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Senate

The Senate met at 9:30 a.m. and was called to order by the President pro tempore.

PRAYER

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

Let us pray:

We praise You, O God, for all of Your comings among us. You have excellent things to teach us, for Your wisdom is more valuable than rubies. Your power established the heavens and drew the horizon on the oceans.

Strengthen and encourage our Senators, giving them a sense of Your abiding presence. May they honor Your name in their thoughts, words, and actions. Give them compassion for the poor and helpless, and use them to rescue the perishing.

Bless our great land and make it a beacon of hope for our world. Give us the graciousness to serve one another in all humility, following Your example of sacrifice. Fill us with Your hope that we may celebrate now that glorious day when You will reign forever as Lord of all. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the pledge of allegiance as follows:

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

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will be a period for the transaction of morning business for up to 2 hours, the first 30 minutes under the control of the majority leader or his designee, the second 30 minutes under the control of the Democratic leader or his designee, the third 30 minutes under the control of the Senator from Arizona, Mr. MCCAIN, and the final 30 minutes under the control of the Democratic leader or his designee.

RECOGNITION OF THE ACTING MAJORITY LEADER

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

SCHEDULE

Mr. MCCONNELL. Mr. President, this morning there will be a 2-hour period for morning business. Following that time, the Senate will resume consideration of S. 5, the Class Action Fairness bill. As the majority leader noted last night, we made substantial progress on the bill yesterday. Senator FEINGOLD's amendment on remand limit is pending. It is our desire to have that vote around 12:30 or so today.

We will also need to dispose of the Durbin amendment on mass actions. I know that discussions continue with respect to that Durbin amendment.

We are not aware of any other amendments to be offered, and therefore it is hoped and expected that we can proceed to final passage of the class action bill at a reasonable hour this afternoon.

Finally, I would say that the two leaders are close to an agreement on the consideration of the Chertoff nomination for next week. We will lock in that unanimous consent at the first opportunity.

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

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDENT pro tempore. Without objection, it is so ordered. The Senator from South Dakota is recognized.

SOCIAL SECURITY

Mr. THUNE. Mr. President, I rise today for the first time as a Senator from the State of South Dakota. First and foremost, I thank the people of South Dakota for putting their trust in me, for sending me to fight for their values and to represent them here in Washington, DC.

I had the distinct pleasure of serving the State of South Dakota for three terms in the House of Representatives, and now I am looking forward to continuing my service to South Dakota and to our Nation here in the Senate. I decided to run for the Senate because I believe we can make better progress on an agenda that strengthens our Nation and increases the prosperity of every American. We have a lot of work to do, and we should not let partisanship or political gamesmanship get in the way of this agenda.

The Senate is known for its deliberative qualities, most commonly manifested through the right to free debate. This quality is part of the fiber of the Senate, part of the character that makes it one of the most august institutions in the world.

Some of the greatest debates in our Nation's history have taken place in this very Chamber, from the 19th century debates on slavery and the Republic to the 20th century debates on civil rights and Social Security. While there is time to debate, we all came here to solve problems, not pass them on to our children. I think I speak for many Members when I say that the only thing that sustains me when I am away from my children is the knowledge that we are improving their lives through our work. That is why I firmly

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

hope that Congress can work together to do more than simply debate our problems, but work together to solve them.

There are some goals that we can all agree on: a national energy policy that increases the use of renewable fuels, more affordable and accessible health care, and meaningful tort reform. We are, in fact, on the eve of passing class action reform that will restore fairness to the judicial system in this country. Our tort system is broken and, without the necessary reforms, beginning with class action lawsuits, we deny our Nation not only fair and efficient access to justice, but we allow this problem to pull our economy downward. Excessive and often unnecessary litigation expenses cost us in terms of lost jobs, lost growth, and lost revenues every day that it goes unabated. We have a full agenda ahead of us. The American people have put their trust in us to make this Nation even greater than it is today, and we cannot let them down.

Part of the task before us, and the reason I rise today, is the need to fix Social Security. Social Security as the system exists today is in danger. While the system has provided 70 years' worth of benefits to our Nation's retirees, the system as we know it today will no longer be able to keep that promise for the next generation.

I understand the intergenerational aspect of this discussion. My father turned 85 in December. My mom will be 84 in May. My father has served his country as a combat pilot in World War II. He has shot down enemy warplanes for his country. He and my mother rely—depend upon Social Security. We need to keep faith in our promise to them.

But I also have teenage daughters. I understand, if we do nothing to improve this system, that our children and grandchildren will not see the Social Security benefits they are counting on receiving. Today's seniors, like my mom and dad back in Murdo, SD, and those nearing retirement age, can be assured that their benefits are safe and sound. The same cannot be said for my two daughters and the rest of their generation.

The explanation of why this is happening is not that difficult to understand. In 1950, there were 16 workers for every retiree. Today, there are only three workers for every retiree. Soon there will be only two workers for every one retiree. Our Nation is aging and, as more and more Americans leave the workforce for retirement, there are fewer and fewer workers paying into the system. The current system is unsustainable given the changing demographics of this country.

Some may ask, When will we start to see the effects from these changes? The Social Security trustees have told us that beginning in 2018, Social Security will begin paying out more in benefits than it is taking in. This means that we will need to start raising taxes, cutting spending, or reducing benefits in just 13 years to cover the promises that have been made to our retirees. In 2042 the system will no longer be able to pay full benefits without major restructuring.

Some will say those dates sound like they are a long ways off, but as the Vice President recently put it, some might be inclined to ''kick the can further down the road,'' leaving the problem for another President and another Congress to fix. Thirteen years is not that far away. Believe me, if you have children you know how quickly those first 12 years can go by, and all of a sudden you have a teenager. It happened to me twice with my two daughters. So the problems with Social Security are not going away, and the longer we wait, the more expensive the solution will be and the more painful to the American taxpayer.

The Social Security trustees have told us that if we wait to solve this problem, we are facing a $10.4 trillion shortfall. Experts agree that if we work on solving the problem today, that cost will be closer to $1 trillion—$1 trillion today, $10 trillion later.

My teenage daughters—and I daresay most Americans—can understand the dimensions of that problem. It is our duty to fix this problem now.

Possible solutions are numerous. Many include personal retirement accounts which would create a nest egg for younger generations. These voluntary accounts would allow younger workers to save some of their payroll taxes in a personal account for their retirement. In fact, they would most likely be fashioned like the Thrift Savings Plan that is available to Federal employees. With personal retirement accounts, our children and grandchildren will be able to get more out of the Social Security system when they retire. In addition, they will have something to pass on to their children.

No matter how the solution is fashioned, current retirees and those nearing retirement do not have to worry about their benefits. They have put their time in, and their benefits will be there for them, no matter what happens.

I have laid out the stakes here today, and it is clear that they could not be much higher. I call on members of both parties to be open to the ideas that are put on the table. Refrain from playing on the fears that often surround this issue. And for those of you who worry about political danger in discussing this issue, know that I am standing here today before you as a Senator who has been on the receiving end of many of those accusations and attacks—the key words being, I am still standing here as a Senator today. I believe we can do more than send and receive political attacks on this issue. We can work together to find a strong bipartisan solution.

As those of us here in Washington begin to debate the issue of Social Security reform, I ask that we think not about our next election but in fact about the next generation—our children and our grandchildren. The same goes for seniors. I ask that they fight the temptation to be concerned about their next Social Security check, because it is going to be there, no matter what. Instead, I ask that they also think about our children and our grandchildren. Their future is what this debate is all about. I for one intend to fight to make it a better future. I hope my colleagues in this Chamber will join me.

I yield the floor.

The PRESIDENT pro tempore. The Senator from Kentucky.

Mr. MCCONNELL. Mr. President, I congratulate the new Senator from South Dakota on his initial speech in the Senate. I say to him that he could not have picked a more important topic than saving Social Security for our children. I had the pleasure to be here and listen to his speech. I have had an opportunity to get to know the Senator from South Dakota over the last few years.

I want to say again on behalf of all of our colleagues, welcome to the Senate, and congratulations on an outstanding speech.

Mr. THUNE. I thank the distinguished whip for his kind remarks.

The PRESIDENT pro tempore. The Senator from Utah.

SOCIAL SECURITY

Mr. BENNETT. Mr. President, this morning's paper has in it once again, as we often get here in Washington, a poll. It seems everything we do is focused on polls and what the people think. This poll is on the question of whether there is a crisis in Social Security. Frankly, the numbers are confusing, because it depends on the definition. If the question is whether there is a problem, there is a majority who say there is a problem; there is a smaller percentage that say there is a crisis, and so on. It gets very confusing.

I would like to speak today in answer to the fundamental question posed by the poll, and do what I can to shed some light on the question of what condition Social Security is in.

I am not a newcomer to this. We have held hearings in the Joint Economic Committee, while I have been chairman, examining this question. We have a body of institutional knowledge that we have put together now over the past year and a half. I want to pose and I hope answer three fundamental questions here today that can be the basis for the debate on Social Security.

Those questions are: No. 1, is there a problem? No. 2, if so, how big is it? No. 3, when will it hit?

With those three questions in mind, let us go forward. Individuals come to me and ask these questions through the lens of their individual situation. Is there a problem with Social Security? They are really asking, Is there a problem for me in Social Security? The answer to that question is a question: When were you born?

Stop and think for a minute of your own birth date, and then address the question, Is Social Security going to be a problem for me? If you were born in the 1930s, as I was, or if you were born in the 1940s, as my wife was, or if you were born in the 1950s, as my nieces and nephews were, the answer is no, there is not a problem for you with respect to Social Security. Your benefits will be paid. They will be paid at the full level the law requires. You do not have a problem with Social Security.

If you were born in the 1960s, as my children were, the question of whether you have a problem depends on how long you will live. If you were born in the 1960s and you live into your eighties, chances are in the last few years of your life the Social Security benefits are going to be cut quite dramatically. If you manage to die before you get to age 80, then you won't have a problem.

If you were born in the 1970s, it is almost certain you will have a problem. And if you were born in the 1980s, it is guaranteed that the Social Security benefits will have to be cut before you reach retirement age.

For these young pages sitting here, it is very clear that if we don't start to do something now, you will be penalized for your youth. The Social Security benefits will be seriously curtailed for you.

Let us review some history to put some flesh on the bones as to whether there is a problem. Think of Social Security in these terms: It is a little like a lottery. A lottery works this way: A lot of people pay in, and only some people get paid out. So it produces winners and losers. With Social Security, a lot of people pay in, and not all of them get money out.

Here are the statistics which demonstrate what has been happening to this lottery. In the 1940s, 54 percent of the workers who paid into the system lived long enough to be winners. This is the ideal political situation, because the losers were dead. They were not in a position to protest that they had paid in and had gotten nothing out. Fifty-four percent in 1940 of the men—and in 1940 our workforce and retiree population was almost entirely male—got money out of the lottery and the other 46 percent who had paid in got nothing, but they weren't complaining because they were dead.

But then the women started to join the workforce, and now women make up as high a percentage of the workforce as men, and the age kept going up. Today, 72 percent of the men who paid into the lottery are eligible for benefits, and 83 percent of the women who paid into the lottery are eligible for benefits. Whereas it was 54 percent who were winners in 1940, it is now 80 percent who are winners, and the number keeps going up.

There is another factor. This shows how many people get into the winner side who are going to be drawing money from Social Security. How long did they stay there? In 1940, once a man got to retirement age, he would stay there on the average for 12 years. Women—there were fewer of them who were in the program—lived for 14.7 years. But the numbers kept going up. Today, a man will be in the program for 15 years, and a woman for nearly 20. The average time people draw out their Social Security benefits has gone up from 12 to 18—a 50-percent increase.

You have many more people who get into the program by virtue of living beyond the age of 65, and then once they are in the program they stay longer.

What is the obvious result of this kind of change in demographics? Let us see what has happened to the pool of people paying in.

In 1945, there were 42 people paying in for every one person drawing out. That is true because the program was still new enough that there were not enough people old enough to take advantage of it. That came down dramatically, as you would expect it would, as more and more retirees came on. In the 1950s, 5 years later, the number was down to 17. Now it is down to 3, and the projections are that it will go down to 2. You cannot have that kind of a lottery where only two people are paying in for every person who is drawing out, while the people who are drawing out are growing as a percentage of the whole program.

How do we deal with this? How have we dealt with this historically over this period? This is how we have dealt with it. Take the 50-year period from 1945 to 1995, and this is the list of tax rates that have been applied to Social Security. For 50 years of time, we have run into one of these demographic problems. We have solved it by raising the tax rate.

I would like to demonstrate what Franklin Roosevelt and Congress in 1936 promised the American people on this issue of tax rates. This is the photograph of the brochure that was distributed to every recipient of Social Security in 1936. ''Security In Your Old Age, Social Security Board, Washington, DC.''

Here is the quote from that pamphlet that was distributed to every Social Security beneficiary. ''Beginning in 1949, twelve years from now, you and your employer will each pay 3 cents on each dollar you earn up to $3,000 a year. That is the most you will ever pay.''

If ever there was a promise the Government made that the Government broke, that is the promise.

Let us go back to the previous chart that shows the history.

This is the 3 percent that was promised in the 1930s; this is the 12.4 percent we are paying 50 years later. That is a 300-percent increase in tax rate. That is not 300 percent in dollars. That is a 300 percent increase in the rate to keep up with the demographic situation we have seen.

I asked three questions: Is there a problem? How big is it? When will it hit?

I have cited the history. Now it is time to get prospective and talk about what is coming.

All of the demographic statistics I have quoted are shown here on this chart. It starts in 1950, and here is where we are now. This is the percentage of Americans who are 65 or older. It has been going up. Yet, it leveled off starting around 1990, and stayed stable; even went down a little. But starting in 2008, something is going to happen. I stress the 2008, because a lot of the accountants have ignored that year, and said, No, the crisis is in 2018, or 2042, or 2042 isn't right, it's 2052.

Here are the demographic realities of what we are facing. Starting in 2008, this line is going to start up dramatically and steeply, and over the period of the next 30 years the percentage of Americans who are 65 and older will double.

When will it hit? It will start to hit in 2008. That is not a long way off. That is within the term for which I was just elected—the 6-year term that the people of Utah gave to me—that this problem is going to start to hit us. We have to deal with it or 30 years from now we are going to end up with a population twice the percentage of the level it is now and no solution.

Let's look at what the Social Security Administration says this will do. This is the chart of current benefits, current law. Here is the revenue line; here is the cost line. How do we fill in the hole of the cost line that is much higher than the revenue line? This hole by itself is $1.5 trillion. Where is that $1.5 trillion going to come from to pay the benefits? It will have to come from either increased tax revenues or increased borrowing to the public. Or it will have to come from some kind of increased rate of return on the money coming in down here. Those are the only three ways to deal with it.

We should understand, once again, the pressure will start in 2008. It will be gradual but it will build. And over the next 30 years, it will overwhelm us if we do not either raise the taxes, cut the benefits, or increase the rate of return.

The proposals of what to do about this range across a wide spectrum of ideas. The President has focused on an idea that he thinks will raise the rate of return on the income coming in. Others have focused on taxes. That is, indeed, how we have handled this for the last 50 years. We have always raised taxes. Some have said we have to begin to adjust the benefits. All of these proposals should be on the table. All of these proposals should be discussed in perfectly good faith. I am willing to discuss anything.

As I said at the outset, we have a history now in the committee that I have chaired of examining these issues. We believe we understand the realities of the past and the challenges and opportunities of the future. We are willing to discuss with anyone any of these proposals and responsibilities.

Remember, there is a problem. It is at the very least a $1.5 trillion problem. It is going to start to hit us in 2008. Surely we in this Chamber can in good faith recognize these facts and deal with them in a spirit of cooperation, reach out to the White House and try to find a solution so these pages will not, in fact, be penalized for their youth and find themselves in a situation where they do not get the benefits their grandparents and others received. They will be paying into the system. They will not get the benefits the others have received unless we lock arms, cooperate, and produce a solution.

My focus today has been to review the history of where the problem has been and review the prospective demographic realities we face. At some future time I will outline some of the solutions my committee has discovered might very well work as we try to find a way to deal with this very real problem.

I yield the floor.

The PRESIDING OFFICER (Ms. MURKOWSKI). The next 30 minutes is under the control of the Democratic leader or his designee.

The Senator from Illinois.

SOCIAL SECURITY

Mr. DURBIN. Madam President, first I salute my colleague from Utah. I agree completely with his conclusion—completely. We need to get together on a bipartisan basis and talk about the future of Social Security. That should be the starting point.

Unfortunately, it is not the starting point. The starting point is a proposal by the administration that we create this privatization of Social Security. That is not a good starting point. We should be able to come together and agree on some facts. The facts are fairly obvious. They have been certified by the General Accounting Office and the Congressional Budget Office. They differ a little bit from what was just said.

I was in Congress in 1983. We looked at Social Security and said we have a serious, immediate crisis: If we do not do something, and do it now, we will find ourselves in a position where we will not be able to meet our promises to all the retirees who paid into Social Security their entire working lives.

President Ronald Reagan, a Republican President, reached across the aisle to the Speaker of the House of Representatives, Tip O'Neill, a leading Democrat, and said: Can't we find a bipartisan way to deal with the most popular and important social program in America? Tip O'Neill said: We have to.

They created a commission with Alan Greenspan as the Chairman. They brought real bipartisanship to the Commission. They did not try to load it one way or the other which, unfortunately, has happened many times when it comes to Social Security. This Commission came up with a list of suggestions to Congress. They said: If you do these things, Social Security will have a long life. The baby boomers whom we know will retire after the turn of this century, we will be able to take care of them.

Some of the things they proposed were controversial: One, increase the retirement age to the age of 67 over a period of years; there were suggestions of taxing Social Security benefits for higher income retirees; there were cuts in benefits; there were increases in payroll taxes. It was a long list, but each of the proposals in and of itself was not that extreme or radical. When it was all said and done, on a bipartisan basis, Congress enacted that law, changed Social Security.

Let me tell you what we bought for the political courage of President Ronald Reagan and Speaker Tip O'Neill in 1983. What we bought was, literally, 59 years of solvency for Social Security. We came together and solved the problem.

There are people ever since who have been carping about and criticizing the 1983 bipartisan approach, but I am glad I voted for it. I am glad because I can stand and face those retiring and say we faced the problem and we solved the problem.

Frankly, that is what we have to acknowledge today. The future problems are, in fact, long-term future problems for Social Security. What we know now is obvious and has been certified and found to be true; that is, untouched, unchanged, without a single amendment to the Social Security law, no changes whatsoever, Social Security will make every payment to every retiree, with a cost-of-living adjustment, every month, every year, until 2042—according to the Congressional Budget Office, 2052. So for 37 years, Social Security is intact, solid, performing, and solvent. Some say it is beyond that. Some say at the end of 47 years we will reach a point where we will not be able to meet every obligation.

Think of that. There is not a single program in our Federal Government today that we can say with any degree of certainty will be here 3 years from now. We can say with certainty, under the current law, Social Security will be there 37 years from now making every single promised payment.

What happens after 37 years? It is true, we will have taken the surplus in Social Security and spent it down. And then we look at the receipts coming in and the interest earned and some estimate we can only pay 70 to 80 percent of our Social Security obligation. Now that is a challenge. How do we make up the difference? How do we make up the difference of the 20 to 30 percent that needs to be made up in Social Security? It is a problem that could be 40 years away. Today, if we sat down and made bipartisan, commonsense suggestions for changes in Social Security, much as we did in 1983, we can come up with a reasonable solution. Instead, what has the administration proposed? The President has come forward and said: We have to change Social Security as you know it. The program that has served America for almost 70 years, this program, we should change dramatically.

So we asked the President, What do you have in mind? He says people should be able to take part of the money they are currently putting into payroll taxes and put it into private or personal accounts. That is appealing to some people because they think they would rather invest it in a mutual fund because they think they can make more money than the Social Security Administration can make. Other people say, well, what if you invest it in the mutual fund and it does not make as much money as in Social Security? Isn't there a risk involved?

There certainly is.

And then there are equally important questions. If you are going to take this money out of Social Security that was supposed to go toward paying current retirees, who will make up the difference? The President does not answer the question. The budget of the President does not answer the question. And in comes a memo from the White House which projects one of their solutions to Social Security is to change the way benefits are calculated. Currently, the formula is based on a wage index. It is based on the increase in wages. The White House memo says we ought to base it on the prices index, the increases in the cost of living. It does not sound like much, but it is a substantial change.

As we play out this White House suggestion, what we find is alarming. What the White House memo proposed would lead to a 40-percent decrease in Social Security benefits. So we step back and say, wait a minute. If we do nothing in the year 2042 we can see a 20- to 30-percent decrease in our payments in Social Security. But if we buy into the President's approach we know we will see a 40-percent decrease. How can that be a good solution? The President's plan does not make Social Security any stronger. The President's plan makes Social Security even weaker.

Then there is the kicker, the one thing that the administration does not want to talk about. This administration says their budget is focused on taming the budget deficit. I have to tell the President quite honestly, if you do not include in your budget the cost of the Iraq war, and you do not include in your budget the cost of privatizing Social Security, it is not complete, it is not an honest budget. We know in a period of the first 10 years we could have anywhere from $750 billion to $2 trillion added to our national debt. So you say to the President, How are you going do make up that difference, that you will take the money out of Social Security for private accounts and create that additional national debt? How are you going to pay for that?

Well, we will add it to the debt of America. For all the young people, the

pages that have been referred to in the Senate who are now becoming the object of many of our speeches, I don't think we are doing any favors by creating private accounts and saying, incidentally, here is a $2 trillion debt, a little mortgage for you to consider. Do not forget about your student loans and getting married and buying that first car and buying that home; here is a little debt from Uncle Sam that is part of the President's proposal.

When I listen to the President's privatization approach, I have to say there are several aspects that trouble me. First, this is not a crisis. We are not going to be in dire emergency circumstances in 2008. According to the Congressional Budget Office, almost 50 years from now Social Security is solvent. Social Security is making every single payment. Yes, we have a challenge beyond that. Secondly, the President's plan does not make Social Security stronger, it makes it weaker. And third, if this is such an obvious answer, why won't the President include this in his budget? You cannot take a plan seriously if the President does not put it in his budget.

I will yield to the Senator from Utah for a question.

Mr. BENNETT. Madam President, the Senator from Illinois began by saying that the facts were different than those I had outlined. I would ask him to tell me where my facts are wrong. He referred to the GAO and the CBO, all of which are fully aware of the facts I quoted, and all of which, to my understanding, endorsed the facts I quoted. So I would like to know where factually I was in error.

Mr. DURBIN. I thank the Senator from Utah. I am afraid I did not hear his exact words, but he referred to the year 2008 as being a critical year.

Mr. BENNETT. That is correct.

Mr. DURBIN. As I understand it, we are currently collecting more from our workers across America for Social Security than we currently need to pay out to retirees. This has been the case since the mid-1980s because we saw this big tsunami of the baby boom generation coming at Social Security. This year, we may be collecting as much as twice the amount we need to pay the Social Security retirees, building up this surplus.

So to suggest we have this terrible situation today where we cannot meet the obligations of Social Security, or that we are going to have it in 2008, or that we are going to have it in 2018 is wrong. By all of the Government agencies mentioned by the Senator from Utah, we are going to make every single payment in Social Security for 37 years, maybe 47 years. There is no crisis because we prepared for this. It is as if we understood in a family situation that we are not going to earn enough money in the outyears to make a go of it, so we save money and take it from our savings account for those lean years. That is what we are doing for Social Security.

To suggest this is a crisis we did not anticipate, I was here when we did anticipate it. President Reagan and Tip O'Neill, in anticipation of it, came up with a good, bipartisan approach.

I yield to the Senator from Utah for another question.

Mr. BENNETT. Madam President, is the Senator from Illinois aware of the fact that the Comptroller General of the United States, who runs GAO, has used the 2008 figure because the 2008 date is the date the baby boomers start to retire? Is the Senator from Illinois aware of the fact that I did not say there is a looming crisis that hits us in 2008, that what I said was the pressure on the Social Security system will begin in 2008 and will build from that date to the point that ultimately $1.5 trillion will have to be raised to fill in the hole in the trust fund, once we cross the line where the amount coming in does not meet the amount going out, and that the 2008 figure is the beginning of the crisis? By no means did I imply or state that 2008 was indeed a crisis point.

Mr. DURBIN. Madam President, reclaiming my time, let me concede to the Senator from Utah, if I misstated his position, I apologize. I do want to make it clear, though, that I sincerely disagree with your conclusion. To suggest we are facing a crisis in 2008 is to suggest we did not anticipate what will happen in 2008, and that is plain wrong.

In 1983, we anticipated the baby boomer generation, larger numbers of retirees, and we did something about it because we made changes in the law. Because we are prepared for the baby boomers, we will not be in crisis in 2008. We will have the money to pay every single baby boomer every penny promised.

That is the point many on the other side of the aisle want to overlook. They want to overlook what we did in 1983. Instead, they should look to that as a model for what we should do in 2005.

If we want to do something for Social Security, let's do it on a bipartisan basis.

Mrs. MURRAY. Madam President, will the Senator from Illinois yield for a question?

Mr. DURBIN. Madam President, before I yield, I would ask the Presiding Officer, how much time is remaining in morning business on our side?

The PRESIDING OFFICER. There is 15 minutes 45 seconds remaining.

Mr. DURBIN. Madam President, I will make a statement that will take about 7 or 8 minutes on Medicare prescription drugs. Then I will yield the remainder of the time to the Senator from Washington.

Mrs. MURRAY. Madam President, that would be great. Can I ask the Senator to yield for one question on Social Security?

Mr. DURBIN. I am happy to yield to the Senator for one question.

Mrs. MURRAY. Madam President, I listened carefully to the discussion of the Senator from Illinois on Social Security, and I am curious, because I heard the President say if you are 55 or older you are fine, you will be OK under his new plan. He is targeting it to everybody else. But as I listened to the Senator talk about the fact that money would be taken out of the payroll tax, and we also would be increasing the debt by substantial amounts, do you think someone who is 55 today is going to be OK under this plan 10 years from now when they retire and money has been taken out of the payroll tax?

Mr. DURBIN. Madam President, in response to the question of the Senator from Washington, I obviously cannot answer that because no one knows what this privatization plan would do exactly. It certainly is not healthy for the Social Security system to see payroll taxes that had been anticipated and dedicated to paying retirees being removed and put into private investments with the risk attached to them. So I do not think there is any certainty for any retiree if the President cannot come up with more details on what he plans to do. I, for one, think the President's plan weakens Social Security and does not strengthen it.

(The remarks of Mr. DURBIN and Mrs. MURRAY pertaining to the introduction of S. 341 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. The Senator from Washington.

BUDGET IMPACT ON VETERANS

Mrs. MURRAY. Madam President, one week ago we walked across the Capitol to hear President Bush outline his priorities for the Nation when he issued his State of the Union Address. On that night, President Bush told all of us and the Nation that the document reflecting his priorities, his fiscal year 2006 budget, '' . . . substantially reduces or eliminates more the than 150 government programs that are not getting results, or duplicate current efforts, or do not fulfill essential priorities.''

Less than a week after delivering that address, the President unveiled his budget that defines exactly what he sees as those nonessential priorities. What are they? Students; our ports and our borders; accessible health care; nuclear waste cleanup.

In addition, his budget has not one dollar—that is right, not one single dollar—for the two top priorities the President talked about that night. His two top priorities: Social Security transition, and making the tax cuts permanent. Both of those items are completely ignored in his budget. This is a camouflage budget that we have been presented, and it is meant to hide the truth from American families.

What the President should know is that families in my home State of Washington and across the country are concerned about the security of their

jobs, the security of their communities, access to affordable health care, and quality education.

Unfortunately, rather than inspiring confidence, I believe the President's budget leaves too many Americans questioning the future. On issue after issue, this budget falls short of what our communities need today to move forward and to feel secure.

What I would like to focus on is this budget's impact on one group that we absolutely must take care of, and that is our Nation's veterans. We have no greater obligation as elected officials than to take care of those who have taken care of us. Unfortunately, I fear this administration is failing in this most important responsibility. After asking thousands of soldiers to serve us overseas, this administration is not making their health care and their well-being a priority when they cease being soldiers and become veterans.

Access to first-class care should be a reality for all veterans, especially while our Nation is at war. The President's budget may have a few small steps in the right direction, but, sadly, he does not go far enough to meet the needs of all veterans. If this budget and its misguided proposals were enacted, it would devastate veterans' health care. Payroll and inflation increases for doctors, for nurses, for medications cost more than $1 billion. But the President has proposed to give the VA only half what it needs. To make up for the shortfall, the budget forces more than 2 million so-called middle-income veterans to pay more than double for their needed medications and to pay a $250 enrollment fee. That is not what we promised veterans when we asked them to serve us overseas.

In addition, the President's budget actually continues to ban some veterans from coming to the VA for care. So far under this flawed policy, 192,260 veterans have been turned away across the country, including more than 3,000 in my home State. This sends the wrong message to our troops overseas. They need to know we are there for them when they return home.

Sadly, this budget also destroys the relationship between the VA and our States. After the Civil War, the VA has supported the cost of veterans who reside in our State VA nursing homes. But this budget now calls on States to cover the entire cost of care for many veterans in these cost-effective nursing homes.

To make this budget add up, the President calls for $590 million in unspecified efficiencies. Thousands of nurses and other providers will be cut, thousands of nursing home beds will be shuttered, and more than 1 million veterans will no longer be able to afford to come to the VA for care.

You don't have to take my word for this. Listen to the head of the VFW who addressed this issue in Commerce Daily a few days ago. John Furgess, who heads the Veterans of Foreign Wars, said the administration's proposed $880 million increase in veterans health care only amounts to an increase of about $100 million because the budget proposes that veterans shoulder a $250 enrollment fee and an increased copay on prescription drugs in addition to nursing home cuts. Furgess said:

Part of the federal government's deficit will be balanced on the backs of military veterans, because it's clear that the proper funding of veterans' health care and other programs is not an administration priority.

There is more. Before the budget was even sent to Congress, I read this in the New York Times:

Richard B. Fuller, legislative director of the Paralyzed Veterans of America, said: ''The proposed increase in health spending is not sufficient at a time when the number of patients is increasing and there has been a huge increase in health care costs. It will not cover the need. The enrollment fee is a health care tax, designed to raise revenue and to discourage people from enrolling.''

Mr. Fuller added that the budget would force veterans, hospitals, and clinics to limit services. He said:

We are already seeing an increase in waiting lists, even for some Iraq veterans.

The story went on to say that there are already some hospitals with waiting lists for Iraqi veterans:

In Michigan, for example, thousands of veterans are on waiting lists for medical services, and some reservists returning from Iraq say they have been unable to obtain the care they were promised. A veterans clinic in Pontiac, Mich., put a limit on new enrollment. Cutbacks at a veterans hospital in Altoona, Pa., are forcing some veterans to seek treatment elsewhere.

And yesterday, in an editorial titled ''Penalizing Veterans,'' the Boston Globe said:

It is a sign of how desperate the Bush administration is to protect tax cuts for the wealthy while also trying to reduce runaway deficits that it would call for veterans to pay more for their health benefits. Congress should reject this proposal out of hand and put enough money into veterans' health care to end the inexcusable waiting lists at many veterans' facilities.

I ask unanimous consent to print the editorial in the RECORD.

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

[From the Boston Globe, Feb. 9, 2005]

PENALIZING VETERANS

It is a sign of how desperate the Bush administration is to protect tax cuts for the wealthy while also trying to reduce runaway deficits that it would call for veterans to pay more for their health benefits. Congress should reject this proposal out of hand and put enough money into veterans' health care to end the inexcusable waiting lists at many veterans' facilities.

Under the Bush proposal, veterans would have to pay an enrollment fee of $250 for VA care. Their copay for prescription drugs would rise from $7 to $15 for a monthly prescription. The administration lamely defends these charges by noting that they are for ''higher-income'' veterans without service-connected disabilities. According to Joe March of the American Legion, the administration defines ''higher income'' as $25,000 or more, which hardly qualifies as the Boca Raton set. A VA spokesman said the income level is based on local conditions. He could not provide a national average.

The goal of the administration, which has made similar proposals in the past, is to save close to a half-billion dollars by coaxing more than 200,000 veterans to seek care in other venues. But increasing numbers of older Americans have been turning to VA clinics and hospitals because they have lost their employment-based insurance and discovered that Medicare will not start covering prescription drug costs until 2006. Many of these veterans do not have affordable alternatives. According to Representative Stephen Lynch of South Boston, veterans in his district often have to wait eight months to see a doctor.

Treatment of veterans without service-related disabilities is considered ''discretionary'' spending by the Department of Veterans Affairs. Veterans'' advocates think this care should not be discretionary but mandatory, like Medicare. In spite of the growing number of veterans from recent wars, the increasingly severe health needs of older veterans, and overall increases in health costs, the administration is asking for just a 2.7 percent increase for ''discretionary'' health care. Veterans groups favor an increase of 25 percent.

That is not realistic, but it is a reflection of the frustration the advocates feel knowing that inadequate spending for veterans' health is undermining the unwritten promise of lifetime care that many veterans believe was made to them when they took the oath.

''Veterans' health care is an ongoing expense of war,'' the American Legion's national commander, Thomas Cadmus, said yesterday. It is particularly wrong-headed for the administration to squeeze veterans when some of the armed services have had trouble filling their ranks. Congress should tell the Bush administration that veterans, who enlisted to help their nation, should not be enlisted anew, involuntarily, and burdened with the job of balancing the budget.

Mrs. MURRAY. As my colleagues can see, I am not alone in my concern for this budget's tremendous impact on our veterans. Unfortunately, the widespread outrage at this budget is not limited to its impact on veterans. I could speak for much time on this floor about my concern about the other priorities our country faces—health care, education, and nuclear waste cleanup.

As a member of the Budget Committee, I raised some of these concerns yesterday with the Director of the Office of Management and Budget. I was pretty disappointed with OMB Director Bolten's responses to our questions on energy policy, on veterans, and on a number of other issues that came before the Budget Committee. This morning, Secretary Snow is addressing the committee. I will leave the floor now to attend that hearing. I hope we get better responses from him.

But for now, let me just say that it seems to me that President Bush believes that in his budget veterans are a nonessential priority. That is an insult. It is an insult to them, to their service, and their sacrifice. I know I, along with many of my colleagues, will not stand for this assault on our veterans. They deserve better.

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

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

(The remarks of Mr. MCCAIN and Mr. LIEBERMAN pertaining to the introduction of S. 342 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

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

The PRESIDING OFFICER (Mr. ENSIGN). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

CLASS ACTION FAIRNESS ACT OF 2005

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 5, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 5) to amend the procedures that apply to the consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes.

Pending:

Durbin (Modified) Amendment No. 3, to preserve State court procedures for handling mass actions.

Feingold Amendment No. 12, to establish time limits for action by Federal district courts on motions to remand cases that have been removed to Federal court.

Mr. SPECTER. Mr. President, I thank Senators on both sides of the aisle for their cooperation in moving this class action bill. We reported it out of committee a week ago today and started the opening debate on it on Monday afternoon and then proceeded in a very timely fashion. The prospects are good that we will conclude action on the bill today. A unanimous consent agreement is currently in the process of being worked out, and we will know in the next few minutes precisely what will happen.

We are going to proceed in a few minutes to the amendment offered by the Senator from Wisconsin, Mr. FEINGOLD, which would impose some time limits on the courts which, as I said at the committee hearing last week, I think is a good idea. I advised Senator FEINGOLD that I would feel constrained to oppose it on this bill because of the procedural status, where the House of Representatives has been reported to accept the Senate bill provided it comes over as what we call a clean bill, without amendments.

But as I said to Senator FEINGOLD, and will repeat for the record, I had heard many complaints about delays in our Federal judicial system. I believe that is an appropriate subject for inquiry by the Judiciary Committee on a broader range than the issue specifically proposed by Senator FEINGOLD. It is in the same family.

I want to be emphatic. We are not impinging in any way on the independence of the Federal judiciary, their discretionary judgments. But when it comes to time limits, how long they have these matters under advisement, I think that is an appropriate matter for congressional inquiry. It bears on how many judges we need and what ought to be done with our judicial system generally. So that will be a subject taken up by the Judiciary Committee at a later date.

I think the Senate bill—this may be a little parochial pride—is more in keeping with an equitable handling of class action bills than is the House bill. For example, the House bill would be retroactive and apply to matters now pending in the State courts, which would be extraordinarily disruptive of many State court proceedings. I think it is fair and accurate to say that the House bill is more restrictive than the Senate bill and our Senate bill, I think, is a better measure to achieve the targeted objective of having class actions decided in the Federal court with balance for plaintiffs and for defendants as well.

So we are moving, I think, by this afternoon, to have a bill which will be ready for concurrence by the House, and signature by the President, and that I think will be a sign that we are moving forward on the legislative calendar.

The Senator from Louisiana is going to seek recognition in a few minutes. I thank my distinguished colleague, Senator HATCH, the former chairman, who has agreed to come over and manage the bill during my absence. We are, at the moment, having hearings on the bankruptcy bill which we hope to have in executive session next Thursday, to move ahead on our fast moving, ambitious judiciary calendar.

I now yield to my distinguished colleague from Louisiana.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. VITTER. Mr. President, I rise in strong support of S. 5, the Class Action Fairness Act of 2005. In doing so, I wish to recognize and thank them for their leadership, so many Senators who have moved the bill thus far, certainly including the chairman of the Judiciary Committee who just spoke, also the Senator from Iowa, the chief sponsor of the bill, and also the Senator from Utah, the former chairman of the Judiciary Committee.

I am also an original cosponsor of this bill, because it would protect consumers from some of the most egregious abuses in our judicial system.

Let me begin by saying that class actions are an important part of our justice system. They serve an important purpose when properly defined. No one would dispute they are a valuable feature of the legal system. This bill doesn't do away with them.

As stated so eloquently by the bill's chief sponsor, my colleague from Iowa, S. 5 is really court reform more than tort reform. What does it reform? What is the problem?

The reason we need to pass this bill is that there are loopholes in the class action system, and it allows bad actors to game the system. As a result, in recent years class actions have been subject to abuses that actually work to the detriment of individual consumers, plaintiffs in such cases. That is exactly who the law is supposed to help.

Additionally, this gaming of the system clearly works to the detriment of business and our economy, and the need for job creation in forging a strong economy.

Such abuses happen mainly in State and local courts in cases that really ought to be heard in Federal court.

We currently have a system, therefore, which some trial lawyers seeking to game the system in an effort to maximize their fees seek out some small jurisdiction to pursue nationwide cookie-cutter cases, and they act against major players in a targeted industry. Often, these suits have very little, if anything, to do with the place in which they are brought. Rather, lawyers select the venues for strategic reasons, or for political reasons, a practice known as forum shopping.

These trial lawyers seek out jurisdictions in which the judge will not hesitate to approve settlements in which the lawyers walk away with huge fees and the plaintiff class members often get next to nothing. The judges in these jurisdictions will decide the claims of other State citizens under their unique State law. They will use litigation models that deny due process rights to consumers and defendants.

Often the decisions coming out of these hand-picked and carefully selected venues are huge windfalls for trial lawyers and big law firms and a punch line for consumers and the people the lawyers claim to represent. There is now in our country a full blown effort aimed at mining for jackpots in sympathetic courts known as ''magnet courts'' for the favorable way they treat these cases.

Let us look at a few examples of exactly what I am talking about. Perhaps the best example nationwide, in terms of preferred venues for trial lawyers, is Madison County, IL, where class action filings between 1998 and 2000 increased nearly 2,000 percent. There is actually an example of a South Carolina law firm filing a purported class action on behalf of three named plaintiffs. None of them lived in Madison County, IL, but the lawsuit was filed in that jurisdiction against 31 defendants throughout the United States. None of those defendants were located in Madison County. These lawyers based the alleged jurisdiction on the mere allegation that some as yet unknown class

member might happen to live in Madison County.

I have a law degree. That is stunning to me. You can imagine how astounding and silly and ridiculous that seems to the American people, small business owners, and consumers around the country. So Madison County is a great example of one of these magnet jurisdictions. Once their reputation as a magnet jurisdiction is established, they attract major nationwide lawsuits that deal with interstate commerce—exactly the types of lawsuits that should be decided in the Federal court.

As noted in one study:

Virtually every sector of the United States economy is on trial in Madison County, Palm Beach County, FL, and Jefferson County, TX—long distance carriers, gasoline purchasers, insurance companies, computer manufacturers and pharmaceutical developers.

Let us review some of the outrageous decisions that this gaming of a broken system produces.

The Bank of Boston case, where class action members actually lost money when their accounts were debited to pay their lawyers $8.5 million; the Blockbuster settlement, where the class action members received coupons off their next rentals while their lawyers were paid $9.25 million; and, the Cheerios case where the plaintiffs got coupons for cereal, while the lawyers reaped $1.75 million—coupons that, quite frankly, they could have gotten in the Sunday local newspaper.

Sad to say, this is hitting home in my home State of Louisiana as well, because one of the jurisdictions that is appearing more and more on the list of these magnet jurisdictions is in Louisiana, Orleans Parish, the city of New Orleans.

I have mentioned how this gaming of the system is a huge disservice so many times to the consumers that were allegedly harmed. They get coupons or next to nothing. In one case, they had to pay even after the award. It is also a huge cost to business and a huge drain on the American economy.

Small businesses are already spending, on average, $150,000 annually on legal fees. The tort system costs U.S. small business $88 billion per year. This is all money that could be used to hire new employees or to improve benefits. I have long been concerned that Louisiana is increasingly becoming a part of this trend.

