacy activities prepares individuals for entry into postsecondary education and employment and, in the case of prison-based services, has an effect on recidivism; and

''(J) other activities designed to enhance the quality of adult education and literacy activities nationwide.''.

SEC. 218. INTEGRATED ENGLISH LITERACY AND CIVICS EDUCATION.

Chapter 4 of subtitle A of title II (29 U.S.C. 9251 et seq.) is amended by adding at the end the following:

''SEC. 244. INTEGRATED ENGLISH LITERACY AND CIVICS EDUCATION.

''(a) IN GENERAL.—From funds made available under section 211(a)(4) for each fiscal year the Secretary shall award grants to States, from allotments under subsection (b), for integrated English literacy and civics education.

''(b) ALLOTMENT.—

''(1) IN GENERAL.—Subject to paragraph (2), from amounts made available under section 211(a)(4) for a fiscal year the Secretary shall allocate—

''(A) 65 percent to the States on the basis of a State's need for integrated English literacy and civics education as determined by calculating each State's share of a 10-year average of the Immigration and Naturalization Service data for immigrants admitted for legal permanent residence for the 10 most recent years; and

''(B) 35 percent to the States on the basis of whether the State experienced growth as measured by the average of the 3 most recent years for which Immigration and Naturalization Service data for immigrants admitted for legal permanent residence are available.

''(2) MINIMUM.—No State shall receive an allotment under paragraph (1) in an amount that is less than $60,000.''.

SEC. 219. TRANSITION.

The Secretary shall take such steps as the Secretary determines to be appropriate to provide for the orderly transition to the authority of the Adult Education and Family Literacy Act (as amended by this title) from any authority under provisions of the Adult Education and Family Literacy Act (as such Act was in effect on the day before the date of enactment of the Adult Education and Family Literacy Act Amendments of 2003.

TITLE III—AMENDMENTS TO OTHER PROVISIONS OF LAW

SEC. 301. WAGNER-PEYSER ACT.

(a) CONFORMING AMENDMENT.—Section 2(3) of the Wagner-Peyser Act (29 U.S.C. 49a(3)) is amended by striking ''section 134(c)'' and inserting ''section 121(e)''.

(b) COLOCATION.—Section 3 of the Wagner-Peyser Act (29 U.S.C. 49b) is amended by adding at the end the following:

''(d) In order to avoid duplication of services and enhance integration of services, employment services offices in each State shall be colocated with comprehensive one-stop centers established under title I of the Workforce Investment Act of 1998.''.

(c) COOPERATIVE STATISTICAL PROGRAM.—Section 14 of the Wagner-Peyser Act (29 U.S.C. 49l–1) is amended by striking the section heading and all that follows through ''There'' and inserting the following:

''SEC. 14. COOPERATIVE STATISTICAL PROGRAM.

''There''.

(d) WORKFORCE AND LABOR MARKET INFORMATION SYSTEM.—Section 15 of the Wagner-Peyser Act (29 U.S.C. 49l–2) is amended—

(1) by striking the section heading and inserting the following:

''SEC. 15. WORKFORCE AND LABOR MARKET INFORMATION SYSTEM.'';

(2) by striking ''employment statistics system'' each place it appears and inserting ''workforce and labor market information system'';

(3) in subsection (a)(1), by striking ''of employment statistics'';

(4) in subsection (b)(2)(E)—

(A) in clause (i), by adding ''and'' at the end;

(B) in clause (ii), by striking ''; and'' and inserting a period; and

(C) by striking clause (iii);

(5) by striking subsections (c) and (d) and inserting the following:

''(c) NATIONAL ELECTRONIC TOOLS TO PROVIDE SERVICES.—The Secretary, in consultation with States, is authorized to assist in the development of national electronic tools that may be used to improve access to workforce information for individuals through—

''(1) the one-stop delivery systems established under section 121(e); and

''(2) such other delivery systems as the Secretary determines to be appropriate.

''(d) TWO-YEAR PLAN.—The Secretary, working through the Bureau of Labor Statistics, and in cooperation with the States and with the assistance of the Employment and Training Administration and other appropriate Federal agencies, shall prepare a 2-year plan which shall be the mechanism for achieving cooperative management of the nationwide workforce and labor market information system described in subsection (a) and the statewide workforce and labor market information systems that comprise the nationwide system. The plan shall—

''(1) describe the steps the to be taken in the following 2 years to carry out the duties described in subsection (b)(2);

''(2) evaluate the performance of the system and recommend needed improvements, with particular attention to the improvements needed at the State and local levels; and

''(3) describe the involvement of States in the development of the plan, pursuant to a process established by the Secretary in cooperation with the States in accordance with subsection (i).'';

(6) in subsection (e)(2)—

(A) in subparagraph (G), by adding ''and'' at the end;

(B) by striking subparagraph (H); and

(C) by redesignating subparagraph (I) as subparagraph (H);

(7) in subsection (g), by striking ''1999 through 2004'' and inserting ''2004 through 2009 to enable the Secretary to carry out the provisions of this section in a timely manner through grants or cooperative agreements with the States'';

(8) in subsection (g)—

(A) by striking ''There are'' and inserting the following:

''(1) IN GENERAL.—There are''; and

(B) by adding at the end the following:

''(2) DISTRIBUTION OF FUNDS.—With regard to distributing funds appropriated under paragraph (1) (relating to workforce and labor market information funding) for fiscal years 2004 through 2009, the Secretary shall continue to distribute the funds to the States in the manner in which the Secretary distributed funds to the States under this section for fiscal years 1999 through 2003.''; and

(9) by adding at the end the following:

''(i) COORDINATION WITH THE STATES.—The Secretary, working though the Bureau of Labor Statistics and in coordination with the Employment and Training Administration, shall consult at least annually with representatives of each of the 10 Federal regions of the Department of Labor, elected (pursuant to a process established by the Secretary) by and from the State workforce and labor market information directors affiliated with the State agencies that perform the duties described in subsection (e)(2).''.

TITLE IV—REHABILITATION ACT AMENDMENTS

SEC. 401. SHORT TITLE.

This title may be cited as the ''Rehabilitation Act Amendments of 2003''.

SEC. 402. TECHNICAL AMENDMENTS TO TABLE OF CONTENTS.

(a) INCENTIVE GRANTS.—Section 1(b) of the Rehabilitation Act of 1973 (29 U.S.C. 701 note) is amended by inserting after the item relating to section 112 the following:

''Sec. 113. Incentive grants.''.

(b) INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND.—Section 1(b) of the Rehabilitation Act of 1973 (29 U.S.C. 701 note) is amended by striking the items relating to sections 752 and 753 and inserting the following:

''Sec. 752. Training and technical assistance.

''Sec. 753. Program of grants.

''Sec. 754. Authorization of appropriations.''.

SEC. 403. PURPOSE.

Section 2(b) of the Rehabilitation Act of 1973 (29 U.S.C. 701(b)) is amended—

(1) in paragraph (1)(F), by striking ''and'' after the semicolon;

(2) in paragraph (2), by striking the period at the end and inserting ''; and''; and

(3) by adding at the end the following:

''(3) to provide opportunities for employers and rehabilitation service providers to provide meaningful input at all levels of government to ensure successful employment of individuals with disabilities.''.

SEC. 404. DEFINITIONS.

Section 7 of the Rehabilitation Act of 1973 (29 U.S.C. 705) is amended—

(1) in paragraph (2)(B)—

(A) in the matter preceding clause (i), by inserting ''and literacy services'' after ''supported employment''; and

(B) in clause (iii), by inserting ''and literacy skills'' after ''educational achievements'';

(2) by striking paragraph (7) and inserting the following:

''(7) CONSUMER ORGANIZATION.—The term 'consumer organization' means a membership organization in which a majority of the organization's members and a majority of the organization's officers are individuals with disabilities.'';

(3) in paragraph (17)—

(A) in subparagraph (C), by striking ''and'' after the semicolon;

(B) in subparagraph (D), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(E) maintaining individuals with significant disabilities in, or transitioning individuals with significant disabilities to, community-based living.'';

(4) by redesignating paragraphs (24) through (28), (29) through (34), and (35) through (39), as paragraphs (25) through (29), (31) through (36), and (38) through (42), respectively;

(5) by inserting after paragraph (23) the following:

''(24) LITERACY.—The term 'literacy' has the meaning given the term in section 203 of the Adult Education and Family Literacy Act (20 U.S.C. 9202).'';

(6) by inserting after paragraph (29), as redesignated by paragraph (4), the following:

''(30) POST-EMPLOYMENT SERVICE.—The term 'post-employment' service means a service identified in section 103(a) that is—

''(A) provided subsequent to the achievement of an employment outcome; and

''(B) necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.'';

(7) by inserting after paragraph (36), as redesignated by paragraph (4), the following:

''(37) STUDENT WITH A DISABILITY.—

''(A) IN GENERAL.—The term 'student with a disability' means an individual with a disability who attends an elementary school or secondary school and who—

''(i) is not younger than 14 years of age;

''(ii) is not older than 21 years of age;

''(iii) has been determined to be eligible under section 102(a) for assistance under title I; and

''(iv)(I) is eligible for, and receiving, special education and related services under part B of the Individuals with Disabilities Education Act (20 U.S.C. 1411 et seq.); or

''(II) is an individual with a disability, for purposes of section 504.

''(B) STUDENTS WITH DISABILITIES.—The term 'students with disabilities' means more than 1 student with a disability.''; and

(8) in paragraph (38)(A)(ii), as redesignated by paragraph (4), by striking ''paragraph (36)(C)'' and inserting ''paragraph (39)(C)''.

SEC. 405. ADMINISTRATION OF THE ACT.

Section 12(a)(1) of the Rehabilitation Act of 1973 (29 U.S.C. 709(a)(1)) is amended—

(1) by inserting ''(A)'' after ''(1)'';

(2) by striking the semicolon and inserting ''; and''; and

(3) by adding at the end the following:

''(B) provide technical assistance to the designated State units on developing successful partnerships with employers;''.

SEC. 406. CARRYOVER.

Section 19 of the Rehabilitation Act of 1973 (29 U.S.C. 716) is amended—

(1) in subsection (a)(1)—

(A) by striking '', section 509 (except as provided in section 509(b))'';

(B) by striking ''or (C)''; and

(C) by striking ''752(b)'' and inserting ''753(b)''; and

(2) by adding at the end the following:

''(c) PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS.—

''(1) APPROPRIATED AMOUNTS.—Notwithstanding any other provision of law, any funds appropriated for a fiscal year to carry out a grant program under section 509 (except as provided in section 509(b)), including any funds reallotted under such grant program, that are not obligated and expended by recipients prior to the beginning of the succeeding fiscal year shall remain available for obligation and expenditure by such recipients during such succeeding fiscal year.

''(2) PROGRAM INCOME.—Notwithstanding any other provision of law, any amounts of program income received by recipients under a grant program under section 509 in a fiscal year that are not obligated and expended by recipients prior to the beginning of the succeeding fiscal year, shall remain available until expended.''.

Subtitle A—Vocational Rehabilitation Services

SEC. 411. DECLARATION OF POLICY; AUTHORIZATION OF APPROPRIATIONS.

Section 100(b)(1) of the Rehabilitation Act of 1973 (29 U.S.C. 720(b)(1)) is amended by striking ''fiscal years 1999 through 2003'' and inserting ''fiscal years 2004 through 2009''.

SEC. 412. STATE PLANS.