I mentioned a minute ago Orleans Parish, which is clearly showing up more and more on the list of these magnet jurisdictions. This is bad for our Louisiana efforts at job creation. It is a serious negative for companies looking to locate in our State.

I will quote from an amicus brief filed at the Louisiana Supreme Court in the case of Sutton Steel and Supply, Inc., Kate Davis, and Mestayer and Mestayer, APLC v. Bellsouth Mobility, Inc. In that brief, they said:

In a recent poll of more than 1,400 in-house general counsel and other senior litigators at public corporations . . . Louisiana was ranked 46th for its treatment of class actions, out of the 48 States that permit class action suits in their courts.

The study they cited is the Chamber of Commerce study done in March 2004, and the amicus brief continues:

Importantly, 80 percent of the respondents—these are businesses now, job creators—indicated that they perceive fairness of the litigation environment in a State ''could affect important business decisions at their company, such as where to locate or do business'' and with good reason.

Of course, many small businesses are dragged down by what are known as Yellow Page lawsuits. In these cases, hundreds of defendants are named in a lawsuit, and it is their responsibility to prove they are not culpable. In many cases, plaintiffs named defendants using vendor lists, or even lists literally from the Yellow Pages of certain types of businesses, be they auto supply stores, drugstores, what have you, in a particular jurisdiction.

Imagine what this means to your State's job creation efforts when national attention is brought to your local jurisdiction because it is a new magnet jurisdiction—a new Madison County, IL. The only jobs that you will be creating are legal positions for the flyby lawsuit filed by out-of-Staters hoping for a payoff from your local industries and companies.

I have identified the problem, gaming a broken system. We have identified the real and negative results of that problem, hurting the actual consumers who are supposed to be helped, and costing business and job creation in your State, including my home State of Louisiana, enormous amounts, including in terms of jobs not created or lost jobs.

Why is S. 5 the solution?

I believe S. 5 is a careful, reasonable, and moderate response to the problem with our class action system. We have a bipartisan compromise that has been in the making for 6 years: 6 years of negotiation, careful study, and careful compromise. It deserves our support.

The House of Representatives has already passed similar class action reform legislation more than once. I have personally supported and worked for that, and voted for that when I served in the House.

S. 5 provides for Federal district court jurisdiction for interstate class action, specifically those in which the aggregate amount in controversy exceeds $5 million and any member of a plaintiff class is a citizen of a different State from any defendant. Under the bill, certain class actions with more than 100 plaintiffs also would be treated as class actions and subject to Federal jurisdiction.

The bill provides exceptions for cases in which Federal jurisdiction is not warranted. Under the so-called home State exception and the local controversy exception, class action cases will remain in State courts if there is significant connection to a local issue or event or a significant number of plaintiffs are from a single State.

The bill includes consumer protections so the real little guy, the plaintiff, the consumer who is wronged, is truly made whole. The bill's consumer bill of rights would require, among other things, that judges review all coupon settlements and limit attorney's fees paid in such settlements to the value actually received by class members. It would also require judges to carefully scrutinize net law settlements in which the class action members end up losing money in a class action settlement, and would prohibit settlements in which parochial judges allow some class action members to have a larger recovery because they simply live closer to the courthouse.

I am pleased there is bipartisan, bicameral support for a carefully crafted, well-thought-out measure. S. 5 is long overdue.

It is also important to say what we are not doing. This bill is not an attempt to eliminate class action lawsuits. Time and again, it has been said by parties on all sides that class actions have a proper place in the legal system. This bill is a modest effort to swing the pendulum back toward common sense, making the system work as it was intended.

This bill will not move all class actions to Federal court, only the ones most appropriately settled there. This bill will not overload Federal courts with class actions. They are prepared to deal with these cases far better than State courts, many of whom are overburdened now. We are also not delaying justice for plaintiffs. Federal courts have as good or better records of dealing with class actions in a timely manner.

In closing, our class action system is rife with abuses. It is gamed. It is broken. We need to fix it. First, we need to fix it for the consumers who are hurt by alleged abuses which are the subject of this class action litigation. Plaintiffs leave feeling cheated because they receive a token settlement in many cases for their efforts while lawyers reap all of the financial benefits.

Second, the system is broken and we need to fix it so we do not hurt legitimate business, legitimate job-creation efforts in Louisiana and elsewhere. Right now, businesses, fearing the mere threat of legal action, settle cases—a form of judicial blackmail. The whole economy is dragged down and fewer jobs are created as a result.

Third, our system of federalism is undermined today because one State's legal system, rather than the legal system of the Federal branch of the courts, is making decisions that affect many or even all other States. So the system is not working for anyone but the lawyers and law firms gaming that system.

A lot of good, hard work has been put into S. 5. I compliment again the prime sponsor, Senator GRASSLEY, as well as the Judiciary Committee, led by the Senator from Pennsylvania. I compliment all of their leadership and

their respective staff members for their efforts. I am proud to be a cosponsor of S. 5. I urge my colleagues to support and vote for the Class Action Fairness Act.

I yield the floor.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, today is going to be an important day for the American public because the Senate will adopt legislation that takes a significant step forward in improving our Nation's civil justice system. I commend my colleagues on both sides of the aisle for coming together on this very important bipartisan bill. Our work in this body bodes well for the Senate's ability to tackle important issues in the 109th Congress.

Let me now take a couple of minutes to address the pending amendment, Senator FEINGOLD's amendment, that would add a provision to S. 5 requiring Federal courts to consider remand motions in class actions within a specified period. This amendment is based on the questionable premise that Federal courts move too slowly and consumer claims will stall while plaintiffs are waiting for courts to rule on jurisdictional issues.

In fact, in many cases, Federal courts move more quickly than the State courts. Resolving remand motions is always their first course of business, and we are moving these cases to Federal courts.

The amendment also fails to recognize the important considerations a judge must make as part of a remand decision. Like other amendments that have been offered, this proposal would result in a less workable bill, not a better one. This amendment should be rejected.

The fact is, the Federal courts do not drag their feet in dealing with remand motions. Federal courts always consider jurisdictional issues first, as they must, before allowing discovery or other substantive motions. The Supreme Court has repeatedly held that jurisdiction is a threshold matter that must be decided prior to other substantive issues in a case. Courts take up jurisdiction as the first course of business already. The amendment is, therefore, unnecessary.

I also want to correct the misunderstanding that Federal courts drag their feet in dealing with class actions generally. This is not the case. In fact, Federal courts generally move more quickly than State courts when it comes to class actions. A recent 2004 study by the Federal Judicial Center found that State courts are far more likely than Federal courts to let class actions linger without ruling on class certification. Moreover, the median time for final disposition of a civil claim filed in Federal court throughout this country is 9.3 months; the median time to trial in a civil matter in State court is 22.5 months. Let me repeat that: 9.3 months in Federal courts versus 22.5 months in State courts for civil claims to be disposed. The dates showing the Federal courts act more than twice as fast as State courts come from the nonpartisan Administrative Office of the United States Courts. There is simply no evidence that States proceed more quickly. Thus, the alleged problem that this amendment would fix is nonexistent. It does not exist.

Take, for example, the case cited by Senator FEINGOLD yesterday, Lizana v. DuPont. It did take a year to rule on the motion to remand, but it is my understanding that the court's docket reveals at the time the court was considering the motion, there were numerous briefings and motions on both sides and numerous hearings to determine whether to remand. The court was hardly sitting on its hands. If anything, this case shows that the courts may require more than 180 days to make a correct decision. They were moving, and moving ahead, and moving ahead with dispatch. But it was a complicated case and it took a little longer. It may very well take more than 180 days, and in some cases, it certainly will.

Another case cited in support of the amendment was Gipson v. Sprint. But when you look at the facts, the facts do not show much support for the amendment at all. Again, it is my understanding the docket reveals that the court was very busy on the case before the ruling on the motion to remand was even handed down. In fact, one of the motions the court was contending with was a motion for continuance filed by, you guessed it, plaintiffs' counsel. This means it was the plaintiffs who wanted the court to delay its ruling. How can anyone complain about the time it takes for a district court not to rule on a remand motion when there are scores of docket entries in a single year and the plaintiffs themselves were seeking delays?

Some opposed to this amendment suggested that defendants will use removal as a delay tactic, but Federal law already penalizes defendants who engage in such tactics. The Federal law governing removal gives judges discretion to make a defendant pay the plaintiff's attorney's fees if remand is granted. In addition, rule 11 of the Federal Rules of Civil Procedure gives Federal judges the authority to levy sanctions for frivolous filings. Thus, the law already addresses concerns about improvident removals.

The bottom line is that this amendment will make it unnecessarily difficult for judges to issue fair rulings in these more complicated cases. And class actions generally are more complicated cases. By forcing judges to decide remand motions by a certain date, as the Feingold amendment would do, that amendment fails to recognize that in some cases the jurisdictional issues will be complex, requiring discovery, substantial briefing, and hearings before the judge.

At times, courts consider several remand motions jointly in order to conserve judicial resources, such as in multidistrict litigation, or MDL, as it is called, and this may, in a limited number of complex cases, result in a slightly longer time period for resolution as well. Forcing judges to rush these issues in all cases regardless of their complexity could result in a denial of due process in these cases where the judge cannot fully comprehend and resolve the issue, or issues, in the time allotted by the Feingold amendment.

The reality is that most remand motions will be decided in less time than the amendment requires, but in some cases they will require more time. We should not create rules of law that force judges to decide issues without full and fair consideration. And that is exactly what the Feingold amendment would do.

Finally, there is a reason the time limits make sense for remand appeals and not for initial rulings on remand motions. In contrast to district courts, which often must develop a factual record to address remand issues, an appeals court that is asked to review a remand order will be provided with a full record from which to reach a decision. Often, the appeals court's decision will be based simply on a reading of the law, and it will, thus, be less time-consuming than the district court's decision.

Even a 180-day time limit may be too stringent in some circumstances. Extending it to district court judges will make it more difficult for them, in some cases, to do their jobs in a fair and efficient fashion.

So I hope our colleagues will vote down the Feingold amendment. Frankly, it is another poison pill amendment that would probably scuttle this bill for another year. We have already been on this bill for 6 solid years. We have a consensus in this body to pass it. We know if we pass it in the form that it is in, the House will take it. We know it will become law because the President will sign it into law. Frankly, I hope this amendment will be voted down for all of those reasons.

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

The PRESIDING OFFICER. The clerk will call the roll.

The senior assistant bill clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. GRAHAM). Without objection, it is so ordered.

Mr. HATCH. Mr. President, I would like to talk more generally about the Class Action Fairness Act because it responds to a serious abuse of the class action system that is on the rise; namely, the filing of copycat or duplicative lawsuits in State courts.

Over the past several years, we have seen a rise in the number of class action lawsuits filed in a few State courts known for tilting the playing field in favor of the plaintiffs' bar; in other words, dishonestly, basically, getting the courts to not do justice. These courts, referred to as ''magnet courts'' for their attractive qualities to enterprising plaintiffs' lawyers, certify class

actions with little regard to defendants' due process rights. They award substantial attorneys' fees as part of class settlements, and they approve coupon settlements to the class members that are sometimes worth little more than the paper on which they are printed.

It has not taken the plaintiffs' lawyers long to figure out which courts are good for their bank accounts. There was an 82-percent increase in the number of class actions filed in Jefferson County, TX, between the years of 1998 and 2000. During the same time span, Palm Beach County, FL, saw a 35-percent increase. The most dramatic increase, however, has occurred in Madison County, IL. Madison County has seen an astonishing 5,000-percent increase in the number of class action filings since 1998.

Let me just refer to this bar chart. It shows that the number of class actions filed in State courts has skyrocketed under current law: Palm Beach County, 35 percent in just 2 years or 3 years; Jefferson County, 82 percent in the same 2 or 3 years; and Madison County, over 5,000 percent. And then this chart shows the overall increase in State courts: 1,315-percent growth.

Now, in their effort to gain a financial windfall in class action cases, some aggressive plaintiffs' lawyers file copycat class action lawsuits. This tactic helps explain the dramatic increase in filings in these magnet courts. Here is how the copycat class action strategy works: Competing groups of plaintiffs' lawyers, and sometimes even the same lawyers, file nearly identical class action lawsuits asserting similar claims on behalf of essentially the same class in State courts around the country. Some lawyers file duplicative actions in an effort to take a potentially lucrative role in an action. Other times, these duplicative actions are the product of forum shopping by the original lawyers who file similar actions in different State courts around the country, perhaps with the sole purpose of finding a friendly judge willing to certify the class.

Because these duplicative actions are filed in State courts of different jurisdictions, there is no way to consolidate or coordinate these cases. As a result of the separate, redundant litigation of copycat lawsuits, our already overburdened State courts can become clogged with complicated class actions that potentially affect the rights and recoveries of class members throughout the entire country.

There is not a single magnet State court in this country that has not encountered the copycat phenomenon. For example, it is my understanding that in Shields v. Allstate County Mutual Insurance Company, filed in Jefferson County, TX, in the year 2000, three named plaintiffs sought certification of a nationwide class comprised of members who were insured by three insurance companies. At the very same time this action was brought in Jefferson County, no fewer than nine similar actions, representing a similarly situated class and alleging the identical claims, were pending in Madison County, IL, against the same insurance companies.

Another example of copycat lawsuits is Flanagan v. Bridgestone/Firestone, filed in Palm Beach County, FL. Now, this lawsuit was but one of the approximately 100 identical class actions filed in State courts throughout the country in the wake of the Ford/Firestone tire recall in the year 2000.

One of the most obvious problems with copycat lawsuits is that they place new burdens on an already stressed State court system. Class actions are large, complex lawsuits with potential ramifications in jurisdictions across the country. Our State courts are courts of general jurisdiction that deal with issues ranging from domestic disputes to routine traffic offenses. They are simply not the best entity to handle the growing number of these complex lawsuits being filed across the country where multiple parties and multiple issues are involved.

S. 5 will mitigate the growing burden on our State courts by providing a means through which truly national class actions will be resolved in the most appropriate forum; that is, the Federal courts.

Over the past several months, I have heard some opponents of this bill argue that the Class Action Fairness Act will somehow result in a delay or even a denial of justice to consumers. They have argued that State courts resolve claims more quickly, and that removing these actions will result in the overburdening of our Federal courts. I have yet to see or hear a single shred of persuasive evidence to support these claims. In fact, according to the data, a strong case in the opposite direction can be made. According to two separate examinations of the State and Federal court systems conducted by the Court Statistics Project and Administrative Office of the U.S. Courts, the average State court judge is assigned nearly three times—nearly three times—as many cases as a Federal court judge. The increase of State court class actions further compounds this burden and interferes with the ability of the State court judges to provide justice to their citizens.

In fact, the Illinois Supreme Court has repeatedly criticized its own Madison County, IL, State court for its horrible backlog. The backlog is the result of the local court's willingness to take on cases that have nothing to do with Madison County, the county in which they sit. In fact, one Madison County State court judge expressed his willingness to take on cases that have little or no connection to Madison County, or even Illinois, for that matter, when he stated:

> I am going to expand the concept that all courts in the United States are for all citizens of the United States. . . .

The fact is, when cases are accepted that have nothing to do with the State in which they are filed, it is difficult to see how justice is served. When the cases are forced to remain in State court because some plaintiff's lawyers have exploited the system by engineering the composition of the class and the defendants, both the class members and the defendants can easily be deprived of justice. In some cases, it appears that the interests disproportionately served are those of the class counsel who stand to receive millions in attorney's fees upon the swift approval of a proposed settlement while their clients receive next to nothing.

Despite claims to the contrary, S. 5 will not flood or remove all class actions to Federal court. Instead the bill acts to decrease the number currently falling in State court dockets. Most of the cases that would be removed to the Federal courts under the bill are precisely the type of cases that should be heard by such courts in the first place; namely, large national class actions affecting citizens in and around the country, including the very copycat lawsuits I have discussed today.

Class actions generally have three things in common. No. 1, they involve the most people. No. 2, they involve the most money. And No. 3, they involve the most interstate commerce issues. Taken as a whole, the national implications of class actions are far greater than many of the cases filed and heard by the Federal courts today. With this in mind, one is left to wonder how anyone could argue that these actions are not deserving of the attention of our Federal courts.

As Chief Justice Marshall noted:

> However true the fact may be, that the tribunals of the States will administer justice as impartially as to those of the nation, to parties of every description, it is not less true that the Constitution itself either entertains apprehensions on this subject, or views with such indulgence the possible fears and apprehensions of suitors, that it has established national tribunals for the decision of controversies between aliens and citizens, or between citizens of different States.

When the Framers of the Constitution created the Federal courts in article 3 of the Constitution, they gave them jurisdiction over cases involving large interstate disputes, cases such as class actions. Contrary to the claims of opponents of this bill, article 3 does not require complete diversity amongst parties to a claim.

The Class Action Fairness Act will also help protect the interests of consumer class members from copycat lawsuits. When duplicative lawsuits are pending in different States, a settlement or judgment in any one case has the potential to make every other pending case moot. This winner-takes-all scenario acts as an incentive for plaintiffs' lawyers with multiple class actions to seek a quick settlement in the case, even if the settlement does no more than make the lawyers involved rich. The bona fide claims of the plaintiffs to the other class actions are wiped out by the settlement. That is not fair, but that is what is happening.

Sometimes they file multiple suits so they can force a settlement with a simple settlement demand. And what company wouldn't pay the defense costs to get out of this type of abusive jurisdiction of the various courts throughout the country.

What this means is that while one injured consumer in one court of the country recovers for their injuries, an identically injured consumer in another part of the country may get nothing. The quick settlement of a copycat lawsuit may essentially steal the ability for similarly situated plaintiffs to fully or fairly recover for their injuries, especially if the forum-shopped court is going to pull this kind of stuff and favor certain attorneys over others and certain clients over others rather than do what is just under the law.

Under S. 5, many of these copycat lawsuits would be removed to Federal court and consolidated to ensure that all similarly situated plaintiffs received the same recovery under any settlement. Unlike State courts, Federal courts are equipped with a mechanism for consolidating similar claims. In the Federal court system, a judge may consolidate multiple identical lawsuits found in various jurisdictions into one proceeding before a single Federal court known as the multidistrict litigation panel or MDL. The MDL panel has proven to be a valuable tool for preventing abuse, judicial waste, and disparate outcomes in Federal courts.

Under this system, much of the time-consuming pretrial activity in the lawsuit is heard by a single court. This serves to help protect against the plaintiffs' lawyer from making a separate deal for some plaintiffs that is not in the best interests of all class members. And by the way, for those who argue that consumers are being hurt by this bill, guess how many consumers are hurt by a collusion between plaintiffs' counsel and a particular corporation to settle in one State that wipes out everybody else throughout the country.

That happens. It happens because we have not solved these problems. This bill goes a long way toward solving some of these problems.

S. 5 solves this very problem by ensuring that a plaintiff's claim is not extinguished by the settlement of the duplicative action in another part of the country. This bill protects consumers in areas where they are not protected under current law.

Before I close, I want to stress that this bill does not change substantive law. The Class Action Fairness Act does not make it any harder or easier to file or win a lawsuit unless, of course, winning is unjustly based upon an uneven playing field. In other words, courts who homer the cases because they want to help certain attorneys who have supported them for their election to those State court positions.

This bill is one that is long overdue. As Chief Justice Rehnquist stated:

> We can no longer afford the luxury of State and Federal courts that work at cross-purposes or irrationally duplicate one another.

This bill is a procedural bill that applies common sense to streamline the court system. The underlying substantive law is the same for class actions whether they are in Federal or in State court. This bill is a balanced, modest approach to solving some of the most abusive problems in our current civil justice system. Members on both sides of the aisle have worked long and hard to formulate a bipartisan bill, and we are succeeding in this bipartisan effort on behalf of the American people.

I steadfastly support the Class Action Fairness Act and urge my colleagues to do so as well, because it is the right thing to do. It is the right thing to do for the legal profession and for the plaintiffs who deserve compensation.

I have been in some pretty tough cases in my day, but I have never seen a case I could not win if the case was the right thing to bring. I would not bring it if it were not the right thing to bring. I loved being in Federal court, time I could get there. I also loved being in State court. I never wanted a judge to lean my way or the other way. I wanted the judge to be down the middle, and if that is the case, I thought I stood a good chance of winning the case.

We are talking about unfair advantage here in these magnet courts, these forum-shopped areas. Madison County has become the ''poster child'' for magnet courts. It deserves its reputation.

This is an important bill. This is a bill that makes sense. This bill does not deprive anybody of rights. This is a bill that will resolve a lot of these conflicts and problems, and it is a bill that I think will help all within the legal community to live within certain legal and moral constraints.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HATCH. 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. HATCH. Mr. President, I ask unanimous consent that at 12:30, the Senate resume debate on the Feingold amendment, and that the time be equally divided in the usual form; provided that at 12:40, 10 minutes later, the Senate proceed to a vote in relation to the Feingold amendment, with no intervening action or debate and no amendments in order to the amendment prior to the vote. I further ask consent that following that vote, debate be equally divided between the two leaders or their designees until the hour of 3 p.m.; provided further that the time between 2:20 and 2:40 be equally divided between Senator SPECTER and Senator LEAHY; and that at 2:40, the final 20 minutes be reserved, with the Democratic leader in control of 10 minutes, to be followed by the majority leader for the final 10 minutes; provided further that at 3 o'clock, the Senate proceed to a vote in relation to the Durbin amendment, with no amendment in order to the amendment prior to the vote. I further ask unanimous consent that following that vote the bill be read the third time and the Senate proceed to a vote on passage of the bill, with no intervening action or debate. Finally, I ask that no other amendments be in order other than the two above-mentioned amendments.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. HATCH. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. HATCH). Without objection, it is so ordered.

Mr. GRAHAM. Mr. President, in light of the unanimous consent agreement that will bring this bill to closure, there is something I needed to get on the record. I appreciate getting a few minutes. I intend to vote for the bill. Everything the Senator said about the bill is very much true. The Senator from Utah has been working as chairman for years. The legal abuse that the Senator described is real. This bill really brings it to an end.

I found Federal court to be a fair place to try cases. The Senator is also right about the scope of class action lawsuits. They involve many people from different places throughout the country. We have a good balance in the bill of when you can be removed. Every class action is not going to go to Federal court. If the formula is right, and if it has enough national impact, Federal court will be the place to go because of the abuses described.

Those of us who practiced law for a living before we got here understand that the legal system can be reformed. I admire what the Senator from Utah and Senators SPECTER and GRASSLEY have done to bring about reform. But we find ourselves in a unique political dynamic with this bill. Our friends in the House say they want it like we have it. We all agree there are amendments that could make the bill better that we would vote for, but the political moment will not allow that to happen. I regret not offering in committee the amendment I am going to speak about. I learned from my mistakes there.

One of the things we have done by federalizing certain class action lawsuits is we have taken the abuse out of the system, and we have gone to Federal court to have a more fair way of

doing business when the formula is right and when there is a national impact to stop home cooking.

The reason the diversity clause exists to begin with is that when you have two people from different States, you want to pick a neutral sight. You do not want to do home cooking. Really, the whole goal of this bill is to get it in a neutral site where people can have their fair day in court. I certainly appreciate that.

But there is another component to class actions that is missing in this bill. Class actions, by their very nature, as Senator HATCH described, involve a lot of people from different places and usually a lot is at stake. Sometimes it is money. Sometimes it is a business practice that does not have a lot of economic effect on one person, but when you add up the economic effect, it is bad for the country. People are cheating. People are nickel and diming folks, getting rich at the expense of the elderly or the infirm, by taking a few dollars here, and it adds up to be a very bad situation for the country. Those type cases lend themselves to class action.

There is another group of cases that could lend themselves to class action, too. That is when products are not designed right. They are consumer cases where consumers throughout the country are affected by the particular behavior in question.

Most States have a procedure, when such cases exist affecting the public at large, where the judge is able to determine what is fair in terms of sealing documents relating to settlements. I had an amendment that was modeled after a South Carolina statute—and over 20 States have a similar statute—that says in cases where the public's interest is present, where there is a consumer case that affects the health or well-being of the community at large, settlements can be sealed, documents can be made secret to protect business interests, but only if the judge determines that the public interest is also being met.

The amendment I proposed would have received well over 50 votes in this body, and I think Senator HATCH would have been friendly to it. But I understand the effect it would have on the bill.

The current chairman, Senator SPECTER, and I will have a colloquy for the record. This is the point of my seeking recognition.

This bill will leave the Senate and go to the House in a way to solve abuse, but I think it is lacking in consumer protections. The reason I am speaking today is this colloquy for the record with Senator SPECTER recognizes the value of this amendment and a commitment on his part and the committee's part to allow this amendment to move forward at another date, another time, in another place.

The reason I am agreeing to that is enough of my colleagues who are sympathetic to the amendment do not want to vote for anything that would derail the bill. I very much appreciate that because that is the way politics is, and there is nothing wrong with that as long as we do not lose sight of the goal. And the goal is to have a balance, to take care of abuses, but at the same time protect the public when the public needs to be protected.

What I am trying to say is I will not put my colleagues in a bad spot of having to vote down an amendment with which they agree because I do not have 50 votes. I am mature enough to know when you can win and when you cannot. Sometimes it is OK to lose. Losing is not bad as long as you feel good about what you are doing.

I do not want to offer the amendment, have colleagues vote against it, and create problems unnecessarily, but I do want my colleagues to know—and this colloquy will express this—that this bill needs to be amended and this problem needs to be addressed. We need to have a provision that is married up with the bill that is about to leave the Senate and go to the House that will allow a judge, upon motion of the parties, to determine in a situation where there is a request to keep the settlement secret and seal the documents from public review, to have a judge to determine what documents should be sealed in secret and what documents should be released to the public, balancing the needs of business and the right of the public to know what they should know about their health and their safety.

There were class action cases with the sunshine statute, about which I am talking, in effect. Without that statute, deadly lighters, exploding tires, defective drugs, toxic chemicals, and faulty automobile designs would not have been known if it were not for a procedure for the judge to release certain documents because the request was: We will give you money, but you cannot tell anybody about the underlying problem.

Sometimes that is very much unfair. I have case after case of sunshine statutes allowing the judge to determine what was in the public interest, to inform the public of deadly events, and peoples lives were saved and their health was protected.

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

Mr. GRAHAM. I ask unanimous consent for 2 more minutes.

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

PROTECTIVE ORDERS

Mr. GRAHAM. Mr. President, I appreciate Chairman SPECTER taking the time to join me in discussing a concern I have regarding S. 5, the class action bill. I am still prepared to seek a vote on my amendment, but based on my conversations with a number of senators this week, including Chairman SPECTER, and in a desire to see this bill pass as soon as possible, I have decided not to offer my amendment.

I agreed to support this bill some time ago because I believe we are long overdue for reform in the class action area. Over the last few years, I have worked to support this bill in both the Judiciary Committee and on the senate floor.

While I have fully supported this reform, I have also noticed some areas where the bill could be improved. I had hoped to offer an amendment on the floor regarding protective orders during discovery. I am confident that the amendment that I had hoped to introduce with Senator PRIOR of Arkansas would have made a significant improvement in the area of class action discovery.

Our amendment is very simple. It is based on the local rule in South Carolina Federal Courts for obtaining protective orders for documents. All it says is, if you want a protective order, you must make a motion at the beginning of trial, explain why it is necessary for the court to seal your documents, and provide public notice of the motion and a description of the documents. that's it.

At least 20 states have taken action to limit secrecy agreements. This type of scrutiny should be extended throughout the nation, especially where we are removing parties from the protections afforded them by their States.

And let me be clear. This is not an onerous burden to place on those seeking protective orders. It is not that far a departure from the current discovery rules. We could have gone a lot further; with higher standards, a presumption against sealing, and other controversial discovery reforms. However, we are not seeking to tilt the playing field to one side or the other, just make sure some reasonable, well-thought out ground rules are applied to everyone.

My amendment creates a presumption of openness—it would require the parties in class action lawsuits to justify their requests for secrecy, followed by a medical review of the information they want the court to keep under seal.

They would have to identify the documents or information they want sealed—and most importantly the reasons why it's necessary to keep them secret.

They also would have to explain why a protective order approach is necessary and justify the request based on controlling case law.

The public would be notified of the information that was being put under seal—and a descriptive non-confidential index of the secret documents would be provided.

In the end, however, it is still up to the judge's discretion, albeit with a slightly higher standard than currently exist under the Federal rules of civil procedure.

I am doing this because I am convinced Federal Judges will come down on the side of consumer protection where it's in the public interest and come down on the side of secrecy where merited. In short, while the burden here is on any party that wants to keep

something secret, it is not an onerous task, nor impossible.

Valid trade secrets and proprietary information—sensitive information that goes to the heart of a company being able to compete in the market place should and will be protected. There must be safeguards for businesses—they have a right to protect valid trade secrets—patents and other proprietary information. But this isn't something that can just go on automatic pilot—there has to be some judicial review and I am confident the procedures protect all the parties in a class action lawsuit.

So again, we have merely tried to find a way to balance the legitimate interests of companies, who we want to remain strong competitors in the marketplace, with the public's interest in disclosing potentially harmful products or practices.

Our amendment strikes the right balance because it raises the bar only slightly for companies to justify why they need to impose secrecy, using our courts to do so, but does not force them to open up their companies to every passerby simply because they are defending a lawsuit.

Now there are critics who warn that an amendment like this is going to create a number of problems in the judicial system, making discovery more difficult and deterring settlements.

I do not agree. Take a look at Florida, which has one of the most stringent sunshine laws. I don't think anyone can tell you Florida is a magnet for class actions. In fact, the most recent studies in the 20 States that have sunshine laws show that limiting court secrecy has not led to more litigation or curtailed the number of case that are settled.

In fact I do not believe there is any evidence that supports the proposition that more cases will go to trial and fewer settlements will be reached if some procedural safeguards are put in place.

Also, you have to remember that our amendment only applied to court-ordered secrecy. Parties would still have been free to privately agree upon secrecy between them.

In closing Mr. President, I must say I have been a bit taken aback by all the turmoil this amendment has caused. I am pretty sure we can all agree that ours was a fairly benign procedural amendment, one that serves both the public and those before our courts.

Toward that end, I very much appreciate the understanding I and Senator PRYOR have been able to reach with Chairman SPECTER regarding the substance of our amendment. The chairman has graciously agreed to assist us with this amendment in the Judiciary Committee. I thank the chairman and look forward to working with him to address this issue in the near future.

Mr. SPECTER. I appreciate Senator GRAHAM's willingness to help us move forward on this bill. He and I have agreed that, due to the procedural posture of this particular bill, we should address the substance of his amendment in committee in the future.

Mr. GRAHAM. I thank my chairman for his future assistance.

Mr. President, I say to my colleagues that they will have done a good thing by passing this bill. They will do a very good thing if we can take up this amendment at another time to make this bill more balanced because the abuses as described by Senator HATCH are real. My colleagues have worked a long time to bring about this date. They should be proud of it.

There is a way to make this bill better, and if we do not address this problem, I predict something is going to happen out there without a sunshine amendment. There is going to be a class action case involving consumer interests, and if there is no procedure for the judge to balance the public interests against business interests, we are going to shield the public from something they should know. There is no reason we cannot do both: Stop the legal abuse and help consumers. It is my pledge and my promise to work with everybody in this body to make that happen.

I yield the floor and thank the Senate for its indulgence.

The PRESIDING OFFICER. The Senator from Iowa. Without objection, the Senator is recognized on the minority time.

AMENDMENT NO. 12

Mr. GRASSLEY. Mr. President, I rise in opposition to Senator FEINGOLD's amendment which would add a provision to the bill requiring the Federal courts to consider remand motions in class actions within a set timetable. This amendment needs to be rejected because it is unnecessary.

There is not any evidence that the Federal courts are particularly slow in dealing with class actions, or specifically that they are slow relative to remand motions. In fact, there is evidence that the Federal courts move more quickly than State courts in considering these motions because they always consider jurisdictional issues first. Senator FEINGOLD cites three examples of delay to support his amendment, but I do not think that is enough to start placing strict time limits on court procedure. I think that Senator FEINGOLD is in search of a problem that does not really exist.

Also, the amendment could make it hard for judges to issue fair rulings in complicated class action cases because judges would be forced to make rushed decisions. This deadline may be too stringent and inflexible to deal with complex cases, where sometimes several remand motions are considered jointly in order to conserve judicial resources. These motions may require hearings, and the timeframe provided in Senator FEINGOLD's amendment may not be enough time for a court to schedule a hearing and consider all the evidence.

I also understand that Federal judges who have learned of this possible time limitation on deciding these kinds of motions are concerned that it would place an unreasonable restriction on their ability to fairly decide cases. The Judicial Conference sent a letter opposing a previous iteration of Senator FEINGOLD's amendment that was more stringent that the current language. However, this amendment still puts significant time constraints on Federal judges that could prove to be too stringent.

So there just is not any evidence that there is a problem with remand motions in class action cases that requires this time limitation that Senator FEINGOLD is proposing. This is just an attempt to weaken the bill. So I urge my colleagues to reject this amendment.

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). The Senator from Wisconsin.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that I have restored the full 5 minutes I was originally given.

The PRESIDING OFFICER. The Senator has 3 seconds remaining.

Mr. FEINGOLD. I ask unanimous consent to have the 5 minutes restored. I would appreciate that, because the chairman who is handling this bill on the floor asked me to stay in committee and finish the bankruptcy hearing. I feel justified in asking for my time to be restored.

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

Mr. FEINGOLD. Mr. President, everyone understands that this bill will allow many more class actions to be removed from State to Federal court, but as the supporters have been proclaiming all week long, there are still class actions that belong in State court, even under this bill. Unfortunately, that may not stop defendants from removing cases that should still be in State court.

When a notice of removal is filed, the case is removed to Federal court. There is no proceeding in the State court to make sure the removal is proper. It is up to the Federal court to decide that question, but only if the plaintiffs file a motion to remand to return the case back to the State court.

The amendment I have offered is designed simply to make sure that this process of removal and remand does not become a tool for delaying cases that actually belong in State court. It requires a district court to take a look at a motion to remand within 60 days of filing and then do one of two things: Decide it, which I hope will be possible in almost all cases, or issue an order stating why a decision is not yet possible. If the court issues that order, it must then reach a decision within 180 days of filing. The parties can agree on an extension of any length.

I want to make this clear because I heard Senator GRASSLEY responding to my original argument when I came on the floor. The amendment before us actually gives the court a great deal of flexibility. It will also assure that a

motion to remand does not languish for months, or even years, before a court reviews it and says, oops, this case really should be back in State court.

As I noted last night, we have many examples of remand motions sitting unresolved for a year and then the case goes back to State court.

As the Senator from Iowa pointed out, the Judicial Conference did oppose my amendment in committee that had a strict limit of 60 days, but what I have done to try to accommodate this concern, which I believe moves in their direction, is tripled that limit in the pending amendment. I think that is eminently reasonable, as the Senator from Delaware, a strong supporter of this bill, acknowledged last night on this floor.

The bill itself provides that appeals of remand motions must be decided within 60 days. So why would there be any substantive argument against having a similar limitation at the district court level?

I heard the Senator from Utah suggesting that somehow my amendment denies due process, but I suggest that 180 days is enough time to handle any remand motion. That is time for discovery and for an evidentiary hearing. The problem is that without a deadline, the motion can sit there for a year or longer without any action.

What I am hearing from some of my colleagues who support the bill and recognize that what I am trying to do is reasonable is that they cannot upset the delicate agreement that has been reached with the House. On this one, I cannot accept that. It makes no sense to me that Senators would give up their independent judgment because of a fear of the leadership of the other body. Does anyone think, after everything this bill has been through, that the House leadership is going to refuse to pass this bill if my very reasonable amendment, simply making sure that motions to remand are decided on time, is included? Are they going to further delay this bill for this? I do not think so.

This amendment does not blow the bill up. It is not a poison pill. Everyone I have talked to says this amendment basically makes sense. So I implore my colleagues to exercise their own good judgment, accept this amendment, and persuade their colleagues on the House side and the business community, which several of my colleagues have told me privately, that this amendment makes sense.

It does not harm the bill. In fact, it makes the bill better because it means all the cases we agree on should remain in State court will actually proceed in State court without delay.

I thank the Chair for according me this additional time. I yield the floor, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to amendment No. 12.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: The Senator from New Hampshire (Mr. SUNUNU) and the Senator from Indiana (Mr. LUGAR).

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

The result was announced—yeas 37, nays 61, as follows:

[Rollcall Vote No. 8 Leg.]

YEAS—37

Akaka	Feingold	Murray
Baucus	Feinstein	Nelson (FL)
Biden	Harkin	Obama
Bingaman	Inouye	Pryor
Boxer	Jeffords	Reed
Byrd	Johnson	Reid
Carper	Kennedy	Rockefeller
Clinton	Kerry	Salazar
Conrad	Lautenberg	Sarbanes
Corzine	Leahy	Stabenow
Dayton	Levin	Wyden
Dorgan	Lincoln	
Durbin	Mikulski	

NAYS—61

Alexander	DeWine	McCain
Allard	Dodd	McConnell
Allen	Dole	Murkowski
Bayh	Domenici	Nelson (NE)
Bennett	Ensign	Roberts
Bond	Enzi	Santorum
Brownback	Frist	Schumer
Bunning	Graham	Sessions
Burns	Grassley	Shelby
Burr	Gregg	Smith
Cantwell	Hagel	Snowe
Chafee	Hatch	Specter
Chambliss	Hutchison	Stevens
Coburn	Inhofe	Talent
Cochran	Isakson	Thomas
Coleman	Kohl	Thune
Collins	Kyl	Vitter
Cornyn	Landrieu	Voinovich
Craig	Lieberman	Warner
Crapo	Lott	
DeMint	Martinez	

NOT VOTING—2

Lugar	Sununu

The amendment (No. 12) was rejected.

Mr. GRASSLEY. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the time until 2:20 p.m. is equally divided between the leaders or their designees. Who yields time?

The Senator from Delaware.

Mr. CARPER. Mr. President, in an hour or two or three, we will have the opportunity to vote final passage on class action reform legislation.

The goals of this legislation are fourfold: One is to make sure when people—I say ''little'' people—are harmed by companies, big or small companies, that the little people have the opportunity to band together and be made whole and compensated for harm. The second goal is to make sure the companies know that if they shortchange their customers or others in our country, there will be a price to pay if they get caught. The third goal is to make sure when companies are called on the carpet and are involved in class action litigation, they are in a court, in a courthouse, with a judge, where the companies have a fair shake and the deck is not stacked against them. Finally, our goal is to make sure that, in shifting some class action litigation of a national scope with hundreds of or thousands of plaintiffs across the Nation, multimillions of dollars involved and defendants scattered across the country in different States than the plaintiffs, to make sure we move some class action litigation to Federal courts, we do not overburden the already busy Federal judiciary.

I take a moment or two today to go through and cite examples—not all of them; this is not an exhaustive list—but some of the examples we have sought to make sure in many instances that the majority of class action litigation remains in State court where it belongs.

Let me cite a couple of examples where this bill has been modified over the years to enable a majority of class action litigation cases to stay in State courts. For example, these are cases where the litigation will remain in State courts: No. 1, cases against State and State officials will remain in state court. Smaller cases will remain in State court. Cases where there are fewer than 100 plaintiffs or in which less than $5 million is at stake, those cases are not eligible for removal from State to Federal court. Cases in which two-thirds or more of the plaintiffs are from the same State as the defendant will remain in State court. Cases in which between one-third and two-thirds of the plaintiffs are from the same State as the defendant may well remain in State court. It is left to the discretion of the Federal judge to decide whether it is Federal or State based on the criteria laid out in the bill.

Similarly, cases involving a local incident or controversy, where the people involved are local, where at least one of the significant defendants involved in the litigation is within the same State, in those instances as well, the cases can and probably should remain in State courts.

That is a handful of the examples where we make sure a lot of the class action litigation remains in State courts where it belongs.

If you go back, the first bill introduced on class action litigation goes back about 7 years, I think, to 1997. That initial bill, along with a number of bills that were introduced in subsequent Congresses, was opposed by the Federal bench. There is an arm of the Federal judiciary called the Judicial Conference of the United States. They have a couple different committees, and from time to time they are asked, and they respond with their opinion, about whether certain legislation is needed, is appropriate, as it pertains to them and the work they are doing.

The initial legislation proposed, I think, in 1997, 1998, was opposed by the Federal judiciary through their Judicial Conference of the United States. In the next Congress, again, the Federal

judiciary opposed that legislation. As the legislation has evolved, we have gone back to ask the Federal judiciary: What do you think? We know you were opposed to original versions of this bill in the late 1990s. How about this latest revision? They continued to oppose subsequent versions of the class action reform until the last Congress.

The Federal judiciary has the same concerns a lot of us have, the wholesale shifting of class action cases from the State courts to the Federal courts. Federal judges are busy, and they do not want to see an avalanche of litigation coming to them. With the adoption of a number of provisions in this legislation that comes to us today, the Judicial Conference wrote to the Senate in 2003 that, particularly given the changes Senator FEINSTEIN proposed, their concerns about the wholesale shifting of State class action litigation to the Federal courts, for the most part, had been met and been satisfied.

They are not taking a position, saying the Senate should vote for this legislation. That is not what they are about. But the concerns they had expressed earlier, year after year after year, have been addressed.

Mr. President, I ask unanimous consent to have printed in the RECORD a letter from the Judicial Conference of the United States, dated April 25, 2003.

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

JUDICIAL CONFERENCE
OF THE UNITED STATES,
Washington, DC, April 25, 2003.

Hon. PATRICK J. LEAHY,
Ranking Member, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR SENATOR LEAHY: Thank you for your letters of April 9, 2003, and April 11, 2003. In those letters, you requested that the Judicial Conference provide the Senate Judiciary Committee with legislative language implementing the Judicial Conference's March 2003 recommendations on class-action litigation and the views of the Conference on S. 274, the ''Class Action Fairness Act of 2003,'' as reported by the Senate Judiciary Committee on April 11, 2003.

As you know, at its March 18, 2003, session, the Judicial Conference adopted the following resolution:

That the Judicial Conference recognize that the use of minimal diversity of citizenship may be appropriate to the maintenance of significant multi-state class action litigation in the federal courts, while continuing to oppose class action legislation that contains jurisdictional provisions that are similar to those in the bills introduced in the 106th and 107th Congresses. If Congress determines that certain class actions should be brought within the original and removal jurisdiction of the federal courts on the basis of minimal diversity of citizenship and an aggregation of claims, Congress should be encouraged to include sufficient limitations and threshold requirements so that the federal courts are not unduly burdened and states' jurisdiction over in-state class actions is left undisturbed, such as by employing provisions to raise the jurisdictional threshold and to fashion exceptions to such jurisdiction that would preserve a role for the state courts in the handling of in-state class actions. Such exceptions for in-state class actions may appropriately include such factors as whether substantially all members of the class are citizens of a single state, the relationship of the defendants to the forum state, or whether the claims arise from death, personal injury, or physical property damage within the state. Further, the Conference should continue to explore additional approaches to the consolidation and coordination of overlapping or duplicative class actions that do not unduly intrude or state courts or burden federal courts.

S. 274, as reported by the Senate Judiciary Committee, generally provides for federal jurisdiction of a class action based on minimal diversity of citizenship if the matter in controversy exceeds the sum of $5 million, exclusive of interest and costs. (S. 274 as introduced established a $2 million minimum amount in controversy.) The bill also now permits a federal district court, in the interests of justice, to decline to exercise jurisdiction over a class action in which greater than one-third but less than two-thirds of the members of all proposed plaintiff classes in the aggregate and the primary defendants are citizens of the state in which the action was originally filed. The court would be required to consider five specified factors when exercising this discretion. (This discretionary provision was not included in the bill as introduced.)

In addition, S. 274 as reported provides that the federal district courts shall not have original jurisdiction over any class action in which: (A) two-thirds or more of the members of all proposed plaintiff classes in the aggregate and the primary defendants are citizens of the state in which the action was originally filed; (B) the primary defendants are states, state officials, or other governmental entities against whom the district court may be foreclosed from ordering relief; or (C) the number of members of all proposed plaintiff classes in the aggregate is less than one hundred. As introduced, the second and third exceptions were the same, but the first one originally precluded federal jurisdiction where ''the substantial majority of the members of the proposed plaintiff class and the primary defendants are citizens of the State in which the action was originally filed'' and ''the claims asserted therein will be governed primarily by the laws of that state. The replacement language in essence substitutes a numerical ratio for ''substantial majority'' and eliminates the choice-of-law requirement.

We are grateful that Congress is working to resolve the serious problems generated by overlapping and competing class actions. The Judicial Conference ''recognizes that the use of minimal diversity of citizenship may be appropriate to the maintenance of significant multi-state class action litigation in the federal courts.'' At the same time, the Judicial Conference does not support the removal of all state law class actions into federal court. Appropriate legislation should ''include sufficient limitations and threshold requirements so that federal courts are not unduly burdened and states' jurisdiction over in-state class actions is left undisturbed.'' Finding the right balance between these objectives and articulating that balance in legislative language implicate important policy choices.

Any minimal-diversity bill will result in certain cases being litigated in federal court that would not previously have been subject to federal jurisdiction. The effects of this transfer should be assessed in determining the appropriateness of various limitations on the availability of minimal diversity jurisdiction.

Certain kinds of cases would seem to be inherently ''state-court'' cases—cases in which a particular state's interest in the litigation is so substantial that federal court jurisdiction ought not be available. At the same time, significant multi-state class actions would seem to be appropriate candidates for removal to federal court.

The Judicial Conference's resolution deliberately avoided specific legislative language, out of deference to Congress's judgment and the political process. These issues implicate fundamental interests and relationships that are political in nature and are peculiarly within Congress's province. Notwithstanding this general view, we can, however, confirm that the Conference has no objection to proposals: (1) to increase the threshold jurisdictional amount in controversy for federal minimal diversity jurisdiction; (2) to increase the number of all proposed plaintiff class members required for maintenance of a federal minimal-diversity class action; and (3) to confer upon the assigned district judge the discretion to decline to exercise jurisdiction over a minimal-diversity federal class action if whatever criteria imposed by the statute are satisfied. Finally, the Conference continues to encourage Congress to ensure that any legislation that is crafted does not ''unduly intrude on state courts or burden federal courts.''

We thank you for your efforts in this most complex area of jurisdiction and public policy.

Sincerely,
LEONIDAS RALPH MERCHAM,
Secretary.

Mr. CARPER. We are going to vote on final passage in an hour or two. I think Senator DURBIN is going to come to the floor. He may ask for a vote on his amendment. I am not sure he will. He cares deeply, passionately about these issues and has sought to try to make sure that we end up not making bad, unwise public policy decisions. My guess is, he is not going to come to the floor and urge us to vote for the bill or say he is going to vote for it. I know he has serious misgivings about this legislation. But he has worked constructively, as have people on our side and the Republican side, to get us to this point in time.

Senator REID of Nevada is our new leader on the Democratic side. He is not on the floor, but I express to him and my colleagues, if he is listening, my heartfelt thanks for working with the Republican leadership and those on our side who support this legislation, to enable us to have this opportunity to debate it fairly and openly, allowing people who like it, people who do not like it, those who wanted to offer amendments, those who did not want to offer amendments, to have a chance for the regular order to take place, to debate the issues and vote, and then to move on.

I do not know if this legislation, the way we have taken it up and debated it, can serve as a template or example to use in addressing other difficult issues—energy policy, asbestos litigation, a variety of other issues—but it might. Because in this case, Democratic and Republican leaders have worked together, have urged us, the rank and file in the Senate, to work together.

Each of the folks in the private sector—people who have an interest in this bill, not only the business side, but the plaintiffs' lawyers side, and other

interested parties, labor, and so forth, consumer groups—I think everybody has acted in good faith to get us to this point in time.

Whether you like the bill, I urge my Democratic colleagues, if you are on the edge and not sure which way to go—you may have voted for all these amendments, and you are not sure how to vote on final passage of the bill—I urge you to vote for this bill.

I do not know if it is possible to have a big margin. I would love to have 70 votes, 75 votes for this bill. I hope we can do that.

Let me close, if I can, by saying, whether you are for the bill or against it, for the amendments or against them, I hope there is one thing we can all agree upon. I will bring to mind the words of one of our colleagues, a legendary trial lawyer from Illinois, who has gone on to be elected and serves with us in the Senate. I will close my comments with his admonition. That admonition is the old Latin phrase: semper ubi sub ubi. Whether you like the bill, I think we can all agree on that admonition today.

With that having been said, I yield back my time and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. CARPER. Mr. President, I ask unanimous consent that again we go into a quorum call, but that the time be equally divided.

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

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

The PRESIDING OFFICER (Mr. ALEXANDER). Without objection, it is so ordered.

Mr. SESSIONS. Mr. President, this week's debate is the culmination of more than 6 years of work in the Senate on a very important piece of legislation, reform that is needed in the U.S. legal system—class action reform.

I practiced law for most of my adult life and have litigated in a number of different forums. I believe in our legal system. It is critical for America's economic vitality and our liberty to have a good legal system. There is no doubt in my mind that the strength of this American democracy, the power of our economy, and our ability to maintain freedom and progress are directly dependent on our commitment to the rule of law and a superb legal system, and we can make it better.

To keep our system strong, we in this Congress have to meet our responsibility to pass laws that improve litigation in America. Our court system must produce effective results that further our national policy, correct wrongs, punish wrongdoers, and generate compensation for those who suffer losses in a fair and objective way. We, therefore, as a Congress must periodically review what is happening in our courts and make adjustments if they are needed. That is what we are here for.

This class action fairness bill, S. 5, seeks to make the adjustments we currently need, in my opinion. It will guarantee that the plaintiffs in a class action, the people who have been actually harmed and have a right to be compensated, are the actual beneficiaries of the class action and not just their attorneys and not sometimes the defendants who benefit by being able to get rid of a bunch of potential litigation by settleing the case and paying less to the plaintiffs than the case is really worth.

The Class Action Fairness Act will not move ''all class actions'' to Federal Court or ''shut the doors to the courthouse'' as some have claimed—rather it will provide fairness for the class action parties by allowing a class action to be removed from a State court where it has been filed to a Federal court when the aggregate amount in question exceeds $5 million and the home State plaintiffs make up two-thirds or less of the plaintiff class.

The Act contains a bill of rights for class action plaintiffs to ensure that coupon settlements or net loss awards receive special scrutiny. We have had some real problems with those. The stories are painful to recite by those of us who believe in a good legal system.

Furthermore, the Class Action Fairness Act will provide notice to public officials of proposed settlements—I was an attorney general, and I know that notice is given to the proper official in a State so that public officials can react if the settlement appears to be unfair to some or all of the class members.

The Class Action Fairness Act has been through the proper charnels in the Senate. The Act has been through the Judiciary Committee not just once but twice. The bill originally passed out of the Judiciary Committee by a 12 to 7 vote over a year ago in June of 2003. It was a bipartisan vote. Since then, it has gone through two substantive negotiations, each bringing on more Senators to support the bill. Just last week, we again passed a bill out of the Judiciary Committee, this time with an even stronger vote of 13 to 5. Today, we expect that more than 70 Senators will support it. The bill is a responsible, restrained bill that will curb class action abuses and further productive class action litigation.

The concept of class actions is a good one. Class actions can be extraordinarily effective tools in helping us deal with legal problems confronting America. Sometimes error or negligence is committed by more than one defendant which harms multiple litigants. In such cases, the number of cases filed can quickly become unmanageable if separate individual lawsuits are required by each person who suffered the harm. One hundred thousand individual lawsuits would not be appropriate when one case could settle the issue for all involved.

Anyone looking closely at our legal system today knows that we have a number of problems to address. One of the main problems is how much the system costs the average American. Americans pay these costs primarily through increased insurance premiums. They also pay it in increased costs for our judiciary.

The 2004 Tillinghast study on the cost of U.S. tort systems found that the U.S. tort system—a tort is a lawsuit or an act that has wronged or injured someone—cost $246 billion in 2003. That is $845 per person. That is a significant number. It is worthy of repeating. The tort system cost $246 billion at an average cost per American citizen of $845. That is an average of $70 a month out of somebody's livelihood. Now, $246 billion is equivalent to 2 percent of GDP, gross domestic product. That is a stunning number. By 2006, the study estimates that the U.S. tort system will cost over $1,000 per person.

Most Americans would be surprised to know that the 2003 version of the Tillinghast study found that the U.S. tort system returned less than 50 cents on the dollar to the people it is designed to help—the plaintiffs—and only 22 cents on the dollar to compensate for actual economic loss. Who, then, would appear to be making the money out of our current tort system? An earlier Tillinghast study reported that the income of litigation attorneys, trial lawyers, in 2001 was $39 billion. That same year Microsoft made only $26 billion, and Coca-Cola, $17 billion.

As a Washington Post editorial has noted: No portion of the American civil justice system is more of a mess than the world of class action.

There are a number of problems with the class action system currently making up the mess The Washington Post referred to.

The number of class actions pending in State courts, many of them nationwide, increased 1,042 percent from 1988 to 1998, while the number pending in Federal courts increased only 338 percent during that same period.

State courts are being overwhelmed by class actions. A number of State courts lack the necessary resources to supervise the class or the proposed settlements affected. Many State judges do not have even one law clerk, and most of the class actions involve citizens from a number of different States, requiring the application of multiple State laws. Some times a state court dockets becomes jammed while the judge researches out-of-State law to get up to speed.

Some say it is a burden on the Federal courts, but Federal judges have on their docket a fraction of the cases of most State court judges in America. Some cases are complex, but that is the nature of Federal court cases for the most part. They have at least two law clerks. The occupant of the chair, Senator ALEXANDER, clerked for Federal judges. District court judges all have at least two clerks, and appellate Federal judges have three or more. Some of them have their clerical support become on staff lawyers and then they really end up with three clerks. At any rate, they have a greater ability to give the time and attention to a major interstate class action involving over $5 million and maybe thousands of plaintiffs than an average circuit judge in a State court system in America. I do not think that can be disputed.

The class action settlement process is problematic because many of the class members have no part in shaping the settlement agreement. In fact, many of the members of the class have no knowledge they have even been involved in a lawsuit or one has been filed on their behalf, leading to an abuse of the settlement process. In this scenario, plaintiffs' attorneys can find themselves in a position where their loyalty is not to these class members. It creates an unhealthy situation. For example, a plaintiffs' lawyer does not know the 1,000 or 10,000 members of his class. He is talking regularly with the defendant's company, and they say: Let us settle this case.

The plaintiffs' lawyer says: We would like to settle this case.

They say: What will it take?

He says: The plaintiffs want $50 million to settle it.

They say: Well, that is too much. Look, why do we not give you $10,000 in coupons for all of your victims and we will give you $10 million or $20 million in legal fees?

Now, most lawyers handle themselves well, but that plaintiffs lawyer now finds themselves in an ethical dilemma. His oath as a lawyer says that he or she should defend the interests of the client, get the most money for their client, but the defendant is dangling out a personally large fee in exchange for a settlement to end the litigation. We have had that happen, frankly, and we have seen that too often. Too often, the attorneys are the ones who received the big fees, and the named plaintiffs, the victims, have gotten very little. It is appropriate, then, that we in this Congress examine this difficulty in our legal system and tighten it up so we have less of that occur.

Many class actions appear to be filed solely for the purpose of forcing a settlement, not the protection of an interest of a class, and that has been referred to in debate frequently as ''judicial blackmail.'' Rather than losing a public relations battle, going through court for several years, the defendants often feel they have to settle these cases even if they are frivolous so they do not risk the cost of litigation and the embarrassment and difficulty of explaining some complex transaction.

There are several other problems. One is forum shopping, and another is settlements detrimental for class members.

Forum shopping occurs when the attorney sets out to try to find the best place to file the class action lawsuit. You could have a case involving an attorney from New York with California plaintiffs filing a class action lawsuit in Mobile, AL. Where can national class action lawsuits be filed today? Amazingly, the answer is in almost any venue, any court, county, circuit court in America. A plaintiff can search this country all over and select the single most favorable venue in America for filing their lawsuit—that is, if it is a broad-based class action that covers victims in every state and county in America, and some of them do. Some may just cover a region or half the counties in America or involve 10 percent of the States. At any rate, they are able to search within that area for the most favorable venue.

I believe that is not healthy. A report issued this year by the American Tort Reform Association about the abuse of this choice named the various counties around the country as ''judicial hellholes.'' The study pointed to the large number of frivolous class actions found in counties it named, citing judicial cultures that ignore basic due process and legal protections and efforts by the county's judges to intimidate proponents of tort reform.

By bringing their suits in one of these areas, plaintiffs' attorneys can defeat diversity by naming a single defendant and a single plaintiff who have citizenship in the same State, thus preventing a Federal court from hearing the case and allowing a State court in a single county to bind people all over the country under that one State or county's laws.

Let me read what the Constitution says about diversity:

> The judicial Power of the United States shall extend to all Cases, in law and equity, arising under this Constitution, the Laws of the United States . . . to Controversies which the United States shall be a party;—Controversies between two or more States, between a State and a Citizen of another State;—between Citizens of different States. . . .

Our Founding Fathers thought about this issue, and they concluded that, if a person from Alabama wanted to sue a person from Illinois, the person in Illinois might not be comfortable being sued in an Alabama state court. They might think that might not be a favorable forum. There might be ''home cooking'' for the Alabama citizen there. So they said those cases ought to be in Federal court.

As history developed, pretty early in our process it was concluded that diversity required complete diversity; that is, if one plaintiff and one of a host of potential defendants was a local defendant, then that could be kept in State court.

I am not disputing that. All I am saying is I believe the Founding Fathers would have believed that a lawsuit that is predominantly intrastate in nature, involving the real defendant, should be in Federal court.

So what happens is if you sue a drug company and you want to keep it in State court, you sue the lady in small town Mississippi who sells the prescription at her store—she is a local defendant, whereas the person who is going to be paying the judgment is out of State. If the drug company had been sued directly, it would have been in Federal court, but by suing one local State defendant along with the big-money deep-pocket in New York, that is not the case.

The PRESIDING OFFICER. The time controlled by the majority has expired.

Mr. SESSIONS. Mr. President, I thank the Chair. I will conclude by saying there are a lot of reasons we ought to support this bill. It has been thought out very carefully. A lot of work has gone into it over a number of years. We are in a position to pass good legislation at this time.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I would like to spend a few minutes to discuss my amendment No. 3, which is pending at this time, and then ask that it be withdrawn. This is the amendment I had offered on Tuesday to clarify the scope of the ''mass action'' provision in Section 4(a) of the bill.

As I had explained earlier this week, this provision requires that mass actions be treated the same as class actions under this bill, and therefore taken out of State courts and removed to Federal courts. But it was still unclear to me—and to many of the injured people who will be affected by this bill—what precisely the drafters had in mind in coming up with this ''mass action'' language in the bill.

When I last took the floor, I had raised some questions about the differences between ''mass actions'' and ''mass torts,'' and whether mass torts would be ,I affected by the language in S. 5. I heard from proponents of this bill that these are two very different types of cases, and that the bill is designed to affect only mass actions and not mass torts.

In fact, Senator LOTT of Mississippi the other day explained on the floor that:

> Mass torts and mass actions are not the same. The phrase ''mass torts'' refers to a situation in which many persons are injured by the same underlying cause, such as a single explosion, a series of event, or exposure to a particular product. In contrast, the phrase ''mass action'' refers to a specific type of lawsuit in which a large number of plaintiffs seek to have all their claims adjudicated in one combined trial. Mass actions are basically disguised class actions.

I am glad that the proponents of this bill agree with me that there is a very

significant difference between these two types of cases. Mass torts are large scale personal injury cases that result from accidents, environmental disasters, or dangerous drugs that are widely sold.

Cases like Vioxx that I described earlier, and cases arising from asbestos exposure, are examples of mass torts. These personal injury claims are usually based on State laws, and almost every State has well established rules of procedure to allow their State courts to customize the needs of their litigants in these complex cases.

Senator LOTT also explained on the floor that:

> There are a few States, like my State—I think, and West Virginia is another one and there may be some others—which do not provide a class action device. In those States, plaintiffs' lawyers often bring together hundreds, sometimes thousands of plaintiffs, to try their claims jointly without having to meet the class action requirements. And often the claims of the multiple plaintiffs have little to do with each other.

So, it seems to me that the authors of this bill are trying to include only these so-called mass actions and not mass torts.

And I understand from the statements made by Senator LOTT, the U.S. Chamber of Commerce, and many other proponents of the bill, that these so-called mass actions are currently filed only in Mississippi and West Virginia. In other words, this provision of S. 5 will have no impact on mass torts cases filed in the other 48 States.

That is good news because I would hate to see this bill—which already turns the idea of federalism on its head—preempt any more State rules and procedures than it already does with the diversity provisions.

I agree with the proponents that the scope of this language is limited.

It is my understanding from conversations with my colleagues who support this bill that a mass action, as used in this section of the bill, is simply a procedural device designed to aggregate for trial numerous claims. If that is the case, I believe my amendment would not be necessary.

I had offered my amendment as a good faith effort to keep mass tort cases from being impacted negatively by this provision. But if the language affects only a narrow set of procedural devices in a limited number of States, then I believe that is consistent with what I had attempted to achieve with my amendment.

Accordingly, I ask unanimous consent that my amendment, Amendment No. 3, be withdrawn.

The PRESIDING OFFICER. Is there objection to the request of the Senator to withdraw the amendment? Without objection, it is so ordered.

Mr. DURBIN. Mr. President, I would also like to talk about the bill generally.

Why are we even debating a question about whether a lawsuit can be filed in a State court or a Federal court? If you can file a lawsuit, you are supposed to have your day in court. But it is not that simple.

The reason why the business lobbies have spent millions of dollars in Washington pushing for this bill, the reason why this bill is the highest priority of the Bush administration and the Republican leadership in Congress, is because of one simple fact: Class action cases removed from State courts to Federal courts are less likely to go forward to be tried, they are less likely to reach a verdict where someone wins or loses, and if there is a decision on behalf of the plaintiffs, they are less likely to pay a reasonable amount of money in Federal court than in State court.

What I say to you is not idle speculation; it is based on Federal court decisions. That is why the business community has worked so long and so hard to remove the rights of consumers and citizens to sue in their own State courts. Rather, they want them removed to Federal courts where they have a better chance to win. The businesses know they can win more class action cases in Federal courts than they could ever win in State courts. That is what this whole debate is about. So you hear all of this talk about whether class action suits are filed here, whether they are filed there—frankly, many of these discussions overlook what these class action lawsuits are all about.

I had my staff compile some information on some of these lawsuits because people tell me: I don't understand what is a class action. I can understand if I am in an automobile accident, I get hurt, and I sue the person who ran into me. Is this what we are talking about? That probably wouldn't be a class action.

Let me give you some examples of real class action lawsuits. These cases will be more difficult to file and more difficult to be successful because the business interests are going to pass this bill.

U.S. postal workers given Cipro after the anthrax attacks in 2001 found out there were many damages that came from the drug, and the postal workers came together as a group to sue the company that made Cipro. This is a class action lawsuit.

Then we had a group of people in Rhode Island who were harmed because they were exposed to lead in paint. They sued, as a class, the manufacturers of lead paint that caused the damage to them physically. But because the manufacturers are not based in Rhode Island, this class action might be removed to a Federal court under this bill.

Then there was a court in Illinois in a class action lawsuit in one of the counties the proponents of this bill like to rail about. It was against Ford Motor Company because they were selling Ford Crown Victoria vehicles to police departments alleging they were better cars for police use. It turned out they had a defective fuel tank that made them dangerous for policemen. So, all of the police departments that bought these cars sued Ford Motor Company as a class because of a defective product. But because Ford Motors is based in Michigan, the Illinois police officers might have to litigate this case in a Federal court.

Here is another one against Foodmaker, which ran Jack-in-the-Box restaurants. It turned out thousands of their patrons were subjected to food contamination and serious illness. The patrons sued as a class. Why? Because any individual might say: I took my child to Jack-in-the-Box, my child became sick and went to the hospital, and was there for two days. The medical bills came to $1,500. But I can't file a lawsuit against the restaurant for $1,500.

Then, the parent finds out that the same thing happened to hundreds of other kids, so all the parents come together and say: Jack-in-the-Box, you should have done a better job. And this class of plaintiffs went forward in a State court. But they would have less of a chance for success under this bill. That is what it is about.

A suit was brought by mothers and fathers when they discovered that Beech-Nut was selling apple juice for infants that turned out to be nothing but sugar water.

What is the damage to an individual infant, or a single family? How do you measure it? If a company sold millions of bottles of this defective product, shouldn't that company be held accountable?

That is what this debate is all about. It is about accountability for those who cause harm to the public. The businesses that are responsible for environmental contamination, for producing dangerous products that cause injuries, for manufacturing items that shouldn't be sold, or for overcharging customers, should be held liable.

But these business interests come to Congress for help, and they are going to win today. As a result of this victory, fewer consumers and fewer families are going to have a chance to succeed in court.

The Government closes down the agencies to protect you, Congress will not pass the laws to protect you, and now this Senate will pass a law to close the courthouse doors in your States when you want to come together as a group and ask for justice. This is the highest priority of the Bush administration: closing that courthouse door, making sure these families and these individuals don't have a fighting chance.

I think there are a lot of other priorities we should consider, such as the cost of health care in America. We will not even talk about that issue on the Senate floor, let alone discuss bipartisan options for addressing that pressing problem.

This so-called Class Action Fairness Act may pass today, but the ultimate losers are going to be families across

America who are hoping that Congress will at least consider their best interests in the very first piece of legislation that we consider.

I yield the floor.

Mr. LEVIN. Mr. President, I will vote against the Class Action Fairness Act of 2005 because, although this bill is an improvement over previous versions, it still has significant deficiencies that would have been corrected by a number of common sense amendments that were not adopted.

For example, forty seven attorneys general, including the attorney general of Michigan, expressed concern that this legislation could limit their powers to investigate and bring actions in their State courts against defendants who have caused harm to their citizens. The attorneys general supported an amendment offered by Senator PRYOR that would have exempted all actions brought by State Attorneys General from the provisions of S. 5 stating, ''It is important to all of our constituents, but especially to the poor, elderly and disabled, that the provisions of the act not be misconstrued and that we maintain the enforcement authority needed to protect them from illegal practices.'' The Pryor amendment was defeated.

Federal courts generally do not certify class actions if laws of many states are involved. However, this legislation would force nationwide class actions into Federal courts where they would likely be dismissed for involving too many state laws. This would deprive the plaintiffs from the opportunity to have their case heard. An amendment sponsored by Senator FEINSTEIN, a cosponsor of this legislation, and Senator BINGAMAN would have fixed this problem by prohibiting the district court from denying class certification in whole or in part on the ground that the law of more than one State will be applied. However, that amendment failed.

Senator FEINGOLD offered an amendment that would have set a time limit for a district court to assume jurisdiction or rule on a remand motion to State court. The amendment, which failed, would have provided protection for plaintiffs against attempts to remove cases to Federal court merely to delay the outcome.

We do need class action reform, however this bill fails to adequately protect the rights of our citizens and therefore I cannot support it.

Mr. SCHUMER. Mr. President, I rise today to express my support for S. 5, the Class Action Fairness Act, and to explain why I supported the amendment proposed by my friend from California, Senator FEINSTEIN, for herself and on behalf of my friend from New Mexico, Senator BINGAMAN.

I support the class action legislation before us today. Certain lawsuits have become a concern to many Americans. Many lawsuits have been filed in local State courts that have no connection to the plaintiff, the defendant, or the conduct at issue. This allows forum shopping, which undercuts the basic fairness of our justice system.

Having said that, I am not one of those who think access to the courts should be unduly blocked. Our citizens' use of the courts has led to many reforms in the protection of civil rights and the environment, and has held corporate malefactors accountable for improper conduct that has cost victims billions of dollars. Often for those without power, a lawsuit is the only avenue for redress. We need lawsuits, but the rules governing them should be fair.

As we have heard yesterday and today, courts in some places have become magnets for all kinds of lawsuits. Some of these lawsuits are meritorious; some are not. In either scenario, if the case affects the Nation as a whole, it should be heard in Federal court. Judges in small counties should not make law for all of America. Although those judges might make good law, there is a real risk that parochial concerns would dominate in that type of decision. That is not to say that there are not judges in the Federal courts who do not have extreme views on both sides of the issues, much as we try not to confirm judges who fall out of the mainstream.

Consequently, we need to rein in forum shopping. When consumers allege that a product sold nationwide to consumers in all 50 States is defective, a Federal court should decide that case.

It is for these reasons that I joined with my colleagues, the Senator from Connecticut, Mr. DODD, and the Senator from Louisiana, Ms. LANDRIEU, to help craft the compromise that led to the bill before us.

The spirit of the compromise we reached would not create a new mechanism to dismiss class actions, but instead would remove the large and national class actions to the Federal courts.

But when Senators DODD, LANDRIEU, CARPER, KOHL, and I, all of whom have worked so long and hard on this bill, met with the majority leader and others 2 years ago, we made perfectly clear the right of the minority to offer amendments. That right remains an essential part of my participation in the compromIse.

Although we worked hard to improve the bill, we wanted to make sure that our colleagues had the opportunity to offer amendments because no bill is perfect.

One area where the bill could be improved stems from a real concern that many of the consumer class actions removed to Federal court might not be certified on the grounds that there would be too many non-common issues due to differences among State laws that would apply to different members of the national class. To date, at least 26 Federal district courts have refused to certify class actions on those grounds.

Some of us believed that not certifying could have resulted in a problem because it would effectively mean the weakening, if not the disappearance, of the class members' ability to get remedies, particularly with the changes made to current law by this bill. Not certifying could also create a practical problem for lawyers, who have the opportunity to try their class action before one court, and post-decertification might have to re-plead and try several class actions in several courts, thereby destroying the sought-after efficiency of class actions and creating the risk that the results would not be uniform.

This was not the desired outcome of our compromise: We intended to send national class actions to Federal court, not to their graves.

The amendment that my friend from California, Senator FEINSTEIN, and my friend from New Mexico, Senator BINGAMAN, introduced would not only have improved the bill, but would have also furthered the spirit of the compromise by clarifying our intention that the bill remove, but preserve class actions, even when Federal judges face choice of law issues.

Importantly, this amendment would not have aided forum-shopping plaintiffs' lawyers. Instead, it would have clarified options for a Federal judge facing a choice of law question. That clarification would have helped to grind to a halt the class action merry-go-round between the State and Federal courts. I hope that Federal judges view this bill, even without the amendment, as a vehicle that was intended to bring national class actions to the Nation's courts and not as a vehicle to balk at certification. The use of subclasses to protect people's rights under their State laws is now in the hands of Federal judges. They have the tools to protect those rights. This bill was not intended to destroy them.

That view will protect an important instrument of deterrence against future wrongdoing and an important adjunct to regulators in the enforcement of laws protecting our citizens.

Mr. ENZI. Mr. President, today I rise in support of S. 5, the Class Action Fairness Act of 2005. The class action system in our country is broken. Over the past decade, class action lawsuits have grown by over 1,000 percent nationwide. This extraordinary increase has created a system that produces hasty claims that are often unjust. Lawsuits that have plaintiffs and defendants from multiple States are tried in small State courts with known biases. This leads to irrationally large verdicts that make little sense legally or practically.

The U.S. Constitution gives jurisdiction to the Federal Government when cases involve citizens of differing states. It makes sense, that, in a case involving plaintiffs from Wyoming and Alabama and defendants from New York and Idaho, that no party be given the inevitable ''home-court'' advantage that comes when a case is tried in your backyard. Regrettably, for years, Congress has required all plaintiffs to be

diverse from all defendants. In large class action lawsuits, with plaintiffs or defendants from states throughout the Nation, it is increasingly difficult for this requirement of complete diversity to be met.

In the system we have created, we see lawyers seeking out victims instead of victims seeking out lawyers. We see lawsuits being adjudicated in a select few courts with proven track records for delivering large verdicts instead of lawsuits being tried in courts with the most appropriate jurisdiction.

S. 5 is a step in the right direction. It eliminates the lottery-like aspect of civil liability that individuals now face by moving interstate cases to the federal level. If passed, S. 5 makes it so that class action cases involving citizens from Wyoming, Utah, Kansas and Texas will not be adjudicated at a courthouse in Madison County, Illinois. In the same vein, it ensures that cases involving folks from Illinois, Arkansas, and Mississippi are not decided in a State court in Wyoming. These are interstate cases and should decided without a home state bias that can exist in some State courts.

When the Founding Fathers drafted the Constitution and its provisions regarding the filing of interstate cases, they could never have imagined that our court system would be used someday to engage almost every sector of the U.S. economy in just three counties. That statistic should be a wake up call that something is dreadfully wrong and that the system is not working as the designers intended. By placing cases in Federal court, we avoid the forum shopping that has become so commonplace over the past few decades. S. 5 gives the defendants in a lawsuit a chance to have their day in an impartial court.

While State courts undoubtedly have their place, and in many instances operate more effectively than Federal courts, a select few have become notorious for delivering outrageous verdicts. Consequently, many of our most costly class action lawsuits end up in these courts. This should not be the case.

S. 5 will not only benefit the defendants, it will also make the system more fair for the plaintiffs. Weak oversight of class action lawsuits has created a system that returns less than 50 cents on the dollar to plaintiffs in a case. Compensation, when compared to actual economic loss, is approximately 22 cents per dollar. Settlement notifications are often times so confusing that plaintiffs do not understand what they are receiving. Plaintiffs are signing off on agreements they do not even understand, with even less understanding about how to challenge the settlement. They are getting a raw deal.

I am pleased that the Class Action Fairness Act addresses this problem by including a ''Consumer Class Action Bill of Rights.'' The ''Bill of Rights'' includes a provision requiring the Federal court to hold a hearing and find that a settlement is fair before it can be approved. It includes provisions that make more fair what have become known as ''coupon settlements,'' in which the attorneys receive real money and the victims receive the equivalent of a Sunday newspaper clipping.

S. 5 works to reign in the only people who covertly benefit from the way the class action system works today, a select group of defense attorneys who seem more interested in profits than process. These lawyers are more concerned with reaching a settlement than helping their victims. They push for quick class certification, and once they have crossed that hurdle, they push for a quick settlement by threatening the defendants with large monetary verdicts that have come about in past cases.

In the face of these ridiculous verdicts, defendants settle quickly. They know the stars are lined up against them if the case goes all the way to trial and often times, by agreeing to coupon settlements, the defendants pay only a fraction of the stated damages. The Class Action Fairness Act takes steps to change this practice. It takes steps to ensure that when a settlement is reached, the lawyers and the defendants do not come out ahead when the victims come out behind.

Is S. 5 perfect? Absolutely not. It does not require that individuals opt-in to class action lawsuits. It does not require sanctions be brought against attorneys who file frivolous lawsuits over and over again. There are a number of provisions that I believe should be included in the bill that did not make the cut.

But S. 5 is the true example of a bipartisan compromise. S. 5 takes into account the wants of the various parties. It took a lot of give and take to get to this point, and now, we have a bill that does some good. We have a bill that takes a first step toward reforming our court system to make it more fair for both the plaintiffs and the defendants.

I look forward to voting in favor of the Class Action Fairness Act later today, and I will encourage all my colleagues to do the same.

Mr. KOHL. Mr. President, I rise today on the final day of debate on the class action reform bill to say a final word in support of the legislation. We have worked for many years on this bill through numerous hearings, committee markups and repeated floor consideration. We can proudly say that we are about to succeed in passing modest, yet important changes to the class action process. Consumers and businesses across the country will benefit and not a single case with merit will go unheard.

Today is the culmination of many years of our bipartisan efforts on this issue as we have attempted to make the class action system fairer for both consumers and businesses alike. Our success once again demonstrates that the Congress works best when we work together. I am most proud that we were able to construct a bipartisan core of supporters to pass this bill.

While this bill does not solve all of the problems in the system, consumers will never again need to worry about being injured and receiving worthless coupons as damages. Businesses will never again need to fear being sued in a small county court where the rules are stacked against them. Most importantly, under our bill every claim with merit will still go forward and the court house doors will always be open.

It is a well-known saying that success has many fathers, so many will deserve thanks for their work leading to the passage of this bill today. I would like to mention a few people specifically who have been indispensable to the passage of this legislation. Senator GRASSLEY and I have worked on this bill for 7 years now. He has been a good partner and leader. He deserves tremendous credit for his willingness to accept bipartisan compromises in an effort to get this bill done.

Senators CARPER and HATCH also deserve praise for the tremendous energy that they have brought to this bill over the past two Congresses. Without them, class action reform certainly would not have made it to the verge of passage today.

In addition, Senators DODD, FEINSTEIN, SCHUMER and LANDRIEU contributed significantly in this process by making important changes to the bill. They were successful in identifying ways to ensure that primarily State cases stayed in state court and only truly national cases could be removed to the Federal courts. This has been our goal all along. With their assistance we have accomplished it.

I would be remiss if I did not thank the many very fine staffers whose work often goes unheralded. This bill addresses a very technical and difficult area of the law, so their contribution to this bill was truly indispensable. All of the following were essential to the final passage of this bill: Rita Lari with Senator GRASSLEY; Jonathon Jones, Sheila Murphy and John Kilvington with Senator CARPER; David Hantman with Senator FEINSTEIN; Jeff Berman with Senator SCHUMER; Shawn Maher with Senator DODD; and Harold Kim with Senator HATCH.

Finally, Paul Bock and Jeff Miller, my chief of staff and chief counsel respectively, deserve significant credit for the passage of this bill. They have worked tirelessly on this legislation for several years and have provided wise counsel during the long and difficult negotiations on this legislation. With their assistance, we succeeded in crafting a moderate bill that will help business and consumers alike. For that, we should all be proud.

Mr. ALLEN. Mr. President, I rise today in support of the Class Action Fairness Act.

This legislation we are considering today is crucial to ensuring that there

is fairness in our courtrooms, that claimants receive the judicial consideration they deserve, and that the American economy and small businesses are able to stay competitive.

This class action reform legislation is primarily designed to allow defendants to move a class action lawsuit from State court to Federal court when there is diversity or citizens from different States involved in the litigation. This concept is as old as our Republic. No one will be denied access to the courts. It is simply allowing most litigants to find the most appropriate court to decide the case. In significant cases with diversity, the Federal courts are the proper choice.

We have heard about cases where lawyers shop around to find courts in particular counties that have a proven track record of being sympathetic to class action lawsuits with absurdly large judgments. When justice arbitrarily hinges on what county in which a case is tried, that is not fair.

A recent study found that 89 percent of Americans believe the legal system is in need of reform. The statistics are indeed alarming: Over the past decade, the number of class action lawsuits has increased by over 1,000 percent nationwide. And the cost of the U.S. tort system has increased one hundred fold over the last 50 years. Lloyd's of London estimates that the tort system cost $205 billion in 2001, or $721 per U.S. citizen. Most importantly, Lloyd's estimates this number to rise to $298 billion by this year. At current levels, U.S. tort costs are equivalent to a five percent tax on wages.

The implications of an abused tort system on the American economy are of legitimate concern. While there is no doubt that many class action lawsuits are legitimate, the inadequacies of the system have resulted in frequent abuses. And the increased cost to businesses has an enormous impact—tying the hands of businesses and restricting their ability to expand, provide additional jobs, or contribute to the economy. Even the threat of class action lawsuits forces businesses to spend millions of dollars. Defendants face the risk of a single judgment in the tens of millions or even billions of dollars, simply because a State court judge has rushed to certify a class without proper review. The risk of a single, bankrupting award often forces defendants to settle the case with sizable payments even when the defendant has meritorious defenses.

Believe it or not, some opponents of the Class Action Fairness Act are still urging that the current class action system works well and that class action reform is unnecessary. Apparently, they do not think it is a problem when consumers take home 50-cent coupons to compensate them for their injuries, while their lawyers pocket millions in cash. Take for example a case against Blockbuster, Inc., where customers alleged they were charged excessive late fees for video rentals. These customers received $1 coupons while their attorneys received over $9 million. Or when one State court prevents citizens from litigating their claims under the law of their home State. Or when attorneys file the same lawsuit in dozens of State courts across the country and file the same lawsuit in a race to see which judge will certify the fastest and broadest class.

In fact, numerous studies have documented class action abuses taking place in a small number of ''magnet'' State courts, and by now, it is beyond legitimate debate that our class action system is in shambles. As the Washington Post editorial page has noted, ''[n]o portion of the American civil justice system is more of a mess than the world of class action.''

A RAND Institute for Civil Justice, ICJ, Study on U.S. class actions released at the end of 1999 empirically confirms what has long been widely believed—State court consumer class actions primarily benefit lawyers, not the consumers on whose behalf the actions ostensibly are brought. Case studies in the ICJ piece confirm that in State court consumer class actions—that is, cases not involving personal injury claims—the fees received by attorneys are typically larger than the total amount of monetary benefits paid to all of the class members combined. In short, the lawyers are the primary beneficiaries. The ICJ Study contains no data indicating that this problem exists in Federal court class actions.

If we do not pass this vital legislation, the class action process will remain a system ripe for exploitation, and the harm to the fundamental fairness of the civil justice system will continue to grow. Excessive and frivolous class action lawsuits stifle innovation, discourage risk-taking, and harm the entrepreneurship that drives our Nation's economic growth and job creation.

This commonsense, bipartisan legislation will help alleviate the dramatic effects that have resulted from an abuse of the class action system. This legislation ensures that legitimate class action cases are given full consideration and that prevailing plaintiffs receive the compensation they deserve. Americans deserve to have a judicial system that is effective and efficient, and, most importantly, fair—this legislation goes a long way toward accomplishing these objectives. I urge my colleagues to support this legislation. In the 108th Congress, this legislation came up one vote short. We now have four more Senators on our side of the aisle, so I am confident in its success in the 109th Congress. This is a success that people in States desire, and it will be a promise kept.

Mrs. CLINTON. Mr. President, I oppose this legislation called the Class Action Fairness Act of 2005, because I do not believe it is fair to litigants who have legitimate claims that are most appropriately addressed by our state courts.

Yes, there are some problems in the use of class actions, and in some cases there are excessive fees or inappropriate coupon settlements. I am pleased that after many years of seeking to move class action ''reform'' legislation, the bill proponents finally agreed to include language that addresses some of the abuses concerning ''coupon'' settlements, in which plaintiffs who have proven their case in court receive in turn coupons for products or services that have little value. This language has long been advocated by the distinguished ranking member of the Senate Judiciary Committee, Senator LEAHY, and it is a good provision because in contrast to most of the bill, it is narrowly crafted to address an actual problem that the legal system and litigants confront.

But the vast majority of the provisions in this legislation are not narrowly crafted to address discrete problems. Instead, this legislation is an extremely blunt instrument that I believe will result in justice delayed and justice denied for many Americans.