Section 101(a) of the Rehabilitation Act of 1973 (29 U.S.C. 721(a)) is amended—

(1) in paragraph (6)(B), by striking ''to employ and advance in employment'' and inserting ''to recruit, employ, and advance in employment'';

(2) in paragraph (7)(A)(v), by striking subclause (I) and inserting the following:

''(I) a system for the continuing education of rehabilitation professionals and paraprofessionals within the designated State unit, particularly with respect to rehabilitation technology, including training implemented in coordination with State programs carried out under section 101 of the Assistive Technology Act of 1998 (29 U.S.C. 3011); and'';

(3) in paragraph (8)(A), by adding at the end the following:

''(iii) SERVICES IDENTIFIED IN INDIVIDUALIZED WORK PLAN.—For purposes of clause (i), for an individual who receives assistance under the Ticket to Work and Self-Sufficiency Program established under section 1148 of the Social Security Act (42 U.S.C. 1320b–19), comparable benefits and services available under such program only include those benefits and services identified in the individual's individualized work plan developed by an employment network pursuant to such section.'';

(4) in paragraph (10)—

(A) in subparagraph (B), by striking ''annual reporting on the eligible individuals receiving the services, on those specific data elements described in section 136(d)(2) of the Workforce Investment Act of 1998'' and inserting ''annual reporting of information on eligible individuals receiving services that is needed to assess performance on the core indicators of performance described in section 136(b)(2)(A)(i) of the Workforce Investment Act of 1998'';

(B) in subparagraph (C), by striking clauses (iii) and (iv) and inserting the following:

''(iii) the number of applicants and eligible recipients, including the number of individuals with significant disabilities, who exited the program carried out under this title and the number of such individuals who achieved employment outcomes after receiving vocational rehabilitation services; and

''(iv) the number of individuals who received vocational rehabilitation services who entered and retained employment and the increases in earnings of such individuals, consistent with State reporting responsibilities pursuant to section 136(b)(2)(A)(i) of the Workforce Investment Act of 1998.''; and

(C) in subparagraph (E)(ii), by striking ''in meeting'' and all that follows through the period and inserting ''in meeting the standards and indicators established pursuant to section 106.'';

(5) in paragraph (11)—

(A) by striking subparagraph (C) and inserting the following:

''(C) INTERAGENCY COOPERATION WITH OTHER AGENCIES.—The State plan shall include descriptions of interagency cooperation with, and utilization of the services and facilities of, Federal, State, and local agencies and programs, including the State programs carried out under section 101 of the Assistive Technology Act of 1998 (29 U.S.C. 3011), programs carried out by the Under Secretary for Rural Development of the Department of Agriculture, and State use contracting programs, to the extent that such agencies and programs are not carrying out activities through the statewide workforce investment system.'';

(B) by striking subparagraph (D)(ii) and inserting the following:

''(ii) transition planning by personnel of the designated State agency and the State educational agency that will facilitate the development and completion of the individualized education programs under section 614(d) of the Individuals with Disabilities Education Act (20 U.S.C. 1414(d)) and, as appropriate, the development and completion of the individualized plan for employment, in order to achieve post-school employment outcomes of students with disabilities;''; and

(C) by adding at the end the following:

''(G) COORDINATION WITH TICKET TO WORK AND SELF-SUFFICIENCY PROGRAM.—The State plan shall provide that the designated State unit will coordinate activities with any other State agency that administers a Ticket to Work and Self-Sufficiency Program established under section 1148 of the Social Security Act (42 U.S.C. 1320b–19).''; and

(6) in paragraph (20)—

(A) by redesignating subparagraph (B) as subparagraph (D);

(B) by inserting after subparagraph (A) the following:

''(B) INFORMATION ON ASSISTANCE FOR BENEFICIARIES OF ASSISTANCE UNDER TITLE II OR XVI OF THE SOCIAL SECURITY ACT.—The State plan shall include an assurance that the designated State agency will make available to individuals entitled to benefits under title II or XVI of the Social Security Act (42 U.S.C. 401 et seq., 1381 et seq.) on the basis of a disability or blindness, information on the availability of—

''(i) medical assistance under the State medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.);

''(ii) benefits under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.);

''(iii) assistance through benefits planning and assistance programs under section 1149 of the Social Security Act (42 U.S.C. 1320b–20) and protection and advocacy programs under section 1150 of the Social Security Act (42 U.S.C. 1320b–21); and

''(iv) medical assistance under other federally funded programs.

''(C) INFORMATION FOR INDIVIDUALS UNDER THE TICKET TO WORK PROGRAM.—The State plan shall include an assurance that the designated

State agency will make available to individuals entitled to benefits under title II or XVI of the Social Security Act (42 U.S.C. 401 et seq., 1381 et seq.) on the basis of a disability or blindness and eligible for assistance under the Ticket to Work and Self-Sufficiency Program established under section 1148 of the Social Security Act (42 U.S.C. 1320b–19), general information regarding the Ticket to Work and Self-Sufficiency Program and specific information on how to contact the program manager of the Ticket to Work and Self-Sufficiency Program to obtain information on approved employment networks.''; and

(C) in subparagraph (D)(ii), as redesignated by subparagraph (A)—

(i) in subclause (II), by inserting '', to the maximum extent possible,'' after ''point of contact''; and

(ii) in subclause (III), by striking ''or regain'' and inserting ''regain, or advance in''.

SEC. 413. ELIGIBILITY AND INDIVIDUALIZED PLAN FOR EMPLOYMENT.

Section 102 of the Rehabilitation Act of 1973 (29 U.S.C. 722) is amended—

(1) in subsection (b)—

(A) in paragraph (1)—

(i) in subparagraph (A), by striking the semicolon at the end and inserting '', including a listing of all the community resources (including resources from consumer organizations), to the maximum extent possible, to assist in the development of such individual's individualized plan for employment to enable the individual to make informed and effective choices in developing the individualized plan for employment;''; and

(ii) in subparagraph (D)—

(I) in clause (i), by striking ''and'' after the semicolon;

(II) in clause (ii), by striking the period at the end and inserting a semicolon; and

(III) by adding at the end the following:

''(iii) for individuals entitled to benefits under title II or XVI of the Social Security Act (42 U.S.C. 401 et seq., 1381 et seq.) on the basis of a disability or blindness, information on the availability of—

''(I) medical assistance under the State medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.);

''(II) benefits under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.);

''(III) assistance through benefits planning and assistance programs under section 1149 of the Social Security Act (42 U.S.C. 1320b–20) and protection and advocacy programs under section 1150 of the Social Security Act (42 U.S.C. 1320b–21); and

''(IV) medical assistance under other federally funded programs; and

''(iv) for individuals entitled to benefits under title II or XVI of the Social Security Act (42 U.S.C. 401 et seq., 1381 et seq.) on the basis of a disability or blindness and eligible for assistance under the Ticket to Work and Self-Sufficiency Program established under section 1148 of the Social Security Act (42 U.S.C. 1320b–19), information—

''(I) on the options under the Ticket to Work and Self-Sufficiency Program; and

''(II) on how to contact the program manager of the Ticket to Work and Self-Sufficiency Program who has contact information on approved employment networks, the benefits planning and assistance programs in the area, and the protection and advocacy programs in the area.'';

(B) in paragraph (2)(E)—

(i) in clause (i)(II), by striking ''and'' after the semicolon;

(ii) in clause (ii), by striking the period at the end and inserting ''; and''; and

(iii) by adding at the end the following:

''(iii) amended, as necessary, to include the post-employment services and service providers that are necessary for the individual to maintain, regain, or advance in employment, consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.''; and

(C) in paragraph (3)—

(i) in subparagraph (B)(i)(I), by striking ''and personal assistance services'' and inserting ''mentoring services, and personal assistance services'';

(ii) in subparagraph (F)(ii), by striking ''and'' after the semicolon;

(iii) in subparagraph (G), by striking the period at the end and inserting a semicolon; and

(iv) by adding at the end the following:

''(H) for a student with a disability, the description—

''(i) in paragraph (3)(A), may be a description of the student's projected post-school employment outcome; and

''(ii) in paragraph (3)(B), shall include the specific transition services (including, as appropriate, work experience and mentoring activities) needed to achieve the student's employment outcome or projected employment outcome; and

''(I) for an individual who is receiving assistance under the Ticket to Work and Self-Sufficiency Program established under section 1148 of the Social Security Act (42 U.S.C. 1320b–19), a list of services such individual receives from an employment network other than the designated State unit.''; and

(2) in subsection (c)(7), by inserting ''that take into consideration the informed choice of the individual,'' after ''plan development,''.

SEC. 414. VOCATIONAL REHABILITATION SERVICES.

Section 103(a) of the Rehabilitation Act of 1973 (29 U.S.C. 723(a)) is amended—

(1) in paragraph (5), by inserting ''literacy services,'' after ''vocational adjustment services,'';

(2) in paragraph (17), by striking ''and'' after the semicolon;

(3) in paragraph (18), by striking the period at the end and inserting ''; and''; and

(4) by adding at the end the following:

''(19) mentoring services.''.

SEC. 415. STATE REHABILITATION COUNCIL.

Section 105(b) of the Rehabilitation Act of 1973 (29 U.S.C. 725(b)) is amended—

(1) in paragraph (1)(A), by striking clause (ix) and inserting the following:

''(ix) in a State in which 1 or more projects provide services under section 121, not less than 1 representative of the directors of the projects;''; and

(2) by striking paragraph (5) and inserting the following:

''(5) CHAIRPERSON.—The Council shall select a chairperson from among the voting membership of the Council.''.

SEC. 416. EVALUATION STANDARDS AND PERFORMANCE INDICATORS.

Section 106(b)(2)(B)(i) of the Rehabilitation Act of 1973 (29 U.S.C. 726(b)(2)(B)(i)) is amended by striking '', if necessary'' and all that follows through the semicolon and inserting ''if the State has not improved its performance to acceptable levels, as determined by the Commissioner, direct the State to make further revisions to the plan to improve performance, which may include allocating a higher proportion of the State's resources for services to individuals with disabilities if the State's spending on such services is low in comparison to spending on such services in comparable agencies in other States;''.

SEC. 417. STATE ALLOTMENTS.

Section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730) is amended—

(1) by striking subsection (b) and inserting the following:

''(b) REALLOTMENT.—

''(1) DETERMINATION.—Not later than 45 days prior to the end of the fiscal year, the Commissioner shall determine, after reasonable opportunity for the submission to the Commissioner of comments by the State agency administering or supervising the program established under this title, that any payment of an allotment to a State under section 111(a) for any fiscal year will not be utilized by such State in carrying out the purposes of this title.

''(2) FORMULA.—

''(A) IN GENERAL.—As soon as practicable but not later than the end of the fiscal year, the Commissioner shall reallot the amount available under paragraph (1) to other States, consistent with subparagraphs (B) and (C), for carrying out the purposes of this title to the extent the Commissioner determines such other State will be able to use such additional amount during that fiscal year or the subsequent fiscal year for carrying out such purposes.

''(B) FORMULA.—

''(i) ELIGIBLE STATES.—The Commissioner shall reallot the amount available under paragraph (1) for a fiscal year to each State whose allotment under subsection (a) for such fiscal year is less than such State's allotment under subsection (a) for the immediately preceding fiscal year increased by the percentage change in the funds available for subsection (a) from the immediately preceding fiscal year.

''(ii) AMOUNT.—

''(I) IN GENERAL.—A State that is eligible to receive a reallotment under clause (i) shall receive an amount for a fiscal year from the amount available for reallotment under paragraph (1) that is equal to the difference between—

''(aa) the amount such State received for such fiscal year; and

''(bb) the amount such State was allotted under subsection (a) for the immediately preceding fiscal year adjusted by the percentage change in the funds available for subsection (a) from the immediately preceding fiscal year.

''(II) INSUFFICIENT FUNDS.—If the amount available for reallotment under paragraph (1) is insufficient to provide each State eligible to receive a reallotment with the amount described in subclause (I), the amount reallotted to each eligible State shall be determined by the Commissioner.

''(C) REMAINING FUNDS.—If there are funds remaining after each State eligible to receive a reallotment under subparagraph (B)(i) receives the amount described in subparagraph (B)(ii), the Commissioner shall reallot the remaining funds among the States requesting a reallotment.

''(3) NON-FEDERAL SHARE.—The Commissioner shall reallot an amount to a State under this subsection only if the State will be able to make sufficient payments from non-Federal sources to pay for the non-Federal share of the cost of vocational rehabilitation services under the State plan for the fiscal year for which the amount was appropriated.

''(4) INCREASE IN ALLOTMENT.—For the purposes of this part, any amount made available to a State for any fiscal year pursuant to this subsection shall be regarded as an increase of such State's allotment (as determined under the preceding provisions of this section) for such year.''; and

(2) by striking subsection (c)(2) and inserting the following:

''(2)(A) In this paragraph:

''(i) The term 'appropriated amount' means the amount appropriated under section 100(b)(1) for allotment under this section.

''(ii) The term 'covered year' means a fiscal year—

''(I) that begins after September 30, 2003; and

''(II) for which the appropriated amount exceeds the total of—

''(aa) the appropriated amount for the preceding fiscal year; and

''(bb) 0.075 percent of the appropriated amount for the preceding fiscal year.

''(B) For each covered year, the sum referred to in paragraph (1) shall be, as determined by the Secretary—

''(i) not less than the total of the sum reserved under this subsection for the preceding fiscal

year and 0.1 percent of the appropriated amount for the covered year; and

''(ii) not more than 1.5 percent of the appropriated amount for the covered year.''.

SEC. 418. CLIENT ASSISTANCE PROGRAM.

Section 112 of the Rehabilitation Act of 1973 (29 U.S.C. 732) is amended—

(1) in subsection (a), by striking ''States'' and inserting ''agencies designated under subsection (c)'';

(2) in subsection (e)—

(A) in paragraph (1)—

(i) in subparagraph (A), by striking ''The Secretary'' and all that follows through the period and inserting the following: ''After reserving funds under subparagraphs (E) and (F), the Secretary shall allot the remainder of the sums appropriated for each fiscal year under this section among the agencies designated under subsection (c) within the States on the basis of relative population of each State, except that no such agency shall receive less than $50,000.'';

(ii) in subparagraph (B), by inserting ''the designated agencies located in'' after ''each to'';

(iii) in subparagraph (D)(i)—

(I) by inserting ''the designated agencies located in'' after ''$100,000 for''; and

(II) by inserting ''the designated agencies located in'' after ''$45,000 for''; and

(iv) by adding at the end the following:

''(E)(i) Beginning on October 1, 2004, for any fiscal year for which the amount appropriated to carry out this section equals or exceeds $13,000,000, the Secretary shall reserve funds appropriated under this section to make grants to the protection and advocacy system serving the American Indian Consortium to provide client assistance services in accordance with this section. The amount of such grants shall be the same amount as provided to territories under subparagraph (B), as increased under clauses (i) and (ii) of subparagraph (D).

''(ii) In this subparagraph:

''(I) The term 'American Indian Consortium' has the meaning given the term in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15002).

''(II) The term 'protection and advocacy system' means a protection and advocacy system established under subtitle C of title I of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15041 et seq.).

''(F) For any fiscal year for which the amount appropriated to carry out this section equals or exceeds $14,000,000, the Secretary shall reserve not less than 1.8 percent and not more than 2.2 percent of such amount to provide training and technical assistance to the programs established under this section. Such training and technical assistance shall be coordinated with activities provided under section 509(c)(1)(A).'';

(B) in paragraph (2)—

(i) by striking ''State'' each place such term appears and inserting ''designated agency''; and

(ii) by striking ''States'' each place such term appears and inserting ''designated agencies''; and

(C) in paragraph (3), by striking ''Except as specifically prohibited by or as otherwise provided in State law, the Secretary shall pay'' and inserting ''The Secretary shall pay directly'';

(3) in subsection (f), by striking ''State'' and inserting ''agency designated under subsection (c)''; and

(4) in subsection (h), by striking ''fiscal years 1999 through 2003'' and inserting ''fiscal years 2004 through 2009''.

SEC. 419. INCENTIVE GRANTS.

Part B of title I of the Rehabilitation Act of 1973 (29 U.S.C. 730 et seq.) is amended by adding at the end the following:

''SEC. 113. INCENTIVE GRANTS.

''(a) AUTHORITY.—The Commissioner is authorized to make incentive grants to States that, based on the criteria established under subsection (b)(1), demonstrate—

''(1) a high level of performance; or

''(2) a significantly improved level of performance as compared to the previous reporting period or periods.

''(b) CRITERIA.—

''(1) ESTABLISHMENT.—Not later than 180 days after the date of enactment of this section, the Commissioner shall establish, and publish in the Federal Register, criteria for making grant awards under subsection (a).

''(2) DEVELOPMENT AND EVALUATION STANDARDS.—The criteria under paragraph (1) shall—

''(A) be developed with input from State vocational rehabilitation agencies and other vocational rehabilitation stakeholders, including vocational rehabilitation consumers and consumer organizations; and

''(B) be based upon the evaluation standards and performance indicators established under section 106 and other performance related measures that the Commissioner determines to be appropriate.

''(c) USE OF FUNDS.—A State that receives a grant under subsection (a) shall use the grant funds for any approved activities in the State's State plan submitted under section 101.

''(d) NO NON-FEDERAL SHARE REQUIREMENT.—The provisions of sections 101(a)(3) and 111(a)(2) shall not apply to this section.

''(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2004 through 2009.''.

SEC. 420. VOCATIONAL REHABILITATION SERVICES GRANTS.

Section 121 of the Rehabilitation Act of 1973 (29 U.S.C. 741) is amended—

(1) in subsection (a), in the first sentence, by inserting '', consistent with such individuals' strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, so that such individuals may prepare for, and engage in, gainful employment'' before the period at the end; and

(2) in subsection (b)—

(A) in paragraph (1)—

(i) in subparagraph (B), by striking ''and'' after the semicolon;

(ii) in subparagraph (C), by striking the period at the end and inserting ''; and''; and

(iii) by adding at the end the following:

''(D) contains assurances that—

''(i) all decisions affecting eligibility for vocational rehabilitation services, the nature and scope of available services, and the provision of such services, will be made by a representative of the tribal vocational rehabilitation program; and

''(ii) such decisions will not be delegated to another agency or individual.'';

(B) in paragraph (3), by striking the first sentence and inserting the following: ''An application approved under this part that complies with the program requirements set forth in the regulations promulgated to carry out this part shall be effective for 5 years and shall be renewed for additional 5-year periods if the Commissioner determines that the grantee demonstrated acceptable past performance and the grantee submits a plan, including a proposed budget, to the Commissioner that the Commissioner approves that identifies future performance criteria, goals, and objectives.''; and

(C) by striking paragraph (4) and inserting the following:

''(4) In allocating funds under this part, the Secretary shall give priority to paying the continuation costs of existing projects and may provide for increases in funding for such projects as determined necessary.''.

SEC. 421. GAO STUDIES.

(a) STUDY ON TITLE I AND TICKET TO WORK.—

(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study on the interaction of title I of the Rehabilitation Act of 1973 (29 U.S.C. 720 et seq.) with the Ticket to Work and Self-Sufficiency Program established under section 1148 of the Social Security Act (42 U.S.C. 1320b–19), including the impact of the interaction on beneficiaries, community rehabilitation programs, and State vocational rehabilitation agencies.

(2) CONDUCT OF STUDY.—In conducting the study under paragraph (1), the Comptroller General of the United States shall consult with all participants in the Ticket to Work and Self-Sufficiency Program, including the Social Security Administration, the Rehabilitation Services Administration, ticketholders, State agencies, community rehabilitation programs (including employment networks and nonemployment networks), protection and advocacy agencies, MAXIMUS, and organizations representing the interests of ticketholders.

(3) REPORT TO CONGRESS.—Not later than 18 months after the date of enactment of this title, the Comptroller General of the United States shall submit the study conducted pursuant to this subsection to the appropriate committees of Congress.

(b) STUDY ON THE ALLOTMENT FORMULA.—

(1) IN GENERAL.—The Comptroller General of the United States shall conduct a study on the relationship between the State allotment formula under section 110 of the Rehabilitation Act of 1973 (29 U.S.C. 730) and the ability of States to provide vocational rehabilitation services in accordance with the State's State plan under section 101 of such Act.

(2) CONDUCT OF STUDY.—In conducting the study under paragraph (1), the Comptroller General of the United States shall consult with appropriate entities.

(3) REPORT TO CONGRESS.—Not later than 12 months after the date of enactment of this title, the Comptroller General of the United States shall submit the study conducted pursuant to this subsection to the appropriate committees of Congress.

Subtitle B—Research and Training

SEC. 431. AUTHORIZATION OF APPROPRIATIONS.

Section 201(a) of the Rehabilitation Act of 1973 (29 U.S.C. 761(a)) is amended—

(1) in paragraph (1), by striking ''fiscal years 1999 through 2003'' and inserting ''fiscal years 2004 through 2009''; and

(2) in paragraph (2), by striking ''fiscal years 1999 through 2003'' and inserting ''fiscal years 2004 through 2009''.

SEC. 432. NATIONAL INSTITUTE ON DISABILITY AND REHABILITATION RESEARCH.

Section 202(f)(1) of the Rehabilitation Act of 1973 (29 U.S.C. 762(f)(1)) is amended by striking ''Federal employees'' and inserting ''Department of Education employees''.

SEC. 433. RESEARCH AND OTHER COVERED ACTIVITIES.

Section 204(c)(2) of the Rehabilitation Act of 1973 (29 U.S.C. 764(c)(2)) is amended by striking ''$500,000'' and inserting ''$750,000''.

SEC. 434. REHABILITATION RESEARCH ADVISORY COUNCIL.

Section 205(c) of the Rehabilitation Act of 1973 (29 U.S.C. 765(c)) is amended by adding at the end the following: ''The Council also shall include a representative from the business community who has experience with the vocational rehabilitation system and hiring individuals with disabilities.''.

Subtitle C—Professional Development and Special Projects and Demonstrations

SEC. 441. TRAINING.

Section 302 of the Rehabilitation Act of 1973 (29 U.S.C. 772) is amended—

(1) in subsection (b)(1)(B)(i), by striking ''or prosthetics and orthotics'' and inserting ''prosthetics and orthotics, rehabilitation for the blind, or orientation and mobility instruction''; and

(2) in subsection (i), by striking ''fiscal years 1999 through 2003'' and inserting ''fiscal years 2004 through 2009''.

SEC. 442. DEMONSTRATION AND TRAINING PROGRAMS.

Section 303 of the Rehabilitation Act of 1973 (29 U.S.C. 773) is amended—

(1) in subsection (b)(5)(A)(i), by striking ''special projects'' and inserting ''not less than 2 special projects'';

(2) by redesignating subsections (c), (d), and (e) as subsections (e), (f), and (h), respectively;

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

''(c) DEMONSTRATION PROJECTS FOR EMPLOYMENT OF STUDENTS WITH INTELLECTUAL DISABILITIES OR MENTAL ILLNESS.—

''(1) PURPOSE.—The purpose of this subsection is to support model demonstration projects to provide supported and competitive employment experiences for students with intellectual disabilities or students with mental illness, and training for personnel that work with students described in this paragraph, to enable the students to gain employment skills and experience that will promote effective transitions from school to employment and adult living.

''(2) GRANTS AUTHORIZED.—

''(A) COMPETITIVE GRANTS AUTHORIZED.—The Secretary may award grants, contracts, and cooperative agreements, on a competitive basis, to eligible organizations described in paragraph (3), to enable the organizations to carry out demonstration projects described in paragraph (1).

''(B) DURATION.—The Secretary shall award grants under this subsection for periods of 3 to 5 years.

''(3) ELIGIBLE ORGANIZATIONS.—To be eligible to receive a grant, contract, or cooperative agreement under this subsection, an organization shall—

''(A) have expertise in providing employment and support services for individuals with intellectual disabilities or individuals with mental illness;

''(B) have a proven track record in successfully running supported employment programs;

''(C) provide employment services that are exclusively integrated community-based supported employment services;

''(D) have expertise in creating natural supports for employment;

''(E) have expertise in providing computer training for the targeted population for the project involved; and

''(F) have experience operating mentoring programs for the target population in middle and high schools for at least a decade in diverse communities throughout the Nation.

''(4) APPLICATIONS.—Each organization desiring to receive a grant, contract, or cooperative agreement under this subsection shall submit an application to the Secretary at such time, in such manner, and including such information as the Secretary may require. Each application shall include—

''(A) a description of how the organization plans to carry out the activities authorized in this subsection through a demonstration project;

''(B) a description of how the organization will evaluate the project;

''(C) a description of how the organization will disseminate information about the activities and the impact of the activities on the lives of students served by the project; and

''(D) a description of how the organization will coordinate activities with any other relevant service providers in the locality where the organization is based, including federally supported independent living centers.

''(5) AUTHORIZED ACTIVITIES.—An organization that receives a grant under this subsection shall use the funds made available through the grant to carry out 1 or more of the following activities for individuals, ages 14 through 21, who are students with intellectual disabilities or students with mental illness:

''(A) PROVIDING SUPPORTED AND COMPETITIVE EMPLOYMENT EXPERIENCES.—The development of innovative and effective supported and competitive employment experiences after school, on weekends, and in the summer, utilizing natural supports that lead to competitive high-paying jobs.

''(B) PROVIDING TRAINING TO SCHOOL AND TRANSITION PERSONNEL.—The development and deployment of experts to work with transition programs (including personnel working with students on transition) so that personnel from the programs develop skills needed to train students with intellectual disabilities or students with mental illness to be successful in competitive employment in a range of settings, including office settings. The training shall include training for the personnel in providing instruction to students in computer skills, office skills, interview etiquette, and appropriate social behavior required for successful long-term employment in professional environments.

''(6) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection $5,000,000 for fiscal year 2004 and such sums as may be necessary for fiscal years 2005 through 2008.

''(d) DEMONSTRATION PROJECT FOR EMPLOYMENT OF INDIVIDUALS WHO ARE DEAF AND LOW FUNCTIONING.—

''(1) PURPOSE.—It is the purpose of this subsection to support a model demonstration project to provide training and support services for individuals who are deaf and low functioning to enable them to gain employment skills that will allow them to become employed and economically self-sufficient.

''(2) DEFINITION.—

''(A) IN GENERAL.—In this subsection, the term 'individual who is deaf and low functioning' means an individual who has been deaf from birth or very early childhood, reads at or below the second grade level, has little or no intelligible speech, and lacks a high school diploma or GED.

''(B) SECONDARY DISABILITIES.—Such term may include an individual with a secondary disability.

''(3) GRANTS AUTHORIZED.—

''(A) COMPETITIVE GRANTS AUTHORIZED.—The Secretary may award grants to State agencies, other public agencies or organizations, or not-for-profit organizations with expertise in providing employment training and support services for individuals who are deaf and low functioning to support model demonstration projects.

''(B) DURATION.—Grants under this subsection shall be awarded for a period not to exceed 5 years.

''(4) AUTHORIZED ACTIVITIES.—

''(A) DEVELOPING A COMPREHENSIVE TRAINING PROGRAM.—Each grant recipient shall develop an innovative, comprehensive program of instruction for individuals who are deaf and low functioning that can be implemented at multiple training locations through such means as distance learning and use of advanced technology, as appropriate. Such training program shall be developed to maximize the potential for replication of the program by other training providers.

''(B) IMPLEMENTATION.—Each grant recipient shall implement the comprehensive training program developed in subparagraph (A) as soon as feasible. Such training shall provide instruction on the job and the social skills necessary for successful long-term employment of individuals who are deaf and low functioning.