There have been many claims about ''judicial hellholes'' and ''magnet jurisdictions'' but the evidence shows that these claims are, at best, overstated, and are certainly not so widespread so as to justify passage of this legislation that turns 200 years of federalism on its head. Indeed, a recent report by Public Citizen found that there were, at most, two jurisdictions—Madison County and St. Clair County, IL—of the 3,141 court systems in the United States for which bill proponents have provided limited data that they are ''magnet jurisdictions.'' As to Madison County in particular, the facts also do not support the rhetoric. In 2002, only 3 of 77 class actions were actually certified to proceed to trial, and in 2003, only 2 of 106 class actions filed were certified.

Moreover, the Public Citizen report notes that, in recent years, at least 11 states have made major changes to the class action process used in their States to aid in the administering of justice, and in fact Illinois is in the process of doing the same.

The legislation purports to help Americans but I believe it will hurt them. The legislation itself states its purpose is to: ''(1) assure fair and prompt recoveries for class members with legitimate claims; (2) restore the intent of the framers of the United States Constitution by providing for Federal court consideration of interstate cases of national importance under diversity jurisdiction; and (3) benefit society by encouraging innovation and lowering consumer prices.''

As to assuring ''fair and prompt recoveries,'' hundreds of consumer rights, labor, civil rights, senior, and environmental organizations, esteemed legal experts, and many State Attorneys General believe, as I do, that this legislation will do just the opposite.

There is also no reasonable basis for the assertion that this legislation ''will

restore the intent of the framers'' with respect to the role of our federal courts. As Arthur Miller, the distinguished Harvard Law School professor, author, and expert in the fields of civil procedure, complex litigation, and class actions noted with respect to similar legislation considered last year: it is a ''radical departure from one of the most basic, longstanding principles of federalism [and] is a particular affront to state judges when we consider the unquestioned vitality and competence of state courts to which we have historically and frequently entrusted the enforcement of state-created rights and remedies.''

As a Senator representing the great State of New York, I have worked closely with many businesses in my state to help them with their efforts to grow and create jobs, and I am a firm believer in encouraging innovation and lowering consumer prices. But even if we assume there is a strong connection between this legislation and those goals, there are many more appropriate means to achieve those ends without doing the harm to the administration of justice that I believe this legislation will impose.

In addition to being unfair to the American people, I do not believe this legislation is fair to our State or Federal judiciaries. This bill will effectively preclude state courts in many instances from employing their expertise and experience in class action cases based on state law that they have historically considered. I believe that state courts should determine matters of state law whenever possible. It is not fair to our Federal judiciary, which simply does not have the resources or experience to handle a mass influx of class action cases to our federal courts.

Indeed, the Judicial Conference of the United States has expressed its opposition to similar legislation introduced in prior Congresses because it ''would add substantially to the workload of the federal courts and [is] inconsistent with principles of federalism.'' Similarly, the Board of Directors of the Conference of Chief Justices representing the Chief Justices of our state courts has said that legislation of this kind is simply unwarranted ''absent hard evidence of the inability of the state judicial systems to hear and decide fairly class actions brought in state courts.'' That evidence simply does not exist.

As the National Conference of State Legislatures, NCSL, has noted in its strong opposition to this legislation, the legislation ''sends a disturbing message to the American people that state court systems are somehow inferior or untrustworthy.'' The NCSL went on to say that the effect of the legislation ''on state legislatures is that state laws in the areas of consumer protection and antitrust, which were passed to protect the citizens of a particular state against fraudulent or illegal activities, will almost never be heard in state courts. Ironically, state courts, whose sole purpose is to interpret state laws, will be bypassed and the federal judiciary will be asked to render judgment in those cases.''

Although bill proponents have sometimes suggested the contrary, make no mistake: if enacted, this legislation will not only result in the majority of class action lawsuits being transferred from our state to Federal courts, but it will also serve to terminate some class action lawsuits that seek to provide justice to everyday Americans.

Proponents of this legislation refer to an alleged abuse by lawyers in bringing class actions and assert that too many cases are instituted that are without merit. As I have already noted, I believe some proponents of this legislation have mischaracterized the extent of the problems concerning class actions. But, even if these assertions were true, the proponents have failed to justify the rejection of the very reasonable amendments offered by my colleagues that sought to address major concerns with the legislation without undermining its spirit or intent.

One such amendment was offered by my colleague Senator PRYOR of Arkansas, a former Arkansas State Attorney General. It would have clarified the role that State Attorneys General would continue to play in State class action cases. That amendment had the express written support of 47 of the 50 State Attorneys General in our Nation. As the highest law enforcement officers in their respective States, I cannot imagine that anyone in this body would believe that such public servants would bring ''frivolous lawsuits'' or would seek to abuse the class action process. And yet, that amendment failed, primarily along party lines.

The remaining amendments met a similar fate, including one offered by Senators BINGAMAN and FEINSTEIN. There is no general Federal consumer protection statute, which is why consumer fraud, deceptive sales practices, and defective product cases are almost always commenced in state courts.

Yet, the legislation before us would effectively move many of these cases to Federal courts, courts that are already overburdened and have neither the experience nor the expertise to handle these cases. If such cases are forced into Federal courts through consolidation of many state court cases, a Federal court hearing such a case must then decide which state laws should be applied. Because these kinds of circumstances have presented enormous challenges to our Federal courts, many Federal judges have simply, and understandably, denied certification of nationwide consumer fraud cases. Yet, the bill language would preclude the consideration of many of these cases in state courts, creating what many have described as the bill's ''Catch-22.'' At that point, such cases would literally be in justice ''limbo'' because a federal court would have dismissed the case but under the provisions of the legislation, the case could not withstand a defendant's challenge to maintain the case in a State court.

The amendment offered by Senator FEINSTEIN, an original cosponsor of the underlying legislation, and Senator BINGAMAN, would have provided a process to handle such cases to increase the likelihood that such cases would be certified by a Federal court and the appropriate State laws would be applied. This was a more than reasonable effort to address a significant concern with this legislation without undermining the legislation's intent to transfer many class actions to Federal courts. But, once again, a majority of the Members of this body chose to reject it.

The Leadership Conference on Civil Rights has stated, and no one has refuted, that ''there is no evidence that lawsuits brought by workers seeking justice in state courts on issues ranging from overtime pay to working off the clock are abusing the system. To the contrary, failure to exempt such lawsuits in this legislation is an abusive act against every hard-working American seeking fair pay and a better life.'' Yet, the amendment offered by Senator KENNEDY that would have carved out such cases from this legislation was rejected as well.

In short, this bill currently stands now in the same shape as when it was introduced. Though valiant efforts were made to improve it, none were successful. Eliot Spitzer, the distinguished New York State Attorney General, and a number of other State Attorneys General, expressed their overall concern with the bill, including the fact that the legislation still ''unduly limits the right of individuals to seek redress for corporate wrongdoing in their state courts.'' I could not agree more.

In speaking in opposition to this legislation on the Senate floor earlier this week, Senator LEAHY, the Ranking Member of the Senate Judiciary Committee, reminded all of my colleagues that sometimes individual claims are so small that even though a harm was done for which a plaintiff should receive relief, it is not worth it for him or her to spend significant financial resources to obtain that relief through the judicial process. Unfortunately, as he said, ''[s]ometimes that is what cheaters count on, and it is how they get away with their schemes. [Yet,] cheating thousands of people is still cheating. Class actions allow the little guys to band together, allow them to afford a competent lawyer, and allow them to redress wrongdoing.'' With the expected passage of this legislation today, I believe the ''little guy'' loses, and I believe that is neither fair nor just. That is why I cannot support this legislation.

I appreciate the concerns raised by businesses in New York and around the country about the cost of litigation. I too believe that litigation costs have increased significantly. Any legislation that seeks to address discrete problems with class action litigation should address this and other concerns without

unnecessarily and negatively affecting the ability of Americans to seek and obtain justice through our courts. A proper balance must be struck. The so-called Class Action Fairness Act simply does not strike that balance.

Mrs. DOLE. Mr. President, I rise today in support of the Class Action Fairness Act of 2005, legislation that is greatly needed to restore public confidence in our Nation's judicial system and protect jobs in my own State and throughout the country.

Frivolous litigation has helped drive the total cost of our tort system to more than $230 billion a year. Tort costs in America are now far higher than those of any other major industrialized nation, and in our global economy, this has become a tremendous disadvantage for American manufacturers and entrepreneurs, who have long sought reform. But this affects not just certain businesses; this affects our overall economy and all Americans.

The Class Action Fairness Act will provide that some class action suits be litigated in the Federal courts rather than allowing venue shopping for a sympathetic State court. The measure will also ensure that cases of national importance are not overlooked. Most importantly, this legislation will ensure that class members with legitimate claims are fairly compensated.

Class action suits are an important part of our legal system. They originated to make our courts more efficient by joining together parties with a common claim. However, growing abuses by opportunistic plaintiffs' attorneys—coupled with the skyrocketing costs of runaway litigation and excessive awards—have had a dramatic impact on America's interstate commerce.

Over the past decade, the number of class action lawsuits has grown by over 1,000 percent nationwide. And the jury awards are sharply increasing over time as well. In 1999, the top 10 awards totaled $9 billion; by 2002, that number had jumped to $32.7 billion.

Businesses, like those in my home State of North Carolina, are losing out because the rules in place today allow lawyers to ''shop'' for the ''friendliest'' court to hear their case. And it is not just large companies being sacked with enormous payouts in class action lawsuits. Small businesses are bearing the majority of tort liability costs. According to a study conducted for the U.S. Chamber of Commerce, small businesses bear 68 percent of tort liability costs but take in just 25 percent of business revenue.

We all know that small businesses are the job creators and the engines of our economy. They create 70 percent of all new jobs in America. Yet the rules in place today allow for a judicial system that is truly hurting them and causing them to spend money—on average $150,000 a year—on litigation expenses rather than on business development and equipment and expansion—the very things that can lead to more jobs.

Our goal in reforming class action lawsuits is to provide justice to the truly injured parties, not to deny victims their day in court and their just compensation. Lawsuit costs have risen substantially over the past several decades, and a significant part of these costs is going towards paying exorbitant lawyers' fees and transaction costs. And some injured plaintiffs are suffering because of weak State court oversight of class action cases. In fact, under the current U.S. tort system, less than 50 cents on the dollar finds its way to claimants, and only 22 cents compensate for actual economic loss.

And sometimes class members don't receive cash at all. For example, in a settlement with Crayola, approved by a State court in Illinois, crayon purchasers in North Carolina and around the country received 75-cent coupons for the purchase of more crayons; their lawyers, however, received $600,000 in cash.

And in the Cheerios class action settlement, also approved by State court in Illinois, consumers in North Carolina and around the country received coupons for buying a single box of cereal, while lawyers got $1.75 million.

I hardly think it's in the best interest of the class member to actually have to purchase more of a product to receive any benefit. And it isn't fair that class members are losing out while their attorneys are cashing in.

This legislation establishes a ''Consumer Class Action Bill of Rights'' that will ensure that class actions do not harm the intended beneficiaries—people who were actually harmed by the actions of a defendant. And it does nothing to prevent class members from having their cases heard—it just establishes that some of these cases may be heard in Federal courts.

It is time we do what is right and repair this broken system—for claimants in class action cases, for our Nation's economy, businesses large and small, and for all Americans.

Mr. VOINOVICH. Mr. President, I rise today to speak on behalf of the Class Action Fairness Act, a bill to stop unfair and abusive class action lawsuits that ignore the best interests of injured plaintiffs. This legislation is sorely needed to help people understand their rights in class action lawsuits and protect them from unfair settlements.

It is also needed to reform the class action process, which has been so manipulated in recent years that U.S. companies are being driven into bankruptcy to escape the rising tide of frivolous lawsuits and has resulted in the loss of thousands of jobs, especially in the manufacturing sector.

Unfortunately, not enough Americans realize that we are in a global marketplace and businesses now have choices as to where they manufacture their products. Many of our businesses are leaving our country because of the litigation tornado that is destroying their competitiveness. The Senate must start taking into consideration the impact of its decisions on this Nation's competitive position in the global marketplace.

I believe that for the system to work, we must strike a delicate balance between the rights of aggrieved parties to bring lawsuits and the rights of society to be protected against frivolous lawsuits and outrageous judgments that are disproportionate to compensating the injured and made at the expense of society as a whole. This is what the Class Action Fairness Act, does, and I am proud to cosponsor it.

Since my days as Governor of Ohio, I have been very concerned with what I call the ''litigation tornado'' that has been sweeping through the economy of Ohio, as well as the Nation.

Ohio's civil justice system is in a state of crisis. Ohio doctors are leaving the State and too many have stopped delivering babies because they can't afford the liability insurance.

From 2001–02, Ohio physicians faced medical liability insurance increases ranging from 28 to 60 percent. Ohio ranked among the top five States for premium increases in 2002. General surgeons pay as much as $74,554, and OB–GYNs pay as much as $152,496. Comparatively, Indiana general surgeons pay between $14,000–$30,000; and OB–GYNs pay between $20,000–$40,000.

Further, Ohio businesses are going bankrupt as a result of runaway asbestos litigation. And today, one of my fellow Ohioans can be a plaintiff in a class action lawsuit that she doesn't know about and taking place in a State she has never even visited.

In 1996, as Governor of Ohio, I was proud to sign H.B. 350, strong tort reform legislation that became law in Ohio for a while. It might have helped today's liability crisis, but it never got a chance.

In 1999, the Supreme Court of Ohio, in a politically motivated 4–3 decision, struck down Ohio's civil justice reform law, even though the only plaintiff in the case was the Ohio Academy of Trial Lawyers—the personal injury bar's trade group.

Their reason for challenging the law? They claimed their association would lose members and lose money due to the civil justice reform laws we enacted.

The bias of the case was so great that one of the dissenters, Justice Stratton, had this to say:

> This case should have never been accepted for review on the merits. The majority's acceptance of this case means that we have created a whole new arena of jurisdiction—advisory opinions on the constitutionality of a statute challenged by a special interest group.

From this, it is obvious to me that the way we currently administer class actions is not working.

While we were frustrated at the State level, I'm proud to have continued my fight for a fair, strong civil justice system in the United States Senate.

To this end, a few years ago I worked with the American Tort Reform Association to produce a study entitled ''Lawsuit Abuse and Ohio'' that captured the impact of this rampant litigation on Ohio's economy, with the goal of educating the public on this issue and sparking change.

Can you imagine what this study found? In 2002 in Ohio, the litigation crisis costs every Ohioan $636 per year, and every Ohio family of four $2,544 per year. These are alarming numbers. And this study was released on August 8, 2002—imagine how high these numbers have risen in 2½ years.

In tough economic times, families can not afford to pay over $2,500 to cover other people's litigation costs. Something needs to be done, and passage of this bill will help!

Mr. President, this legislation is intended to amend the federal judicial code to streamline and curb abuse of class action lawsuits, a procedural device through which people with identical claims are permitted to merge them and be heard at one time in court.

In particular, this legislation contains safeguards that provide for judicial scrutiny of the terms of class action settlements in order to eliminate unfair and discriminatory distribution of awards for damages and prevent class members from suffering a net loss as a result of a court victory.

This bill would establish a concept of diversity jurisdiction that would allow the largest interstate class actions into Federal court, while preserving exclusive State court control over smaller, primarily intrastate disputes. As several major newspaper editorial boards—ranging from the Post to the Wall Street Journal—have recognized, enactment of such legislation would go a long way toward curbing unfairness in certain state court class actions and restoring faith in the fairness and integrity of the judicial process.

This bill is designed to improve the handling of massive U.S. class action lawsuits while preserving the rights of citizens to bring such actions.

Class action lawsuits have spiraled out of control, with the threat of large, overreaching verdicts holding corporations hostage for years and years.

In total, America's civil justice system had a direct cost to tax payers in 2002 of $233.4 billion, or 2.23 percent of GDP. That is $809 per citizen and equivalent to a 5 percent wage tax. That's a 13.3 percent jump from the year before—a year when we experienced a 14.4 percent increase which was the largest percentage increase since 1986.

Now, some of my colleagues have argued that this bill sends most state class actions into Federal court and deprives state courts of the power to adjudicate cases involving their own laws. They argue that the bill therefore infringes upon States' sovereignty.

However, in one empirical study done by two attorneys from O'Melveny & Myers, their data indicated that this bill would not sweep all class actions into Federal court. Rather, the bill is a targeted solution that could result in moving to Federal court a substantial percentage of the nationwide or multi-State class actions filed in class action ''mill'' jurisdictions (like Madison County, IL), while allowing State courts everywhere to litigate truly local class actions (the kinds of class actions typically filed in State courts that do not endeavor to become ''magnet'' courts for class actions with little or no relationship to the forum).

There is just no evidence for the assertion that this bill deprives State courts of their power to hear cases involving their own laws. In fact, it is the present system that infringes upon state sovereignty rights by promoting a ''false federalism'' whereby some state courts are able to impose their decisions on citizens of other States regardless of their own laws.

Another argument against this bill is that it will unduly expand Federal diversity jurisdiction at a time when courts are overcrowded. However, State courts have experienced a much more dramatic increase in class action filings and have not proven to be any more efficient in processing complex cases.

In addition, Federal courts have greater resources to handle the most complex, interstate class action litigation, and are insulated from the local prejudice problems so prevalent under current rules.

Mr. President, I emphasize to my colleagues that this isn't a bill to end all class action lawsuits. It's a bill to identify those lawsuits with merit and to ensure that the plaintiffs in legitimate lawsuits are treated fairly throughout the litigation process.

It's a bill to protect class members from settlements that give their lawyers millions, while they only see pennies. It's a bill to rectify the fact that over the past decade, State court class action filings increased over 1,000 percent. It's a bill to fix a broken judicial system.

I am a strong supporter of this bill, and I urge my colleagues to do the same.

Mr. JEFFORDS. Mr. President, I am pleased to support S. 5, the Class Action Fairness Act of 2005.

I believe there are problems with our current class action system that should be addressed through Congressional action. These problems include:

Cases and controversies that are national in scope and are currently being decided in State courts;

Decisions or settlements that are determined in one State's court system, are being applied nationwide, and conflict with laws in other States; and

Plaintiffs receiving little compensation, or in the most extreme example, actually owing money from the settlement of a class action lawsuit.

Class action lawsuits serve a useful purpose in our judicial system. Class actions allow individuals to merge a number of similar claims into one lawsuit, which can be an efficient use of judicial resources. Class action lawsuits enable individuals with small claims the ability to seek justice.

The legislation we are considering today will fairly determine whether a class action should be considered in a State court or a Federal court. Thus, the legislation will help ensure that issues that are national in scope are heard in federal court, while issues that are local in nature are heard in State courts.

The Class Action Fairness Act also provides some common sense reforms and oversight of the class action settlement process. These changes will help ensure that individuals who should be compensated receive fair compensation for their injuries, rather than worthless coupons, or actually owing money.

I cannot, and would not, support legislation that denies individuals their ability to pursue compensation in the legal system for damages they have suffered. The legislation before this body is a bipartisan compromise worked out over many years. It does not deny individuals their right to pursue justice through the legal system. Because I believe the Class Action Fairness Act of 2005 fairly addresses the problems in our class action system, I will support its passage today.

Mr. REED. Mr. President, I rise to speak about S. 5, the Class Action Fairness Act.

First and foremost, I want to commend both the Republican and Democratic Leaders for all the work they did to bring this bill before the Senate. In particular, I am pleased that the consent agreement allowed all relevant amendments to be offered and debated.

I believe many of these amendments would have improved the underlying legislation without threatening its reforms. In particular, I think we should have adopted the Feinstein-Bingaman amendment, which would have given federal judges clear guidance about how to apply state consumer laws in multi-state class action lawsuits. This would have permitted more multi-state consumer class actions to be certified in federal court and resolved on their merits.

After S. 5 is enacted into law, I believe we should rapidly revisit this issue and make sure that consumers are actually getting their day in court and not having their class action cases thrown out because Federal courts are deeming them too complex or unmanageable to certify.

That being said, I think this legislation benefited greatly from the negotiations entered into by Senators DODD, LANDRIEU and SCHUMER with the bill's major sponsors, Senators GRASSLEY, KOHL, HATCH and CARPER. Although S. 5 is not the bill I would have written, I do think it will address some of the well-documented problems created by overlapping class actions in State and Federal courts.

In particular, the Dodd-Landrieu-Schumer language included in S. 5 addressed some of my biggest concerns about moving class actions to Federal court. Many class actions involve only State law issues, are brought by plaintiffs from the same geographical area and have a defendant who is based within that same community. Moving these cases to Federal court is inappropriate, especially if they do not involve issues of national importance. In many cases, it is our State judges who are in the best position to make determinations about State law. The Dodd-Landrieu-Schumer compromise created a new exception for keeping cases like this in State court. Under the bill, if two-thirds of the plaintiffs are from a given State, the injury happened in that State and at least one significant defendant is from that same State, then the class action can remain in State court. As a result, I believe S. 5 ensures that ''nationwide'' class actions are separated from those that should continue to be heard in State courts.

I also believe that any attempt to stop forum shopping by plaintiffs should minimize forum shopping by defendants. The Dodd-Landrieu-Schumer compromise in S. 5 addressed this issue by making it clear that there is a firm 30-day deadline for the removal of nationwide class actions to Federal court once the plaintiffs have filed papers that create conditions for removal.

I also am pleased that the Dodd-Landrieu-Schumer compromise dealt with one of the most serious abuses in class action cases, certain types of collusive coupon settlements. S. 5 clarified that if a settlement provides coupons as a remedy, attorneys' fees will only be paid in proportion to the redemption of the coupons. A provision like this does not prohibit coupon settlements, but practically speaking, attorneys will not agree to such settlements unless the coupons are actually valuable. S. 5 also requires that a judge may not approve a coupon settlement until a hearing is conducted to determine if the settlement terms are fair, reasonable, and adequate for class members.

Finally, I believed that is important to preserve the ability of the Advisory Committee on the Federal Rules, the U.S. Judicial Conference, and the Supreme Court to amend the class action rules or procedures to the extent necessary to accomplish their purposes more effectively or to cure any unanticipated problems. S. 5 also included a provision saying that the Federal courts could make such changes as appropriate.

As a result of all of these improvements, I believe S. 5 is legislation that addresses serious problems in our nation's class action system and will make the system fairer for both plaintiffs and defendants.

The PRESIDING OFFICER. Twenty minutes is to be equally divided between the chairman and ranking member of the Judiciary Committee.

The Senator from Vermont.

Mr. LEAHY. Mr. President, I commend the distinguished senior Senator from Illinois. He is absolutely right. You have the corporate interests, and this administration is closing courthouse doors—one of the few places where people can go that are not aligned with either the Republican or the Democratic Party; a place where they don't need any political clout; a place where somebody can't say they are going to contribute heavily to a political party so their interests will be heard, or something like that. There is one place they could go—whether they are a mechanic, a bus driver, a person raising a family, somebody who had been damaged by a product sold when the manufacturer knew of the flaw—the one place they could go would be the courthouse. They are not the rich, powerful, or well-connected. They could win. Or at least seek justice. We are going to close that door, too.

Over the few days that the Senate has been considering this bill, there have been a few modest amendments that might actually keep the door open a tiny crack for the people who need it. There have been serious concerns raised by the National Conference of State Legislatures of our 50 States, the National Association of State Attorneys General, prominent legal scholars, consumers, environmental groups, and civil rights organizations. They asked us to at least consider a few improvements but the courthouse door was slammed shut. The Senate's door was slammed shut.

For anybody watching this debate, they have figured out that by now the fix was in, despite these legitimate concerns.

After 31 years here I am disappointed that the Senate is now taking its marching orders for major legislation from corporate special interests and the White House.

We could have actually acted as an independent body and made some changes in this bill. Instead, we are saying—the 100 of us—to all 50 of the State legislatures that we know better than they do, that they are irrelevant, that we could close them off.

It is going to make it harder for American citizens to protect themselves against violation of State civil rights, consumer, health, environmental protection laws, to take these cases to State court.

Aside from being convenient, plaintiffs actually know where the local state courthouse is. These courthouses have experience with the legal and factual issues within their States. We are simply going to sweep these cases into Federal court, after we have already swept so much criminal jurisdiction there, and you can't get a civil case heard anyway. We are erecting barriers to lawsuits, and we are placing new burdens on plaintiffs. They will languish.

The bill contains language that would reduce the delay that parties can experience when a case is removed to Federal court by setting a limit for appeals of remand orders. But we don't say anything about how long the court can sit on the remand motion. They could sit on it for 10 years if they want to before they do a thing. Plaintiffs can die, witnesses can move away, memories could grow dim, and nothing happens.

Senator FEINGOLD offered a modest amendment to set a reasonable time for action on remand motions. The solution received praise from one of the sponsors of this legislation, but the corporate masters and the White House said no. So it was rejected by the Senate.

The biggest concern raised by legal scholars and agreed to by several Senate sponsors of the bill would address the recent trend in Federal courts not to certify class actions if multiple state laws are involved.

The way this is set up in the bill—a lot of the business groups are behind this—one could easily get a case dismissed by a Federal court.

Senator FEINSTEIN and Senator BINGAMAN worked together to alleviate what was a legal Catch-22. The Federal court says if a case has complicated State laws in it, it can't hear it. But you can't bring it in State court either. The Federal court says the State laws are complicated and it should have been heard in the State court. But under this bill, it goes to the Federal court so, of course, the corporate interests win. We tried to change that.

Cynics might even speculate that is what the business groups behind this purported ''procedural'' change are really seeking, the dismissal of meritorious cases on procedural grounds by the federal courts. Naturally, the orders came down from the corporate masters and the White House: Don't do it. We love the way this is going to allow us to keep things out of court. There it goes.

Anyone who reads this bill will notice that despite its title, it affects more than just class actions. Individual actions, consolidated by state courts for efficiency purposes, are not class actions. Despite the fact that a similar provision was unanimously struck from the bill during the last Congress, mass actions reappeared in this bill this Congress. Federalizing these individual cases will no doubt delay, and possibly deny, justice for victims suffering real injuries. Senator DURBIN's amendment sought to clarify the bill's effect on these cases. I'm glad the debate this week served to clarify the narrow scope of this provision.

It is interesting because a similar provision to was unanimously struck from the bill during the last Congress—unanimously but that wasn't good enough for the corporate masters. It was slipped back into the bill this Congress.

Class action legislation had been criticized by nearly all of the State attorneys general in this country, Republicans and Democrats alike. The distinguished former attorney general, Senator PRYOR of Arkansas, had a concern that S. 5 would limit their official powers to investigate and bring actions in State courts against defendants. He wanted to put in minor clarifications to show they could do that. Although these attorneys general contacted their Senators—Republicans and Democrats alike—they were tossed out.

Senator KENNEDY's amendment to exempt civil rights, and wage and hour cases in the bill, was a sensible solution. Prominent civil rights organizations and labor advocates requested that the bill be modified to acknowledge the fact that many of our states have their own protective civil rights and employment laws. I was proud to cosponsor it and regret that with the fix being in, this amendment was rejected by the Senate. But the fix was in, and that is out.

What we have done here? I will give you an example of one class action suit that would have been impacted under this legislation—Brown v. Board of Education, finally ending segregation in our schools, a blight on the American conscience. And how did Brown v. Board of Education get to the Supreme Court? Not from the three Federal courts in that class action suit; not the three Federal courts that said ''separate but equal'' is the law of the land. It had been good enough for all of us. Send those African-American children to one school. Send the White kids to a much better school—because that is what it was. The view was that is good enough for us, always been that way.

Only one State court in the State of Delaware said: That might be what the U.S. Supreme Court said, but they are wrong. They are wrong. We don't believe in Plessy v. Ferguson. We don't believe in the separate but equal. We say sending Black children to one school and White kids to the other is not equal. We are making second-class citizens of these African Americans.

And because a State court heard and ruled on that class action, it went up to the U.S. Supreme Court, and the U.S. Supreme Court unanimously came down with Brown v. Board of Education.

We pray there is not some class of people in this country being damaged the way African-American children were being damaged at that time because if they go into the courts in the wake of this legislation, the fix is in, this Senate has closed the court doors to them, this White House has closed the court doors to them, these corporate interests have closed the court doors to them. It is a shame. It is wrong. It is one heck of a message to send to this country.

It is disappointing to me that the Senate has refused to listen to wise counsel of our state legislatures, our state law enforcement officers, our state judges and even the views expressed by our federal judiciary since they are the institutions that we are affecting by enacting this legislation.

I predict this legislation will be manipulated by well-paid corporate defense lawyers to create complex, expensive and lengthy litigation over the criteria and factors in the bill and whether they apply to a particular case. Unfortunately, one of the great boons of this legislation, to the extent it does not simply deter class actions brought by consumers, is that it will make them more costly, burdensome and complicated.

The so-called Class Action Fairness Act falls short of the expectation set by its title. It will leave many injured parties who have valid claims with no avenue for relief, and that is anything but fair to the ordinary Americans who look to us to represent them in the United States Senate.

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. SPECTER. 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. SPECTER. Mr. President, I thank my colleagues for moving this bill through to final conclusion where we are now scheduled to vote on final passage at 3 o'clock this afternoon.

We took this bill up in the Judiciary Committee a week ago today. Although there was some conjecture we could not pass the bill out of committee, in the morning we did so. We started the floor debate Monday afternoon. I led off in my capacity as chairman of the Judiciary Committee. We had a number of amendments and we have worked the will of the Senate. A number of amendments have been withdrawn, a number of amendments have been defeated.

The Senator from Wisconsin, Senator FEINGOLD, offered an amendment which would have imposed time limitations on the courts on their handling of class action cases. I told him I thought it was a good idea, but I was constrained to vote against it because we have an understanding—implicit or explicit, I am not quite sure which because I was not party to it—with the House of Representatives that if we sent them a so-called clean bill without amendments, they would accept the Senate version. I told Senator FEINGOLD as to his issue, I have had a number of complaints about delays in the administration of the courts. That is something the Judiciary Committee will take up.

I make it plain we will not deal with judicial independence or the court's discretionary functions, but when it comes to delays, that is a matter of congressional oversight on our fundamental responsibility to decide how many judges there will be at all levels. That is an issue we will take up.

The Senator from South Carolina, Senator LINDSEY GRAHAM, had proposed an amendment on disclosure, on transparency, sunshine. There again, that is a good idea. We have worked through a colloquy. I have not seen the final form, but I was discussing it with Senator GRAHAM again this morning and the staffs are working that out. I anticipate we will have that finished.

The Senator from Illinois, Senator DURBIN, had a proposed amendment on mass actions. We had worked through to see if we could formulate a colloquy. That has not reached fruition. Senator DURBIN has decided to withdraw. That is a complex matter which we took up in committee 2 years ago. We made some modifications in the bill, but it is very important as this bill moves forward to become law that it be dealt with as a procedural change, that there not be substantive changes in the rights of the parties.

We have sought to move into the Federal courts in order to avoid forum shopping on judges or courts where there is some indication of a prejudicial predisposition. It is my hope as this class action bill is interpreted that it will not effect substantive rights.

There is a tender issue on selection of State law where there are a number of States involved. There is a lot of commonality in our law injected through the uniform commercial code and interjected through the restatement of varieties of substantive matters such as torts, where class actions can be certified, so it is my hope this bill, this act, will not be interpreted to curtail a substantive right.

There is a great deal of wisdom in the Senate on this bipartisan bill which has received considerable support on the Democratic side of the aisle as well as very strong support on the Republican side of the aisle to move through without a conference where we might have had a bill which was a great deal more restrictive of plaintiffs' rights, where we might have had a bill where the House provision calls for retroactive application. That would upset a great many existing lawsuits. All factors considered, we have come to a wise conclusion.

Mr CORNYN. Mr. President, I have spoken previously on this floor about my concerns that this legislation does not go far enough to address the scandal of litigation abuse that plagues our civil justice system. I stand by those concerns today. We can and should do more to reduce the burden of frivolous, expensive litigation. Our Nation's economic competitiveness in the 21st century depends on it.

We should consider additional measures that better level the playing field, that produce a good flow of information and transparency, and that provide a clear relationship between plaintiffs and their attorneys.

But while this modest legislation could do more, I believe that S. 5 is an important first step to reform—a step in the right direction.

By providing for removal of a greater number of class action lawsuits from State court to Federal court and by requiring that judges carefully review all coupon settlements and limit attorneys' fees paid to these settlements to the value actually received by class members, it sets the groundwork for a much needed reform.

In the spirit of bipartisan cooperation that drove this bill forward, I set aside my concerns for now and am proud to co-sponsor.

I thank my friend from Iowa, Senator GRASSLEY, for his leadership and persistence on this issue. For five consecutive Congresses, dating back to 1997, Senator GRASSLEY has taken up the mantel of class action reform and he deserves a great deal of credit for it.

Finally, I want to thank Chairman SPECTER and Senator HATCH for their continued stewardship. Without them, this bill would not be where it is today.

Mr. SPECTER. Mr. President, I have a few minutes remaining on my 10 minutes. I notice the distinguished Democratic leader is here, but I said I would yield to the Senator from Connecticut, Senator DODD. He has a very unique spot in my evaluation of Senators because he was elected in the class of 1980. He reminds me there were 18 of us elected, and the Democrats, through their tenacity and wisdom, have maintained 50 percent of their class and the Republicans, on the other hand, have only retained 12½ percent. Of course, we started with 16 to 2, so let the record show that the Republicans from the class of 1980 still outnumber the Democrats 2 to 1.

I yield to Senator DODD.

Mr. DODD. Mr. President, I thank my colleague from Pennsylvania. One of the great pleasures over the past 24 years has been to serve with ARLEN SPECTER in this body.

We are nearing the end of consideration of this bill.

I would like to spend just a few minutes to offer some thoughts on it.

First, a brief word about the process by which this bill has been considered by the Senate. I don't think it is an overstatement to say that—aside from the details of the legislation itself—the most important factor in its expected passage is the unanimous consent agreement that was put into place at the onset of the Senate's deliberations on the bill.

In that respect, the two leaders—Senator FRIST and Senator REID—are to be greatly commended. Either one could have refused to enter into such an agreement—which would have made the prospects for passage of this legislation far less certain.

As I said yesterday, a determined minority of even one Senator can impede or block consideration of legislation in this body. Either Leader, by declining to enter into a consent agreement, could have paved the way for others to employ dilatory, delaying, and distracting tactics.

However, both Senators REID and FRIST agreed that only relevant amendments to the bill would be in order. No doubt, that agreement displeased some members in both caucuses. However, it helped ensure that the debate we have had on this bill has been substantive, orderly, and deliberate. And it minimized the risk that this bill would be derailed by contentious issues wholly unrelated to the substance of the bill itself.

So the cooperation shown by the two leaders on this legislation cannot be overemphasized. Senator REID is to be particularly commended in this regard, given that a majority of the members of his caucus do not appear to support the bill.

The consent agreement that he entered into with the majority leader demonstrates his commitment to working in as cooperative a manner as possible for the good of the Senate.

Allow me to spend a few moments talking about the substance of this legislation. We have heard a lot of characterizations over the past few days to describe the bill and the problems it seeks to correct. I am among those who believe that our class action system is in need of reform. There are clear abuses and shortcomings that have not served the interests of the parties or the interests of justice. And this bill takes a number of significant steps to remedy those abuses and shortcomings.

To those who say that this legislation will have dire consequences on the quality of justice in our Nation, I must respectfully disagree. And I do so for a number of reasons.

First, it is important to view this legislation in a larger perspective. According to one estimate, .92 percent of all cases filed in Federal courts over the past three decades have been class actions. This point deserves special emphasis: from 1972 to 2002, less than one percent of all cases filed in the Federal courts of our Nation have been class actions.

Not all states compile similar data, so there are no comparable statistics for class actions as a percentage of all cases filed in State courts. However, there is every reason to believe that the percentage of class actions filed in state courts is at least as minuscule as the percentage filed in state courts. My point is simply this: that this legislation will affect only a very small percentage of all cases filed in our courts—less than 1 percent.

Some would argue that if even one just case in America were denied by this bill, that would be an unit result, and merit the defeat of this bill. I am not unsympathetic to that argument. Indeed, I agree wholeheartedly with it. Our system of justice is premised on the belief that equal justice under law is the right of each and every citizen.

Even one just cause unjustly denied offends our Nation's commitment to justice and fair play. Any legislation that would deny to even one citizen the right to equal justice deserves opposition, at least in this Senator's opinion.

But this bill does not deny such a right. It does not even come close. It will not close the courthouse door on a single citizen.

Moreover—unlike other legislation that has been considered by this body—it will not cap damages in a single case.

It will not cap attorney's fees for a single class action lawyer.

It will not extinguish or alter in any way a single pending class action.

Nor does it impose more rigorous pleading requirements or evidentiary standards of proof in a single class action.

In short, no citizen will in any way lose his or her right to go to court and seek the redress of grievances.

My colleagues might ask: if this bill will not do any of these things, then what will it do?

First and foremost, it will put an end to the kind of abusive forum-shopping that has grown in frequency and notoriety over the past few years.

Opponents of this bill claim that, by in any way altering the procedural rules governing class actions, substantive rights will be denied.

However, this argument is trumped by a little document called the U.S. Constitution.

Article III of that document extends Federal jurisdiction to suits between ''citizens of different States.'' The purpose of extending this ''diversity jurisdiction'' to citizens is to prevent the citizens of one State from being discriminated against by the courts of another State.

However, over the years, this purpose has been increasingly thwarted by clever pleading practices of enterprising class action attorneys.

By adding a plaintiff or a defendant to a lawsuit solely based on their citizenship, they have been able to defeat efforts to move cases to Federal court—even cases involving multiple parties from multiple States. Likewise, by alleging an amount in controversy that does not trigger the $75,000 threshold, they have thwarted Federal jurisdiction—even in cases alleging millions if not billions of dollars in damages.

In short, current pleading practice by the class action plaintiffs bar has very effectively denied Federal jurisdiction over cases that are predominantly interstate in nature. These are precisely the kinds of cases the Framers thought deserve to be heard in Federal courts.

All that this legislation does in this respect is bring pleading practice more into line with constitutional requirements. Cases that are primarily intra- rather than interstate in nature may continue to be heard in State courts.

But those that are clearly interstate in nature will now be more likely to be heard in Federal court, where they belong.

The notion that cases will be ''dismissed'' as a result of this and other changes created by this legislation is, in my view, patently absurd. No provision of this legislation requires a single case to be dismissed. Plaintiffs' attorneys may end up spending more time in

Federal court than State court. They may not be able to pick a class of plaintiffs that is as large as they can now, or that encompasses as many States. They may end up bringing cases in two or more courts that they might have preferred to bring in a single court. But they will not find their cases dismissed.

As my friend and colleague from Utah, Senator HATCH, said earlier, good lawyers will find a way to do well under this bill. Good lawyers will do well in Federal courts, as they have done well in State courts. In that sense, then, this bill is exceedingly modest.

We write our laws on paper. We do not etch them in stone. I am confident that the bill we have written here is a good one. I believe that, if and when it becomes law, it will withstand the test of time. Likewise, I am confident that if in the future any shortcomings emerge, we will have the good sense to fix them.

By way of analogy, I remind our colleagues of another reform bill that was considered several years ago. The Senator from New Mexico, Senator DOMENICI, and I wrote a bill to address frivolous securities lawsuits directed primarily at high-tech companies. The bill was on the floor of the Senate for about 2 weeks, if I recall correctly. A number of amendments were offered. It ultimately became law, despite a Presidential veto.

There were those who predicted dire consequences as a result of that bill's enactment. We were told that securities lawsuits would dry up, that harmed investors would have no recourse.

Well, here we are, about 9 years after enactment of that law, and there has been no appreciable drop-off in investor lawsuits and recoveries. In fact, some of the most vehement opponents of that law in the trial bar continue to be some of the most successful under the law.

In sum, we have written a good bill here. It deserves to become law. I hope that it will. I want to acknowledge those of our colleagues who are most responsible for bringing us to this point: Senators FRIST and REID, as I have already mentioned; as well as Senators GRASSLEY, KOHL, HATCH, FEINSTEIN, CARPER, and others. I also want to acknowledge the hard work of their staff, who in some cases have worked on this legislation for a number of years.

So, to briefly reiterate, I thank my leader, Senator REID, and the majority leader, as well. We would not be in the position we are in, I have said on several occasions over the last 3 or 4 days, had the Democratic leader—particularly because the minority always has unique rights in this Senate to delay or stop legislation moving at all.

Even though my colleague from Nevada has strong reservations, which I am sure he will express shortly, about the substance of this bill, as a result of his willingness to let a product move forward, we are here today about to adopt a piece of legislation. When I hear some of the comments being made about whether Democrats are willing to work on issues, even ones they disagree with, that is belied by the fact that the minority leader made it possible for us to be here to deal with all relevant, germane amendments on this bill. I thank the Senator from Nevada for his efforts in allowing that to go forward.

There has been a lot of talk over the last several days. Classically, with a matter like this the opponents and proponents have a tendency to engage in, if I may say with all due respect, a little bit of hyperbole. But it's important to stick to the facts. And one important fact that should shape how we view this legislation is that less than 1 percent of all cases filed in the Federal courts since 1972 have been class action cases. I searched very tirelessly to find out the percentages in State courts. I could not come up with an exact number. I am told by those knowledgeable the number of class actions filed in State courts as a percentage of all State actions is not substantially different than the Federal courts, and is likely to be even smaller given the large number of State cases filed generally. What is beyond dispute is that a very small percentage of the cases filed in our court systems are class actions.

Obviously, if anyone is denied access to the courts in this country because of things we do here, then, obviously, justice is denied to someone who cannot make that case.

We have not done that. This system of class action is in need of reform.