''(C) ESTABLISHING A POST-TRAINING PROGRAM OF EMPLOYMENT AND SUPPORT SERVICES.—Each grant recipient shall implement employment and support services to assist individuals who complete the training program under subparagraph (A) in securing employment and transitioning to the workplace for a period of not less than 90 days subsequent to placement.

''(5) APPLICATIONS.—Each entity desiring to receive a grant under this subsection shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require including—

''(A) a description of how the applicant plans to address the activities authorized under this subsection;

''(B) a description of the evaluation plan to be used in the project;

''(C) a description of how the applicant will disseminate information about the training program developed and the results of the model demonstration project; and

''(D) a description of how the project will coordinate with any other relevant service providers or entities providing employment training and supports for individuals who are deaf and low functioning.

''(6) MANDATED EVALUATION AND DISSEMINATION ACTIVITIES.—

''(A) ANNUAL REPORT.—Not later than 2 years after the date on which a grant under this subsection is awarded and annually thereafter, each grant recipient shall submit to the Commissioner a report containing—

''(i) the number of individuals who are participating in the demonstration project funded under this subsection;

''(ii) the employment and other skills being taught in the project;

''(iii) the number of individuals participating in the project that are placed in employment;

''(iv) the job sites in which those individuals are placed and the type of jobs they are placed in; and

''(v) the number of individuals who have dropped out of the project and the reasons for their terminating participation in the project.

''(B) EVALUATION OF THE PROJECT.—Each grant recipient shall implement the evaluation plan approved in its application for determining the results of the project within the timeframe specified in, and following the provisions of, its approved application.

''(C) PARTICIPANT EVALUATION PROCESS; FINAL EVALUATION.—In the final year of the project, the grant recipient will produce a final evaluation report of the results of the model demonstration project containing—

''(i) the number of individuals who participated in the training program;

''(ii) a description of the job sites in which those individuals were placed;

''(iii) the number of individuals placed in employment and the type of employment in which they were placed;

''(iv) the number of individuals who did not complete their training and the reasons those individuals dropped out of the project;

''(v) the number of individuals who participated in the training project and who remain employed as of 2 months prior to the date on which the final report is submitted to the Secretary;

''(vi) a written analysis of the model project, including both the strengths and weaknesses of the project, to assist other entities in replicating the training program developed through this model demonstration project; and

''(vii) such other information as the Secretary determines appropriate.

''(D) DISSEMINATION.—Not later than 5 years after the date on which an award is granted under this subsection, the evaluations and results of activities funded by such grant shall be disseminated to State vocational rehabilitation agencies, school systems providing instruction to students who are deaf, supported employment providers, postsecondary vocational training programs, employers, the Social Security Administration, and other interested parties.

''(7) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this subsection, $5,000,000 for fiscal year 2004 and such sums as may be necessary for each of fiscal years 2005 through 2008.'';

(4) by inserting after subsection (f), as redesignated by paragraph (2), the following:

''(g) ACCESS TO TELEWORK.—

''(1) DEFINITION OF TELEWORK.—In this subsection, the term 'telework' means to work from home and other telework sites with the assistance of a computer and with reasonable accommodations, including the necessary equipment

to facilitate successful work from home and other telework sites.

''(2) AUTHORIZATION OF PROGRAM.—The Commissioner is authorized to make grants to States and governing bodies of American Indian tribes located on Federal and State reservations (and consortia of such governing bodies) to pay for the Federal share of the cost of establishing or expanding a telework program.

''(3) APPLICATION.—A State that desires to receive a grant under this subsection shall submit an application to the Commissioner at such time, in such manner, and containing such information as the Commissioner may require.

''(4) USE OF FUNDS.—A State that receives a grant under this subsection shall establish or expand a telework program that shall provide loans or other alternative financing mechanisms to individuals with disabilities to enable such individuals to purchase computers or other equipment, including adaptive equipment, that facilitates work from home and other telework sites so that such individuals are able to telework.

''(5) ANNUAL REPORT.—

''(A) IN GENERAL.—A State that receives a grant under this subsection shall submit an annual report to the Commissioner.

''(B) CONTENTS.—The report under subparagraph (A) shall include the following:

''(i) The characteristics of each individual with a disability that receives a loan or other alternative financing mechanism under the program, including information about the individual such as the following:

''(I) Age.

''(II) Ethnicity.

''(III) Type of disability.

''(IV) Employment status at the time of application for a loan or other alternative financing mechanism under this subsection.

''(V) Whether the individual attempted to secure financial support from other sources to enable the individual to telework and, if so, a description of such sources.

''(VI) Whether the individual is working and, if so, whether the individual teleworks, the occupation in which the individual is working, the hourly salary the individual receives, and the hourly salary of the individual prior to receiving a loan or other alternative financing mechanism under the program.

''(VII) Whether the individual has repaid the loan or other alternative financing mechanism received under the program, is in repayment status, is delinquent on repayments, or has defaulted on the loan or other alternative financing mechanism.

''(ii) Any other information that the Commissioner may require.

''(6) FEDERAL SHARE.—The Federal share of the cost of establishing a telework program shall be 10 percent of the cost.''; and

(5) in subsection (h), as redesignated by paragraph (2)—

(A) by striking ''this section'' and inserting ''this section (other than subsections (c) and (d))''; and

(B) by striking ''fiscal years 1999 through 2003'' and inserting ''fiscal years 2004 through 2009''.

SEC. 443. MIGRANT AND SEASONAL FARMWORKERS.

Section 304(b) of the Rehabilitation Act of 1973 (29 U.S.C. 774(b)) is amended by striking ''fiscal years 1999 through 2003'' and inserting ''fiscal years 2004 through 2009''.

SEC. 444. RECREATIONAL PROGRAMS.

Section 305 of the Rehabilitation Act of 1973 (29 U.S.C. 775) is amended—

(1) in subsection (a)(1)(B), by striking ''construction of facilities for aquatic rehabilitation therapy,''; and

(2) in subsection (b), by striking ''fiscal years 1999 through 2003'' and inserting ''fiscal years 2004 through 2009''.

Subtitle D—National Council on Disability

SEC. 451. AUTHORIZATION OF APPROPRIATIONS.

Section 405 of the Rehabilitation Act of 1973 (29 U.S.C. 785) is amended by striking ''fiscal years 1999 through 2003'' and inserting ''fiscal years 2004 through 2009''.

Subtitle E—Rights and Advocacy

SEC. 461. ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD.

Section 502(j) of the Rehabilitation Act of 1973 (29 U.S.C. 792(j)) is amended by striking ''fiscal years 1999 through 2003'' and inserting ''fiscal years 2004 through 2009''.

SEC. 462. PROTECTION AND ADVOCACY OF INDIVIDUAL RIGHTS.

Section 509 of the Rehabilitation Act of 1973 (29 U.S.C. 794e) is amended—

(1) in subsection (g)(2), by striking ''was paid'' and inserting ''was paid, except that program income generated from the amount paid to an eligible system shall remain available to such system until expended''; and

(2) in subsection (l), by striking ''fiscal years 1999 through 2003'' and inserting ''fiscal years 2004 through 2009''.

Subtitle F—Employment Opportunities for Individuals With Disabilities

SEC. 471. PROJECTS WITH INDUSTRY AUTHORIZATION OF APPROPRIATIONS.

Section 612 of the Rehabilitation Act of 1973 (29 U.S.C. 795a) is amended by striking ''fiscal years 1999 through 2003'' and inserting ''fiscal years 2004 through 2009''.

SEC. 472. SERVICES FOR INDIVIDUALS WITH SIGNIFICANT DISABILITIES AUTHORIZATION OF APPROPRIATIONS.

Section 628 of the Rehabilitation Act of 1973 (29 U.S.C. 795n) is amended by striking ''fiscal years 1999 through 2003'' and inserting ''fiscal years 2004 through 2009''.

Subtitle G—Independent Living Services and Centers for Independent Living

SEC. 481. STATE PLAN.

Section 704 of the Rehabilitation Act of 1973 (42 U.S.C. 795c) is amended by adding at the end the following:

''(o) PROMOTING FULL ACCESS TO COMMUNITY LIFE.—The plan shall describe how the State will provide independent living services that promote full access to community life for individuals with significant disabilities. The services shall include, as appropriate, facilitating transitions from nursing homes and other institutions, including institutions serving individuals with cognitive disabilities, to community-based residences, assisting individuals with significant disabilities at risk of entering institutions to remain in the community, and promoting home ownership among individuals with significant disabilities.''.

SEC. 482. STATEWIDE INDEPENDENT LIVING COUNCIL.

(a) Section 705(b) of the Rehabilitation Act of 1973 (29 U.S.C. 796d(b)) is amended—

(1) in paragraph (2), by striking subparagraph (C) and inserting the following:

''(C) in a State in which 1 or more projects provide services under section 121, not less than 1 representative of the directors of the projects.''; and

(2) by striking paragraph (5) and inserting the following:

''(5) CHAIRPERSON.—The Council shall select a chairperson from among the voting membership of the Council.''.

SEC. 483. INDEPENDENT LIVING SERVICES AUTHORIZATION OF APPROPRIATIONS.

Section 714 of the Rehabilitation Act of 1973 (29 U.S.C. 796e–3) is amended by striking ''fiscal years 1999 through 2003'' and inserting ''fiscal years 2004 through 2009''.

SEC. 484. PROGRAM AUTHORIZATION.

Section 721 of the Rehabilitation Act of 1973 (42 U.S.C. 796f) is amended—

(1) by striking subsection (c) and inserting the following:

''(c) ALLOTMENTS TO STATES.—

''(1) DEFINITIONS.—In this subsection:

''(A) ADDITIONAL APPROPRIATION.—The term 'additional appropriation' means the amount (if any) by which the appropriation for a fiscal year exceeds the total of—

''(i) the amount reserved under subsection (b) for that fiscal year; and

''(ii) the appropriation for fiscal year 2003.

''(B) APPROPRIATION.—The term 'appropriation' means the amount appropriated to carry out this part.

''(C) BASE APPROPRIATION.—The term 'base appropriation' means the portion of the appropriation for a fiscal year that is equal to the lesser of—

''(i) an amount equal to 100 percent of the appropriation, minus the amount reserved under subsection (b) for that fiscal year; or

''(ii) the appropriation for fiscal year 2003.

''(2) ALLOTMENTS TO STATES FROM BASE APPROPRIATION.—After the reservation required by subsection (b) has been made, the Commissioner shall allot to each State whose State plan has been approved under section 706 an amount that bears the same ratio to the base appropriation as the amount the State received under this subsection for fiscal year 2003 bears to the total amount that all States received under this subsection for fiscal year 2003.

''(3) ALLOTMENTS TO STATES OF ADDITIONAL APPROPRIATION.—From any additional appropriation for each fiscal year, the Commissioner shall allot to each State whose State plan has been approved under section 706 an amount equal to the sum of—

''(A) an amount that bears the same ratio to 50 percent of the additional appropriation as the population of the State bears to the population of all States; and

''(B) 1/56 of 50 percent of the additional appropriation.''; and

(2) by adding at the end the following:

''(e) CARRYOVER AUTHORITY.—Notwithstanding any other provision of law—

''(1) any funds appropriated for a fiscal year to carry out a grant program under section 722 or 723, that are not obligated and expended by recipients prior to the beginning of the succeeding fiscal year shall remain available for obligation and expenditure by such recipients during that succeeding fiscal year and the subsequent fiscal year; and

''(2) any amounts of program income received by recipients under a grant program under section 722 or 723 in a fiscal year that are not obligated and expended by recipients prior to the beginning of the succeeding fiscal year, shall remain available for obligation and expenditure by such recipients during that succeeding fiscal year and the subsequent fiscal year.''.

SEC. 485. GRANTS TO CENTERS FOR INDEPENDENT LIVING IN STATES IN WHICH FEDERAL FUNDING EXCEEDS STATE FUNDING.

Section 722(c) of the Rehabilitation Act of 1973 (29 U.S.C. 796f–1(c)) is amended by striking ''by September 30, 1997'' and inserting ''during the preceding year''.

SEC. 486. GRANTS TO CENTERS FOR INDEPENDENT LIVING IN STATES IN WHICH STATE FUNDING EQUALS OR EXCEEDS FEDERAL FUNDING.

Section 723(c) of the Rehabilitation Act of 1973 (29 U.S.C. 796f–2(c)) is amended by striking ''by September 30, 1997'' and inserting ''during the preceding year''.

SEC. 487. STANDARDS AND ASSURANCES FOR CENTERS FOR INDEPENDENT LIVING.

Section 725(b) of the Rehabilitation Act of 1973 (29 U.S.C. 796f–4(b)) is amended by adding at the end the following:

''(8) PROMOTING FULL ACCESS TO COMMUNITY LIFE.—The center shall provide independent living services that promote full access to community life for individuals with significant disabilities. The services shall include, as appropriate,

facilitating transitions from nursing homes and other institutions, including institutions serving individuals with cognitive disabilities, to community-based residences, assisting individuals with significant disabilities at risk of entering institutions to remain in the community, and promoting home ownership among individuals with significant disabilities.''.

SEC. 488. CENTERS FOR INDEPENDENT LIVING AUTHORIZATION OF APPROPRIATIONS.

Section 727 of the Rehabilitation Act of 1973 (29 U.S.C. 796f–6) is amended by striking ''fiscal years 1999 through 2003'' and inserting ''fiscal years 2004 through 2009''.

SEC. 489. INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND.

Chapter 2 of title VII of the Rehabilitation Act of 1973 (29 U.S.C. 796j et seq.) is amended—

(1) by redesignating sections 752 and 753 as sections 753 and 754, respectively; and

(2) by inserting after section 751 the following:

''SEC. 752. TRAINING AND TECHNICAL ASSISTANCE.

''(a) GRANTS; CONTRACTS; OTHER ARRANGEMENTS.—For any fiscal year for which the funds appropriated to carry out this chapter exceed the funds appropriated to carry out this chapter for fiscal year 2003, the Commissioner shall first reserve from such excess, to provide training and technical assistance to designated State agencies for such fiscal year, not less than 1.8 percent, and not more than 2 percent, of the funds appropriated to carry out this chapter for the fiscal year involved.

''(b) ALLOCATION.—From the funds reserved under subsection (a), the Commissioner shall make grants to, and enter into contracts and other arrangements with, entities that demonstrate expertise in the provision of services to older individuals who are blind to provide training and technical assistance with respect to planning, developing, conducting, administering, and evaluating independent living programs for older individuals who are blind.

''(c) FUNDING PRIORITIES.—The Commissioner shall conduct a survey of designated State agencies that receive grants under section 753 regarding training and technical assistance needs in order to determine funding priorities for grants, contracts, and other arrangements under this section.

''(d) REVIEW.—To be eligible to receive a grant or enter into a contract or other arrangement under this section, an eligible entity shall submit an application to the Commissioner at such time, in such manner, containing a proposal to provide such training and technical assistance, and containing such additional information as the Commissioner may require.

''(e) PROHIBITION ON COMBINED FUNDS.—No funds reserved by the Commissioner under this section may be combined with funds appropriated under any other Act or part of this Act if the purpose of combining funds is to make a single discretionary grant or a single discretionary payment, unless such funds appropriated under this chapter are separately identified in such grant or payment and are used for the purposes of this chapter.''.

SEC. 490. PROGRAM OF GRANTS.

Section 753 of the Rehabilitation Act of 1973, as redesignated by section 489, is amended—

(1) in subsection (g), by inserting '', or contracts with,'' after ''grants to'';

(2) by striking subsection (h);

(3) by redesignating subsections (i) and (j) as subsections (h) and (i), respectively;

(4) in subsection (b), by striking ''section 753'' and inserting ''section 754'';

(5) in subsection (c)—

(A) in paragraph (1), by striking ''section 753'' and inserting ''section 754''; and

(B) in paragraph (2)—

(i) by striking ''subsection (i)'' and inserting ''subsection (h)''; and

(ii) by striking ''subsection (j)'' and inserting ''subsection (i)'';

(6) in subsection (h), as redesignated by paragraph (3)—

(A) in paragraph (1), by striking ''subsection (j)(4)'' and inserting ''subsection (i)(4)''; and

(B) in paragraph (2)—

(i) in subparagraph (A)(vi), by adding ''and'' after the semicolon;

(ii) in subparagraph (B)(ii)(III), by striking ''; and'' and inserting a period; and

(iii) by striking subparagraph (C); and

(7) in subsection (i), as redesignated by paragraph (3)—

(A) by striking paragraph (2) and inserting the following:

''(2) MINIMUM ALLOTMENT.—

''(A) STATES.—In the case of the several States, the District of Columbia, and the Commonwealth of Puerto Rico, the amount referred to in paragraph (1)(A) for a fiscal year is the greater of—

''(i) $350,000;

''(ii) an amount equal to the amount the State, the District of Columbia, or the Commonwealth of Puerto Rico received to carry out this chapter for fiscal year 2003; or

''(iii) an amount equal to ⅓ of 1 percent of the amount appropriated under section 754, and not reserved under section 752, for the fiscal year and available for allotments under subsection (a).

''(B) CERTAIN TERRITORIES.—In the case of Guam, American Samoa, the United States Virgin Islands, and the Commonwealth of the Northern Mariana Islands, the amount referred to in paragraph (1)(A) for a fiscal year is $60,000.'';

(B) in paragraph (3)(A), by striking ''section 753'' and inserting ''section 754, and not reserved under section 752,''; and

(C) in paragraph (4)(B)(i), by striking ''subsection (i)'' and inserting ''subsection (h)''.

SEC. 491. INDEPENDENT LIVING SERVICES FOR OLDER INDIVIDUALS WHO ARE BLIND AUTHORIZATION OF APPROPRIATIONS.

Section 754 of the Rehabilitation Act of 1973, as redesignated by section 489, is amended by striking ''fiscal years 1999 through 2003'' and inserting ''fiscal years 2004 through 2009''.

Subtitle H—Miscellaneous

SEC. 495. HELEN KELLER NATIONAL CENTER ACT.

(a) GENERAL AUTHORIZATION OF APPROPRIATIONS.—The first sentence of section 205(a) of the Helen Keller National Center Act (29 U.S.C. 1904(a)) is amended by striking ''1999 through 2003'' and inserting ''2004 through 2009''.

(b) HELEN KELLER NATIONAL CENTER FEDERAL ENDOWMENT FUND.—The first sentence of section 208(h) of the Helen Keller National Center Act (29 U.S.C. 1907(h)) is amended by striking ''1999 through 2003'' and inserting ''2004 through 2009''.

TITLE V—TRANSITION AND EFFECTIVE DATE

SEC. 501. TRANSITION PROVISIONS.

The Secretary of Labor shall, at the discretion of the Secretary, take such actions as the Secretary determines to be appropriate to provide for the orderly implementation of titles I and III of this Act. The Secretary of Education shall, at the discretion of the Secretary, take such actions as the Secretary determines to be appropriate to provide for the orderly implementation of titles II and IV of this Act.

SEC. 502. EFFECTIVE DATE.

Except as otherwise provided in this Act, this Act and the amendments made by this Act shall take effect on the date of enactment of this Act.

Mr. KENNEDY. Mr. President, it is a privilege to join my colleagues to support a bipartisan bill to reauthorize the Workforce Investment Act and increase the opportunities for workers to obtain the services and training they need to hold good jobs in the years ahead.

This bill strengthens the current one-stop system, so that many more can be served in the system we created in 1998. The bill creates stronger partnerships with businesses to recruit new workers, collaborate in training of current workers, improve career ladder opportunities, and work with local leaders to meet the development needs of their community.

The one-stop system is needed more than ever now, to serve hard-working Americans who have lost their job through no fault of their own in the current economic downturn, who need effective training to be eligible for the available jobs in their area.

We have worked to remove the sequencing of services for people entering the workforce who face barriers to employment. Providers can move adults directly to skills training or create training programs that include literacy and language training as well, so that skills training is not delayed.

The bill also encourages local providers to stay with workers until they earn self-sufficient wages. A minimum wage is a start—and the support system should be there to help them qualify for the better paying jobs that will enable them to support their families.

The bill will also help young people. Last summer, as the youth unemployment rate rose to 19 percent, we were all acutely aware of the special challenges that young workers face in this economy. The youth program will continue to work with both in-school and out-of-school youth to help them obtain the education and the real job experience they need to be competitive.

The bill also contains the Adult Literacy Act, which funds critical programs in States to assist adults in obtaining the basic reading, writing, numeracy, and English language skills that they need to be full participants in the workplace and in society at large. We all know that education is the great equalizer. Improving basic literacy services is a critical component of job training as well.

Finally, this bill also contains the Vocational Rehabilitation Act. For over 30 years, since the Vocational Rehabilitation Act was first enacted in 1973, State vocational rehabilitation systems have brought new hope to individuals with disabilities throughout the country, so that they can reach their full potential and actively participate in their communities.

Through vocational rehabilitation, individuals with disabilities can obtain the training, counseling, support, and job opportunities they need in order to have independent, productive, and fulfilling lives. For millions of these Americans, vocational rehabilitation is the difference between dependence and independence, between lost potential and a productive career.

In 1998, vocational rehabilitation became part of the State-wide work force system in each State. This reauthorization will strengthen that partnership,

so that many more working-age individuals with disabilities, even those with the most significant disabilities, have realistic opportunities to obtain the services and support they need to reach their employment goals.

The legislation also strengthens other aspects of independent living, so that students and adults with disabilities receive the services and support they need for community-based living.

Our goal in this reauthorization is to see that the talents and strengths of all individuals with disabilities are recognized, enhanced, and fairly rewarded in communities and workplaces across the Nation.

I thank my colleagues and the many organizations representing governors, mayors, county officials, youth, women, labor, and low-income persons who were all actively involved in preparing this legislation. We have tried to listen carefully to the many leaders who implement these laws.

This bipartisan bill was the result of months of dedicated staff work, and I would like to give special thanks to Jane Oates of my staff, Ilyse Schuman and Scott Fleming of Senator ENZI's staff, Bill Kamela with Senator MURRAY, Sherry Kaiman with Senator JEFFORDS, Randy Soderquist with Senator BINGAMAN, Elyse Wasch and Didem Nisanci with Senator JACK REED, Catherine Brown with Senator CLINTON, Lindsay Lovlien with Senator ENSIGN, Tom Horgan and Julie Jolly with Senator BOND, Andrea Becker with Senator FRIST, Prim Formby with Senator SESSIONS, Mary Beth Luna with Senator DEWINE, and Annie White and Tracy Locklin with Chairman GREGG.

I would also like to thank Sigurd Nilsen with the GAO whose staff prepared countless reports to get us the information we needed to make critical decisions; Ann Lordeman and Paul Irwin of CRS for their technical support and Mark Koster, Amy Gaynor, and Liz King of Legislative Counsel who prepared the bill. In addition, I thank the floor staff who are so helpful on every piece of legislation.

I look forward to continuing this bipartisan effort as we continue into conference with the House, and I thank my colleagues for their willingness to work so well in the completion of this bill.

Mr. ENZI. Mr. President, the signs are all around us. They can be seen in the economic reports in the papers, in the economic forecasts that are discussed on the weekend talk shows, and in reports on the job market. It all adds up to some good news for the people of this Nation—the economy is getting stronger.

It hasn't happened overnight, of course. By taking action to lay the groundwork for our economic recovery, we have ensured the presence of more capital in our economy which has already started to lead to the creation of more jobs. There are telling signs that the labor market is on the mend. The economy gained 126,000 jobs in October—almost twice the market forecast of 65,000.

Now we will take the next step. With the passage of the Workforce Investment Act Amendments of 2003, we lay the groundwork for helping millions of Americans get back to work or find new or better jobs through training and employment assistance.

It is very clear that the face of our Nation's economy is changing. The kind of jobs that are available now—and will be in the future—are different from those that were highly valued a few years, or even months, ago. Last month, for instance, there was significant job growth in the professional, educational and health related services sectors. The manufacturing sector, however, continued to lose jobs. To keep the American dream within the grasp of all Americans, we will have to deal with the changing face of our economy. To do that we must ensure that job seekers have the skills they need for the new economy. We must also bring together workforce supply and demand to ensure that our businesses have the skilled employees they need to compete in a more global economy.

That is why this legislation is so very important. Workforce development is a powerful economic development tool. This legislation builds upon the successes of the Workforce Investment Act of 1998 while addressing its shortcomings. In so doing, this bill will improve the lives of millions of our workers, and increase the strength of our businesses and communities.

This legislation that I introduced along with Senators KENNEDY, GREGG, and MURRAY is the product of an extensive bipartisan effort. It reflects significant input from the Department of Labor and Department of Education, as well as major stakeholders in job training, adult education, and vocational rehabilitation.

The workforce investment system may be fairly new, but we've already learned a great deal about its strengths and weaknesses. These lessons reinforce what I learned as a small business owner in Wyoming:

> Real opportunity in America comes from the small business sector; economic development and workforce development go hand in hand; rural areas face unique workforce development challenges; Washington cannot—and should not—determine state, local and individual workforce needs; and, overly burdensome administrative requirements divert resources from serving customers.

Our bill improves upon the existing One-Stop Career Center delivery system to ensure that it can respond quickly and effectively to the changing needs of employers and workers in the new economy. Doing so will provide the 21st century workforce with the skills they will need for career opportunities in high-growth sectors. Our bill removes barriers in the law that have discouraged business involvement in workforce training, particularly small businesses. Our bill also removes barriers to access to services created by distance in many rural and frontier areas like Wyoming. This legislation will leverage technology to improve access to employment and training services in all areas of the country.

This legislation will also help keep the American dream within the grasp of men and women alike by ensuring that men and women have access to jobs, education, and training that will lead to comparable pay.

Some States and localities have found creative ways to overcome the challenges imposed by current law. Wyoming has done a magnificent job with the resources they have been allotted, and I commend their ingenuity. With this legislation, we will give Wyoming and the other States and localities the tools they need to help the unemployed or underemployed find new or better jobs.