This is about money. Unfortunately, it is not about the money that legitimate plaintiffs get; it is about the money that is either saved by a defendant or made by the plaintiffs' bar. That is what this is about, and forum shopping around the country, finding the venue that gets you the best possible result for your particular point of view—not exactly what the Founders had in mind when they drafted the diversity provisions of article III of the Federal Constitution. If you want to change the Constitution and say that no longer should diversity apply, then you may try to do that. If that is what opponents of this legislation believe, then they can try to amend the Constitution to in effect keep all these cases in State courts. But since the founding of this Republic, the diversity clause of article III of the Constitution has been very clear.

Mr. REID. Mr. President, I ask unanimous consent that the Senator from Connecticut be allowed 5 more minutes.

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

Mr. DODD. Mr. President, I thank my colleague. I will go quickly.

The point is, this is about court reform more than tort reform. About fifteen months ago, as many of my colleagues recall, we worked out this bill. We struck an agreement, a good one. Unfortunately, the majority here, last year, decided not to bring this bill up. I believe they made a mistake in doing that. We could have wrapped this bill up in January of 2004 but did not do it. This agreement has been ready for the Senate's consideration for over a year. We have had good debate on some of these amendments, and we have drafted a pretty good bill. It is not written in marble; it is not written in granite; it is written on paper. And we think it is going to provide equal access to the courts. It is going to provide a fairness to plaintiffs and defendants, to see that they get a just decision regarding the matters that are brought before the courts.

So to my colleagues who are strong opponents of all of this, believe me, this bill is a simple matter of court reform. It will help ensure that victims of wrongdoing get fair compensation and relief, rather than a raw deal that lines the pockets of those who either allegedly represent them or those who are on the defendant side who want to avoid some of the payments they would otherwise have to make.

There are no caps in this bill. It does not impose any rigorous procedural requirements or evidentiary requirements of proof at all. In short, no citizen will in any way lose his or her right to go to court to seek redress for their grievances.

You get anecdotal stories, hearing of one case or another. This bill is about court reform, getting a system right. It is long overdue. It does not mean that every tort reform measure that comes before us ought to be supported, but on this one, those of us who worked on this believe we have done a good job. We were asked to make four improvements in this bill. We made 12 of them over a year ago.

I thank the Senator from Delaware, Mr. CARPER, Senator FEINSTEIN, Senator SCHUMER, Senator LANDRIEU, and other Members on the Democratic side who have worked on this issue to make this possible.

Again, my thanks—and it should be noted—to the distinguished Senator from Nevada, Mr. REID, and Senator FRIST, who struck a procedural agreement so the Senate could consider this bill.

The PRESIDING OFFICER. The Democratic leader.

Mr. REID. Mr. President, yesterday on the Senate floor I expressed serious concerns about this legislation that is pending before the Senate. I explained at that time that this legislation, in my opinion, is one of the most unfair, anti-consumer pieces of legislation to come before the Senate in a long time. It slams the courthouse doors on a wide range of injury plaintiffs, it turns federalism upside down by preventing State courts from hearing State law claims, and it limits corporate accountability at a time of rampant corporate scandals. Instead of turning up

the heat on corporate fraud, this bill lets corporate wrongdoers off the hook.

At the beginning of the debate yesterday, I said this is a bad piece of legislation, but there are going to be some amendments offered, amendments that will improve this bad legislation. They would have made significant improvements. But my hope of these amendments passing was very short lived. It did not happen. Over the last 2 days, the Senate has turned away each and every effort to make this bill less offensive. Every single amendment—each a message of fairness—was debated and turned down. That is a shame. Proponents of this bill explained their opposition to the common sense amendments by describing the current bill as a ''delicate compromise.'' I have heard that so many times. I spoke to Congressman SENSENBRENNER, the chairman of the Judiciary Committee in the House, who is supposedly the gatekeeper on this legislation. He said: We are going to accept legislation that is in keeping with what you did last time. Well, when he said, What you did last time, he was talking about the bill that came out of the Senate Judiciary committee and was here on the floor. These changes would not have dramatically altered that.

If you went downtown to see what K Street wanted with these amendments, of course they were against all of them because, in my opinion, this legislation slams the door on most everyone who wants to bring a case and use class action as the tool for coming to court.

The debate yesterday was characterized by two significant misunderstandings about the bill. First, proponents claimed that under this bill, class action lawsuits could stay in State courts as long as two-thirds of the plaintiffs are from a single State. Well, in fact, the bill reverses longstanding Federal court diversity rules by saying that no matter how many plaintiffs are from a single State, the case can still be removed to Federal court if the defendant corporation is incorporated in a different State. Keep in mind, of the Fortune 500 companies, 58 percent of them are incorporated in Delaware, so the majority of class action lawsuits would be removable just on that figure alone.

For example, in the State of Nevada, at the famous Yucca Mountain, the contractors were in such a rush, the Department of Energy was in such a rush to drill a hole in this mountain, they had a huge auger. The size of this auger was halfway to the top of the second story of this Chamber. It was a huge machine. It dug a hole almost as big as this Chamber—a big tool going right through that mountain. They knew they were coming to a formation there and that the toxic mineral dust from drilling the formation would cause people to get really sick with silicosis. They knew that, but they were in such a rush that they would not even wet down this big tool to prevent the dust. They drilled dry, so to speak, and this toxic dust flew all over and the workers inhaled it. And today, as we speak, people are dying as a result of that.

Well, there has been a request for the case to be considered a class action—under the old law in existence before this passes—that would allow all those workers to join together in a class action and have it certified. Even though well over two-thirds of the plaintiffs are residents of Nevada, the harm was caused in Nevada, and the defendants were obviously doing business in Nevada, a defendant incorporated in a State other than Nevada could remove the case from Nevada State court. That is how this bill works. It is just unfair.

The second mischaracterization of this legislation is that supporters make it sound as though all we are talking about is venue: These cases will simply move from State court to Federal court and proceed just the same. That is simply not true. Under Supreme Court precedents that this bill does nothing to change, Federal judges routinely dismiss class action lawsuits based on State law. Those cases that are not dismissed go to the back of a very long line in the overburdened Federal court system.

One of the foremost experts on class actions is a man who is also an expert in antitrust law. He is a professor at Harvard Law School. His name is Arthur Miller. Here is what he said:

> Federal courts have consistently denied class certification in multi-state lawsuits based on consumer as well as other state laws. . . . not a single Federal Circuit Court has granted class certification for such a lawsuit, and six Circuit Courts have expressly denied certification.

The rejection of the Feinstein-Bingaman amendment shows this bill's true colors. And I admire greatly Senator FEINSTEIN for having the courage to do the right thing and say: I have been one of the original pushers of this legislation, but what we are trying to do is unfair, and the Bingaman amendment should be adopted. She joined with him for the Feinstein-Bingaman amendment.

So, if the sponsors merely wanted federal court review of lawsuits with national implications, they would not object to an amendment making clear that federal judges may not dismiss these cases.

But without that change, the truth is plain to see: This bill is designed to bury class action lawsuits, to cut off the one means by which individual Americans ripped off by fraudulent or deceptive practices can band together to demand justice from corporate America.

What does this change mean in the real world? It means, for example, that cases like the one brought by Shaneen Wahl will not be able to go forward. Shaneen is a 55 year old woman, and she was diagnosed with breast cancer. Her health insurance company raised the rates on her insurance premiums from $194 a month to $1,800 a month—a little jump in price. She found out that her insurance company was improperly doing this for tens of thousands of other chronically ill patients. She got a lawyer, they banded together in a class action lawsuit, and they prevailed in state court. Under this legislation, the case would be dismissed.

Another breast cancer survivor also a Florida woman, is 40-year-old Susan Friedman. Susan's insurance company removed her case to federal court, where it was dismissed. She is an unlucky example of what will happen to more people under this legislation. This is the fate of many other class action lawsuits under the bill the Senate will soon pass.

Unfortunately, insurance companies are ripping people off all the time, and this legislation will give the biggest, best businesses in the world, the insurance companies, more money.

In the real world, this legislation means that when a phone company systematically bills customers for services they had cancelled or a plumbing company routinely overcharges customers by $10, those practices will not be brought to light. The dollar amounts would be too small. Why should the plumbing company get an extra $10 from everyone? I guess what this legislation means is if you cheat a lot, you can take them to court, but if you cheat just a little bit, lots and lots of times, have at it, because no one can do anything about it. This is the ''cheat a little bit'' legislation.

This legislation is not good. It will help the tobacco industry avoid accountability. It virtually guarantees that tobacco-related cases will end up in federal court where they won't be able to proceed. I had a person, Fritz Hahn, who lived on my property in Nevada to keep an eye on things. He was there for many years. He started smoking when he was a teenager. He is now dead as a result of tobacco. He smoked too much. He got throat cancer. He died a slow, terrible death. But for class action lawyers, tobacco companies would have a free rein, and they would be able to kill a lot more people like Fritz Hahn.

That is what class action is all about, joining together and going after those companies who do bad things to people. However, this legislation will make it so much more difficult. That is why numerous consumer groups, including the Campaign for Tobacco-Free Kids, the Leadership Conference on Civil Rights, the Consumers Union, the AFL–CIO, Public Citizen, and many others have urged the Senate to reject the bill.

I ask unanimous consent to print in the RECORD scores and scores of companies that support my statement against this legislation.

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

NATIONAL ORGANIZATIONS OPPOSED TO FEDERAL CLASS ACTION LEGISLATION AS OF MAY 21, 2004

AARP, ADA Watch/National Coalition for Disability Rights, AFL–CIO, Alliance for Healthy Homes, Alliance for Justice, Alliance for Retired Americans, American Association of People with Disabilities, American Association of University Women, American Cancer Society, American Heart Association, American Federation of Government Employees, American Federation of State, County and Municipal Employees, American Lung Association, American-Arab Anti-Discrimination Committee, Americans for Democratic Action, Bazelon Center for Mental Health Law, Brady Campaign to Prevent Gun Violence, United with the Million Mom March, and Campaign for Tobacco Free Kids.

Center for Disability and Health, Center for Justice and Democracy, Center for Responsible Lending, Center for Women Policy Studies, Civil Justice, Inc., Clean Water Action, Coalition to Stop Gun Violence, Commission on Social Action of Reform Judaism, Communication Workers of America, Consumer Federation of America, Consumers for Auto Reliability and Safety, Disability Rights Education and Defense Fund, Earthjustice, Education Law Center, Environmental Working Group, Epilepsy Foundation, Families USA, Federally Employed Women, Friends of the Earth, and Gray Panthers.

Greenpeace, Homeowners Against Deficient Dwellings, Jewish Labor Committee, Lawyers' Committee for Civil Rights Under Law, Leadership Conference on Civil Rights, Mexican American Legal Defense and Educational Fund, Mineral Policy Center, NAACP Legal Defense and Education Fund, National Alliance of Postal and Federal Employees, National Asian Pacific Legal Consortium, National Association for the Advancement of Colored People, National Association for Equal Opportunity in Higher Ed, National Association of Consumer Advocates, National Association of Consumer Agency Administrators, National Association of the Deaf, National Association of Protection and Advocacy Systems, National Bar Association, National Campaign for Hearing Health, National Center on Poverty Law, and National Coalition on Black Civic Participation.

National Committee on Pay Equity, National Consumer Law Center, National Consumer's Coalition, National Council of La Raza, National Employment Lawyers Association, National Fair Housing Alliance, National Gay and Lesbian Task Force, National Law Center on Homeless & Poverty, National Legal Aid and Defender Association, National Organization for Women, National Partnership for Women & Families, Natural Resources Defense Council, National Workrights Institute, National Women's Health Network, National Women's Law Center, North Carolina Justice Center, NOW Legal Defense and Education Fund, People for the American Way, Public Citizen, and Pride at Work.

Project Equality, Religious Coalition for Reproductive Choice, Sargent Shriver National Center on Poverty Law, Service Employees International Union, Sierra Club, Tobacco Control Resource Center, Tobacco Products Liability Project, UNITE!, United Food and Commercial Workers International Union, United Steelworkers of America, USAction, U.S. Public Interest Research Group, Violence Policy Center, and Women Employed.

GOVERNMENT ORGANIZATIONS OPPOSED TO CLASS-ACTION LEGISLATION

Conference of Chief Justices (State Supreme Court Justices), Judicial Conference of the United States (Federal Judges Association), Attorney General of California, Bill Lockyer, Attorney General of Illinois, Lisa Madigan, Attorney General of Maryland, J. Joseph Curran, Jr., and Attorney General of Minnesota, Mike Hatch.

Attorney General of Missouri, Jeremiah W. Nixon, Attorney General of Montana, Mike McGrath, Attorney General of New Mexico, Patricia A. Madrid, Attorney General of New York, Eliot Spitzer, Attorney General of Oklahoma, W.A. Drew Edmondson, Attorney General of Vermont, William H. Sorrell, and Attorney General of West Virginia, Darrell Vivian McGraw, Jr.

Mr. REID. Organizations are against it. State court judges, Federal judges, many state Attorneys General, and the National Conference of State Legislators are against it. Officials in our home States are telling us not to do this. The only groups that want us to pass this bill are those representing defendants in these lawsuits. Sure, they want to be relieved of the burden of accountability. We shouldn't let them. This is not just a battle between big business and lawyers. It is more. It is certainly more anti-lawyer than I would like to think. But that is what we hear coming from the White House.

At a meeting in Las Vegas, the President said: The most hurtful thing in the American economy today is lawyers. I don't believe that, as indicated by the instances I gave about tobacco. Sure there are bad lawyers who bring meritless cases, and there should be something we do to crack down on them. But this bill is not about punishing bad lawyers. More fundamentally this bill is about limiting access to civil courts and hurting consumers.

One of the grievances that inspired our Founding Fathers to revolt against King George was they couldn't bring their grievances to a body.

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

Mr. REID. What time is that? I will use leader time.

The PRESIDING OFFICER. The Senator had 10 minutes.

Mr. REID. I thank the Chair.

As I was saying, one of the grievances that inspired our Founding Fathers to revolt against King George was limited access to the civil courts. That was based on the rights secured in the year 1215, when King John signed the Magna Carta. King John couldn't sign his name, so he put an X. From that day forward, one of the things that was brought over the ocean and is now in our common law, when the Founding Fathers developed our country, is that you bring to court your grievances. They had a jury that could sit down and talk about what was good and bad about your case. Access to the courts is a basic right in our democracy, and after today it will be a diminished right.

These rights are being denigrated, taken away from us with this legislation. It is too bad. A basic right that has been in existence since we have been a country, they are chipping away at.

I am going to vote against this ill-considered bill. I recognize it is going to pass. I think that is too bad. I can say this without any question: Downtown beat us. There is no question about that.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. FRIST. Mr. President, in a few minutes we will be voting on the Class Action Fairness Act. We have before us truly a bipartisan bill that was introduced with 32 cosponsors, 24 Republicans and 8 Democrats. It was voted out of the Judiciary Committee on a strong bipartisan vote. Every vote on every amendment that has been offered has been bipartisan, if we look at the vote tallies. I do anticipate that in a few minutes our vote on final passage will be strongly bipartisan as well.

There are a few misconceptions about the bill that I would like to definitively dispel in these final moments. This bill does not close the courthouse doors to injured or aggrieved plaintiffs. It does not. This is court reform. It is designed to rein in lawsuit abuses, and it does just that. The plaintiff may end up in Federal court, yes, rather than State court, but no citizen will lose his or her right to bring a case—no citizen. In fact, the Class Action Fairness Act will protect plaintiffs in large interstate class action cases. No longer will predatory lawyers be able to negotiate deals that leave their clients with coupons while they take home millions. Plaintiffs will now be covered by a consumer bill of rights for the first time, a consumer bill of rights that will require lawyer's fees for coupon settlements to be based either on the value of the coupons that are actually redeemed or on the hours actually billed.

Take the case such as the one in my home State of Tennessee involving a Memphis car dealer. It was discovered that a dealership was instructing its employees to cheat car purchasers by as much as $2,000. Numerous residents were affected so a class action suit was filed. The suit was eventually settled, and the plaintiffs received a coupon for $1,200, but that coupon could only be used if they went back to the same dealer who had cheated them in the first place and bought another car. Meanwhile, the trial attorneys who settled the suit received $1.3 million in legal fees. A number of customers were understandably upset that in order to receive any financial benefit, they would have to take that coupon and go back to the very same dealer, while at the same time the lawyers were able to take their money and put it right into their pockets. The legislation before us today will put a stop to such unfair practices.

Second, the class action bill will help end the phenomenon that we all recognize known as forum shopping. Aggressive trial lawyers have found that a few counties are lawsuit friendly, and in these select State courts, judges are quick to certify a class action and juries are known to grant extravagant damage awards. Meanwhile, this same defendant can face copycat cases all

across the country, each jury granting a different result. These counties may have little or no geographic relationship to either the plaintiff or to the defendant, but the trial lawyers know that simply the threat of suing in these particular counties can lead to huge, extravagant cash settlements. One study estimates that virtually every sector of the U.S. economy is on trial in only three State courts.

The Class Action Fairness Act moves those large nationwide cases that genuinely impact interstate commerce to the Federal courts where they belong. The Class Action Fairness Act is a good bill. It is a fair bill. It is a significant first step in putting an end to the lawsuit abuses that undermine our legal system.

I commend my colleagues for their hard work. I thank, in particular, Senator GRASSLEY, the bill's lead sponsor, who has been working on this issue for a decade; Senator SPECTER, for leading the bill expeditiously through the Judiciary Committee and on to the floor; Senator HATCH, who has been a tireless advocate for legal reform and class action reform and has helped to manage this bill on the floor; Senator CORNYN, who has been tireless in his presence and participation on this class action bill over the last several days; the bill's Democratic supporters, especially Senator KOHL, Senator DODD, Senator CARPER, Senator BEN NELSON; all have worked and reached across the aisle despite great pressure from the bill's opponents, and for that I thank them.

Finally, I thank the Democratic leader, HARRY REID, for working on a process. We just heard him speaking on the floor against the bill. In spite of that personal feeling toward this bill, he has worked in a real leadership manner—working with us to deal with the bill in a timely and expeditious manner on the floor.

The American people expect and deserve a government that works and leaders who work together. I think they have seen it play out very well on this bill. They did elect us to govern toward meaningful solutions. The bill, I believe, demonstrates we are accomplishing just that. We are meeting the challenge and we are moving America forward. I look forward to quick passage of the bill in the House and being able to send it to the President's desk.

Mr. President, we will vote very shortly. So that Members can plan on their schedules, this upcoming vote on final passage of the class action fairness bill will be the last vote of the evening.

Following this vote, we will have a few Members making statements. We will remain in session for a short period today. The Senate will not be in session tomorrow and we will reconvene on Monday.

On Monday, the plans are to begin debate on the nomination of Michael Chertoff to be Secretary of Homeland Security. At closing today, we will reach an agreement that will provide for debate on the Chertoff nomination during Monday's session, with a vote to occur on that nomination on Tuesday.

Therefore, I am prepared to announce we will not have any votes on Monday. I will have more to say about the precise timing of the debate and vote later today when we wrap up our business. Once again, I thank all Members for their cooperation and assistance throughout the debate on the class action bill. I believe we are ready for final passage.

Mr. President, I ask for the yeas and nays on the bill.

The PRESIDING OFFICER (Mr. COLEMAN). Is there a sufficient second? There is a sufficient second.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Pennsylvania (Mr. SANTORUM) and the Senator from New Hampshire (Mr. SUNUNU).

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

The result was announced—yeas 72, nays 26, as follows:

[Rollcall Vote No. 9 Leg.]

YEAS—72

Alexander	DeWine	Lugar
Allard	Dodd	Martinez
Allen	Dole	McCain
Bayh	Domenici	McConnell
Bennett	Ensign	Murkowski
Bingaman	Enzi	Nelson (NE)
Bond	Feinstein	Obama
Brownback	Frist	Reed
Bunning	Graham	Roberts
Burns	Grassley	Rockefeller
Burr	Gregg	Salazar
Cantwell	Hagel	Schumer
Carper	Hatch	Sessions
Chafee	Hutchison	Shelby
Chambliss	Inhofe	Smith
Coburn	Isakson	Snowe
Cochran	Jeffords	Specter
Coleman	Johnson	Stevens
Collins	Kohl	Talent
Conrad	Kyl	Thomas
Cornyn	Landrieu	Thune
Craig	Lieberman	Vitter
Crapo	Lincoln	Voinovich
DeMint	Lott	Warner

NAYS—26

Akaka	Durbin	Mikulski
Baucus	Feingold	Murray
Biden	Harkin	Nelson (FL)
Boxer	Inouye	Pryor
Byrd	Kennedy	Reid
Clinton	Kerry	Sarbanes
Corzine	Lautenberg	Stabenow
Dayton	Leahy	Wyden
Dorgan	Levin	

NOT VOTING—2

Santorum	Sununu

The bill (S. 5) was passed, as follows:

S. 5

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; REFERENCE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Class Action Fairness Act of 2005''.

(b) REFERENCE.—Whenever in this Act reference is made to 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 title 28, United States Code.

(c) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) Class action lawsuits are an important and valuable part of the legal system when they permit the fair and efficient resolution of legitimate claims of numerous parties by allowing the claims to be aggregated into a single action against a defendant that has allegedly caused harm.

(2) Over the past decade, there have been abuses of the class action device that have—

(A) harmed class members with legitimate claims and defendants that have acted responsibly;

(B) adversely affected interstate commerce; and

(C) undermined public respect for our judicial system.

(3) Class members often receive little or no benefit from class actions, and are sometimes harmed, such as where—

(A) counsel are awarded large fees, while leaving class members with coupons or other awards of little or no value;

(B) unjustified awards are made to certain plaintiffs at the expense of other class members; and

(C) confusing notices are published that prevent class members from being able to fully understand and effectively exercise their rights.

(4) Abuses in class actions undermine the national judicial system, the free flow of interstate commerce, and the concept of diversity jurisdiction as intended by the framers of the United States Constitution, in that State and local courts are—

(A) keeping cases of national importance out of Federal court;

(B) sometimes acting in ways that demonstrate bias against out-of-State defendants; and

(C) making judgments that impose their view of the law on other States and bind the rights of the residents of those States.

(b) PURPOSES.—The purposes of this Act are to—

(1) assure fair and prompt recoveries for class members with legitimate claims;

(2) restore the intent of the framers of the United States Constitution by providing for Federal court consideration of interstate cases of national importance under diversity jurisdiction; and

(3) benefit society by encouraging innovation and lowering consumer prices.

SEC. 3. CONSUMER CLASS ACTION BILL OF RIGHTS AND IMPROVED PROCEDURES FOR INTERSTATE CLASS ACTIONS.

(a) IN GENERAL.—Part V is amended by inserting after chapter 113 the following:

"CHAPTER 114—CLASS ACTIONS

"§ 1711. Definitions

''In this chapter:

''(1) CLASS.—The term 'class' means all of the class members in a class action.

''(2) CLASS ACTION.—The term 'class action' means any civil action filed in a district court of the United States under rule 23 of the Federal Rules of Civil Procedure or any civil action that is removed to a district court of the United States that was originally filed under a State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representatives as a class action.

''(3) CLASS COUNSEL.—The term 'class counsel' means the persons who serve as the attorneys for the class members in a proposed or certified class action.

''(4) CLASS MEMBERS.—The term 'class members' means the persons (named or unnamed) who fall within the definition of the proposed or certified class in a class action.

''(5) PLAINTIFF CLASS ACTION.—The term 'plaintiff class action' means a class action in which class members are plaintiffs.

''(6) PROPOSED SETTLEMENT.—The term 'proposed settlement' means an agreement regarding a class action that is subject to court approval and that, if approved, would be binding on some or all class members.

"§ 1712. Coupon settlements

''(a) CONTINGENT FEES IN COUPON SETTLEMENTS.—If a proposed settlement in a class action provides for a recovery of coupons to a class member, the portion of any attorney's fee award to class counsel that is attributable to the award of the coupons shall be based on the value to class members of the coupons that are redeemed.

''(b) OTHER ATTORNEY'S FEE AWARDS IN COUPON SETTLEMENTS.—

''(1) IN GENERAL.—If a proposed settlement in a class action provides for a recovery of coupons to class members, and a portion of the recovery of the coupons is not used to determine the attorney's fee to be paid to class counsel, any attorney's fee award shall be based upon the amount of time class counsel reasonably expended working on the action.

''(2) COURT APPROVAL.—Any attorney's fee under this subsection shall be subject to approval by the court and shall include an appropriate attorney's fee, if any, for obtaining equitable relief, including an injunction, if applicable. Nothing in this subsection shall be construed to prohibit application of a lodestar with a multiplier method of determining attorney's fees.

''(c) ATTORNEY'S FEE AWARDS CALCULATED ON A MIXED BASIS IN COUPON SETTLEMENTS.—If a proposed settlement in a class action provides for an award of coupons to class members and also provides for equitable relief, including injunctive relief—

''(1) that portion of the attorney's fee to be paid to class counsel that is based upon a portion of the recovery of the coupons shall be calculated in accordance with subsection (a); and

''(2) that portion of the attorney's fee to be paid to class counsel that is not based upon a portion of the recovery of the coupons shall be calculated in accordance with subsection (b).

''(d) SETTLEMENT VALUATION EXPERTISE.—In a class action involving the awarding of coupons, the court may, in its discretion upon the motion of a party, receive expert testimony from a witness qualified to provide information on the actual value to the class members of the coupons that are redeemed.

''(e) JUDICIAL SCRUTINY OF COUPON SETTLEMENTS.—In a proposed settlement under which class members would be awarded coupons, the court may approve the proposed settlement only after a hearing to determine whether, and making a written finding that, the settlement is fair, reasonable, and adequate for class members. The court, in its discretion, may also require that a proposed settlement agreement provide for the distribution of a portion of the value of unclaimed coupons to 1 or more charitable or governmental organizations, as agreed to by the parties. The distribution and redemption of any proceeds under this subsection shall not be used to calculate attorneys' fees under this section.

"§ 1713. Protection against loss by class members

''The court may approve a proposed settlement under which any class member is obligated to pay sums to class counsel that would result in a net loss to the class member only if the court makes a written finding that nonmonetary benefits to the class member substantially outweigh the monetary loss.

"§ 1714. Protection against discrimination based on geographic location

''The court may not approve a proposed settlement that provides for the payment of greater sums to some class members than to others solely on the basis that the class members to whom the greater sums are to be paid are located in closer geographic proximity to the court.

"§ 1715. Notifications to appropriate Federal and State officials

''(a) DEFINITIONS.—

''(1) APPROPRIATE FEDERAL OFFICIAL.—In this section, the term 'appropriate Federal official' means—

''(A) the Attorney General of the United States; or

''(B) in any case in which the defendant is a Federal depository institution, a State depository institution, a depository institution holding company, a foreign bank, or a nondepository institution subsidiary of the foregoing (as such terms are defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), the person who has the primary Federal regulatory or supervisory responsibility with respect to the defendant, if some or all of the matters alleged in the class action are subject to regulation or supervision by that person.

''(2) APPROPRIATE STATE OFFICIAL.—In this section, the term 'appropriate State official' means the person in the State who has the primary regulatory or supervisory responsibility with respect to the defendant, or who licenses or otherwise authorizes the defendant to conduct business in the State, if some or all of the matters alleged in the class action are subject to regulation by that person. If there is no primary regulator, supervisor, or licensing authority, or the matters alleged in the class action are not subject to regulation or supervision by that person, then the appropriate State official shall be the State attorney general.

''(b) IN GENERAL.—Not later than 10 days after a proposed settlement of a class action is filed in court, each defendant that is participating in the proposed settlement shall serve upon the appropriate State official of each State in which a class member resides and the appropriate Federal official, a notice of the proposed settlement consisting of—

''(1) a copy of the complaint and any materials filed with the complaint and any amended complaints (except such materials shall not be required to be served if such materials are made electronically available through the Internet and such service includes notice of how to electronically access such material);

''(2) notice of any scheduled judicial hearing in the class action;

''(3) any proposed or final notification to class members of—

''(A)(i) the members' rights to request exclusion from the class action; or

''(ii) if no right to request exclusion exists, a statement that no such right exists; and

''(B) a proposed settlement of a class action;

''(4) any proposed or final class action settlement;

''(5) any settlement or other agreement contemporaneously made between class counsel and counsel for the defendants;

''(6) any final judgment or notice of dismissal;

''(7)(A) if feasible, the names of class members who reside in each State and the estimated proportionate share of the claims of such members to the entire settlement to that State's appropriate State official; or

''(B) if the provision of information under subparagraph (A) is not feasible, a reasonable estimate of the number of class members residing in each State and the estimated proportionate share of the claims of such members to the entire settlement; and

''(8) any written judicial opinion relating to the materials described under subparagraphs (3) through (6).

''(c) DEPOSITORY INSTITUTIONS NOTIFICATION.—

''(1) FEDERAL AND OTHER DEPOSITORY INSTITUTIONS.—In any case in which the defendant is a Federal depository institution, a depository institution holding company, a foreign bank, or a non-depository institution subsidiary of the foregoing, the notice requirements of this section are satisfied by serving the notice required under subsection (b) upon the person who has the primary Federal regulatory or supervisory responsibility with respect to the defendant, if some or all of the matters alleged in the class action are subject to regulation or supervision by that person.

''(2) STATE DEPOSITORY INSTITUTIONS.—In any case in which the defendant is a State depository institution (as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)), the notice requirements of this section are satisfied by serving the notice required under subsection (b) upon the State bank supervisor (as that term is defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813)) of the State in which the defendant is incorporated or chartered, if some or all of the matters alleged in the class action are subject to regulation or supervision by that person, and upon the appropriate Federal official.

''(d) FINAL APPROVAL.—An order giving final approval of a proposed settlement may not be issued earlier than 90 days after the later of the dates on which the appropriate Federal official and the appropriate State official are served with the notice required under subsection (b).

''(e) NONCOMPLIANCE IF NOTICE NOT PROVIDED.—

''(1) IN GENERAL.—A class member may refuse to comply with and may choose not to be bound by a settlement agreement or consent decree in a class action if the class

member demonstrates that the notice required under subsection (b) has not been provided.

''(2) LIMITATION.—A class member may not refuse to comply with or to be bound by a settlement agreement or consent decree under paragraph (1) if the notice required under subsection (b) was directed to the appropriate Federal official and to either the State attorney general or the person that has primary regulatory, supervisory, or licensing authority over the defendant.

''(3) APPLICATION OF RIGHTS.—The rights created by this subsection shall apply only to class members or any person acting on a class member's behalf, and shall not be construed to limit any other rights affecting a class member's participation in the settlement.

''(f) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to expand the authority of, or impose any obligations, duties, or responsibilities upon, Federal or State officials.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of chapters for part V is amended by inserting after the item relating to chapter 113 the following:

''114. Class Actions ..... 1711''.

SEC. 4. FEDERAL DISTRICT COURT JURISDICTION FOR INTERSTATE CLASS ACTIONS.

(a) APPLICATION OF FEDERAL DIVERSITY JURISDICTION.—Section 1332 is amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following:

''(d)(1) In this subsection—

''(A) the term 'class' means all of the class members in a class action;

''(B) the term 'class action' means any civil action filed under rule 23 of the Federal Rules of Civil Procedure or similar State statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action;

''(C) the term 'class certification order' means an order issued by a court approving the treatment of some or all aspects of a civil action as a class action; and

''(D) the term 'class members' means the persons (named or unnamed) who fall within the definition of the proposed or certified class in a class action.

''(2) The district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs, and is a class action in which—

''(A) any member of a class of plaintiffs is a citizen of a State different from any defendant;

''(B) any member of a class of plaintiffs is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a State; or

''(C) any member of a class of plaintiffs is a citizen of a State and any defendant is a foreign state or a citizen or subject of a foreign state.

''(3) A district court may, in the interests of justice and looking at the totality of the circumstances, decline to exercise jurisdiction under paragraph (2) over a class action in which greater than one-third but less than two-thirds of the members of all proposed plaintiff classes in the aggregate and the primary defendants are citizens of the State in which the action was originally filed based on consideration of—

''(A) whether the claims asserted involve matters of national or interstate interest;

''(B) whether the claims asserted will be governed by laws of the State in which the action was originally filed or by the laws of other States;

''(C) whether the class action has been pleaded in a manner that seeks to avoid Federal jurisdiction;

''(D) whether the action was brought in a forum with a distinct nexus with the class members, the alleged harm, or the defendants;

''(E) whether the number of citizens of the State in which the action was originally filed in all proposed plaintiff classes in the aggregate is substantially larger than the number of citizens from any other State, and the citizenship of the other members of the proposed class is dispersed among a substantial number of States; and

''(F) whether, during the 3-year period preceding the filing of that class action, 1 or more other class actions asserting the same or similar claims on behalf of the same or other persons have been filed.

''(4) A district court shall decline to exercise jurisdiction under paragraph (2)—

''(A)(i) over a class action in which—

''(I) greater than two-thirds of the members of all proposed plaintiff classes in the aggregate are citizens of the State in which the action was originally filed;

''(II) at least 1 defendant is a defendant—

''(aa) from whom significant relief is sought by members of the plaintiff class;

''(bb) whose alleged conduct forms a significant basis for the claims asserted by the proposed plaintiff class; and

''(cc) who is a citizen of the State in which the action was originally filed; and

''(III) principal injuries resulting from the alleged conduct or any related conduct of each defendant were incurred in the State in which the action was originally filed; and

''(ii) during the 3-year period preceding the filing of that class action, no other class action has been filed asserting the same or similar factual allegations against any of the defendants on behalf of the same or other persons; or

''(B) two-thirds or more of the members of all proposed plaintiff classes in the aggregate, and the primary defendants, are citizens of the State in which the action was originally filed.

''(5) Paragraphs (2) through (4) shall not apply to any class action in which—

''(A) the primary defendants are States, State officials, or other governmental entities against whom the district court may be foreclosed from ordering relief; or

''(B) the number of members of all proposed plaintiff classes in the aggregate is less than 100.

''(6) In any class action, the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs.

''(7) Citizenship of the members of the proposed plaintiff classes shall be determined for purposes of paragraphs (2) through (6) as of the date of filing of the complaint or amended complaint, or, if the case stated by the initial pleading is not subject to Federal jurisdiction, as of the date of service by plaintiffs of an amended pleading, motion, or other paper, indicating the existence of Federal jurisdiction.

''(8) This subsection shall apply to any class action before or after the entry of a class certification order by the court with respect to that action.

''(9) Paragraph (2) shall not apply to any class action that solely involves a claim—

''(A) concerning a covered security as defined under 16(f)(3) of the Securities Act of 1933 (15 U.S.C. 78p(f)(3)) and section 28(f)(5)(E) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(f)(5)(E));

''(B) that relates to the internal affairs or governance of a corporation or other form of business enterprise and that arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or

''(C) that relates to the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1)) and the regulations issued thereunder).

''(10) For purposes of this subsection and section 1453, an unincorporated association shall be deemed to be a citizen of the State where it has its principal place of business and the State under whose laws it is organized.

''(11)(A) For purposes of this subsection and section 1453, a mass action shall be deemed to be a class action removable under paragraphs (2) through (10) if it otherwise meets the provisions of those paragraphs.

''(B)(i) As used in subparagraph (A), the term 'mass action' means any civil action (except a civil action within the scope of section 1711(2)) in which monetary relief claims of 100 or more persons are proposed to be tried jointly on the ground that the plaintiffs' claims involve common questions of law or fact, except that jurisdiction shall exist only over those plaintiffs whose claims in a mass action satisfy the jurisdictional amount requirements under subsection (a).

''(ii) As used in subparagraph (A), the term 'mass action' shall not include any civil action in which—

''(I) all of the claims in the action arise from an event or occurrence in the State in which the action was filed, and that allegedly resulted in injuries in that State or in States contiguous to that State;

''(II) the claims are joined upon motion of a defendant;

''(III) all of the claims in the action are asserted on behalf of the general public (and not on behalf of individual claimants or members of a purported class) pursuant to a State statute specifically authorizing such action; or

''(IV) the claims have been consolidated or coordinated solely for pretrial proceedings.

''(C)(i) Any action(s) removed to Federal court pursuant to this subsection shall not thereafter be transferred to any other court pursuant to section 1407, or the rules promulgated thereunder, unless a majority of the plaintiffs in the action request transfer pursuant to section 1407.

''(ii) This subparagraph will not apply—

''(I) to cases certified pursuant to rule 23 of the Federal Rules of Civil Procedure; or

''(II) if plaintiffs propose that the action proceed as a class action pursuant to rule 23 of the Federal Rules of Civil Procedure.

''(D) The limitations periods on any claims asserted in a mass action that is removed to Federal court pursuant to this subsection shall be deemed tolled during the period that the action is pending in Federal court.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 1335(a)(1) is amended by inserting ''subsection (a) or (d) of'' before ''section 1332''.

(2) Section 1603(b)(3) is amended by striking ''(d)'' and inserting ''(e)''.

SEC. 5. REMOVAL OF INTERSTATE CLASS ACTIONS TO FEDERAL DISTRICT COURT.

(a) IN GENERAL.—Chapter 89 is amended by adding after section 1452 the following:

''§ 1453. Removal of class actions

''(a) DEFINITIONS.—In this section, the terms 'class', 'class action', 'class certification order', and 'class member' shall have the meanings given such terms under section 1332(d)(1).

''(b) IN GENERAL.—A class action may be removed to a district court of the United States in accordance with section 1446 (except that the 1-year limitation under section

1446(b) shall not apply), without regard to whether any defendant is a citizen of the State in which the action is brought, except that such action may be removed by any defendant without the consent of all defendants.

''(c) REVIEW OF REMAND ORDERS.—

''(1) IN GENERAL.—Section 1447 shall apply to any removal of a case under this section, except that notwithstanding section 1447(d), a court of appeals may accept an appeal from an order of a district court granting or denying a motion to remand a class action to the State court from which it was removed if application is made to the court of appeals not less than 7 days after entry of the order.

''(2) TIME PERIOD FOR JUDGMENT.—If the court of appeals accepts an appeal under paragraph (1), the court shall complete all action on such appeal, including rendering judgment, not later than 60 days after the date on which such appeal was filed, unless an extension is granted under paragraph (3).

''(3) EXTENSION OF TIME PERIOD.—The court of appeals may grant an extension of the 60-day period described in paragraph (2) if—

''(A) all parties to the proceeding agree to such extension, for any period of time; or

''(B) such extension is for good cause shown and in the interests of justice, for a period not to exceed 10 days.

''(4) DENIAL OF APPEAL.—If a final judgment on the appeal under paragraph (1) is not issued before the end of the period described in paragraph (2), including any extension under paragraph (3), the appeal shall be denied.

''(d) EXCEPTION.—This section shall not apply to any class action that solely involves—

''(1) a claim concerning a covered security as defined under section 16(f)(3) of the Securities Act of 1933 (15 U.S.C. 78p(f)(3)) and section 28(f)(5)(E) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(f)(5)(E));

''(2) a claim that relates to the internal affairs or governance of a corporation or other form of business enterprise and arises under or by virtue of the laws of the State in which such corporation or business enterprise is incorporated or organized; or

''(3) a claim that relates to the rights, duties (including fiduciary duties), and obligations relating to or created by or pursuant to any security (as defined under section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1)) and the regulations issued thereunder).''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—The table of sections for chapter 89 is amended by adding after the item relating to section 1452 the following:

''1453. Removal of class actions.''.

SEC. 6. REPORT ON CLASS ACTION SETTLEMENTS.

(a) IN GENERAL.—Not later than 12 months after the date of enactment of this Act, the Judicial Conference of the United States, with the assistance of the Director of the Federal Judicial Center and the Director of the Administrative Office of the United States Courts, shall prepare and transmit to the Committees on the Judiciary of the Senate and the House of Representatives a report on class action settlements.

(b) CONTENT.—The report under subsection (a) shall contain—

(1) recommendations on the best practices that courts can use to ensure that proposed class action settlements are fair to the class members that the settlements are supposed to benefit;

(2) recommendations on the best practices that courts can use to ensure that—

(A) the fees and expenses awarded to counsel in connection with a class action settlement appropriately reflect the extent to which counsel succeeded in obtaining full redress for the injuries alleged and the time, expense, and risk that counsel devoted to the litigation; and

(B) the class members on whose behalf the settlement is proposed are the primary beneficiaries of the settlement; and

(3) the actions that the Judicial Conference of the United States has taken and intends to take toward having the Federal judiciary implement any or all of the recommendations contained in the report.

(c) AUTHORITY OF FEDERAL COURTS.—Nothing in this section shall be construed to alter the authority of the Federal courts to supervise attorneys' fees.

SEC. 7. ENACTMENT OF JUDICIAL CONFERENCE RECOMMENDATIONS.

Notwithstanding any other provision of law, the amendments to rule 23 of the Federal Rules of Civil Procedure, which are set forth in the order entered by the Supreme Court of the United States on March 27, 2003, shall take effect on the date of enactment of this Act or on December 1, 2003 (as specified in that order), whichever occurs first.

SEC. 8. RULEMAKING AUTHORITY OF SUPREME COURT AND JUDICIAL CONFERENCE.

Nothing in this Act shall restrict in any way the authority of the Judicial Conference and the Supreme Court to propose and prescribe general rules of practice and procedure under chapter 131 of title 28, United States Code.

SEC. 9. EFFECTIVE DATE.

The amendments made by this Act shall apply to any civil action commenced on or after the date of enactment of this Act.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Mr. President, I move to reconsider the vote and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MORNING BUSINESS

Mr. LOTT. Mr. President, I ask unanimous consent there now be a period of morning business with Senators permitted to speak for up to 10 minutes each.

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

The Senator from Oregon.

MEDICARE PRESCRIPTION DRUG BENEFIT

Mr. WYDEN. Mr. President, the staggering cost estimates for the Medicare prescription drug benefit, coupled with the small number of seniors who have signed up so far, has threatened the very survival of this program. I do not want to see that happen, having voted for this program. I want to see the Senate take the steps to ensure that it works; that it delivers medicine to our seniors in a cost-effective way, and ensures that it reaches the hopes and expectations that millions of older people and their families have for this program.

The fact is, the Medicare prescription drug program now faces two very serious problems. The first is the skyrocketing cost. These are the costs we have been debating throughout the week, that have been far greater than anyone could have predicted.

A second problem may also herald very big concerns. To date, a small number of older people have signed up for the first part of the drug benefit, the drug card. So what you have is a pretty combustible mix. The combination of escalating costs and a skimpy number of older people signing up thus far raises the very real problem that a huge amount of Government money will be spent on a very small number of people. That is a prescription for a program that cannot survive.

I do not want to see that happen. As someone who voted for this program and worked with colleagues on both sides of the aisle to make this program work to meet the urgent needs of the Nation's older people, I think the Senate ought to be taking corrective action and take corrective action now, in order to deal with what I think are looming problems.

As I said, we learned a bit about the escalating costs of the program. But when you couple that with low levels of participation by older people, that is particularly troublesome. I think it is fair to say, if the drug card debacle—the first part of the program and the small number of older people signing up for the drug card continues into the full benefit phase of the program, what you have is a situation where I believe people are going to say this program cannot be justified at a time of scarce Government resources.

To turn for a moment to the drug card part of the program that I don't think has been discussed much lately, the choices are eye-glazing. There are more than 70 cards available; 39 you can get in any part of the country, the other 30-plus you can get only in some States. The Inspector General of the Department of Health and Human Services reported in an informal survey that the program information was confusing and inadequate.

What makes it amazing is that a lot of folks who were looking at it are people who were relatives of HHS employees. So you have a situation where even folks connected with those who would know a fair amount about this program are having difficulty sorting through it.

I have come to the floor today to try to sound a wake-up call, to say those of us who voted for the program, like myself, and those who opposed it, we ought to be working together on a bipartisan basis now to correct it. The first part of that effort should be to put in place sensible cost containment like we see in the private sector. It is incomprehensible to me that this program is not using the kind of cost containment strategies that you see in Minnesota and Oregon and all across the country.

The Medicare Program is pretty much like a fellow standing in the Price Club who buys one roll of toilet paper at a time. They are not shopping in a smart way. They are not using their purchasing power. I and Senator SNOWE have sought to correct that and

to take steps to use sensible cost containment strategies and ensure that the costs of this program are held down.

Second, I think we need to take steps to make sure that some of the mistakes of the past are avoided. CMS, the agency charged with dealing with this program, needs people with expertise to answer the questions of seniors and family members. There needs to be better information, on the net and elsewhere, that is not incomprehensible gobbledygook. Seniors are going to need information about real savings for each plan. Pie-in-the-sky projections, which is what they have gotten thus far, are not going to cut it. That is what we saw this week with respect to these cost estimates. Suffice it to say, the U.S. Congress is not satisfied.

I believe without effective cost containment and without good administration of the program, particularly as it moves into this next stage, we are going to see the bills continue to run up and we are going to see the participation of seniors continue to run down. That is a prescription for a Government program that cannot survive. I do not want to see that.

I stuck my neck out in order to get that legislation passed. I believe it can survive. Congress needs to hustle, now, to mend it, to mend it with sensible bipartisan cost containment along the lines of what is used in the private sector; mend it with changes in the way the program is administered so it goes into the second phase without some of the problems we saw connected with the drug card. I just hope, as a result of what the Congress has learned this week, that there has been a real wakeup call as to how urgent it is that Congress take these corrective steps and that Congress move quickly. I believe this program now, because of the huge new cost estimates and the problems with getting folks signed up, could well be headed for life support.

I don't want to see that. I think it would be a tragedy. I want the program that I voted for to work. That means it has to be supplemented with good cost containment and improvements in the way it is administered. I intend to work with my colleagues, particularly on the other side of the aisle—Senator SNOWE and Senator MCCAIN, who joined me in this legislation—to deal with the cost containment features, plus many colleagues on this side of the aisle who have bills of their own.

I yield the floor.

The PRESIDING OFFICER. The Senator from Florida.

Mr. NELSON of Florida. Mr. President, my comments will come, appropriately, after the distinguished Senator from Oregon, about this program that was enacted a couple of years ago, the so-called providing prescription drugs for senior citizens. There are a number of Senators here who were promised, in order to get their votes, that this program would not cost more than $400 billion over a 10-year period. Of course, we know now that the result of the most recent studies is that it is not $400 billion, it is $720 billion. How many more cost estimates will go up and up?

There is one thing we can do to this legislation, legislation that this Senator didn't vote for because I thought it was quite flawed—not only the true costs, which we were not given, but the fact that we are not allowing the principle of private enterprise to function. There is a provision in the bill that specifically prohibits the Federal Government, through Medicare, from negotiating bulk rate purchases, thus bringing the cost of the prescription drugs down.

All of our colleagues embrace the private marketplace. Free market competition is where you can get the most efficient products at the least cost.

Why wasn't that same principle of free market competition allowed to work here in the purchase of prescription drugs for Medicare recipients? It is certainly not new to the Federal Government. We have done this for almost 20 years in the Veterans' Administration—for the VA contracts for the purchase of prescription drugs in bulk and, therefore, the cost of the drugs to the Veterans' Administration is considerably less than retail price.

If it is good for the Department of Veterans Affairs, why isn't it good for the rest of the Federal Government and for Medicare to do it? But we were not allowed to because the law specifically says we are going to violate the principle of free market enterprise, and you can't negotiate the price of the prescription drugs down. It seems to me that not only violates the principle, it violates good common sense.

Now what do we do? The news has come out. No, the bill isn't going to cost what was promised, $400 billion over 10 years; it is going to cost a minimum of $720 billion over 10 years. We had better be minding our Ps and Qs or else we are going to continue to bankrupt this country by using faulty mathematics.

I yield the floor.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I ask unanimous consent to speak in morning business for as much time as I consume.

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

(The remarks of Mr. DORGAN pertaining to the introduction of S. 355 are printed in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

PHARMACEUTICAL MARKET ACCESS

Mr. DORGAN. Mr. President, yesterday I and 28 of my Senate colleagues introduced legislation allowing the reimportation of FDA-approved prescription drugs from Canada and other countries. We have introduced legislation of this type before, but we have been blocked from consideration in the Senate. We do not intend to be blocked this year. We intend to get the Senate on record. We believe there are sufficient votes in the Senate to pass a bill dealing with the reimportation of prescription drugs. We very much hope we can get a bill to the President and have that legislation signed.

The 29 Senators who have reached agreement on this represent a broad bipartisan consensus in the Senate. That bipartisan group includes Senator SNOWE, Senator GRASSLEY, Senator KENNEDY, Senator MCCAIN, Senator LOTT, Senator STABENOW, and many others—a broad group of Republicans and Democrats joining together to try to put downward pressure on prescription drug prices.

Let me show two pill bottles in the Senate. These bottles held the drug called Lipitor, one of the most popular cholesterol-lowering drugs in America. Obviously, the Lipitor tablets that went into these two bottles are made by the same company. In each bottle, it is the same FDA-approved tablet, made by the same company in the same plant and put in the same pill bottle. The only difference is price. This bottle was sent to a Canadian pharmacy that paid $1.01 per tablet; this one was sent to the United States pharmacy that paid $1.81 per tablet.

Why are the Americans charged nearly double for the same pill, put in the same bottle, made by the same company? Because the company can and does call the shots. We do have price controls on prescription drugs in this country: it is the pharmaceutical industry that is controlling prices, and they have decided that the U.S. consumers should pay the highest prices in the world for prescription medicines.

Many of us believe that should not be the case. Miracle drugs offer no miracles to those who cannot afford them. We have so many senior citizens living on fixed incomes in this country who need prescription drugs. Senior citizens are 12 percent of this country's population. Yet they consume over one-third of all the prescription drugs in our country. That is why this issue is so important.

The reimportation legislation we have introduced is again a broad bipartisan agreement between Republicans and Democrats, one we intend to push to a vote. We believe it is finally time that we have a vote in the House and the Senate and get a bill to the President. We understand the President has not supported this. We understand the Food and Drug Administration has been very strong and assertive in saying there are safety issues with this legislation.

That, of course, is patently absurd. We have had testimony before the U.S. Congress that in Europe, for 20 years, they have done reimportation. In Europe, they call it ''parallel trading,'' where if you are from France and want to buy a prescription drug from Germany, that is just fine. If you are from

Italy and want to buy a prescription drug from Spain, that is just fine. Parallel trading in pharmaceuticals has occurred for 20 years, and there has been no safety issue.

We had a pharmaceutical company executive named Dr. Peter Rost, the vice president of marketing for a major drug company, who said:

> The biggest argument against reimportation is safety. What everyone has conveniently forgotten to tell you is that in Europe, reimportation of drugs has been in place for 20 years.

This is an executive from the drug industry itself.

He said something else that is important:

> During my time responsible for a region in northern Europe, I never once—not once—heard the drug industry, regulatory agencies, the government, or anyone else saying that this practice was unsafe.

He is talking about the practice of importing drugs between countries. He goes on to say:

> And personally, I think it is outright derogatory to claim that the Americans would not be able to handle reimportation of drugs, when the rest of the educated world can do this.

This is a big issue. This is not a small issue. The price of prescription drugs is on the march upward. Too many Americans cannot afford their medication. It is unfair to have the American people charged the highest prices in the world. We are talking only about importing FDA-approved drugs made in FDA-approved plants, in many cases put in identical bottles, shipped to two different locations. One location is to an American who will pay the highest price, and the other location is to other major countries around the world whose citizens are charged much lower prices.

We think that is unfair. We intend to try to put downward pressure on drug prices in this country by using trade. Let the American people benefit from this kind of trade.

Finally, if people wonder whether the price difference is just with respect to Lipitor, it is not. The unfair price discrepancy is significant for Prevacid, Zocor, Nexium, Zoloft—the list is very substantial.

For instance, Nexium is advertised a great deal on television. In the United States the price for 90 doses is $409. The price in Canada is $239. Or Zocor. A well-known football coach on television tells us how important Zocor is. As an American, he pays $383 for 90 doses; a Canadian pays 46 percent less. That describes the problem we are trying to correct.

SOCIAL SECURITY

I will mention one additional item today. That is the aggressive debate that is occurring and will continue to occur on the subject of Social Security. There is an array of issues that face this country—some big, some small, some of consequence, some not—and we tend, from time to time, to treat the serious too lightly and sometimes the light too seriously. But this issue of Social Security is a big issue.

I was reading something the other day about this from a Knight-Ridder column:

> The promises of Social Security retirement is a hoax. Taxes paid by workers are wasted by the government rather than prudently invested, and the so-called reserve fund is no reserve at all because it contains nothing but government IOU's.
>
> Was that President Bush speaking? No, no. That was the Republican presidential candidate, Alf Landon, in 1936. In 1936 that was the message by people who never liked Social Security—those who never liked Social Security and fought against it when it was created never really quit.

In 1983, the Cato Institute published a paper that served as the manifesto for turning over some of Social Security to the private sector. It recommended the following: Consistent criticism of Social Security to undermine confidence in it. That was part of the strategy. Consistently criticize Social Security to undermine confidence. Build a coalition of supporters for private accounts, including banks and other financial institutions that would benefit from private accounts.

They have done pretty well. This manifesto going back to Alf Landon, going to the Cato Institute in 1983—constantly criticize Social Security, undermine it, build a coalition of supporters, banks, and others who would benefit from it. They have done pretty well because they now have an administration that says Social Security is in crisis.

It is not, of course. Social Security is a program that has lifted tens of millions of senior citizens out of poverty over many decades.

People are living longer and better lives, so we will have to make some adjustments. It does not require major surgery.

We will have to make some adjustments in Social Security if we do not get the kind of economic growth we had in the last 75 years. If we do get the kind of growth we had in the economy in the last 75 years, Social Security is fine for the next 75 years with no adjustments needed. But if we get only 1.9 percent economic growth, as the Social Security actuaries predict, we will have to make some adjustments—but not major adjustments and not major surgery.

The President and others are using terms such as ''broke,'' ''bankrupt,'' ''flat busted,'' in order to demonstrate that something has to be done with Social Security. Yet he is offering nothing that would address the solvency of Social Security. Nothing. He is proposing, instead, the creation of private accounts using a portion of the Social Security money. Unfortunately, this would increase the problem in Social Security.

We need to have and will have a very aggressive debate about this issue. My feeling is that we ought to do two things: One, we ought to preserve and protect Social Security. It is a program that has worked, and it continues to work well. It is the bedrock social insurance that the elderly rely upon when they reach retirement age. When they reach this point at which they are no longer working and have diminished income, Social Security is what they can depend on to keep them out of poverty.

Some say: Let's decide to put some of that money in the stock market. Well, I am all for private accounts, but not in the Social Security system. We have 401(k)s, IRAs, pension programs, and Keogh programs. We have done a lot to incentivize private accounts. We now provide about $140 billion per year in tax incentives to encourage the use of these retirement accounts.

We ought to continue providing these incentives, and even increase them, but not in Social Security. Social Security is not an investment account; it is an insurance account. It has always been an insurance account.

A leading spokesperson on the far right said the following a couple of weeks ago: Social Security is the soft underbelly of the welfare state. Well, if you believe that, then I understand why you do not want Social Security, why you do not like Social Security, why you would like to take it apart. I understand that. I respect that view, even if it is dreadfully wrong. We need to respect different viewpoints. There is no reason for all of us to think the same thing all the time.

Someone once said: When everyone is thinking the same thing, no one is thinking very much. So I understand and respect people with different viewpoints. If you never liked Social Security, if you believe it is part of the welfare state as opposed to an enormously successful social insurance program that has worked for 70 years to lift the elderly out of poverty, if you really believe it is unworthy and you want to take it apart, I understand that. But I do not agree. I believe we need to fight as hard as we can to oppose those who would dismantle Social Security.

It is safe to say that none of the people I have ever heard speak against Social Security will ever need it. None of them will ever need it. Almost all of them speak from a position of financial solvency. In most cases, they have the gift of a very solid financial background. Well, good for them.

But maybe they should understand there are a lot of folks in this country who reach those declining income years and do not have very much. They worked hard and led good lives, but they end up with not very much.

Their aspiration was not to make as much money as they could; it was to serve their community. But they did not end up with very much. The same is true with a lot of people. They live a good life, do good things, help other people, but they do not end up with a lot.

A friend of mine died about 2 months ago. He was an older man. He was close

to 90 years old. He had a great life. He was a wonderful man.

After his funeral, his wife sent me a note. She said, very simply: Oscar always helped his neighbors, and he always looked out for those who were not so well off. That is all she said.

I thought, what a wonderful thing to say about someone's life. He always helped his neighbors and always looked out for those who were not so well off. What a great life. He did not make a lot of money, he did not die with a huge estate, but he had a great life.

So does Social Security—the social insurance program that he and others know will be there when they reach retirement—enrich their lives, make their lives better, allow them to depend on something that will be there? You bet it does. It is important.

I find it interesting that the chant and the mantra in this town, from the White House, yes, and from some of our colleagues, is that the most important thing for us to do is to eliminate the tax on inherited wealth. They say you have to eliminate what they call the death tax. But there is no death tax. That is just something a pollster came up with.

My colleague Phil Gramm from Texas was on the floor once, and I explained to him, were he to die, his wife would own his entire estate, with no tax. So he must be exempt. The fact is, there is no death tax. When one spouse dies, the other spouse has a 100-percent exemption, and they own all those assets.

There is, however, a tax not on death but on inherited wealth, in certain circumstances. So what we have is a proposal to eliminate the tax on inherited wealth, which would largely benefit the folks who have accumulated the most wealth in this country.

We have about half of the world's billionaires living in the United States, and good for us, and good for them. Most of that money accumulated by billionaires is a result of appreciation in stocks, and has never been subjected to a tax.

Our colleagues have created this wonderful little description of the estate tax or the tax on inherited wealth. They have now described it as a death tax. And they are on the floor of the Senate saying that when Donald Trump, for example, passes on and moves to another life, his estate should not be taxed. I would not normally use a name, but Donald Trump is a wonderful and very successful businessman. He likes to have people use his name, so I am sure he will not mind if I use his name.

I think the fight to repeal the tax on inherited wealth is an interesting one. At the very same time, the administration says: We think we are desperately short of money to help pay for the basic Social Security benefits for the low-income elderly who have reached retirement age.

Oh, we have plenty of energy to repeal the tax on inherited wealth for the richest Americans, but we do not have the will to make sure that Social Security will be there when you retire. I believe it is a matter of values, a matter of choice, and a matter of priorities.

Some will say: Well, if all you are doing is supporting Social Security, you are just old-fashioned. There are some timeless truths in life. It seems to me that standing up for something that has so dramatically improved life in this country is a timeless truth. And it's one that I would like to be a part of.

Before Social Security was enacted, one-half of the elderly in America were poor. They were living in poverty. Today that figure is less than 10 percent. This program is often the only support for those who reach retirement age.

I cannot tell you how many times I have been to meetings when someone has come up to me, at the end of a meeting in North Dakota, very often in a small town—very often a woman living alone—who talks about how important that Social Security check is. They tell me that it determines whether they can buy groceries or pay the rent and have the opportunity to continue to live alone. It is so important and has been such a benefit for so many lives.

Now, I am for change when change advances our interests and lifts our country. I am for private accounts if they are outside of Social Security. I encourage people to provide more for their retirement security by investing more in IRAs and 401(k)s. But I am not for anyone who wants to take apart the basic Social Security program.

One of my colleagues calls this an ''evidence-free zone'' here in Washington, DC, that despite the evidence, people use whatever rhetoric they want to use. Well the evidence is pretty clear. The President says that if you could take a part of Social Security, invest it in private accounts, you will have this wonderful nirvana with dramatic returns in private accounts, and you will all end up with a lot of money.

The problem is this: The President believes the Social Security system is in crisis because the actuaries in the Social Security program predict that rather than the 3.4-percent economic growth we have had for the past 75 years, we will only have 1.9-percent economic growth in the next 75 years. If you have 1.9-percent economic growth for 75 years, you are not going to get the kind of corporate profits that lift the stock market and provides returns in private accounts.

You cannot have it both ways. Either you have an economy that is robust and growing, in which case you do not have a Social Security funding issue, or you have 1.9-percent economic growth, dramatically below what we have previously experienced, and you cannot possibly get an adequate return in private accounts. You cannot have it both ways. Yet the administration and others continue to argue both sides of that issue.

This is a big issue and important issue. There is plenty of room for disagreement. I believe passionately and strongly in this issue. I believe the Social Security program is not, as those on the far right would say, the soft underbelly of the welfare state. I don't believe that at all.

This is something that has allowed all Americans to contribute from their paychecks something called FICA. The ''I'' stands for insurance, because this is an insurance program. I believe this has worked well for over 7 decades. And it can and will work well for 10 and 20 decades from now if we have the will and the nerve and the strength to stand up for the foundation of this nation's retirement security system.

We will have aggressive debates in the coming days and weeks. I come from a state that has a lot at stake in this Social Security debate. We have a higher percentage of people aged 85 years and older than any other state. I have previously mentioned my uncle who has been running foot races, has 43 gold medals, running in the Senior Olympics all over the country, who discovered when he was 72 that he could run faster than anybody his age. His experience illustrates the fact that people are living longer, and good for them.

Part of what has enriched their lives is being able to retire knowing that Social Security will be there for them. It is the guarantee and the promise this country has kept and will continue to keep in the future.

I yield the floor.

The PRESIDING OFFICER (Mr. CHAFEE). The Senator from Delaware.

BIPARTISANSHIP

Mr. CARPER. Mr. President, I have just returned to the Senate Chamber from a press conference that took place one floor above us in the press gallery. There Democratic and Republican Senators, some of our staff, and a number of reporters discussed the passage of the class action reform bill by a 72-to-26 margin a few moments ago. That was a strong bipartisan vote. I was hoping that we might get 70, maybe even 75 votes, and we ended up right in that neighborhood.

A lot of people deserve credit for the success of the vote: Democratic and Republican Senators who crafted the legislation, debated it in committee, and who improved it over the last 7 years since the first bill was introduced. The key to getting the legislation passed—and it is a fair compromise—was figuring out how to set aside our partisanship, saying that we are not interested in gridlock, and for us to reach across the aisle, Democrats and Republicans and Republicans and Democrats, to figure out how we can reconcile our differences and resolve what has been a very divisive issue for the past 7 years and even before that.

I said at the press conference—I say here today—my thanks to our leader. I

thanked Senator FRIST, the Republican leader. I express my thanks to Senator HARRY REID for his willingness to allow this vote to go forward. The class action bill was not legislation that he endorsed, but he was willing to allow the debate to begin and for those who had amendments to the bill to offer the amendments, that we would have plenty of time to debate them and to decide the amendments, and then without any kind of delaying tactics the Senate would go to final passage and take up the bill. I thank him for the very constructive and positive role he played in allowing this legislation to be passed today.

The House of Representatives has agreed to accept without change the bill we have passed. The President has agreed to sign that legislation.

I was saddened last night to be reading through my mail and to come across a 29-page document that I believe has been distributed by the Republican National Committee. There is a picture of Senator HARRY REID on the cover, along with our former leader, Senator Tom Daschle. The caption under the picture says: ''Who is Harry Reid?'' And below that we read: ''Sen. Minority Leader determined to obstruct President Bush's agenda.'' For the next 28, 29 pages, this document is an attempt to identify HARRY REID or to try to define who he is and where he is from, his values. I think it is 29 pages of something more akin to venom.

If we are interested in building on the bipartisanship that characterized this week's debate and today's vote on class action reform, those goals are not enhanced or strengthened by this kind of tactic.

I say to my Republican friends—and I don't believe this came from anybody in this Chamber, but it is from someone our Republicans know and work with, people who work for the President or indirectly—if you want Democrats to work with you and find common ground on issues such as class action or energy or asbestos or other difficult issues, bankruptcy, this is not the way to do it. If you want to make sure that we have obstructionism, that we have a lack of bipartisanship, if you want to ensure that the climate of the last several years where we got so little done returns, this is the way to do it.

Whoever is responsible for this, let me just say: Shame on you. Republicans can do better than this. And to the extent that Democrats are responsible for this kind of behavior on our side, shame on us.

I came here 4 years ago from Delaware, which is a little State, such as the State of the Presiding Officer. In our State we have a history of Democrats and Republicans working across the aisle, trying to find common ground and, more often than not, succeeding. This sort of thing would not be tolerated in my State by either Democrats or Republicans. This is not the way we do business. One of the reasons Delaware is so successful is because of that bipartisan tradition that is part of our fiber.

I hope that we won't see this kind of attack on our leader, and I certainly hope we don't see it on the Republican leader. The Republicans are better than this. So are the Democrats.

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

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

(The remarks of Mr. CRAIG pertaining to the introduction of S. 359 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

LOCAL LAW ENFORCEMENT ENHANCEMENT ACT OF 2005

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. Each Congress, Senator KENNEDY and I introduce hate crimes legislation that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society. Likewise, each Congress I have come to the floor to highlight a separate hate crime that has occurred in our country.

On July 17, 2004, Donald Brockman, Darren Gay, Shawn Regan and an unidentified 16-year-old boy accompanied another man home after leaving a bar in Austin, TX. After arriving, the four men allegedly punched and kicked the victim as well as forced him to violate himself because they believed he was gay. The four attackers described themselves as Aryan Nazis and later bragged about ''beating up a gay man.''

I believe that the 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.

FAREWELL TO JOE F. COLVIN

Mr. DOMENICI. Mr. President, I would like to recognize the significant achievements of Joe F. Colvin, who is retiring as president and chief executive officer of the Nuclear Energy Institute, and acknowledge his many noteworthy contributions in building a strong future for nuclear energy, America's largest emission-free electricity source.

As chairman of the Senate Energy and Natural Resources Committee, it has been my distinct pleasure to work closely with Mr. Colvin and his organization. I can personally attest to his leadership in guiding the nuclear energy industry through a period of extraordinary renaissance.

Mr. Colvin has provided more than 40 years of service to our Nation, first as a submarine office in the U.S. Navy and later in the commercial nuclear energy industry.

When he took the helm at NEI in 1996, conventional thinking was that the industry was stagnant and nuclear power had no future in America's energy mix. He rejected that view and tirelessly worked to advance nuclear energy's true capabilities—its proven safety, its contribution to our environment and its affordability.

After more than 20 years of debate, Congress passed legislation in 2002 designating Yucca Mountain as the site of Nation's used fuel repository giving our Nation clear direction for our used fuel management program.

Today, America's nuclear plants are now recognized as the significant assets they are, and the nuclear energy industry is more competitive than ever. In addition, several companies are testing an improved licensing process for new nuclear power plants.

Although Mr. Colvin is quick to acknowledge the accomplishments of others, his own work on behalf of the nuclear energy industry has paid enormous dividends. Through frequent testimony before congressional committees, conversations with senior Government officials and countless others, he has educated many about the value of nuclear energy and the promise it holds.

Hence, it is with mixed emotions that I wish Mr. Colvin, a great University of New Mexico Lobo, all the best in his retirement from the Nuclear Energy Institute. He has earned a well-deserved respite.

PHARMACEUTICAL MARKET ACCESS AND FAIR TRADE ACT OF 2005

Mr. JOHNSON. Mr. President, I rise today to discuss the introduction of an important piece of legislation that will greatly aid Americans, both young and old, with their health care costs. I, along with a bipartisan group of Senators, have introduced the Pharmaceutical Market Access and Fair Trade Act of 2005. This legislation would provide much needed assistance for millions of Americans who are struggling to pay for their prescription drugs.

American consumers are currently charged 55 percent more, on average, for the same brand-name medicines sold in other major developed countries for a fraction of the price. The Pharmaceutical Market Access and Fair Trade Act of 2005 would allow American consumers to benefit from international price competition for prescription medicines through the reimportation of FDA-approved prescription drugs. This legislation allows U.S.-licensed pharmacies and drug wholesalers to

import medications from Canada, Europe, Australia, New Zealand, and Japan and pass along the savings to their American customers. This approach would allow Americans to benefit from lower prices on their prescription drugs while still enabling them to use their local pharmacy. The bill also allows individual consumers to import prescription drugs for their own personal use.

One of the leading arguments against reimportation has been concerns over safety of the prescription drugs that are sold abroad. My colleagues and I have addressed this issue by providing strict safety measures in this legislation which are intended to guarantee that only safe, effective FDA-approved prescription drugs are imported. Such provisions would require pharmacies and drug wholesalers to register with the FDA and be subject to frequent, random inspections. It would allow only the importation of FDA-approved medicines with a ''chain of custody'' that can be traced all the way back to an FDA-inspected manufacturing plant. It would provide for the use of the anticounterfeiting technology to identify safe, legal imported medicines, as well as give the FDA resources and authority it needs to ensure the safety of imported drugs and to stop those that are unsafe.

It is very important that the bill this Congress takes up and passes will not only become law but also ensure that reimportation is actually allowed to occur. This bill ensures that by including features to prevent a drug company from blocking importation by making subtle changes to a drug, such as changing the color or the place of manufacture, so that it is no longer FDA approved.

It is about time that the Senate takes up this legislation and passes it. It has broad bipartisan support and has been subjected to intense discussion, review, and debate. We are now faced with health care costs nationwide that are spiraling out of control, and we need to take action to address this issue. Allowing the safe reimportation of prescription drugs is a step in the right direction. The majority of the American people support reimportation, and I hope the leadership of this body will listen to them and finally provide the relief our citizens need.

COMMISSION ON MEDICAID AND THE MEDICALLY UNDERSERVED

Mr. CHAFFEE. Mr. President, I am pleased to join Senator GORDON SMITH and others in the introduction of a bipartisan proposal that calls for the creation of a Commission on Medicaid and the Medically Underserved. This legislation recognizes the importance of assessing what aspects of the Medicaid program are working, which need reform, and how to improve service delivery and quality in the most cost effective manner possible. In this tight budget climate this bill highlights the need for a comprehensive assessment of the Medicaid program. The future of Medicaid cannot be determined by cost alone.

This Medicaid commission would be charged with numerous duties, including reviewing and making recommendations on long-term goals of the program, populations served, financial sustainability, interaction with Medicare and the uninsured, and the quality of care provided. Medicaid is a critically important program that helps meet the health care needs of a diverse population. Namely it serves as a source of traditional insurance for poor children and some of their parents, it pays for an acute and long term care services for the elderly and disabled, wraps around coverage or assistance for low-income seniors and the disabled on Medicare, and serves as the primary source of funding for safety net providers serving Medicaid patients and the uninsured.

In recognition of the diverse population Medicaid serves, the Medicaid commission would be comprised of 23 members representing all the stakeholders in the Medicaid program. The commission has 1 year to hold public hearings, conduct evaluations and deliberations, and issue its report recommendations to the President, Congress and the public.

Like many of our Nation's governors, I agree that the Medicaid program needs a careful assessment with an eye toward reform that will make the program financially sustainable. At the same time, I recognize the importance of not fundamentally altering the structure of program without the deliberation necessary to preserve aspects of the program that are working. I urge my colleagues to join me in supporting Senator SMITH's legislation to help bring Medicaid into the 21st century with reforms driven by efficacy, and not simply the cost of the program.

ADDITIONAL STATEMENTS

HONORING THE ACCOMPLISHMENTS OF WEST KENTUCKY COMMUNITY AND TECHNICAL COLLEGE

● Mr. BUNNING. Mr. President, I pay tribute and congratulate West Kentucky Community and Technical College, WKCTC, as one of the finalists for the prestigious Bellwether Award presented by the Community College Futures Assembly. Their recent recognition has given Kentucky reason to be proud.

As one of eight national finalists, WKCTC is recognized for its Realtime Captioning Technology program. This program, which was originally funded by a $475,000 Congressional award, creates a distance-learning format designed to greater prepare individuals for the workplace, while also providing broadcast captioning for the hearing-impaired. With over 28 million deaf and hearing-impaired Americans nationwide, I am sure that you will join me in recognizing the importance of providing such a service.

The Bellweather award was established in 1995 as integral part of the Community College Futures Assembly. This assembly primarily focuses on cutting-edge, trend setting programs, which often run the risk of being replaced at larger colleges.

I hope that you will join me today in both recognizing and congratulating West Kentucky Community Technical College in their recent achievement. They serve as an example to the rest of the Commonwealth of Kentucky. I wish them continued success in their program.●

TRIBUTE TO ALISON NICHOLS, BRITTANY SALTIEL AND SARA SIEGAL

● Mr. OBAMA. Mr. President, I speak today to recognize three gifted students from the State of Illinois: Alison Nichols, Brittany Saltiel, and Sara Siegal, all students at Stevenson High School in Lincolnshire, IL.

These three students created a National History Day project on the Mississippi Burning legal case. Alison, Brittany, and Sara's efforts to examine the circumstances of this case have led to not only a reopening of the case but also the overdue indictment of Edgar Ray Killen for the murder of three young civil rights activists: James Chaney, Andrew Goodman, and Michael Schwerner.

As a former civil rights attorney and constitutional law lecturer, I know firsthand the importance of ensuring that justice and the principles of our Constitution are always upheld. I am proud to represent Alison, Brittany, and Sara in the Senate as they serve as a reminder of why all of us have committed our lives to public service.

These students have demonstrated their tremendous potential in scholarship and leadership in public affairs. They serve as shining examples for our Nation's young people of how a small group of committed individuals can truly change a community, nation, and the world. Alison, Brittany, and Sara deserve not only our congratulations; they deserve our gratitude for making this country stronger.●

GRADING THE STATES ON GUN SAFETY

● Mr. LEVIN. Mr. President, last month the Brady Campaign to Prevent Gun Violence, in partnership with the Million Mom March and a number of State gun safety groups, released its 8th Annual Report Card on State Gun Laws Protecting Children. I applaud the efforts of these organizations to keep the pressure on State and local legislators to enact sensible gun safety legislation, and I encourage my colleagues to review this report.

The Brady Campaign report assigns individual States a grade of A through F on seven types of laws that protect children from gun violence. ''Extra credit'' and ''demerits'' were also assigned for other State gun safety laws.

The Brady Campaign includes in its analysis such questions as: Is it illegal for a child to possess a gun without supervision? Is it illegal to sell a gun to a child? Are gun owners held responsible for leaving loaded guns easily accessible to children? Are guns required to have child-safety locks, loaded-chamber indicators and other childproof designs? Do cities and counties have authority to enact local gun safety laws? Are background checks required at gun shows? And, is it legal to carry concealed handguns in public?

Children around the country continue to be at great risk from gun violence. This year, the Brady Campaign awarded only six States an A rating in their report. Unfortunately, 31 States received grades of D or F. Only one State improved its grade from last year, while two others took actions that will make communities less safe from the threat of gun violence. However, I was encouraged that the number of ''extra credit Sensible Safety Stars'' for protecting children from gun violence more than doubled to 21, and that the number of ''Time-Out Chair demerits'' assigned for weakening State gun laws was cut from ten to six.

While some States have taken positive steps on the issue of gun safety in the last year, more than half are still receiving failing grades from the Brady Campaign. By passing legislation that reduces child firearm deaths, Congress can help to improve the grades of these States. I urge my colleagues to take up and pass common sense gun safety legislation that will close the gun show loophole, reauthorize the 1994 assault weapons ban, and improve child gun access prevention laws.●

MESSAGE FROM THE PRESIDENT

A message from the President of the United States was communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGE REFERRED

As in executive session the Presiding Officer laid before the Senate a message from the President of the United States submitting a nomination which was referred to the Committee on Foreign Relations.

(The nomination received today is printed at the end of the Senate proceedings.)

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–664. A communication from the Deputy Secretary of State, Department of State, transmitting, a report regarding management and security accomplishments of the U.S. Mission in Iraq; to the Committee on Foreign Relations.

EC–665. A communication from the Executive Secretary and Chief of Staff, Agency for International Development, transmitting pursuant to law, the report of a vacancy in the position of Assistant Administrator, Bureau Management, received on February 7, 2005; to the Committee on Foreign Relations.

EC–666. A communication from the Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, a report on the Agency's Competitive Sourcing Activities for Fiscal Year 2004, received January 25, 2005; to the Committee on Foreign Relations.

EC–667. A communication from Chief, Aviation Civil Rights Compliance Branch, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Reports by Carriers on Incidents Involving Animals During Air Transport'' (RIN2105–AD48) received on February 2, 2005; to the Committee on Commerce, Science, and Transportation.

EC–668. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Bombardier Rotax GmbH Type 912F, 912S, and 914F Series Reciprocating Engines'' (RIN2120–AA64) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–669. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 767–300 Series Airplanes'' (RIN2120–AA64) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–670. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 757–200, 200 PF, and 200CB Series Airplanes'' (RIN2120–AA64) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–671. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Garmin International Inc. GTX 33, GTX 33D, GTX 330 and GTX 330D Mode S Transponders'' (RIN2120–AA64) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–672. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Gulfstream Aerospace LP Model Gulfstream 100 Airplanes; and Model Astra SPX and 1125 Westwind Astra Series Airplanes'' (RIN2120–AA64) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–673. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: The New Piper Aircraft, Inc. Models PA 23 235, PA 23 250, and PA E23–250 Airplanes'' (RIN2120–AA64) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–674. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: EXTRA Flugzeugbau GbH Model EA 300 and EA 300/S Airplanes'' (RIN2120–AA64) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–675. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Airbus Model A310 Series Airplanes; and Model A300–B4–600, B4–600R, and F4–600R Series Airplanes, and Model C4 605R Variant F Airplanes'' (RIN2120–AA64) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–676. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Correction Boeing Model 767–200, –300, and –300F Series Airplanes'' (RIN2120–AA64) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–677. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Raytheon Aircraft Company Beech 100, 200, and 300 Series Airplanes'' (RIN2120–AA64) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–678. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: The Lancair Company Models LC40–550FG and LC42–550FG Airplanes'' (RIN2120–AA64) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–679. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Bell Helicopter Textron Canada Model 222, 222B, 222U, 230, and 430 Helicopters'' (RIN2120–AA64) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–680. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 767–200, 300, and 300F Series Airplanes'' (RIN2120–AA64) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–681. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Bombardier Model C1 215 6B11 and CL 215 6B11 Series Airplanes'' (RIN2120–AA64) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–682. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Pratt and Whitney Jt8D–200 Series Turbofan Engines; Correction'' (RIN2120–AA64) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–683. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: McDonnell Douglas Model MD 10 10F, MD 10 30F, MD 11F, DC 10 10F, and DC 10 30F Airplanes ''(RIN2120–AA64) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–684. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule

entitled ''Airworthiness Directives: Airbus Model A320 Series Airplanes'' (RIN2120–AA64) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–685. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Rolls Royce Corporation 250–B and 250–C Series Turboprop and Turboshaft Engines'' (RIN2120–AA64) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–686. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 767–300 and 767–300F Series Airplanes Equipped with GE or Pratt and Whitney Engines'' (RIN2120–AA64) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–687. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Empresa Brasileira de Aeronautica Model EMB 135 and EMB 145 Series Airplanes'' (RIN2120–AA64) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–688. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Raytheon Aircraft Company Beech 200 Series Airplanes'' (RIN2120–AA64) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–689. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 757–200 and 200 PF Series Airplanes'' (RIN2120–AA64) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–690. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Airbus Model A320 Series Airplanes'' (RIN2120–AA64) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–691. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Lockheed Model 1329 Series Airplanes'' (RIN2120–AA64) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–692. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 747–100, 100B, 100B SUD, 200B, 200C, 200F, and 300 Series Airplanes; and Model 747SP and 747SR Series Airplanes; Equipped with Pratt and Whitney JT9D–3 and –7 Series Engines or GE CF6–50 Series Engines with Modified JT9D–7 Inboard Struts'' (RIN2120–AA64) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–693. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Airbus Model A319 and A320 200 Series Airplanes'' (RIN2120–AA64) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–694. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Pratt and Whitney JT8D 200 series Turbofan Engines'' (RIN2120–AA64) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–695. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Correction: Empresa Brasileira de Aeronautica SA Model EMB 135 and 145 Series Airplanes'' (RIN2120–AA64) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–696. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Rolls Royce plc RB211 Trent 875, 877, 884, 884B, 892, 892B, and 895 Series Turbofan Engines'' (RIN2120–AA64) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–697. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Correction; Boeing Model 757–200, 200PF, 200CB, and 300 Series Airplanes'' (RIN2120–AA64) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–698. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Correction; Saab Model SAAB SF340A and SAAB 340B Series Airplanes'' (RIN2120–AA64) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–699. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Rolls Royce Deutschland TAY 611–8, TAY 620–15, TAY 650–15, and TAY 651–54 Series Turbofan Engines'' (RIN2120–AA64) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–700. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Correction; Rolls Royce Deutschland TAY 611–8, TAY 620–15, TAY 650–15 and TAY 651–54 Series Turbofan Engines'' (RIN2120–AA64) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–701. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Sedalia, MO; Confirmation of Effective Date'' (RIN2120–AA64) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–702. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Class E Airspace; Correction, Sedalia, MO'' (RIN2120–AA64) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. ENZI, from the Committee on Health, Education, Labor, and Pensions, with an amendment in the nature of a substitute:

S. 288. A bill to extend Federal funding for operation of State high risk health insurance pools.

S. 306. A bill to prohibit discrimination on the basis of genetic information with respect to health insurance and employment.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. ENZI for the Committee on Health, Education, Labor, and Pensions.

*A. Wilson Greene, of Virginia, to be a Member of the National Museum and Library Services Board for a term expiring December 6, 2009.

*Katina P. Strauch, of South Carolina, to be a Member of the National Museum and Library Services Board for a term expiring December 6, 2009.

*Edward L. Flippen, of Virginia, to be Inspector General, Corporation for National and Community 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 Mr. DURBIN (for himself, Mr. BUNNING, Mr. OBAMA, Mr. BAYH, and Mr. LUGAR):

S. 341. A bill to provide for the redesign of the reverse of the Lincoln 1-cent coin in 2009 in commemoration of the 200th anniversary of the birth of President Abraham Lincoln; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. MCCAIN (for himself, Mr. LIEBERMAN, Ms. SNOWE, Mrs. FEINSTEIN, Mr. CHAFEE, Mr. DURBIN, Mr. LAUTENBERG, Mrs. MURRAY, Mr. NELSON of Florida, Mr. CORZINE, Ms. CANTWELL, Mr. KERRY, and Mr. DAYTON):

S. 342. A bill to provide for a program of scientific research on abrupt climate change, to accelerate the reduction of greenhouse gas emissions in the United States by establishing a market-driven system of greenhouse gas tradeable allowances, to limit greenhouse gas emissions in the United States and reduce dependence upon foreign oil, and ensure benefits to consumers from the trading in such allowances; to the Committee on Environment and Public Works.

By Mr. WYDEN (for himself and Mr. SMITH):

S. 343. A bill to provide for qualified withdrawals from the Capital Construction Fund for fishermen leaving the industry and for

the rollover of Capital Construction Funds to individual retirement plans, and for other purposes; to the Committee on Finance.

By Mr. DEWINE:

S. 344. A bill to link recidivist penalties for certain drug crimes; to the Committee on the Judiciary.

By Mr. DURBIN:

S. 345. A bill to amend title XVIII of the Social Security Act to deliver a meaningful benefit and lower prescription drug prices under the medicare program; to the Committee on Finance.