I want to thank Senator KENNEDY, Senator GREGG, Senator MURRAY and the rest of my colleagues on the committee for all their work on this bipartisan bill. I also want to thank the Department of Labor and Department of Education for their assistance. I look forward to getting this bill into conference and quickly enacting this vital legislation.

I would also like to thank the staff on both sides of the aisle who worked on this bill—Ilyse Schuman, Scott Fleming, Annie White, Lindsay Loulien, Tracy Locklin, Jane Oates, Bill Kamela, Sherry Kaiman and all the other HELP Committee staff who worked so hard to make this possible. I would also like to extend a special thank you to Denise Dendy, the Committee's Editor.

This legislation builds a bridge between the jobs of yesterday and the jobs of tomorrow. The bridge is a workforce investment system that is flexible, innovative, and responsive to the needs of employers—both large and small. At the other end of the bridge is the American dream, and good, solid careers for our Nation's workers.

Mr. FRIST. Mr. President, I ask unanimous consent that the committee-reported substitute be agreed to; the bill, as amended, be read a third time and passed; the HELP Committee be discharged from further consideration of H.R. 1261; that the Senate proceed to its immediate consideration; provided that all after the enacting clause be stricken; the text of S. 1627, as amended, be inserted in lieu thereof; that the bill, as amended, be read a third time and passed, and the motion to reconsider be laid upon the table en bloc; that any statements relating to the bill be printed in the RECORD.

I further ask unanimous consent that S. 1627 be returned to the calendar.

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

The committee amendment in the nature of a substitute was agreed to.

The bill H.R. 1261, as amended, was read the third time and passed.

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR NOS. 418 AND 436 THROUGH 450

Mr. FRIST. Mr. President, as in executive session, I ask unanimous consent that at a time determined by the majority leader, with the concurrence of the Democratic leader, the Senate may proceed to executive session for the consideration of Calendar No. 418, MG Robert T. Clark, to be lieutenant general in the Army; further, that there be 2 hours equally divided between the chairman and the ranking member; provided further, that under the time controlled by the minority, 40 minutes be allocated to Senator KENNEDY and 15 minutes to Senator DAYTON. I further ask consent that following the use or yielding back of time, the Senate proceed to a vote on the confirmation of the nomination, with no intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. FRIST. I further ask unanimous consent that following the confirmation vote, the Senate proceed to the consideration of the following nominations en bloc, Nos. 436 through 450, and all remaining nominations on the Secretary's desk; further, that the nominations be confirmed, and the motions to reconsider be laid upon the table, the President be immediately notified of all of the above action, and the Senate then resume legislative session.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

MEASURES READ THE FIRST TIME—S. 1862 THROUGH S. 1866

Mr. FRIST. Mr. President, I understand there are five bills, numbered S. 1862 through S. 1866, at the desk, and I ask that they be read for the first time en bloc.

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

The assistant legislative clerk read as follows:

A bill (S. 1862) to provide certain exceptions from requirements for bilateral agreements with Australia and the United Kingdom for exemptions from the International Traffic in Arms Regulations.

A bill (S. 1863) to authorize the transfer of certain naval vessels.

A bill (S. 1864) to enhance the security of the United States and United States allies.

A bill (S. 1865) to enhance the security of the United States and United States allies.

A bill (S. 1866) to enhance the security of the United States and United States allies.

Mr. FRIST. I now ask for their second reading and object to further proceeding on these matters en bloc.

The PRESIDING OFFICER. Objection having been heard, the bills will remain at the desk.

THIS WEEK IN THE SENATE

Mr. FRIST. Mr. President, in looking over the course of the last week, much of the focus of the last 40 hours or so, the last 2 days, has been on the issue of judges. The three cloture votes failed this morning.

Earlier in the week, we really accomplished a reasonable amount, as I look over what we have done. The Syria Accountability Act—Chairman LUGAR and Senator SANTORUM and many others in the body who brought that forward had it debated, and it was passed. The MILCON conference report was completed this week, and the Defense authorization conference report. We had another bill, the armed cargo pilots bill. We had the District of Columbia Retirement Equity Act by Senator COLLINS and others.

Today, we had the OPIC reauthorization, which we just did, with a lot of bipartisan work done by Chairman LUGAR and others; a bill that has been worked on for a long period of time in a bipartisan way with Senator MIKE ENZI, the Workforce Investment Reauthorization Act, a lot of work reflected in that bill. I am glad we have completed action on that bill today.

With regard to the last 48 hours, I want to extend the comments that were made earlier by the Democratic leader a few hours ago in thanking everybody, expressing my heartfelt appreciation to all of the people who participated over what was a very long and challenging schedule the last couple of days: The Secretary of the Senate, Emily Reynolds, and her staff, Dave Tinsley and Allen Frumin, along with their team of legislative clerks and Parliamentarians; the folks in the Official Reporters of Debates and in Closed Captioning Services who worked around the clock; the Sergeant at Arms Bill Pickle, and all of his support staff, including Skip Rouse and his crew with Capitol facilities, for the around-the-clock services, everything from cots to different bedding materials; Myron Flemming and his doorkeepers who kept control of the galleries because we had a lot of people through over the course of the last 2 days; the Capitol Police who, as always, do such a superb job watching over this Capitol complex, keeping it safe, and very long hours through the night and through the morning with a lot of visitors in and out of the building; Margo Conner and Jorge Castro, along with the Senate restaurants that helped provide food and made sure we were all well fed over the course of the last couple of days; Joy Ogden and the women of the appointments desk for ably handling all of the many guests who came through; the Press Gallery, the folks in the Senate Library, Printing and Document Services, Information Systems, and the Senate pages with whom I was just talking a few moments ago, all for their willingness to help in any way; we have the floor staff here, the cloakroom staff in the cloakrooms behind us, all who helped to make things run as smoothly as possible.

A lot of staff are involved for each Senator. Behind each and every one are a number of staff members on both sides of the aisle who worked very long hours.

As I got home very late last night, when I said hello to Karen, my wife, I realized I hadn't seen her in quite a few days. It made me realize, once again, that the Senators on this floor work long hours, and there is a lot of patience and a lot of understanding by Senate spouses who sacrifice their time for their loved ones, especially with a lot of understanding.

I thank my own staff who have worked with a lot of dedication, including Manny Miranda, Marty Gold, Ramona Lessen, Holly Nass, Brook Whitfield, Tom Craig, Meg Gregory, and Abby Clinton. I thank everybody who has participated in the last several days. It has been extraordinary in many ways, made possible by a lot of hard work.

ORDERS FOR MONDAY, NOVEMBER 17, 2003

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 12 noon, Monday, November 17. I further ask 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 resume consideration of the VA-HUD appropriations bill.

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

PROGRAM

Mr. FRIST. Mr. President, on Monday, the Senate will resume the VA-HUD appropriations bill. If Senators have amendments, they should be prepared to offer and debate those amendments during Monday's session. At 4:30 p.m. the Senate will resume consideration of the FAA reauthorization conference report. Under the previous order there will be 1 hour of debate prior to a vote on the motion to invoke cloture on the conference report. The cloture vote on the FAA conference report will occur at approximately 5:30 p.m., and that will be the first vote on Monday's session.

I would also remind my colleagues that two cloture motions were filed on the Dorr nomination today. Those cloture votes will occur on Tuesday morning.

Before closing, I see the distinguished Senator and colleague, the person who is most responsible in many ways for this Workforce Investment Reauthorization Act, Senator ENZI. I am happy to yield to him.

Mr. ENZI. Mr. President, I thank the leadership on both sides of the aisle for bringing this bill to fruition at this point in time. I thank Senator GREGG for allowing me to work this issue through to this point. I thank Senator KENNEDY and Senator MURRAY for their

tremendous effort and willingness to work toward the goal of getting more people in the workforce and eliminating some of the disparity between men's and women's wages. It has been a tremendous effort. This is normally a very controversial bill, but through some very steady effort over many months, we have come to this point. I thank everybody. I will have additional comments.

Mr. FRIST. Mr. President, again, I congratulate Senator ENZI for outstanding work. This is a bill he has worked on for a long period of time, as we have talked about jobs, job creation, what the workplace is like. This is a very exciting bill. I congratulate him and his colleagues who worked in a bipartisan way on an excellent piece of legislation that will have a true impact on what we all care so much about; that is, the economy, jobs, and the setting in which those jobs are carried out.

ADJOURNMENT UNTIL MONDAY, NOVEMBER 17, 2003

Mr. FRIST. Mr. President, 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 3:06 p.m., adjourned until Monday, November 17, 2003, at noon.

NOMINATIONS

Executive nominations received by the Senate November 14, 2003:

THE JUDICIARY

DIANE S. SYKES, OF WISCONSIN, TO BE UNITED STATES CIRCUIT JUDGE FOR THE SEVENTH CIRCUIT, VICE JOHN L. COFFEY, RETIRING.

DEPARTMENT OF STATE

DAVID C. MULFORD, OF ILLINOIS, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO INDIA.

CONFIRMATION

Executive nomination confirmed by the Senate November 14, 2003:

DEPARTMENT OF STATE

ZALMAY KHALILZAD, OF MARYLAND, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE TRANSITIONAL ISLAMIC STATE OF AFGHANISTAN.

THE ABOVE NOMINATION WAS APPROVED SUBJECT TO THE NOMINEE'S COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

Daily Digest

HIGHLIGHTS

Senate agreed to the Conference Report on H.R. 1588, National Defense Authorization Act, and the Conference Report on H.R. 2559, Military Construction Appropriations Act, clearing both measures for the President.

Senate

Chamber Action

Routine Proceedings, pages S14463–S14921

Measures Introduced: *On Wednesday, November 12, 2003,* six bills were introduced, as follows: S. 1850–1855; on *Thursday, November 13, 2003,* three bills and two resolutions were introduced, as follows: S. 1856–1858, S. Res. 266, and S. Con. Res. 81; and *on Friday, November 14, 2003,* nine bills and one resolution were introduced, as follows: S. 1859–1867, and S.J. Res. 24. **Page S14804**

Measures Reported:

Special Report entitled "Further Revised Allocation to Subcommittees of Budget Totals for Fiscal Year 2004". (S. Rept. No. 108–195) **Page S14804**

Measures Passed:

Basic Pilot Program Extension and Expansion Act: Senate passed S. 1685, to extend and expand the basic pilot program for employment eligibility verification, after agreeing to the committee amendment in the nature of a substitute, and the following amendment proposed thereto: **Pages S14504–06**

Bond (for Leahy/Brownback) Amendment No. 2170, to extend the duration of the immigrant investor regional center pilot program for 5 additional years. **Pages S14505–06**

Adoption Promotion Act: Committee on Finance was discharged from further consideration of H.R. 3182, to reauthorize the adoption incentive payments program under part E of title IV of the Social Security Act, and the bill was then passed, clearing the measure for the President. **Pages S14859–60**

Overseas Private Investment Corporation Amendments Act: Senate passed S. 1824, to amend the Foreign Assistance Act of 1961 to reauthorize the Overseas Private Investment Corporation. **Pages S14860–61**

Workforce Reinvestment and Adult Education Act: Committee on Health, Education, Labor, and Pensions was discharged from further consideration of H.R. 1261, to enhance the workforce investment system of the Nation by strengthening one-stop career centers, providing for more effective governance arrangements, promoting access to a more comprehensive array of employment, training, and related services, establishing a targeted approach to serving youth, and improving performance accountability, and the bill was then passed, after striking all after the enacting clause and inserting in lieu thereof, the text of S. 1627, Senate companion measure, after agreeing to the committee amendment in the nature of a substitute. **Page S14861–S14919**

Subsequently, S. 1627 was returned to the Senate calendar. **Page S14919**

VA–HUD Appropriations Act: Senate continued consideration of H.R. 2861, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2004, taking action on the following amendments proposed thereto:

Pages S14464–81, S14496–S14504, S14506–28

Adopted:

Craig (for Bond) Amendment No. 2156 (to Amendment No. 2150), to clarify the current exemption for certain nonroad agriculture and construction engines or vehicles that are smaller than 50 horsepower from an air emission regulation by California and require EPA to develop a national standard. **Pages S14477–81, S14496**

Craig Modified Amendment No. 2158 (to Amendment No. 2150), 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. **Page S14496**

Bond Amendment No. 2167 (to Amendment No. 2150), to remove the emergency designation on VA medical care. **Page S14496**

Lautenberg Amendment No. 2171 (to Amendment No. 2150), to maintain enforcement personnel for the Environmental Protection Agency at the fiscal year 2003 level. **Pages S14506–07**

Bond (for Graham (SC)/Hollings) Amendment No. 2172 (to Amendment No. 2150), to authorize the Secretary of Veterans Affairs to enter into an enhanced-use lease at the Charleston Department of Veterans Affairs Medical Center, Charleston, South Carolina. **Page S14507**

Bond (for Mikulski/Bond) Amendment No. 2173 (to Amendment No. 2150), to require notice and comment rulemaking, and prohibit disclosure of selection information, by the Corporation for National and Community Service. **Page S14507**

Bond Amendment No. 2174 (to Amendment No. 2150), to increase funds for the Office of Federal Housing Enterprise Oversight to conduct audits, investigations and examinations and to provide for additional emergency funds. **Pages S14510–11**

Bond (for Stevens) Amendment No. 2175 (to Amendment No. 2150), to provide an allocation of funding under the Native American Housing Assistance and Self-Determination Act of 1996 for the State of Alaska. **Page S14511**

Bond (for Durbin/Fitzgerald) Amendment No. 2176 (to Amendment No. 2150), to insert a provision relating to VA-Navy sharing of facilities at the North Chicago VA Medical Center. **Pages S14511–12**

Bond (for Murkowski) Amendment No. 2177 (to Amendment No. 2150), to provide housing for teachers, administrators, and other school staff in remote areas of Alaska since such housing is often extremely substandard, if it is even available at all, and rural school districts in Alaska are facing increased challenges, including meeting the mandates of the No Child Left Behind Act, and in recruiting and retaining employees due to a lack of housing units. **Page S14512**

Bond Amendment No. 2180 (to Amendment No. 2150), to require HUD to make any changes to the operating fund formula by negotiated rulemaking. **Pages S14518, S14520–24**

Bond (for Murkowski) Amendment No. 2181 (to Amendment No. 2150), to provide for the treatment of the Pioneer Homes in Alaska as a State home for veterans. **Pages S14520–24**

Bond (for Dorgan) Amendment No. 2182 (to Amendment No. 2150), to express the sense of the Senate on the access to primary health care of veterans living in rural and highly rural areas. **Pages S14520–24**

Bond (for Sarbanes) Amendment No. 2183 (to Amendment No. 2150), to express the sense of the Senate that housing vouchers are a critical resource and that the Department of Housing and Urban Development should ensure that all vouchers can be used by low-income families. **Pages S14520–24**

Bond (for Clinton) Amendment No. 2184 (to Amendment No. 2150), to provide VISTA volunteers the option of receiving a national service educational award. **Pages S14520–24**

Bond (for Landrieu) Amendment No. 2151 (to Amendment No. 2150), to increase the amount of funds that may be used by States for technical assistance and administrative costs under the community development block grant program. **Pages S14520–24**

Bond (for Levin) Amendment No. 2185 (to Amendment No. 2150), to authorize appropriations for sewer overflow control grants. **Pages S14520–24**

Bond (for Boxer) Amendment No. 2186 (to Amendment No. 2150), to express the sense of the Senate that human dosing studies of pesticides raises ethical and health questions. **Pages S14520–24**

Withdrawn:

Dorgan Amendment No. 2159 (to Amendment No. 2158), to permit the Administrator of the Environmental Protection Agency to register a Canadian pesticide. **Pages S14478–79**

Pending:

Bond/Mikulski Amendment No. 2150, in the nature of a substitute. **Pages S14464–81, S14496–S14504, S14506–28**

Clinton Amendment No. 2152 (to Amendment No. 2150), to permit the use of funds for the Capital Asset Realignment for Enhanced Services (CARES) initiative of the Department of Veterans Affairs for purposes of enhanced services while limiting the use of funds for the initiative for purposes of the closure or reduction of services pending a modification of the initiative to take into account long-term care, domiciliary care, and mental health services and other matters. **Pages S14496–S14504, S14508–10**

During consideration of this measure today, Senate also took the following action:

By 44 yeas to 49 nays (Vote No. 449), three-fifths of those Senators duly chosen and sworn, not having voted in the affirmative, Senate rejected the motion to waive section 502(c)(5) of H. Con. Res. 95, Congressional Budget Resolution, with respect to the emergency designation provision in Mikulski Amendment No. 2178 (to Amendment No. 2150),

to provide for certain capitalization grants. Subsequently, a point of order that the emergency designation provision would violate section 502(c)(5) of H. Con. Res. 95 was sustained and the provision was stricken. Also, the Chair sustained a point order that the amendment would exceed the subcommittee's 302(b) allocation and the amendment thus falls.

Pages S14512–18

A unanimous-consent agreement was reached providing for further consideration of the bill at 12 noon, on Monday, November 17, 2003. **Page S14920**

National Defense Authorization Act—Conference Report: By 95 yeas to 3 nays (Vote No. 447), Senate agreed to the conference report on H.R. 1588, to authorize appropriations for fiscal year 2004 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, and to prescribe personnel strengths for such fiscal year for the Armed Forces, clearing the measure for the President.

Pages S14481–94

Military Construction Appropriations—Conference Report: By a unanimous vote of 98 yeas (Vote No. 448), Senate agreed to the conference report on H.R. 2559, making appropriations for military construction, family housing, and base realignment and closure for the Department of Defense for the fiscal year ending September 30, 2004, clearing the measure for the President. **Pages S14494–96**

Federal Aviation Administration Authorization—Conference Report: Senate began consideration of the conference report on H.R. 2115, to amend title 49, United States Code, to reauthorize programs for the Federal Aviation Administration.

Page S14858

A motion was entered to close further debate on the conference report and, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, a vote on cloture will occur on Monday, November 17, 2003. **Page S14858**

A unanimous-consent agreement was reached providing the further consideration of the conference report at 4:30 p.m., on Monday, November 17, 2003; that there be one hour of debate equally divided, and Senate then vote on the motion to close further debate on the conference report. **Page S14858**

Nomination Considered: Senate resumed consideration of the nomination of Priscilla Richman Owen, of Texas, to be United States Circuit Judge for the Fifth Circuit.

Pages S14531–32, S14547–S14682, S14683–S14777

A fourth motion was entered to close further debate on the nomination and, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, a vote on cloture will occur on Friday, November 14, 2003. **Pages S14531–32**

By 53 yeas to 42 nays (Vote No. 450), three-fifths of those Senators duly chosen and sworn, not having voted in the affirmative, Senate rejected the fourth motion to close further debate on the nomination. *(This action occurred on the calendar day of Friday, November 14, 2003 during the continuous session of Wednesday, November 12, 2003.)* **Page S14777**

Nomination Considered: Senate resumed consideration of the nomination of Carolyn B. Kuhl, of California, to be United States Circuit Judge for the Ninth Circuit.

Page S14532, S14547–S14682, S14683–S14783

A second motion was entered to close further debate on the nomination and, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, a vote on cloture will occur on Friday, November 14, 2003. **Page S14532**

By 53 yeas to 43 nays (Vote No. 451), three-fifths of those Senators duly chosen and sworn, not having voted in the affirmative, Senate rejected the second motion to close further debate on the nomination. *(This action occurred on the calendar day of Friday, November 14, 2003 during the continuous session of Wednesday, November 12, 2003.)* **Pages S14777–83**

Nomination Considered: Senate began consideration of the nomination of Janice R. Brown, of California, to be United States Circuit Judge for the District of Columbia Circuit.

Page S14532, S14547–S14682, S14683–S14785

A motion was entered to close further debate on the nomination and, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, a vote on cloture will occur on Friday, November 14, 2003. **Page S14532**

By 53 yeas to 43 nays (Vote No. 452), three-fifths of those Senators duly chosen and sworn, not having voted in the affirmative, Senate rejected the motion to close further debate on the nomination. *(This action occurred on the calendar day of Friday, November 14, 2003 during the continuous session of Wednesday, November 12, 2003.)* **Pages S14783–85**

Nomination Considered: Senate began consideration of the nomination of Thomas C. Dorr, of Iowa, to be Under Secretary of Agriculture for Rural Development. **Pages S14858–59**

A motion was entered to close further debate on the nomination and, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, a vote on cloture will occur on Tuesday, November 18, 2003. **Pages S14858–59**

Nomination Considered: Senate began consideration of the nomination of Thomas C. Dorr, of Iowa,

to be a Member of the Board of Directors of the Commodity Credit Corporation. **Pages S14858–59**

A motion was entered to close further debate on the nomination and, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, a vote on cloture will occur on Tuesday, November 18, 2003. **Pages S14858–59**

Point of Order Raised: During Executive Session, Senator Gregg raised a point of order that a sign displayed on the minority side of the aisle violated provisions of Rule XVII of the Rules for Regulation of the Senate Wing of the United States Capitol and Senate Office Buildings. **Page S14529**

Nomination—Agreement: a unanimous-consent agreement was reached providing that at a time determined by the Majority Leader, with the concurrence of the Democratic Leader, Senate may proceed to executive session to begin consideration of the nomination of Maj. Gen. Robert T. Clark for appointment in the United States Army to the grade of Lieutenant General; that there be two hours equally divided between the Chairman and Ranking Member of the Committee on Armed Services; and that following the use or yielding back of time, Senate proceed to a vote on confirmation of the nomination; further, that following the confirmation vote, Senate proceed to the consideration of certain nominations en bloc, and the nominations then be confirmed. **Page S14920**

Messages From the President: Senate received the following message from the President of the United States:

Transmitting, pursuant to law, a periodic report relative to the national emergency with respect to Iran which was declared in Executive Order No. 12170; to the Committee on Banking, Housing, and Urban Affairs. (PM–56) **Page S14802**

Nominations Confirmed: Senate confirmed the following nomination (on the calendar day of Friday, November 14, 2003, during the continuous session of Wednesday, November 12, 2003):

Zalmay Khalilzad, of Maryland, to be Ambassador to the Transitional Islamic State of Afghanistan. **Page S14921**

Nominations Received: Senate received the following nominations (on the calendar day of Friday, November 14, 2003, during the continuous session of Wednesday, November 12, 2003):

Diane S. Sykes, of Wisconsin, to be United States Circuit Judge for the Seventh Circuit.

David C. Mulford, of Illinois, to be Ambassador to India. **Page S14921**

Messages From the House: **Page S14802**

Enrolled Bills Presented: **Page S14802**

Executive Communications: **Pages S14802–04**

Executive Reports of Committees: **Page S14804**

Additional Cosponsors: **Pages S14804–07**

Statements on Introduced Bills/Resolutions: **Pages S14807–19**

Additional Statements: **Pages S14798–S14802**

Amendments Submitted: **Pages S14819–48**

Notices of Hearings/Meetings: **Page S14848**

Authority for Committees to Meet: **Pages S14848–49**

Privilege of the Floor: **Page S14849**

Record Votes: Six record votes were taken today. (Total—452) **Pages S14493–94, S14495–96, S14518, S14777, S14783, S14785**

Adjournment: Senate met at 9:30 a.m., and adjourned at 3:06 p.m. until 12 noon on Monday, November 17, 200d. (For Senate's Program, see the remarks of the Majority Leader in today's Record on page S).

Committee Meetings

(Committees not listed did not meet)

ONGOING MILITARY OPERATIONS

Committee on Armed Services: Committee met in closed session to receive a briefing to examine ongoing military operations and areas of key concern around the world from Lieutenant General Norton A. Schwartz, USAF, Director for Operations, J–3, and Major General Ronald L. Burgess, Jr., USA, Director for Intelligence, J–2, both of the Joint Staff; William J. Luti, Deputy Assistant Secretary of Defense for Near East and South Asian Affairs; and Ruben Jeffrey, Representative and Executive Director of the Coalition Provisional Authority.

FINANCIAL ACCOUNTING STANDARDS BOARD

Committee on Banking, Housing, and Urban Affairs: Subcommittee on Securities and Investment concluded a hearing on the Financial Accounting Standards Board and small business growth, focusing on establishing and improving general-purpose standards of financial accounting and reporting for both public and private enterprises, after receiving testimony from Senator Ensign; Robert H. Herz, Financial Accounting Standards Board, Norwalk, Connecticut; Peter A. Salg, QSC Restaurants, Inc., Fort Collins, Colorado, on behalf of the International Franchise Association; James K. Glassman, American Enterprise Institute, and Jeannine Kenney, National

Cooperative Business Association, both of Washington, D.C.; Richard E. Forrestel, Jr., Cold Spring Construction Company, Akron, New York, on behalf of the Associated General Contractors of America; Walter K. Moore, Genentech, Inc., San Francisco, California; and Mark Heesen, National Venture Capital Association, Arlington, Virginia.

TOBACCO SETTLEMENT FUNDS

Committee on Commerce, Science, and Transportation: Committee concluded a hearing to examine State use of tobacco settlement funds, focusing on the growing number of non-participating tobacco manufacturers, the prevention and control of tobacco use, and cigarette taxes, after receiving testimony from Delaware State Representative Deborah Hudson, Dover, on behalf of the National Conference of State Legislatures; Mississippi Attorney General Mike Moore, Jackson; and Matthew Louis Myers, Tobacco-Free Kids, Raymond C. Scheppach, National Governors Association, and Cheryl G. Healton, American Legacy Foundation, all of Washington, D.C.

BUSINESS MEETING

Committee on Environment and Public Works: Committee ordered favorably reported the following business items:

S. 1072, to authorize funds for Federal-aid highways, highway safety programs, and transit programs, with an amendment in the nature of a substitute; and

The nomination of Rixio Enrique Medina, of Oklahoma, to be a Member of the Chemical Safety and Hazard Investigation Board.

BUSINESS MEETING

Committee on Finance: Committee ordered favorably reported the nominations of Michael O'Grady, of Maryland, and Jennifer Young, of Ohio, both to be an Assistant Secretary of Health and Human Services, and Bradley D. Belt, of the District of Columbia, to be a Member of the Social Security Advisory Board.