By Ms. STABENOW:

S. 346. A bill to amend the Solid Waste Disposal Act to prohibit the importation of Canadian municipal solid waste without State consent; to the Committee on Environment and Public Works.

By Mr. NELSON of Florida (for himself, Mr. LUGAR, and Mr. ROCKEFELLER):

S. 347. A bill to amend titles XVIII and XIX of the Social Security Act and title III of the Public Health Service Act to improve access to information about individuals' health care operations and legal rights for care near the end of life, to promote advance care planning and decisionmaking so that individuals' wishes are known should they become unable to speak for themselves, to engage health care providers in disseminating information about and assisting in the preparation of advance directives, which include living wills and durable powers of attorney for health care, and for other purposes; to the Committee on Finance.

By Mr. SANTORUM (for himself and Ms. MIKULSKI):

S. 348. A bill to designate Poland as a program country under the visa waiver program established under section 217 of the Immigration and Nationality Act, and for other purposes; to the Committee on the Judiciary.

By Mr. DOMENICI:

S. 349. A bill to provide for the appointment of additional judges for the district of New Mexico; to the Committee on the Judiciary.

By Mr. LUGAR (for himself, Mrs. BOXER, Mr. CHAFEE, Mr. FEINGOLD, Mr. COLEMAN, and Mr. SMITH):

S. 350. A bill to amend the Foreign Assistance Act of 1961 to provide assistance for orphans and other vulnerable children in developing countries, and for other purposes; to the Committee on Foreign Relations.

By Mr. KENNEDY (for himself, Mr. KERRY, Mr. AKAKA, Mrs. BOXER, Mrs. CLINTON, Mr. CORZINE, Mr. DODD, Mr. FEINGOLD, Mr. INOUYE, Mr. LAUTENBERG, Mr. LEVIN, Mr. LIEBERMAN, Ms. MIKULSKI, Mr. SARBANES, and Mr. REED):

S. 351. A bill to amend title XVIII of the Social Security Act to provide for patient protection by limiting the number of mandatory overtime hours a nurse may be required to work in certain providers of services to which payments are made under the Medicare Program; to the Committee on Finance.

By Ms. MIKULSKI (for herself, Mr. GREGG, Mr. LEAHY, Mr. WARNER, Mr. CHAFEE, Mr. THOMAS, Mr. LEVIN, Mr. SALAZAR, Mr. ALLEN, Mr. KENNEDY, Mr. JEFFORDS, Ms. COLLINS, Mr. SARBANES, Ms. SNOWE, Mr. DORGAN, Mr. REED, Mr. DAYTON, and Mr. KERRY):

S. 352. A bill to revise certain requirements for H–2B employers and require submission of information regarding H–2B non-immigrants, and for other purposes; to the Committee on the Judiciary.

By Mr. CONRAD (for himself and Mr. DORGAN):

S. 353. A bill to amend the Water Resources Development Act of 1999 to direct the Secretary of the Army to provide assistance to design and construct a project to provide a continued safe and reliable municipal water supply system for Devils Lake, North Dakota; to the Committee on Environment and Public Works.

By Mr. ENSIGN (for himself, Mr. GREGG, Mr. THOMAS, Mr. INHOFE, and Mr. KYL):

S. 354. A bill to improve patient access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the health care delivery system; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DORGAN (for himself and Mrs. CLINTON):

S. 355. A bill to require Congress to impose limits on United States foreign debt; to the Committee on Foreign Relations.

By Mr. BROWNBACK (for himself and Mr. ROBERTS):

S. 356. A bill to direct the Secretary of the Army to convey to the Geary County Fire Department certain land in the State of Kansas; to the Committee on Armed Services.

By Mr. BINGAMAN (for himself, Mrs. HUTCHISON, Mr. NELSON of Florida, Mrs. CLINTON, and Mr. MARTINEZ):

S. 357. A bill to expand and enhance postbaccalaureate opportunities at Hispanic-serving institutions, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. DURBIN (for himself, Mr. SPECTER, Mr. BYRD, Mr. ROCKEFELLER, Mr. COCHRAN, Ms. MIKULSKI, Mr. BAYH, and Mr. SARBANES):

S. 358. A bill to maintain and expand the steel import licensing and monitoring program; to the Committee on Finance.

By Mr. CRAIG (for himself, Mr. KENNEDY, Mr. HAGEL, Mr. SPECTER, Mr. LAUTENBERG, Mr. VOINOVICH, Mr. SCHUMER, Mr. LUGAR, Mr. DURBIN, Mr. COLEMAN, Mr. KERRY, Mr. MCCAIN, Mr. DODD, Mr. COCHRAN, Mr. DOMENICI, Ms. CANTWELL, Mr. DEWINE, Mr. LIEBERMAN, Mr. BURNS, Mrs. BOXER, Mr. ROBERTS, Mr. LEAHY, Mr. HATCH, Mr. AKAKA, Mr. LOTT, Mr. NELSON of Nebraska, Mr. BROWNBACK, Mr. LEVIN, Mr. STEVENS, Mr. WYDEN, Mr. MARTINEZ, Mr. SALAZAR, Mr. CHAFEE, and Mrs. MURRAY):

S. 359. 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; to the Committee on the Judiciary.

By Ms. SNOWE (for herself and Mr. KERRY):

S. 360. A bill to amend the Coastal Zone Management Act; to the Committee on Commerce, Science, and Transportation.

By Ms. SNOWE (for herself, Mr. KERRY, Mr. STEVENS, Mr. INOUYE, and Ms. COLLINS):

S. 361. A bill to develop and maintain an integrated system of ocean and coastal observations for the Nation's coasts, oceans and Great Lakes, improve warnings of tsunamis and other natural hazards, enhance homeland security, support maritime operations, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. INOUYE (for himself, Mr. STEVENS, Ms. CANTWELL, Ms. SNOWE, Mr. KERRY, and Mr. LAUTENBERG):

S. 362. A bill to establish a program within the National Oceanic and Atmospheric Administration and the United States Coast Guard to help identify, determine sources of, assess, reduce, and prevent marine debris and its adverse impacts on the marine environment and navigation safety, in coordination with non-Federal entities, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. INOUYE (for himself, Mr. STEVENS, Mr. AKAKA, and Mr. LAUTENBERG):

S. 363. A bill to amend the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 to establish vessel ballast water management requirements, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. INOUYE (for himself, Mr. STEVENS, Mr. LOTT, Ms. CANTWELL, Ms. SNOWE, Mr. KERRY, and Mr. LAUTENBERG):

S. 364. A bill to establish a program within the National Oceanic Atmospheric Administration to integrate Federal coastal and ocean mapping activities; to the Committee on Commerce, Science, and Transportation.

By Mr. COLEMAN (for himself and Mr. DAYTON):

S. 365. A bill to amend the Torture Victims Relief Act of 1998 to authorize appropriations to provide assistance for domestic and foreign centers and programs for the treatment of victims of torture, and for other purposes; to the Committee on Foreign Relations.

By Mr. GREGG (for himself and Mr. ENSIGN):

S. 366. A bill to improve women's access to health care services and provide improved medical care by reducing the excessive burden the liability system places on the delivery of obstetrical and gynecological services; to the Committee on the Judiciary.

By Mr. GREGG (for himself and Mr. ENSIGN):

S. 367. A bill to improve women's access to health care services, and the access of all individuals to emergency and trauma care services, by reducing the excessive burden the liability system places on the delivery of such services; to the Committee on the Judiciary.

By Mr. LAUTENBERG (for himself, Mr. KENNEDY, and Mrs. MURRAY):

S. 368. A bill to provide assistance to reduce teen pregnancy, HIV/AIDS, and other sexually transmitted diseases and to support healthy adolescent development; to the Committee on Health, Education, Labor, and Pensions.

By Mr. VITTER:

S.J. Res. 3. A joint resolution proposing an amendment to the Constitution of the United States relative to limiting the number of terms that a Member of Congress may serve; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BAYH:

S. Res. 47. A resolution expressing the sense of the Senate commending civilian employers of members of the reserve components of the Armed Forces for their support of members who are called to active duty and for their support of the members' families; to the Committee on Armed Services.

By Mr. LUGAR:

S. Res. 48. A resolution expressing the sense of the Senate regarding trafficking in persons; to the Committee on Foreign Relations.

ADDITIONAL COSPONSORS

S. 5

At the request of Mr. SPECTER, the name of the Senator from Texas (Mr. CORNYN) was added as a cosponsor of S. 5, a bill to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes.

S. 8

At the request of Mr. ENSIGN, the name of the Senator from Mississippi (Mr. LOTT) was added as a cosponsor of S. 8, a bill to amend title 18, United States Code, to prohibit taking minors across State lines in circumvention of laws requiring the involvement of parents in abortion decisions.

S. 37

At the request of Mrs. FEINSTEIN, the names of the Senator from Alaska (Ms. MURKOWSKI), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Washington (Mrs. MURRAY), the Senator from Colorado (Mr. SALAZAR) and the Senator from Kentucky (Mr. BUNNING) were added as cosponsors of S. 37, a bill to extend the special postage stamp for breast cancer research for 2 years.

S. 39

At the request of Mr. STEVENS, the names of the Senator from Massachusetts (Mr. KERRY) and the Senator from New Jersey (Mr. LAUTENBERG) were added as cosponsors of S. 39, a bill to establish a coordinated national ocean exploration program within the National Oceanic and Atmospheric Administration.

S. 119

At the request of Mrs. FEINSTEIN, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 119, a bill to provide for the protection of unaccompanied alien children, and for other purposes.

S. 183

At the request of Mr. GRASSLEY, the names of the Senator from Utah (Mr. HATCH), the Senator from Montana (Mr. BAUCUS), the Senator from Pennsylvania (Mr. SANTORUM), the Senator from West Virginia (Mr. ROCKEFELLER), the Senator from Oregon (Mr. SMITH), the Senator from North Dakota (Mr. CONRAD), the Senator from Missouri (Mr. TALENT), the Senator from Vermont (Mr. JEFFORDS), the Senator from Utah (Mr. BENNETT), the Senator from New Mexico (Mr. BINGAMAN), the Senator from New Mexico (Mr. DOMENICI), the Senator from Massachusetts (Mr. KERRY), the Senator from Indiana (Mr. LUGAR), the Senator from Arkansas (Mrs. LINCOLN), the Senator from Missouri (Mr. BOND), the Senator from New York (Mr. SCHUMER), the Senator from Ohio (Mr. DEWINE), the Senator from Nevada (Mr. REID), the Senator from Maine (Ms. COLLINS), the Senator from Washington (Mrs. MURRAY), the Senator from South Carolina (Mr. GRAHAM), the Senator from South Dakota (Mr. JOHNSON), the Senator from Nebraska (Mr. HAGEL), the Senator from Michigan (Ms. STABENOW), the Senator from New Jersey (Mr. CORZINE), the Senator from Connecticut (Mr. DODD), the Senator from Iowa (Mr. HARKIN), the Senator from Maryland (Ms. MIKULSKI), the Senator from Rhode Island (Mr. REED), the Senator from Hawaii (Mr. AKAKA), the Senator from Delaware (Mr. BIDEN), the Senator from Washington (Ms. CANTWELL), the Senator from Minnesota (Mr. DAYTON), the Senator from Illinois (Mr. DURBIN), the Senator from California (Mrs. FEINSTEIN), the Senator from Hawaii (Mr. INOUYE), the Senator from Wisconsin (Mr. KOHL), the Senator from Louisiana (Ms. LANDRIEU), the Senator from New Jersey (Mr. LAUTENBERG), the Senator from Vermont (Mr. LEAHY), the Senator from Michigan (Mr. LEVIN), the Senator from New York (Mrs. CLINTON), the Senator from North Dakota (Mr. DORGAN), the Senator from Maryland (Mr. SARBANES), the Senator from Indiana (Mr. BAYH), the Senator from Connecticut (Mr. LIEBERMAN) and the Senator from Arkansas (Mr. PRYOR) were added as cosponsors of S. 183, a bill to amend title XIX of the Social Security Act to provide families of disabled children with the opportunity to purchase coverage under the medicaid program for such children, and for other purposes.

S. 239

At the request of Mr. WYDEN, the name of the Senator from Florida (Mr. NELSON) was added as a cosponsor of S. 239 , a bill to reduce the costs of prescription drugs for medicare beneficiaries, and for other purposes.

S. 266

At the request of Mr. LAUTENBERG, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 266, a bill to stop taxpayer funded Government propaganda.

S. 267

At the request of Mr. CRAIG, the name of the Senator from Idaho (Mr. CRAPO) was added as a cosponsor of S. 267, a bill to reauthorize the Secure Rural Schools and Community Self-Determination Act of 2000, and for other purposes.

S. 320

At the request of Mr. ALLARD, the name of the Senator from Colorado (Mr. SALAZAR) was added as a cosponsor of S. 320, a bill to require the Secretary of the Army to carry out a pilot project on compatible use buffers on real property bordering Fort Carson, Colorado, and for other purposes.

S. 336

At the request of Mr. SARBANES, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. 336 , a bill to direct the Secretary of the Interior to carry out a study of the feasibility of designating the Captain John Smith Chesapeake National Historic Watertrail as a national historic trail.

S. RES. 44

At the request of Mr. ALEXANDER, the names of the Senator from New York (Mrs. CLINTON), the Senator from Oklahoma (Mr. COBURN), the Senator from Mississippi (Mr. COCHRAN), the Senator from New Mexico (Mr. DOMENICI), the Senator from South Carolina (Mr. GRAHAM), the Senator from South Dakota (Mr. JOHNSON), the Senator from Louisiana (Ms. LANDRIEU), the Senator from Michigan (Mr. LEVIN), the Senator from Arkansas (Mr. PRYOR) and the Senator from Pennsylvania (Mr. SANTORUM) were added as cosponsors of S. Res. 44, a resolution celebrating Black History Month.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. GRAHAM (for himself, Mrs. CLINTON, Mr. DEWINE, Mr. LEAHY, Mr. ALLEN, Ms. CANTWELL, and Mr. REID):

S. 337. 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 expand certain authorities to provide health care benefits for Reserves and their families, and for other purposes; to the Committee on Armed Services.

Mr. REID. Mr. President, we have long recognized that our country has an obligation to take care of the brave men and women who wear the uniform of the United States—and their families.

Sixty years ago we passed the GI Bill of Rights for the 16 million veterans who served in WorId War II. By providing new opportunities in housing and education, we helped them return to civilian life.

Our military forces have changed dramatically since then—but the benefits we offer to military families haven't kept pace with the changes.

Today our military relies on volunteers, and our security depends on recruiting and retaining good troops—including members of the National Guard and Reserves.

The Guard and Reserves serve at the command of State governors, but members are also available to be called to active duty by the President. And over the last 10 years, the role of the National Guard and Reserves in our military has steadily increased.

Today, reports indicate that almost half of the forces deployed in support of Operation Enduring Freedom and Operation Iraqi Freedom come from the National Guard and the Reserves.

These Guardsmen and Reservists are not only providing much-needed ''boots on the ground.'' They bring specific skills that our regular active military cannot duplicate.

For example, in my home state of Nevada, half of the pilots in the Nevada Air National Guard are civilian pilots.

A majority of the Nevada National Guard military police, who are in the 72nd MP Company that just returned from Iraq, work as law enforcement officers in Las Vegas.

And the Nevada Army Guard's 126th Medical Company an air ambulance

unit, which flew more than 174 traumatic medical evacuations in Afghanistan, is made up entirely of men and women who work as civilian paramedics.

So the National Guard and Reserves are strengthened by the fact that members hold civilian jobs as pilots, police officers and paramedics.

The Guard and Reserves also provide the primary service—or the only service—in several crucial areas of national security, including: port security; airport security; civil support teams; and reconnaissance and Drug Air Interdiction.

Since we rely more than ever on members of our National Guard and Reserves, we need to modernize the benefits that are available to them—especially in the areas of retirement and health care.

Let's start with health care.

It's true that service in the Guard and Reserve is a part time obligation—but it is unlike any other part-time job that a person might hold.

When the Guard and Reserves call, members must put their duty above their regular jobs and even their families. That means taking time off from their regular jobs . . . and forgoing many family activities because they are busy fulfilling their Guard or reserve duties.

And it means being ready for deployment at any time.

In short, we expect members to make the Guard and Reserves a top priority in their lives.

In return for that commitment . . . for the sacrifices they make at their regular jobs . . . we owe them the peace of mind of knowing that their families will receive quality medical care.

We need to offer medical care that leverages the existing military health care system. That is why TRICARE should be an option for all members of the National Guard and Reserves.

The lack of health care benefits for Guard and Reserve members is a serious problem. Currently, about 40 percent of the enlisted members don't have any health care coverage.

This affects troop readiness. In recent mobilizations, 10 to 15 percent of the Guard and Reserve members could not be deployed due to health-related issues.

It also affects the state of mind of those who are training for dangerous deployments. A Reservist in training on the weekend shouldn't be worried about whether his or her sick child will be able to see a doctor.

Providing better health care benefits to members of the Guard and Reserve is not only the right thing to do—it's a matter of national security.

We just also upgrade the retirement benefits available to those who choose to serve for long periods of time.

A person who serves in the Guard or Reserve for 20 years is subject to being called up to active duty numerous times, disrupting his or her civilian career and retirement planning.

We must take this into account, and improve the retirement benefits for Guard and Reserve members.

The current reserve retirement system is 50 years old, and it doesn't reflect the extent to which our nation now depends on the National Guard and Reserves.

This outdated system doesn't allow members to receive retired pay or retiree health benefits until they are 60 years old. We must update the system so those who serve can receive benefits at age 55, if they meet all the other requirements.

This change would recognize the importance of the Guard and Reserves in today's military . . . and it would recognize the sacrifices that members make in their civilian careers in order to serve their country.

Once again, this is not only the right thing to do—it will make our country stronger and safer by encouraging and rewarding service in the National Guard and Reserves.

By Mr. DURBIN (for himself, Mr. BUNNING, Mr. OBAMA, Mr. BAYH, and Mr. LUGAR):

S. 341. A bill to provide for the redesign of the reverse of the Lincoln 1-cent coin in 2009 in commemoration of the 200th anniversary of the birth of President Abraham Lincoln; to the Committee on Banking, Housing, and Urban Affairs.

Mr. DURBIN. Mr. President, today I am introducing a bill to honor Abraham Lincoln in 2009, the bicentennial of his birth, by issuing a series of 1-cent coins with designs on the reverse that are emblematic of the 4 major periods of his life, in Kentucky, Indiana, Illinois, and Washington, D.C. The bill would also provide for a longer-term redesign of the reverse of 1-cent coins so that after 2009 they will bear an image emblematic of Lincoln's preservation of the United States as a single and united country.

Abraham Lincoln was one of our greatest leaders, demonstrating enormous courage and strength of character during the Civil War, perhaps the greatest crisis in our Nation's history. Lincoln was born in Kentucky, grew to adulthood in Indiana, achieved fame in Illinois, and led the Nation in Washington, DC. He rose to the Presidency through a combination of honesty, integrity, intelligence, and commitment to the United States.

Adhering to the belief that all men are created equal, Lincoln led the effort to free all slaves in the United States. Despite the great passions aroused by the Civil War, Lincoln had a generous heart and acted with malice toward none and with charity for all. Lincoln made the ultimate sacrifice for the country he loved, dying from an assassin's bullet on April 15, 1865. All Americans could benefit from studying the life of Abraham Lincoln.

The ''Lincoln cent'' was introduced in 1909 on the 100th anniversary of Lincoln's birth, making the front design by sculptor Victor David Brenner the most enduring image on the Nation's coinage. President Theodore Roosevelt was so impressed by Brenner's talent that he was chosen to design the likeness of Lincoln for the coin, adapting a design from a plaque Brenner had prepared earlier. In the nearly 100 years of production of the ''Lincoln cent,'' there have been only two designs on the reverse: the original, featuring two wheat-heads, and the current representation of the Lincoln Memorial in Washington, DC.

On the occasion of the bicentennial of Lincoln's birth and the 100th anniversary of the production of the Lincoln cent, we should recognize his great achievement in ensuring that the United States remained one Nation, united and inseparable.

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. 341

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 ''Abraham Lincoln Bicentennial 1-Cent Coin Redesign Act''.

SEC. 2. FINDINGS.

The Congress finds as follows:

(1) Abraham Lincoln, the 16th President, was one of the Nation's greatest leaders, demonstrating true courage during the Civil War, one of the greatest crises in the Nation's history.

(2) Born of humble roots in Hardin County, Kentucky, on February 12, 1809, Abraham Lincoln rose to the Presidency through a combination of honesty, integrity, intelligence, and commitment to the United States.

(3) With the belief that all men are created equal, Abraham Lincoln led the effort to free all slaves in the United States.

(4) Abraham Lincoln had a generous heart, with malice toward none and with charity for all.

(5) Abraham Lincoln gave the ultimate sacrifice for the country he loved, dying from an assassin's bullet on April 15, 1865.

(6) All Americans could benefit from studying the life of Abraham Lincoln, for Lincoln's life is a model for accomplishing the ''American dream'' through honesty, integrity, loyalty, and a lifetime of education.

(7) The year 2009 will be the bicentennial anniversary of the birth of Abraham Lincoln.

(8) Abraham Lincoln was born in Kentucky, grew to adulthood in Indiana, achieved fame in Illinois, and led the nation in Washington, D.C.

(9) The so-called ''Lincoln cent'' was introduced in 1909 on the 100th anniversary of Lincoln's birth, making the obverse design the most enduring on the nation's coinage.

(10) President Theodore Roosevelt was so impressed by the talent of Victor David

Brenner that the sculptor was chosen to design the likeness of President Lincoln for the coin, adapting a design from a plaque Brenner had prepared earlier.

(11) In the nearly 100 years of production of the ''Lincoln cent'', there have been only 2 designs on the reverse: the original, featuring 2 wheat-heads in memorial style enclosing mottoes, and the current representation of the Lincoln Memorial in Washington, D.C.

(12) On the occasion of the bicentennial of President Lincoln's birth and the 100th anniversary of the production of the Lincoln cent, it is entirely fitting to issue a series of 1-cent coins with designs on the reverse that are emblematic of the 4 major periods of President Lincoln's life.

SEC. 3. REDESIGN OF LINCOLN CENT FOR 2009.

(a) IN GENERAL.—During the year 2009, the Secretary of the Treasury shall issue 1-cent coins in accordance with the following design specifications:

(1) OBVERSE.—The obverse of the 1-cent coin shall continue to bear the Victor David Brenner likeness of President Abraham Lincoln.

(2) REVERSE.—The reverse of the coins shall bear 4 different designs each representing a different aspect of the life of Abraham Lincoln, such as—

(A) his birth and early childhood in Kentucky;

(B) his formative years in Indiana;

(C) his professional life in Illinois; and

(D) his presidency, in Washington, D.C.

(b) ISSUANCE OF REDESIGNED LINCOLN CENTS IN 2009.—

(1) ORDER.—The 1-cent coins to which this section applies shall be issued with 1 of the 4 designs referred to in subsection (a)(2) beginning at the start of each calendar quarter of 2009.

(2) NUMBER.—The Secretary shall prescribe, on the basis of such factors as the Secretary determines to be appropriate, the number of 1-cent coins that shall be issued with each of the designs selected for each calendar quarter of 2009.

(c) DESIGN SELECTION.—The designs for the coins specified in this section shall be chosen by the Secretary—

(1) after consultation with the Abraham Lincoln Bicentennial Commission and the Commission of Fine Arts; and

(2) after review by the Citizens Coinage Advisory Committee.

SEC. 4. REDESIGN OF REVERSE OF 1-CENT COINS AFTER 2009.

The design on the reverse of the 1-cent coins issued after December 31, 2009, shall bear an image emblematic of President Lincoln's preservation of the United States of America as a single and united country.

SEC. 5. NUMISMATIC PENNIES WITH THE SAME METALLIC CONTENT AS THE 1909 PENNY.

The Secretary of the Treasury shall issue 1-cent coins in 2009 with the exact metallic content as the 1-cent coin contained in 1909 in such number as the Secretary determines to be appropriate for numismatic purposes.

SEC. 6. SENSE OF THE CONGRESS.

It is the sense of the Congress that the original Victor David Brenner design for the 1-cent coin was a dramatic departure from previous American coinage that should be reproduced, using the original form and relief of the likeness of Abraham Lincoln, on the 1-cent coins issued in 2009.

By Mr. MCCAIN (for himself, Mr. LIEBERMAN, Ms. SNOWE, Mrs. FEINSTEIN, Mr. CHAFEE, Mr. DURBIN, Mr. LAUTENBERG, Mrs. MURRAY, Mr. NELSON of Florida, Mr. CORZINE, Ms. CANTWELL, Mr. KERRY, and Mr. DAYTON):

S. 342. A bill to provide for a program of scientific research on abrupt climate change, to accelerate the reduction of greenhouse gas emissions in the United States by establishing a market-driven system of greenhouse gas tradeable allowances, to limit greenhouse gas emissions in the United States and reduce dependence upon foreign oil, and ensure benefits to consumers from the trading in such allowances; to the Committee on Environment and Public Works.

Mr. MCCAIN. Mr. President, I am pleased today to be joined with Senator LIEBERMAN in introducing the Climate Stewardship Act of 2005. This bill is nearly identical to a proposal we offered during the 108th Congress. It is designed to begin a meaningful and shared effort among the emission-producing sectors of our country to address the world's greatest environmental challenge—climate change.

The National Academy of Sciences reported:

> Greenhouse gases are accumulating in the Earth's atmosphere as a result of human activities, causing surface air temperatures and subsurface ocean temperatures to rise. Temperatures are, in fact, rising. The changes observed over the last several decades are likely mostly due to human activities.

Again, ''temperatures are, in fact, rising.'' Those are the words of the National Academy of Sciences, a body created by the Congress in 1863 to provide advice to the Federal Government on scientific and technical matters. These comments were written after much thoughtful deliberation and should not be taken lightly. The Academy has a 140-year history and a strong reputation of service to the people of this great country.

In October 2003, in response to the alarming changes in the climate that are being reported worldwide, we were joined by a number of other Senators in the first offering of our proposal for addressing climate change for Senate consideration. We had a hard-fought debate and found ourselves eight votes short of achieving a majority in passage. Today, we resume what we finally can consider a worthy and necessary cause.

I state at the outset that this issue is not going away. This issue is one of transcendent importance outside the boundaries of the United States of America. If you travel to Europe today and visit with our European friends, you will find that climate change/Kyoto treaty are major sources of dissatisfaction on that side of the Atlantic with the United States of America and its policies. But far more important than that, the overwhelming body of scientific evidence shows that climate change is real, that it is happening as we speak. The Arctic and Antarctic are the ''miner's canary'' of climate change, and profound and terrible things are happening at the poles, not to mention other parts of the world.

Democracies usually respond to crises when they are faced with them and, at least in the case of this Nation, we address problems and crises that confront us and we move on. We are not very good at long-term planning and long-term addressing of issues that face us in the future. The divisions concerning the issue of Social Security are clearly an example of what I just said.

If we do not move on this issue, our children and grandchildren are going to pay an incredibly heavy price because this crisis is upon us, only we do not see its visible aspects in all of its enormity.

Prime Minister Tony Blair, assuming the stewardship of the G–8, has made it his highest priority. He has very aptly pointed out: Suppose that all of the scientific opinion is wrong; suppose that the ice that is breaking up in the Antarctic in huge chunks is just something which is temporary; suppose that the glaciers receding in the Arctic at a higher rate than at any time in history is something that is a one-time deal; suppose that the melting of the permafrost in Alaska and the Inuit villages collapsing into the ocean is a one-time thing; suppose these increases in violent climate occurrences are all something that are just temporary aberrations; suppose that happens to be true and we have acted. Then the world and the Nation will be better off because we would have developed technologies which are cleaner. We would have taken actions to reduce what everybody agrees is harmful, and that is excess greenhouse gases. And the Nation and the world would be better off.

But suppose the scientists are right. Suppose that the National Academy of Sciences report that says, ''Greenhouse gases are accumulating in the Earth's atmosphere as a result of human activities. Temperatures are, in fact, rising. The changes observed over the last several decades are likely mostly due to human activities[. . .]'' is right; suppose that Dr. Robert Corell, chair of the Arctic Climate Impact Assessment, assessing the economic impacts and consequences of the changing Arctic, and the Arctic Council, composed of the senior officials from the eight Arctic countries that reached the conclusion that the Arctic climate is changing rapidly; that over the past 50 years, temperatures across Alaska, Canada, and much of Russia have increased 3 to 5 degrees Fahrenheit, with winter temperatures in these areas increasing by up to 7 degrees Fahrenheit; that in the past 30 years, the Arctic has lost an area of annual average sea ice larger than all of Arizona and Texas combined, with even stronger declines observed in summer sea ice; that mountain glaciers have also receded dramatically, and the snow cover season

has been shrinking; that greenhouse gas concentration continues to rise; and even larger changes in climate are projected for the next 100 years; suppose they are right.

The observed warming is already having significant impacts on Arctic people and ecosystems. Much larger projected climate changes will result in even greater impacts on the people in the Arctic and beyond. Increasing coastal erosion threatens many Alaskan villages. Warming is also affecting the oil industry. The number of days in which oil exploration and extraction activities on the tundra are allowed under Alaska Department of Natural Resources standards has been halved over the past 30 years.

The projected changes in Arctic climate will also have global implications. Amplified global warming, rising sea levels, and potential alterations in ocean circulation patterns that can have large-scale climatic effects are among the global concerns. Melting Arctic snow and ice cause additional absorption of solar energy by the darker land surface, amplifying the warming trend at the global scale.

Recently, the Australians have predicted that the Great Barrier Reef will be dead by 2050. What is the impact of coral reefs around the world being bleached and dying on the food chain?

Dr. William Fraser, president of Polar Oceans Research Group, testified that mountain ranges flanking the southeastern boundary of the glacier, not visible 30 years ago, are emerging into full view. The amount of ice-free land along the entire southwest coast of Anver Island has been redefined by glacier retreat. Populations of the ice-avoiding Chinstrap and Gentoo penguins have increased by 55 to 90 percent.

The coral reefs are the most biologically diverse ecosystem of the ocean, as we all know. Almost 1,000 coral species currently exist. With the majority of human populations living in coastal regions, many people depend on living coral reef for food and protection from storm surges.

Dr. Lara Hansen stated:

While the Great Barrier Reef is widely considered to be one of the best managed reef systems in the world, local conservation actions will not be sufficient to protect coral reefs from the effects of climate change. To date, studies indicate that the best chance for successful conservation in the face of climate change is to limit the temperature increase. . . .

ADM James Watkins, who was chairman of the U.S. Commission on Ocean Policy, testified that climate change impacts every topic in the report from the health and safety of humans, the health of environment and fisheries to the distribution of marine organisms, including pathogens. Admiral Watkins, former Chief of Naval Operations and former Secretary of Energy, not a renowned environmentalist, went on to say climate change is a serious problem, and it could affect all of the recommendations from the report.

There will be people who will come to this floor and say that climate change is a myth; it is not serious. They will find a scientist, they will find some study group, some of them funded by people with special interests here, but I hope that we will pay attention to Prime Minister Tony Blair, who has made climate change one of the two issues he hopes to address during his presidency of the G–8. This issue I believe is very well understood by a majority of scientists in America.

I have a couple of pictures I will show. I see my colleague from Connecticut is in the Chamber.

Recently, Dr. Rajendra Pachauri, the chairman of the U.N.'s Intergovernmental Panel on Climate Change, stated that he personally believes that the world has ''already reached the level of dangerous concentrations of carbon dioxide in the atmosphere.''

He went on to say:

Climate change is for real. We have just a small window of opportunity, and it is closing rapidly. There is not a moment to lose.

The International Climate Change Task Force, chaired by Senator SNOWE and the Right Honorable Stephen Byers, Member of Parliament of the United Kingdom, stated in 1 of its 10 recommendations concerning climate change that ''all developed countries introduce mandatory cap-and-trade systems for carbon emissions and construct them to allow for future integration into a single global market.'' That is already being done in Europe as we speak, which is the substance of Senator LIEBERMAN's and my legislation.

States are acting. Nine States in the East have signed on as full participants in this initiative to elevate climate mitigation strategies from voluntary initiatives to a regulatory program. The State of California has approved a new State regulation aimed at decreasing carbon dioxide emissions from vehicles. The States are way ahead of us. I believe one of the reasons for that is because special interests are less active in the States.

This is a chart that shows that the CO2 data has gone up from, as we can see, 1860 to 2001.

This is a picture of the Arctic sea ice loss. The red outline is 1979. This was the Arctic sea ice, which is outlined in red. We can see the size of the Arctic sea ice today. I made a visit with some of my colleagues to the Arctic. We took a ship and stopped at where this glacier was 5 years ago, traveling a number of miles and saw where that glacier is today.

I want to emphasize again, the Arctic and the Antarctic are the miner's canary of global warming because of the thinness of the atmosphere there.

This chart is sea level changes in areas of Florida that would be inundated with a sea level rise.

I usually have—it is probably not here—I usually have a picture of Mount Kilimanjaro, which is known to many of us.

This is a chart of coral bleaching which is taking place as we speak.

If I can add a little parochialism, if I can show a picture of Lake Powell in Arizona, it has been drying up since 1999, draining Lake Powell to well below its high watermark. It is at an alltime low in its seventh year. The lake has shrunk to 10 percent of its capacity.

The signs of climate change are all around us. We need to act. We need to develop technologies and make it economically attractive for industry to find it in their interest to develop technology which will reduce and bring into check the greenhouse gas emissions in the world.

We need to do a lot of things, but a cap and trade, which would put an end to the increase of greenhouse gases and a gradual reduction, is an integral part.

Finally, I would like to return to my other argument in closing.

Suppose the Senator from Connecticut and I are deluded, that all of this scientific evidence, all these opinions, people such as Admiral Watkins in the oceans report, the National Academy of Sciences, the literally hundreds of people in the scientific community with whom Senator LIEBERMAN and I have met and talked are wrong.

Here is the picture of Kilimanjaro in 1912, 1970, and 2000.

Suppose we are deluded, that we are tree-hugging environmentalists who have taken leave of our senses and are sounding a false alarm to the world, and we go ahead and put in a cap and trade, we encourage technologies to be developed and funded, some by the Federal Government in the form of pure research, and we do put a cap on the greenhouse gases, we negotiate an alternate Kyoto Treaty with our friends throughout the world—140 nations are signatories to the Kyoto Treaty—and we join on the provision India and China have to be included and other provisions which we have every right to demand, and we start moving forward on this issue and we are wrong, that the year after next, everything is fine in the world? Then we will have made probably a significant contribution to the betterment of the world and the Earth by reducing greenhouse gases, by developing cleaner technologies, by doing good things, and then Senator LIEBERMAN and I will come to the floor and apologize for sounding this alarm.

But suppose, Mr. President, that we are right. Suppose the National Academy of Sciences is right. Suppose the eight-nation research council that is deeply alarmed at these effects in both the Arctic and Antarctic is wrong; suppose Admiral Watkins is wrong; suppose the Australian Government is wrong when it says the Great Barrier Reef is going to be dead by 2050, and we have done nothing? We have done relatively nothing besides gather additional data and make reports. That is what the U.S. national policy is today: gather information and make reports. I

would argue that is a pretty heavy burden to lay on future generations of Americans.

I welcome the participation, friendship, and commitment of my friend from Connecticut.

Mr. President, I ask unanimous consent to print in the RECORD an article entitled ''Arid Arizona Points to Global Warming as Culprit,'' and a response to Senator INHOFE's floor statement on January 4, 2005.

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

[From the Washington Post, Feb. 6, 2005]

ARID ARIZONA POINTS TO GLOBAL WARMING AS CULPRIT

(By Juliet Eilperin)

TUCSON.—Reese Woodling remembers the mornings when he would walk the grounds of his ranch and come back with his clothes soaked with dew, moisture that fostered enough grass to feed 500 cows and their calves.

But by 1993, he says, the dew was disappearing around Cascabel—his 2,700-acre ranch in the Malpai borderlands straddling New Mexico and Arizona—and shrubs were taking over the grassland. Five years later Woodling had sold off half his cows, and by 2004 he abandoned the ranch.

Reese Woodling, in white, used to own a 2,700-acre ranch, but lack of rain reduced the grassland—his main source of cattle feed.

''How do you respond when the grass is dying? You hope to hell it starts to rain next year,'' he says.

When the rain stopped coming in the 1990s, he and other Southwest ranchers began to suspect there was a larger weather pattern afoot. ''People started talking about how we've got some major problems out here,'' he said in an interview. ''Do I believe in global warming? Absolutely.''

Dramatic weather changes in the West—whether it is Arizona's decade-long drought or this winter's torrential rains in Southern California—have pushed some former skeptics to reevaluate their views on climate change. A number of scientists, and some Westerners, are now convinced that global warming is the best explanation for the higher temperatures, rapid precipitation shifts, and accelerated blooming and breeding patterns that are changing the Southwest, one of the nation's most vulnerable ecosystems.

In the face of shrinking water reservoirs, massive forest fires and temperature-related disease outbreaks, several said they now believe that warming is transforming their daily lives. Although it has rained some during the past three months, the state is still struggling with a persistent drought that has hurt its economy, costing cattle-related industries $2.8 billion in 2002.

''Everyone's from Missouri: When they see it, they believe it,'' said Gregg Garfin, who has assessed the Southwest's climate for the federal government since 1998. ''When we used to talk about climate, eyes would glaze over. . . . Then the drought came. The phone started ringing off the hook.''

Jonathan Overpeck, who directs the university- and government-funded Institute for the Study of Planet Earth at the University of Arizona, said current drought and weather disruptions signal what is to come over the next century. Twenty-five years ago, he said, scientists produced computer models of the drought that Arizona is now experiencing.

''It's going to get warmer, we're going to have more people, and we're going to have more droughts more frequently and in harsher terms,'' Overpeck said. ''We should be at the forefront of demanding action on global warming because we're at the forefront of the impacts of global warming. . . . In the West we're seeing what's happening now.''

There are dissenters who say it is impossible to attribute the recent drought and higher temperatures to global warming. Sherwood Idso, president of the Tempe, Ariz.-based Center for the Study of Carbon Dioxide and Global Change, said he does not believe the state's drought ''has anything to do with CO_2 or global warming,'' because the region experienced more-severe droughts between 1600 and 1800. Idso, who also said he did not believe there is a link between human-generated carbon dioxide emissions and climate change, declined to say who funds his center.

The stakes are enormous for Arizona, which is growing six times faster than the national average and must meet mounting demands for water and space with scarce resources. Gov. Janet Napolitano (D) is urging Arizonans to embrace ''a culture of conservation'' with water, but some conservationists and scientists wonder whether that will be enough.

Dale Turner of the Nature Conservancy tracks changes in the state's mountaintop ''sky islands''—a region east and south of Tucson that hosts a bevy of rare plants and animals. Human activities over the past century have degraded local habitats, Turner said, and now climate change threatens to push these populations ''over the edge.''

The Mount Graham red squirrel, on the federal endangered species list since 1987, has been at the center of a long-running fight between environmentalists and development-minded Arizonans. Forest fires and rising temperatures have worsened the animals' plight as they depend on Douglas firs at the top of a 10,720-foot mountain for food and nest-building materials. The population has dipped from about 562 animals in spring 1999 to 264 last fall.

''They are so on the downhill slide,'' said Thetis Gamberg, a U.S. Fish and Wildlife biologist who has an image of the endangered squirrel on her business card. Atop Mount Graham, the squirrels' predicament is readily visible. Mixed conifers are replacing Douglas firs at higher altitudes, and recent fires have destroyed other parts of the forest, depriving the animals of the cones they need.

Environmentalists such as Turner worry about the disappearance of the Mount Graham squirrel, the long-tailed, mouselike vole and native wet meadows known as cienegas, but many lawmakers and state officials are more focused on the practical question of water supply.

Reese Woodling, in white, used to own a 2,700-acre ranch, but lack of rain reduced the grassland—his main source of cattle feed.

Arizona gets its water from groundwater and rivers such as the massive Colorado, a 1,450-mile waterway that supplies water to seven states: Arizona, California, Colorado, Nevada, New Mexico, Utah and Wyoming.

The recent drought and changing weather patterns have shrunk the western snowpack and drained the region's two biggest reservoirs, lakes Mead and Powell, to half their capacity. More precipitation is falling as rain instead of snow, and it is coming earlier in the year, which leads to rapid runoff that disappears quickly.

Scientists at Scripps Institution of Oceanography predict that by 2090 global warming will reduce the Sierra Nevada snowpack, which accounts for half of California's water reserves, by 30 percent to 90 percent. ''It makes water management more challenging,'' said Kathy Jacobs, who spent two decades managing state water resources before joining the University of Arizona's Water Resources Research Center. ''You can either reduce demand or increase supply.''

Water managers have just begun to consider climate change in their long-term planning. Forest managers have also started asking for climate briefings, now that scientists have documented that short, wet periods followed by drought lead to the kind of giant forest fires that have been devastating the West.

This month, scientists at the National Center for Atmospheric Research in Boulder, Colo., published a study showing that worldwide, regions suffering from serious drought more than doubled in area from the early 1970s to the early 2000s, with much of the change attributed to global warming. A separate recent report in the journal Science concluded that higher temperatures could cause serious long-term drought over western North America.

C. Mark Eakin, a paleoclimatologist at the National Oceanic and Atmospheric Administration who co-wrote the study in Science, said historical climate records suggest the current drought could just be the beginning.

''When you've got an increased tendency toward drought in a region that's already stressed, then you're just looking for trouble,'' Eakin said. ''Weather is like rolling the dice, and climate change is like loading the dice.''