NOMINATION

Committee on Governmental Affairs: Committee concluded a hearing to examine the nomination of Scott J. Bloch, of Kansas, to be Special Counsel, Office of Special Counsel, after the nominee, who was introduced by Senator Brownback, testified and answered questions in his own behalf.

FEDERAL EMPLOYEE PROTECTION OF DISCLOSURES ACT

Committee on Governmental Affairs: Committee concluded a hearing to examine S. 1358, to amend chapter 23 of title 5, United States Code, to clarify the disclosure of information protected from prohibited personnel practices, require a statement in nondisclosure policies, forms, and agreements that such policies, forms, and agreements conform with certain disclosure protections, provide certain authority for the Special Counsel, after receiving testimony from Senator Grassley; Peter Keisler, Assistant Attorney General, Civil Division, Department of Justice; and Elaine Kaplan, Bernabei and Katz, PLLC, Thomas Devine, Government Accountability Project, Stephen M. Kohn, National Whistleblower Center, and William L. Bransford, Shaw, Bransford, Veilleux and Roth, P.C., on behalf of the Senior Executives Association, all of Washington, D.C.

NOMINATIONS:

Committee on the Judiciary: Committee concluded a hearing to examine the nominations of Judith C. Herrera, to be United States District Judge for the District of New Mexico, who was introduced by Senators Domenici and Bingaman, F. Dennis Saylor IV, to be United States District Judge for the District of Massachusetts, who was introduced by Senator Kennedy, Sandra L. Townes, to be United States District Judge for the Eastern District of New York, who was introduced by Senator Schumer, and Domingo S. Herraiz, of Ohio, to be Director of the Bureau of Justice Assistance, Department of Justice, who was introduced by Senator DeWine, after the nominees testified and answered questions in their own behalf.

TRANSPORTATION, TREASURY, AND GENERAL GOVERNMENT APPROPRIATIONS ACT

Conferees agreed to file a conference report on the differences between the Senate and House passed versions of H.R. 2989, making appropriations for the Departments of Transportation and Treasury, and independent agencies for the fiscal year ending September 30, 2004.

House of Representatives

Chamber Action

Measures Introduced: 2 public bills, H.R. 3485 and 3486; and 1 resolution, H. Con. Res. 324, were introduced. **Page H11149**

Additional Cosponsors: **Page H11149**

Reports Filed: Reports were filed today as follows:

H.R. 2886, to amend title 31, United States Code, to improve the financial accountability requirements applicable to the Department of Homeland Security, amended (H. Rept. 108–358, Pt. 1). **Pages H11148–49**

Chaplain: The prayer was offered today by Most Rev. Anthony Sablan Apuron, Archbishop of Agana in Guam. **Page H11147**

Meeting Hour: Agreed that when the House adjourn today, it adjourn to meet at 2 p.m. on Friday, November 14, and further that when it adjourn on that day, it adjourn to meet at 12:30 p.m. on Monday, November 17 for morning-hour debate. **Page H11148**

Calendar Wednesday: Agreed to dispense with the Calendar Wednesday business of Wednesday, November 19. **Page H11148**

Presidential Message: Read a message from the President, received by the Clerk on November 12, notifying Congress of the continuation of the national emergency with respect to Iran—referred the Committee on International Relations and ordered to be printed (H. Doc. 108–141). **Page H11148**

Senate Message: Message received from the Senate today appears on pages H11147–48.

Senate Referral: S. 1657 was referred to the Committee on Transportation and Infrastructure; S. 286 was ordered held at the desk. **Page H11148**

Adjournment: The House met at 2 p.m. and adjourned at 2:06 p.m.

Committee Meetings

No committee meetings were held.

NEW PUBLIC LAWS

(For last listing of Public Laws, see DAILY DIGEST, *p. D1259)*

H.R. 2691, making appropriations for the Department of the Interior and related agencies for the fiscal year ending September 30, 2004. Signed on November 10, 2003. (Public Law 108–108).

H.R. 1516, to provide for the establishment by the Secretary of Veterans Affairs of additional cemeteries in the National Cemetery Administration. Signed on November 11, 2003. (Public Law 108–109).

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 Post Office Building''. Signed on November 11, 2003. (Public Law 108–110).

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''. Signed on November 11, 2003. (Public Law 108–111).

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''. Signed on November 11, 2003. (Public Law 108–112).

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''. Signed on November 11, 2003. (Public Law 108–113).

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''. Signed on November 11, 2003. (Public Law 108–114).

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''. Signed on November 11, 2003. (Public Law 108–115).

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''. Signed on November 11, 2003. (Public Law 108–116).

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''. Signed on November 11, 2003. (Public Law 108–117).

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''. Signed on November 11, 2003. (Public Law 108–118).

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''. Signed on November 11, 2003. (Public Law 108–119).

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''. Signed on November 11, 2003. (Public Law 108–120).

H.R. 3365, to amend title 10, United States Code, and the Internal Revenue Code of 1986 to increase the death gratuity payable with respect to deceased members of the Armed Forces and to exclude such gratuity from gross income, to provide additional tax relief for members of the Armed Forces and their families. Signed on November 11, 2003. (Public Law 108–121).

H.J. Res. 52, recognizing the Dr. Samuel D. Harris National Museum of Dentistry, an affiliate of the Smithsonian Institution in Baltimore, Maryland, as the official national museum of dentistry in the United States. Signed on November 11, 2003. (Public Law 108-122).

S. 926, to amend section 5379 of title 5, United States Code, to increase the annual and aggregate limits on student loan repayments by Federal agencies. Signed on November 11, 2003. (Public Law 108–123).

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''. Signed on November 11, 2003. (Public Law 108–124).

S. 470, to extend the authority for the construction of a memorial to Martin Luther King, Jr. Signed on November 11, 2003. (Public Law 108–125).

CONGRESSIONAL PROGRAM AHEAD

Week of November 17 through 22, 2003

Senate Chamber

On Monday at 12 noon, Senate will resume consideration of H.R. 2861, VA–HUD Appropriations Act.

At 4:30 p.m., Senate will resume consideration of the conference report on H.R. 2115, FAA Authorization, with a vote on the motion to close further debate on the conference report to occur at 5:30 p.m.

On Tuesday, Senate will resume consideration of the nominations of Thomas C. Dorr. to be Under Secretary of Agriculture for Rural Development, and

to be a Member of the Board of Directors of the Commodity Credit Corporation, with votes on the motions to invoke cloture, respectively.

During the balance of the week, Senate may consider any other cleared legislative and executive business, including appropriation bills, conference reports and certain nominations, when available.

Senate Committees

(Committee meetings are open unless otherwise indicated)

Committee on Armed Services: November 18, to hold hearings to examine the nomination of Michael W. Wynne, of Florida, to be Under Secretary of Defense for Acquisition, Technology, and Logistics, 4 p.m., SR–222.

November 19, Full Committee, to hold hearings to examine current Army issues, 9 a.m., SH–216.

Committee on Banking, Housing, and Urban Affairs: November 18, to hold hearings to examine current investigations and regulatory actions regarding the mutual fund industry, 10 a.m., SD–538.

November 20, Full Committee, to hold hearings to examine improving the corporate governance of the NYSE, 10 a.m., SD–538.

November 20, Full Committee, to resume hearings to examine current investigations and regulatory actions regarding the mutual fund industry, 2 p.m., SD–538.

Committee on Commerce, Science, and Transportation: November 20, to hold hearings to examine drug importation, 9:30 a.m., SR–253.

Committee on Energy and Natural Resources: November 18, Subcommittee on Public Lands and Forests, to hold hearings to examine S. 1209, to provide for the acquisition of property in Washington County, Utah, for implementation of a desert tortoise habitat conservation plan, H.R. 708, to require the conveyance of certain National Forest System lands in Mendocino National Forest, California, to provide for the use of the proceeds from such conveyance for National Forest purposes, S. 1467, to establish the Rio Grande Outstanding Natural Area in the State of Colorado, S. 1167, to resolve the boundary conflicts in Barry and Stone Counties in the State of Missouri, and S. 1848, to amend the Bend Pine Nursery Land Conveyance Act to direct the Secretary of Agriculture to sell the Bend Pine Nursery Administration Site in the State of Oregon, 2:30 p.m., SD–366.

Committee on Finance: November 18, to hold hearings to examine the nomination of Steven J. Simmons, of Connecticut, to be a Member of the Broadcasting Board of Governors, 10 a.m., SD–215.

November 18, Full Committee, to hold hearings to examine the nomination of Arnold I. Havens, of Virginia, to be General Counsel for the Department of the Treasury, 10 a.m., SD–215.

Committee on Governmental Affairs: November 18, Permanent Subcommittee on Investigations, to hold hearings to examine the role of professional organizations like accounting firms, law firms, and financial institutions in developing, marketing and implementing tax shelters, 9 a.m., SH–216.

November 18, Full Committee, to hold hearings to examine the nomination of James M. Loy, of Virginia, to be Deputy Secretary of Homeland Security, 2:30 p.m., SD–342.

November 19, Full Committee, to hold hearings to examine the threat of agroterrorism, 9:30 a.m., SD–342.

November 19, Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, to resume hearings to examine the August 2003 Northeast blackouts and the federal role in managing the nation's electricity, 2:30 p.m., SD–342.

November 20, Permanent Subcommittee on Investigations, to resume hearings to examine the role of professional organizations like accounting firms, law firms, and financial institutions in developing, marketing and implementing tax shelters, 9 a.m., SH–216.

Committee on Health, Education, Labor, and Pensions: November 19, to hold hearings to examine S. 741, to amend the Federal Food, Drug, and Cosmetic Act with regard to new animal drugs, proposed Mammography Quality Standards Reauthorization Act, proposed Medical Device Technical Corrections Act, proposed Organ Donation and Recovery Improvement Act, and pending nominations, 10 a.m., SD–430.

Committee on the Judiciary: November 18, to hold hearings to examine America after the 9/11 terrorist attacks, 9:30 a.m., SD–226.

November 19, Full Committee, to hold hearings to examine pending judicial nominations, 10 a.m., SD–226.

House

Committee on Government Operations, Subcommittee on Human Rights and Wellness, hearing entitled "Preventing Another SV40 Tragedy: Are Today's Vaccine Safety Protocols Effective?" 2 p.m., 2154 Rayburn.

Joint Meetings

Conference: November 17, meeting of conferees on H.R. 6, to enhance energy conservation and research and development, to provide for security and diversity in the energy supply for the American people, 2 p.m., SD–106.

COMMITTEE MEETINGS FOR THURSDAY, NOVEMBER 13, 2003

(Committee meetings are open unless otherwise indicated)

Senate

Committee on Armed Services: to hold hearings to examine current Army issues, 9:30 a.m., SH–216.

Committee on Indian Affairs: business meeting to consider pending calendar business, 10 a.m., SR–485.

Committee on the Judiciary: business meeting to consider H.R. 1437, to improve the United States Code, S. Res. 253, to recognize the evolution and importance of motorsports, and the nominations of Henry W. Saad, of Michigan, to be United States Circuit Judge for the Sixth Circuit, Michael J. Garcia, of New York, to be an Assistant Secretary of Homeland Security, Claude A. Allen, of Virginia, to be United States Circuit Judge for the Fourth Circuit, James B. Comey, of New York, to be Deputy

Attorney General, and Federico Lawrence Rocha, of California, to be United States Marshal for the Northern District of California, both of the Department of Justice, 9:30 a.m., SD–226.

Subcommittee on Immigration, Border Security and Citizenship, to hold hearings to examine state and local authority to enforce immigration law relating to terrorism, 2:30 p.m., SD–226.

COMMITTEE MEETINGS FOR FRIDAY, NOVEMBER 14, 2003

(Committee meetings are open unless otherwise indicated)

Senate

Committee on the Judiciary: business meeting to consider H.R.1437, to improve the United States Code, S. Res. 253, to recognize the evolution and importance of motorsports, and the nominations of Henry W. Saad, of Michigan, to be United States Circuit Judge for the Sixth Circuit, Michael J. Garcia, of New York, to be an Assistant Secretary of Homeland Security, Claude A. Allen, of Virginia, to be United States Circuit Judge for the Fourth Circuit, James B. Comey, of New York, to be Deputy Attorney General, and Federico Lawrence Rocha, of California, to be United States Marshal for the Northern District of California, both of the Department of Justice, 9 a.m., SD-226.

House

No committee meetings are scheduled.

Next Meeting of the **SENATE**

12 noon, Monday, November 17

Senate Chamber

Program for Monday: Senate will resume consideration of H.R. 2861, VA–HUD Appropriations Act. At 4:30 p.m., Senate will resume consideration of the conference report on H.R. 2115, FAA Authorization, with a vote on the motion to close further debate on the conference report to occur at 5:30 p.m.

Next Meeting of the **HOUSE OF REPRESENTATIVES**

2 p.m., Friday, November 14

House Chamber

Program for Friday: The House will meet at 2 p.m. on Friday, November 14 in pro forma session.

NOTICE

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