Still, Arizona politicians remain divided on how to address global warming. Sen. John McCain (R-Ariz.) has led the national fight to impose mandatory limits on industrial carbon dioxide emissions that are linked to warming, though his bill remains stalled.

''We'll win on this issue because the evidence continues to accumulate,'' McCain said in an interview. ''The question is how much damage will be done until we do prevail.''

But other Arizona Republicans are resistant. State Sen. Robert Blendu, who opposed a bill last year to establish a climate change study committee, said he wants to make sure politicians ''avoid the public knee-jerk reaction before we get sound science.''

That mind-set frustrates ranchers such as Woodling, who is raising 10 grass-fed cows on a leased pasture. At age 69, he will never be able to rebuild his herd, he said, but he believes politicians have an obligation to help restore the environment.

''Man has been a great cause of this, and man needs to address it,'' he said.

USCAN REBUTTAL TO KEY POINTS IN SENATOR INHOFE'S FLOOR STATEMENT, JANUARY 4, 2005

The following individuals contributed to this response: U.S. Delegation at COP10, Debbie Reed, National Environmental Trust; EU Targets: Jeff Fiedler, Natural Resources Defense Council; Scientific Consensus: Brenda Ekwurzel, Julie Anderson Union of Concerned Scientists; and Costs: Ansje Miller, Environmental Justice and Climate Change Initiative.

For more information or with any questions, contact: Lee Hayes Byron, U.S. Climate Action Network, lhbyron@climatenetwork.org, 202–513–6240.

U.S. DELEGATION AT COP10

Senator Inhofe's characterization of Under Secretary Paula Dobriansky's rebuff at attempts to ''drag the U.S. into discussions concerning post-Kyoto climate change commitments'' at the recent UNFCCC conference in Buenos Aires is only partially accurate. Ms. Dobriansky did, indeed make clear the fact that the Bush administration believes that post–2012 talks are ''premature.'' Some countries, including the E.U., were indeed hopeful that the U.S., the world's largest emitter of greenhouse gas pollution, would join post–2012 discussions, having previously

withdrawn from the Kyoto Protocol, and having proclaimed domestic action to reduce GHG emissions, despite the fact that U.S. emissions continue to increase unabated. Senator Inhofe's material omission from this statement, however, is illustrative of his and the Bush administration's true goals: to prevent the rest of the world from making progress on reducing global GHG emissions. What Senator Inhofe failed to mention in his diatribe was that the Bush administration in Buenos Aires not only demurred from participating in these discussions, but also acted to prevent the rest of the world's countries from beginning those discussions even in the absence of U.S. participation. Without objections from the United States, the post–2012 discussions could have begun, and would have allowed some ideas and suggestions for the post–2012 period to be presented to the next meeting of the UNFCCC in November, 2005. But Under Secretary Dobriansky and the Bush administration objected and threw up every possible obstacle to allowing other countries to have those discussions, with or without the U.S. The result is that one multiple-day meeting, with a narrowly defined agenda to discuss post–2012 strategies was agreed to—but the exact nature of the discussions, and the ability of the meeting's participants to report to the UNFCCC in November 2005 was a matter of disagreement even as the agreement was made. It is highly likely that the meeting itself will be contentious, for these reasons. But the real question is why the U.S. insists on blocking the rest of the world from moving on, even if it chooses not to? Senator Inhofe would better serve his constituents and his colleagues to accurately and completely report the Administration's actions at the meeting.

Similarly, the Senator reported that there was discussion but no resolution at the meeting on how to address emissions from developing countries. He claimed that developing countries, ''most notably China, remained adamant in Buenos Aires in opposing any mandatory greenhouse gas reductions, now or in the future.'' Again, his material omission is significant. The United States remained adamant in Buenos Aires in opposing any mandatory greenhouse gas reductions, now or in the future. And the United States urged China and India to do the same. The Bush administration's duplicity—claiming that they will not act until China and India do, and then visibly and vocally urging China and India not to act—is unconscionable, as is Senator Inhofe's. And the Senator perhaps should acknowledge the fact that, since the Senate passed the Byrd-Hagel resolution in 1997, it has passed three additional resolutions on climate change—all of which clearly state that climate change is happening and that the United States should take a credible, leadership role in combating global warming—including by re-engaging in the international climate change negotiations. Paula Dobriansky, when asked whether the Bush administration knew of these resolutions, and if so, whether they intended to comply, said ''yes,'' they were fully aware of resolutions, but ''no'', they had no intention of complying. If that is the case, so be it—but let's be honest and open about it, Senator Inhofe.

EU TARGETS

In contrast to Senator Inhofe's contention that ''most EU member states will not meet their Kyoto targets and have no real intentions of doing so,'' a recent analysis by the European Environment Agency (EEA) concluded that the EU is in fact on track to meet its Kyoto targets. This analysis examined existing and planned policies, as well as the use of the Kyoto emissions trading measures.

Looking only at policies that were being implemented at the time of the analysis, EEA projected that the EU would indeed fall short of its targets (with emissions 1% below 1990 instead of 8%). However, looking at planned policies, the EU is on track to exceed its −8% target. Domestic EU policies alone are projected to achieve a 7.7% reduction. The small remaining gap is covered by international emission reduction projects for which funds have already been budgeted.

The effect of ''planned policies'' cannot be dismissed as wishful thinking. Included in the list of ''planned policies'' is the EU Emissions Trading Scheme, a mandatory cap-and-trade policy for large stationary sources, which started operation this year. Many other EU-wide policies have been adopted by the EU Council and Parliament, and are now being incorporated into law by EU member states. These policies include measures to promote renewable electricity production, increase building efficiency, and restructure energy taxes. A complete list of future policies that are in advanced stages is available in EEA 2004, at page 21.

The EEA projections cited above exclude two additional means of meeting the targets. First, activities in the forest and agriculture sectors are projected to contribute an additional 0.7% emission reduction. Second, the EU can make up any shortfall in existing and planned policies by using the Kyoto Protocol's International Emissions Trading system, ironically an element of the protocol designed by the US. Under this system EU countries will be able to purchase emissions allowances from other Kyoto countries. This includes Russia, which by most projections will have significant excess allowances. Therefore, although it is environmentally preferable for the EU to meet its Kyoto targets solely through domestic policies, it is almost inconceivable that the EU would not be able to achieve compliance through the purchase of Russian allowances.

HOCKEY STICK

Senator Inhofe made the following statements regarding research that reconstructs northern hemisphere temperature over the past millennium. ''The conclusion inferred from the hockey stick is that industrialization, which spawned widespread use of fossil fuels, is causing the planet to warm. I spent considerable time examining this work in my 2003 speech. Because Mann effectively erased the well-known phenomena of the Medieval Warming Period—when, by the way, it was warmer than it is today—and the Little Ice Age, I didn't find it very credible. I find it even less credible now.'' Senator Inhofe went on to state, ''In other words, in obliterating the Medieval Warming Period and the Little Ice Age, Mann's hockey stick just doesn't pass muster.''

Recent warming trends are confirmed by many independent and reinforcing . indicators. Direct temperature measurements from the past 140 years, combined with past temperature measurements inferred from tree rings, ice cores, and annual sediment layers, show that average northern hemisphere temperatures in the late 20th century are higher than they have been in the last 1,000 years. More recent publications push the temperature reconstruction back to 1,800 years. Indeed, the last 10 years (1995–2004), excluding 1996, are the warmest in the instrumental record from 1861 to the present. This unprecedented recent warming trend is one of many pieces of evidence that ties global warming to human-caused emissions of heat-trapping gases from land-use change and fossil fuel burning.

Heat-trapping gases such as carbon dioxide (CO_2) absorb energy emitted from the earth's surface and radiate it back downward to warm the lower atmosphere and the surface. The general correlation between temperature and atmospheric CO_2 concentration is apparent in ice core records at many locations at the poles and in the temperate and tropical regions throughout the world. The Antarctic ice core records vividly illustrate that current atmospheric carbon dioxide levels are unmatched during the past 420,000 years. Furthermore, CO_2 concentration has risen a dramatic 30 percent in the last 150 years. When scientists compare the timing of the recent rise in atmospheric carbon dioxide concentrations with the magnitude of other factors that influence climate—solar variation, volcanic eruptions, and pollutant emissions such as sulfur dioxide—the link between recent warming and human activities is unmistakable.

(2) Debate over the ''hockey stick'' temperature reconstruction is largely irrelevant to our current policy choices. The shape of the sharp rise in northern hemisphere average temperature, at the end of the last millennium, led to the common practice of referring to the plot as the ''hockey stick'' figure. Projections of future climate changes, however, are based on the well-known physics linking increasing heat-trapping gas concentrations to conditions at the earth's surface, and these projections do not depend on details of the earth's temperature hundreds of years ago. Thus, debate over the ''hockey stick'' temperature reconstruction is largely irrelevant to our current policy choices. Nevertheless, because the scientific debate on this issue has been misinterpreted, most recently in Senator Inhofe's January 4, 2005 speech, it is worth clarifying a few points.

The hockey stick analysis is one of many independent reinforcing indicators of the recent warming. For example, glacier melting is increasing, sea level is rising, and many species' ranges are shifting.

The hockey stick reconstruction represents the average temperature across the entire northern hemisphere—an average of many measurements taken from locations north of the equator. This averaging is important because local temperatures can vary considerably for many climatological reasons, and so a hemispheric average gives a truer picture of a warming climate. Therefore, looking at regional data in isolation, such as temperatures from the ''Medieval Warm Period'' in the North Atlantic area, and to therefore claim that the hockey stick temperature reconstruction is invalid, is inaccurate.

Additional Remarks

In criticizing the ''hockey stick'' temperature record, Senator Inhofe charges that the Mann analysis has been criticized in the pages of Geophysical Research Letters (GRL), a respected, peer-reviewed journal, as ''just bad science.'' This quote does actually appear in GRL in a commentary by Chapman et al. (2004), but Inhofe's citation is quite misleading.

The criticism leveled by Chapman et al did not apply to the ''hockey stick''-that is, the 1OOO-year temperature reconstruction by Mann and others. Rather, the Chapman et al. criticism was leveled at a totally different, much more narrow and technical modeling study by Mann and Schmidt in 2003 about borehole reconstructions.

ARCTIC

Senator Inhofe asserted, using the words of Dr. George Taylor from Oregon, that the Arctic Climate Impact Assessment ''appears to be guilty of selective use of data. Many of the trends described in the document begin in the 1960s or 1970s. . . . Yet data are readily available for the 1930s and early 1940s, when temperatures were comparable to (and probably higher than) those observed today.''

(1) Temperature trends and sea ice trends shown in the Arctic report are century long trends, from 1900–2000. Therefore, Senator Inhofe's attack on the scientific integrity of the Arctic impact assessment is inappropriate.

(2) Arctic researchers concluded that the recent warming, in contrast to the earlier warming during the 1930s and 1940s, is in response to human activities. No one disputes that Arctic temperatures were almost as high in the 1930s and 1940s as they are now, least of all the scientists involved in the Arctic Climate Impact Assessment. The conclusion that the Arctic is now experiencing a stronger, longer, and more widespread warming trend is based on a robust combination of temperature measurements, sea ice retreat, glacial melting, and increasing permafrost temperatures. For example, the century-long sea ice record clearly shows a strong retreat in sea ice extent in recent decades, whereas no such trend is evident during the earlier warm period.

Scientists have employed observations and models to analyze these two pronounced twentieth-century warming events, both amplified in the Arctic, and found that the earlier warming was due to natural internal climate-system variability and was not as widespread as today's, whereas the recent warming is in response to human activities.

Furthermore, earlier periods of warming either this century or in past centuries do not preclude a human influence on the current warming trend. By way of analogy, just because wildfires are often caused by lightning does not mean that they cannot also be caused by a careless camper. The same can be said for carbon dioxide—just because it has natural sources does not mean that humans do not also contribute to atmospheric carbon dioxide levels and thereby contribute to the resulting warming.

SEA LEVEL RISE

Sea level talking points

Senator Inhofe stated: ''But in a study published this year in Global and Planetary Change, Dr. Nils-Axel Mörner of Sweden found that sea level rise hysteria is overblown. In his study, which relied not only on observational records, but also on satellites, he concluded: 'There is a total absence of any recent 'acceleration in sea level rise' as often claimed by IPCC and related groups.' Yet we still hear of a future world overwhelmed by floods due to global warming. Such claims are completely out of touch with science. As Sweden's Mörner puts it, 'there is no fear of massive future flooding as claimed in most global warming scenarios.' ''

(1) Research and observation has solidly established that sea level is rising. Our longest historical records come from tide gauge measurements taken along the world's coastlines. These measurements indicate that the globally averaged coastal sea level rose at a rate of about 3.5 inches over 50 years (or 0.7 inch per decade since 1950). Since 1993, satellites have continuously measured sea level over the entire ocean, not just along the shoreline as do tide gauges. Satellite measurements can monitor global sea level with a greater accuracy, and they record a higher global sea-level rise rate of about 1 inch per decade. Given the short record of these satellite measurements, scientists cannot yet conclude if the last decade was unusually high or if it represents an acceleration of sea level rise.

(2) Global sea-level rise is primarily the result of expansion of seawater as it warms plus meltwater from land-based ice sheets and land-based mountain glaciers. Many factors contribute to sea level rise, and scientific efforts continue to refine our understanding of the relative contribution of each to the observed sea-level rise. As the climate warms, we expect to see two different effects in the ocean. First, sea level rises as the ocean temperature increases. Just as a gas expands when it is heated, water also expands as its temperature rises. Second, the amount of water entering the ocean increases as land-based ice sheets and glaciers melt. Increased meltwater adds more freshwater to the ocean and increases sea level, just like adding water to a bathtub. This influx of freshwater also lowers the oceans' salinity. Recent research suggests that all continental sources added the equivalent of about 2.7 inches of fresh water over 50 years to the ocean.

(3) Rising sea levels increase the impacts from coastal hazards. Because of the steadily rising seas we can expect increased damage to coastal communities around the world. Sea-level rise increases coastal erosion, further inundates coastal wetlands, increases the salinity in estuaries and pushes saltwater further landward in coastal rivers, contaminates coastal freshwater aquifers with saltwater, and increases the risks from flooding. Coastal storms of the same intensity as in the past will create greater damage in the future simply because the baseline sea level is higher. Low-lying coastlands such as Louisiana, Florida, Bangladesh, and the Maldives will be impacted most acutely.

COSTS

Senator Inhofe claimed that Kyoto-like policies harm Americans, especially the poor and minorities. This statement is a false scare tactic directed at our most vulnerable communities. The well-documented truth is that not taking action to slow global warning harms Americans, especially the poor and minorities.

Global warming is already hurting Americans, especially the poor, its Indigenous Peoples, and people of color, and is projected to get worse if we don't act now.

People of color communities—already burdened with poor air quality and twice as likely to be uninsured as whites will become even more vulnerable to climate change related respiratory ailments, heat-related illness and death, and illness from insect-carried diseases.

Scientists have determined that the ice in Alaska and the Arctic region is melting so rapidly that much of it could be gone by the end of the century. The results could be catastrophic for polar-region Indigenous peoples and animals, while low-lying lands as far away as Florida could be inundated by rising sea levels.

''We found that scientific observations and those of Indigenous people over many generations are meshing . . . Sea ice is retreating, glaciers are reducing in size, permafrost is thawing, all [these indicators] provide strong evidence that it has been warming rapidly in the Arctic in recent decades.''—Susan Joy Hassol, global warming analyst and author of the Arctic Climate Impact Assessment (ACIA) synthesis report Impacts of a Warming Arctic.

Flooding and erosion affects 184 out of 213, or 86 percent, of Alaska Native Villages to some extent. While many of the problems are long-standing, various studies indicate that coastal villages are becoming more susceptible to flooding and erosion caused in part by rising temperatures. Four villages—Kivalina, Koyukuk, Newtok, and Shismaref—are in imminent danger and are planning to relocate. Costs for relocation could be high—from $100–$400 million per village.

''Everything is under threat. Our homes are threatened by storms and melting permafrost, our livelihoods are threatened by changes to the plants and animals we harvest. Even our lives are threatened, as traditional travel routes become dangerous.''—Alaska Chickaloon Village Chief Gary Harrison of the Arctic Athabaskan Council

A recent study in Los Angeles found that if we don't act now to slow global warming, L.A. residents will face significant heat-related mortality increases. Under a high emissions scenario, heat-related mortality rates could increase sixteen-fold for Blacks, fourteen-fold for Asians, twelve-fold for Hispanics, and eight-fold for Whites, by 2090.

Climate change will likely raise food and energy prices, which already represent a large proportion of a low-income family's budget. Integrated Assessment models indicate that the annual cost of gradual climate change with no adaptation may be as high as 1.0 to 1.5 percent of GDP (roughly $80 to $120 billion per year). People of color and the poor may be disproportionately impacted by these changes, due to the higher fraction of incomes spent on food and energy.

''We are long past the point where global warming is considered a myth. We are seeing its effects all around us—especially in my hometown of New Orleans, Louisiana, which is expected to experience an increased incidence of flooding that could potentially destabilize its economy and endangers its populace. We must be realistic about longterm solutions to global warming.''—Rep. William Jefferson, (D–LA)

''African Americans and other vulnerable populations live disproportionately in areas that are exposed to toxic waste, air pollution and other environmental hazards. Now we learn, through this report, that global warming will expose these communities to further environmental hazards that will continue to have a devastating impact on their health and economic conditions. We must involve all of the various stakeholders and continue to use forward-thinking, comprehensive principals when developing transportation, energy and environmental policies because of their enormous effect on vulnerable populations.''—Rep. James E. Clyburn, (D–TX)

Taking action to slow global warming protects low-income, people of color, and Indigenous communities, and is good for all Americans by boosting job growth, saving money for consumers, and strengthening national security.

Studies have found that the benefits of reducing carbon emissions, such as lower air pollution, new jobs, and reduced oil imports, would prove helpful to all Americans. The best policies for the health of people of color and the poor involve a substantial decrease in emissions of carbon dioxide and associated pollutants, and encourage international cooperation in mitigating climate change.

Policies to reduce global warming can boost job growth, save money for consumers, and strengthen national security (Hoerner and Barrett). How America benefits:

1.4 million additional new jobs created;

Average household saving on energy bills of $1,275 per year; and

Reduced dependence on foreign oil, strengthening national and economic security for all Americans.

''It is a travesty that we live in a country where African Americans expend more of their income on energy costs yet are the most negatively impacted by energy byproducts such as carbon emissions. In the current scenario, African Americans are paying a premium for poor health resulting from air pollution and climate change. We must mobilize and energize our policymakers to enact legislation that will mitigate the unjust effects of global warming.''—Rev. Jesse L. Jackson, Sr., Rainbow Push Coalition

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

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I am honored to rise with my friend and colleague from Arizona, Senator MCCAIN, to introduce the Climate Stewardship Act. It is an urgent matter. I was thinking of one clause that I could remove from Senator MCCAIN's comments. He said: Suppose Senator LIEBERMAN and I are deluded.

It struck me that probably many times in the battles that we have fought together or individually, people have thought we were deluded. If I was going to be deluded, I would rather be deluded in the company of JOHN MCCAIN than anybody else I can think of. But let me say this: We are not deluded in our battle to get the U.S. Government to assume a leadership role in stopping this planet of ours from warming, with disastrous consequences for the way we and certainly our children and grandchildren will be forced to live if we do not do something.

When Senator MCCAIN and I first started to work with people in the field, the scientists, the businesspeople, the environmentalists, we had a pretty clear picture of what was coming, but very often we had to rely on scientific models and assume their accuracy in terms of the worst consequences. That is over.

As Senator MCCAIN's charts and pictures show, we can see with our eyes the effects of global warming already. The planet is warming. The polar ice caps are melting. One can see that with their own eyes. The sea level is rising in coastal areas already, and in other areas the water is diminishing, declining, as in the great State of my cosponsor, Arizona, and the State of the distinguished occupant of the Chair, Nevada. Forest fires are increasing. The evidence is clear that the problem is here, and that is why we have to do something about it.

Doing nothing is no longer an option. We have reached a point where the intractable must yield to the inevitable. The evidence that climate change is real and dangerous keeps pouring in and piling up. What this legislation is all about is pushing, cajoling, and convincing the politics to catch up with the science.

I will give real market-based evidence to back up what Senator MCCAIN and I are saying about how compelling the science is. The leading insurance companies in the world—we are not talking about environmentalists—are now predicting that climate-driven disasters will cost global financial centers an additional $150 billion a year within the next 10 years. That is $150 billion of additional costs for the world as a result of climate-driven disasters.

Just a couple of weeks ago, at an international conference, the head of the United Nations Intergovernmental Panel on Climate Change, Dr. R. K. Pachauri, said that we are already at ''a dangerous point'' when it comes to global warming, and ''immediate and very deep cuts in greenhouse gases are needed if humanity is to survive.'' Let me repeat those last words: ''If humanity is to survive.''

It should be noted that Dr. Pachauri is no wild-eyed environmental radical. In fact, the administration lobbied heavily for Dr. Pachauri's appointment to the IPCC leadership because it considered him a more cautious and pragmatic scientist than the other leading candidate.

To call global warming simply an environmental challenge is almost to diminish it or demean it with a kind of simplicity that puts it alongside a host of other environmental challenges that we face. Global warming is both a moral and an economic security challenge, as well as an environmental challenge.

I start with what I mean by calling it a moral challenge. Greenhouse gases stay in the atmosphere for about 100 years, so failure to take the prudent actions that our bill calls for—market-based, moderate, with caps—will force children still unborn to take far more drastic action to save their world as they know it and want to live in it. There is just no excuse for this.

We know it is real. I cited the melting glaciers, the coastal communities damage, the increased rate of forest fires. Previously, on this floor I have talked about the fact that a robin appeared in the north of Alaska and Canada among the Inuits native tribe, and they had no word in their 10,000-year-old civilization and vocabulary for robin.

Robins now linger longer into the winter in Connecticut, my State. Why? Because it is getting warmer.

Polar bears may soon be listed as an endangered species. Let me put it another way. We know that a petition will be filed soon to ask that polar bears be listed as an endangered species. Why? Because global warming is removing their habitat. It is wreaking havoc in the arctic climates where they live and grow. So to spoil the Earth for generations to come when we knew what we were doing and could have stopped it would be a moral failing of enormous and, I might add, Biblical proportions.

This time, it would be mankind that condemned itself, if I may put it again this way, to no longer living in the garden.

The challenge of solving global warming also presents our Nation with untold opportunities to reshape our world and assert our moral, economic, and environmental leadership. There is always opportunity in change. The world will transition to a world with limited greenhouse gas emissions, and the United States needs a program like the one we offer today to seize the new markets, as well as the environmental challenge.

In particular, Senator MCCAIN and I are seeking now to develop additional provisions to this legislation that will provide American innovators and businesspeople with the technological incentives they need to make our bill work for them.

Looking at the recommendations of the International Climate Change Task Force, the National Commission on Energy Policy, and the Pew Center Workshop on Technologies and Policies for a Low Carbon Future, there are a number of consensus provisions that could help the U.S. transition to these technologies of the future.

These technologies are here. A recent paper in Science magazine showed that the scientific, technological, and industrial know-how already exists to limit carbon dioxide emissions substantially in the next 50 years. So we do not have to invent them. We just need the incentives and the motivation for industry, innovators, and individuals to deploy this knowledge and start us on the path toward a healthier, more sustainable future.

That is what the Climate Stewardship Act that Senator MCCAIN and I are introducing today will do. It will provide the incentives. It will create a cap and let the market do the rest of the work, a real opportunity for change.

I am very pleased that one study being released today by the NRDC applying a method of evaluating which is advocated by the Energy Information Administration of our own Government says the Climate Stewardship Act will add 800,000 jobs to our economy by the year 2025. So it will not cost jobs, it will add them.

Over the last few years, we have seen our colleagues grappling with the challenge of global warming. So many of them seem to be of the same mind, feeling that something needs to be done but still unsure what should be done and how. Senator MCCAIN and I want our legislation to work for them so they can come forward and join us in this effort. This is an opportunity to invest in our future to face this challenge, an opportunity to enhance our energy security, and therefore our national security, by placing a price on greenhouse gas emissions, which is what our legislation will do.

Our Nation's best energy options will become more cost competitive with foreign oil. It will make economic sense for dramatic growth in clean coal, alternative energy, and energy efficiency. It will be an opportunity for economic development in rural communities. By placing a price on carbon, it will create new value for range lands, farms, and forests by compensating landowners for the carbon they can store. It is an opportunity to innovate clean energy technologies for a growing global market. By placing this price that the cap and market will do on greenhouse gases, we will push demand for clean technologies, promoting innovation through both public and private enterprise and making that innovation profitable. It is an opportunity for our country to control the development of our own carbon market that will inevitably become part of a

global market someday soon. It is an opportunity, as Senator MCCAIN said, to improve our relations with our allies and the rest of the world and gain a stronger voice and ability to bring in developing nations.

Without a price for carbon, these opportunities disappear. Our bill provides that price for carbon and other greenhouse gas emissions. We know it is not the entire answer. A lot of people think it is too moderate and holds greenhouse gas emissions at today's levels.

By the end of the decade, it is less demanding than the Kyoto Protocol, which goes into effect as a result of Russia's ratification next week, but it is a cap that major utilities have told us they could meet. It may not be strong enough to reduce U.S. emissions as much as some would like, but it will be strong enough to start turning America around in the direction of dealing with global warming, reasserting our world environmental leadership, and moving our economy in the right direction. We cannot afford to be as shortsighted as we have been up until now. We cannot afford anymore to allow the special interests, who will also resist change because change is unnerving and sometimes more costly, to prevail.

We have to assert the public interest of ourselves and all those who will follow us on this Earth and in this great country to do something about global warming while we still can, before its consequences are disastrous. This is an enormous political challenge.

I go back to where I began. When we started, we had just models, so we were trying to portray what might happen over the horizon and ask our colleagues to join us in doing something now. It is not easy to do that because the crisis always seems further away than the immediacy of the changes a solution requires, but now we can see it. Shame on us if we do not do something about it.

I begin this battle today with Senator MCCAIN and other cosponsors with not only a sense of commitment but a sense of encouragement and optimism that people ultimately are too reasonable and responsible to ignore the facts and do nothing about this looming disaster for humankind.

Senator MCCAIN and I begin this battle again, and we are not going to stop until it is won.

I ask unanimous consent that several articles on climate be printed in the RECORD.

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

[From the Brookings Institution, Jan. 28, 2005.]

MICHAEL CRICHTON AND GLOBAL WARMING

(By David B. Sandalow)

How do people learn about global warming? That—more than the merits of any scientific argument—is the most interesting question posed by Michael Crichton's State of Fear.

The plot of Crichton's 14th novel is notable mainly for its nuttiness—an MIT professor fights a well-funded network of eco-terrorists trying to kill thousands by creating spectacular ''natural'' disasters. But Crichton uses his book as a vehicle for making two substantive arguments. In light of Crichton's high profile and ability to command media attention, these arguments deserve scrutiny.

First, Crichton argues, the scientific evidence for global warming is weak. Crichton rejects many of the conclusions reached by the National Academy of Sciences and Intergovernmental Panel Change—for example, he does not believe that global temperature increases in recent decades are most likely the result of human activities. In challenging the scientific consensus, Crichton rehashes points familiar to those who follow such issues. These points are unpersuasive, as explained below.

Second, Crichton argues that concern about global warming is best understood as a fad. In particular, he argues that many people concerned about global warming follow a herd mentality, failing critically to examine the data. Crichton is especially harsh in his portrayal of other members of the Hollywood elite, though his critique extends more broadly to the news media, intelligentsia and general public. This argument is more interesting and provocative, though ultimately unpersuasive as well.

1. Climate Science

Crichton makes several attempts to cast doubt on scientific evidence regarding global warming. First, he highlights the ''urban heat island effect.'' Crichton explains that cities are often warmer than the surrounding countryside and implies that observed temperature increases during the past century are the result of urban growth, not rising greenhouse gas concentrations.

This issue has been examined extensively in the peer-reviewed scientific literature and dismissed by the vast majority of earth scientists as an inadequate explanation of observed temperature rise. Ocean temperatures have climbed steadily during the past century, for example—yet this data is not affected by ''urban heat islands.'' Most land glaciers around the world are melting, far away from urban centers. The Intergovernmental Panel on Climate Change, using only peer-reviewed data, concluded that urban heat islands caused ''at most'' 0.05°C of the increase in global average temperatures during the period 1900–1990—roughtly one-tenth of the increase during this period. In contrast, as one source reports, ''there are no known scientific peer-reviewed papers'' to support the view that ''the heat island effect accounts for much or nearly all warming recorded by land-based thermometers.''

Second, Crichton argues that global temperatures declines from 1940–1970 disprove, or at least cast doubt on, scientific conclusions with respect to global warming. Since concentrations of greenhouse gases were rising during this period, says Crichton, the fact that global temperatures were falling calls into question the link between greenhouse gas concentrations and temperatures.

Crichton is correct that average temperatures declined, at least in the Northern Hemisphere, from 1940–1970. Temperature is the result of many factors, including the warming effects of greenhouse gases, the cooling effects of volcanic eruptions, changes in solar radiation and more. (Think of a game of tug-of-war, in which the number of players on each team changes frequently.) The fall in Northern Hempishere temperatures from 1940–1970 reflects the relative weight of cooling factors during that period, not the absence of a warming effect from man-made greenhouse gases.

Should we at least be encouraged, recalling the decades from 1940–1970 in the hope that cooling factors will outweigh greenhouse warming in the decades ahead? Hardly. Greenhouse gas concentrations are now well outside levels previously experienced in human history and climbing sharply. Unless we change course, the relatively minor warming caused by man-made greenhouse gases in the last century will be dwarfed by much greater warming from such gases in the next century. There is no basis for believing that cooling factors such as those that dominated the temperature record from 1940–1970 will be sufficient to counteract greenhouse warming in the decades ahead.

Third, Crichton offers graph after graph showing temperature declines during the past century in places such as Puenta Arenas (Chile), Greenville (South Carolina), Ann Arbor (Michigan), Syracuse (New York) and Navacerrada (Spain). But global warming is an increase in global average temperatures. Nothing about specific local temperature declines is inconsistent with the conclusion that the planet as a whole has warmed during the past century, or that it will warm more in the next century if greenhouse gas concentrations continue to climb.

Crichton makes other arguments but a point-by-point rebuttal is beyond the scope of this paper. (A thoughtful rebuttal of that kind can be found at www.realclimate.org.) Climate change science is a complex topic, not easily reduced to short summaries. But a useful contrast with Crichton's science-argument-within-an-action-novel is the sober prose of the U.S. National Academy of Sciences. The opening paragraph of a 2001 National Academy report responding to a request from the Bush White House read:

''Greenhouse gases are accumulating in Earth's atmosphere as a result of human activities, causing surface air temperatures and subsurface ocean temperatures to rise. Temperatures are, in fact, rising. The changes observed over the last several decades are likely mostly due to human activities, but we cannot rule out that some significant part of these changes is also a reflection of natural variability. Human-induced warming and associated sea level rises are expected to continue through the 21st century. Secondary effects are suggested by computer model simulations and basic physical reasoning. These include increases in rainfall rates and increased susceptibility of semi-arid regions to drought. The impacts of these changes will be critically dependent on the magnitude of the warming and the rate with which it occurs.''

Climate Change Science: An Analysis of Some Key Questions, National Academies Press (2001).

Time will tell whether this report or Crichton's novel will have a greater impact on public understanding of global warming.

2. Climate Fad

This raises the second, more interesting argument in Crichton's novel. Crichton argues that concern about global warming has become a fad embraced by media elites, entertainment moguls, the scientific establishment and general public. In Crichton's view, many assertions are accepted as fact without critical analysis by the vast majority of those who have views on this issue.

On the last point, fair enough. There are indeed fewer people who have sorted through the minutiae of climate change science than have opinions on the topic. In this regard, global warming is like Social Security reform, health care finance, the military budget and many other complex public policy issues. As Nelson Polsby and Aaron Wildavsky once wrote, ''Most people don't think about most issues most of the time.'' When forming opinions on such matters, we all apply certain predispositions or instincts

and rely on others whose judgment or expertise we trust.

Of course this observation applies as well to the economics of climate change. The perception is widespread in many circles that reducing greenhouse gas emissions will be ruinously expensive. How many of those who hold this view have subjected their opinions to critical analysis? Crichton never musters outrage on this topic.

Crichton's complaints are particularly striking in light of the highly successful efforts to provide policymakers and the public with analytically rigorous, non-political advice on climate science. Since 1988, the Intergovernmental Panel on Climate Change has convened thousands of scientists, economists, engineers and other experts to review and distill the peer-reviewed literature on the science on global warming. The IPCC has produced three reports and is now at work on the fourth. In addition, the National Academy of Sciences has provided advice to the U.S. government on this topic, including the report cited above.

Crichton's view that the American media provides a steady drumbeat of scary news on global warming is especially hard to fathom. Solid data are scarce, but one 1996 analysis found that the rock star Madonna was mentioned roughly 80 times more often than global warming in the Lexis-Nexis database. Certainly one could watch the evening news for weeks on end without ever seeing a global warming story.

Furthermore, the print media's ''on the one hand, on the other hand'' convention tilts many global warming stories strongly toward Crichton's point of view. As Crichton would concede, the vast majority of the world's scientists believe that global warming is happening as a result of human activities and that the consequences of rising greenhouse gas emissions could be very serious. Still, many news stories on global warming include not just this mainstream view but also the ''contrarian'' views of a very small minority of climate change skeptics, giving roughly equal weight to each. As a result, public perceptions of the controversy surrounding these issues may be greatly exaggerated.

Crichton's most serious charge is that ''open and frank discussion of the data, and of the issues, is being suppressed'' in the scientific community. As ''proof,'' he offers the assertion that many critics of global warming are retired professors no longer seeking grants. Whether there is any basis for these assertions is unclear, but if so Crichton should back up his claims with more than mere assertions in the appendix to an action novel.

Indeed Crichton should hold himself to a higher standard with regard to all the arguments in his book. He is plainly a very bright guy and, famously, a Harvard Medical School graduate. A millionaire many times over, he doesn't need to be seeking grants. If he has something serious to say on the science of climate change, he should say so in a work of nonfiction and submit his work for peer review. The result could be instructive—for him and us all.

ARCTIC TEMPERATURE CHANGE—OVER THE PAST 100 YEARS

This note has been prepared in response to questions and comments that have arisen since the publication of the Arctic Climate Impact Assessment overview document—''Impacts of a Warming Arctic''. It is intended to provide clarity regarding some aspects relative to the material from Chapter 2 Arctic Climate—Past and Present that will appear in full with the publication of the ACIA scientific report in 2005 and has now been posted on the ACIA website.

There are several possible definitions of the Arctic depending on, for example, tree line, continuous permafrost, and other factors. It was decided for purposes of this analysis that the latitude 60° N would be defined as the southern boundary. Although somewhat arbitrary, this is no more arbitrary than choosing 62° N, 67° N or any other latitude. Since the marine data in the Arctic are very limited in geographical and temporal coverage, it was decided, for consistency, to only use data from land stations. The Global Historical Climatology Network (GHCN) database (updated from Peterson and Vose, 1997) and the Climatic Research Unit (CRU) database (Jones and Moberg, 2003) were selected for this analysis.

The analysis showed that the annual land-surface air temperature variations in the Arctic (north of 60° N) from 1900 to 2002 using the GHCN and the CRU datasets led to virtually identical time series, and both documented a statistically significant warming trend of 0.09 C/decade during that period. In view of the high correlation between the GHCN and CRU datasets, it was decided to focus the presentation in Chapter 2 on analyses of the GHCN dataset.

It needs to be stressed that the spatial coverage of the region north of 60° N is quite varied. During the period (1900–1945), there were few observing stations in the Alaska/Canadian Arctic/West Greenland sector and more in the North Atlantic (East Greenland/Iceland/Scandinavia) and Russian sectors. The coverage for periods since 1945 is more uniform. Based on the analyses of the GHCN and CRU datasets, the annual land-surface air temperature from 60–90° N, smoothed with a 21-point binomial filter giving near decadal averages, was warmer in the most recent decade (1990s) than it was in the 1930–1940s period. It should be noted that other analyses (e.g., Przybylak 2000; Polyakov et al. 2002; and Lugina et al. 2004) give comparable estimates of Arctic warming for these two decades that, however, lay wit/hin the error margins of possible accuracy of the zonal mean estimates (Vinnikov et al. 1990; Vinnikov et al.,1987). The major source of this uncertainty is the data deficiency in the North American sector prior to 1950s in all databases.

Least-squares linear trends in annual anomalies of Arctic (60° to 90° N) land-surface air temperature from the GHCN (updated from Peterson and Vose, 1997) and CRU (Jones and Moberg, 2003) datasets for the period 1966–2003 both gave warming rates of 0.38 (°C/decade). This is consistent with the analysis of Polyakov et al. (2002) and confirmed with satellite observations over the whole Arctic, for the past 2 decades (Comiso, 2003).

Chapter 3 of the ACIA report, entitled ''The Changing Arctic: Indigenous Perspectives'' documents the traditional knowledge of Arctic residents and indicates that substantial changes have already occurred in the Arctic and supports the evidence that the most recent decade is different from those of earlier in the 20th century.

The modeling studies of Johannessen et al. (2004) showed the importance of anthropogenic forcing over the past half century for modeling the arctic climate. ''It is suggested strongly that whereas the earlier warming was natural internal climate-system variability, the recent SAT (surface air temperature) changes are a response to anthropogenic forcing''.

In the context of this report, the authors agreed on the following terminology. A conclusion termed as ''very probable'' is to be interpreted that the authors were 90–99% confident in the conclusion. The term ''probable'' conveys a 66–90% confidence.

The conclusions of Chapter 2 were that: ''Based on the analysis of the climate of the 20th century, it is very probable that the Arctic has warmed over the past century, although the warming has not been uniform. Land stations north of 60° N indicate that the average surface temperature increased by approximately 0.09 °C/decade during the past century, which is greater than the 0.06 °C/decade increase averaged over the Northern Hemisphere. It is not possible to be certain of the variation in mean landstation temperature over the first half of the 20th century because of a scarcity of observations across the Arctic before about 1950. However, it is probable that the past decade was warmer than any other in the period of the instrumental record.''

Polar amplification refers to the relative rates of warming in the Arctic versus other latitude bands. The conclusions of Chapter 2 were that: ''Evidence of polar amplification depends on the timescale of examination. Over the past 100 years, it is possible that there has been polar amplification, however, over the past 50 years it is probable that polar amplification has occurred.''

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DISTORT REFORM

A REVIEW OF THE DISTORTED SCIENCE IN MICHAEL CRICHTON'S STATE OF FEAR

(By Gavin Schmidt)

Michael Crichton's new novel State of Fear is about global-warming hysteria ginned up by a self-important NGO on behalf of evil eco-terrorists . . . or by evil eco-terrorists on behalf of a self-important NGO. It's not quite clear. Regardless, the message of the book is that global warming is a non-problem. A lesson for our times? Sadly, no.

In between car chases, shoot-outs, cannibalistic rites, and other assorted derring-doo-doo, the novel addresses scientific issues, but is selective (and occasionally mistaken) about the basic science involved. Some of the issues Crichton raises are real and already well-appreciated, while others are red herrings used to confuse rather than enlighten.

The fictional champion of Crichton's climate skepticism is John Kenner, an MIT academic-turned-undercover operative who runs intellectual rings around two other characters—the actor (a rather dim-witted chap) and the lawyer (a duped innocent), neither of whom know much about science.

So, for the benefit of actors and lawyers everywhere, I will try to help out.

FORCINGS MAJEURE

Early in State of Fear, a skeptical character points out that while carbon dioxide was rising between 1940 and 1970, the globe was cooling. What, then, makes us so certain rising CO_2 is behind recent warming?

Good question. Northern-hemisphere mean temperatures do appear to have fallen over that 30-year period, despite a rise in CO_2, which if all else had been equal should have led to warming. But were all things equal? Actually, no.

In the real world, climate is affected both by internal variability (natural internal processes within the climate system) and forcings (external forces, either natural or human-induced, acting on the climate system). Some forcings—sulfate and nitrate aerosols, land-use changes, solar irradiance, and volcanic aerosols, for instance—can cause cooling.

Matching up what really happened with what we might have expected to happen requires taking into consideration all the forcings, as best as we can. Even then, any discrepancy might be due to internal variability (related principally to the ocean on multi-decadal time scales). Our current ''best guess'' is that the global mean changes in temperature, including the 1940–1970 cooling, are quite closely related to the forcings. Regional patterns of change appear to be linked more closely to internal variability, particularly during the 1930s.

No model that does not include a sharp rise in greenhouse gases (GHGs), principally CO_2, is able to match up with recent warming. Thus the conclusion that GHGs are driving warming.

The book also shows, through the selective use of weather-station data, a number of single-station records with long-term cooling trends. In particular, characters visit Punta Arenas, at the tip of South America, where the station record posted on the wall shows a long-term cooling trend (though slight warming since the 1970s). ''There's your global warming,'' one of Crichton's good guys declares dismissively.

Well, not exactly. Global warming is defined by the global mean surface temperature. No one has or would claim that the whole globe is warming uniformly. Had the characters visited the nearby station of Santa Cruz Aeropuerto, the poster on the wall would have shown a positive trend. Would that have been proof of global warning? No. Only by amalgamating all available records can we have an idea what the regional, hemispheric, or global means are doing. That's way they call it global warming.

TALL, DARK, AND HANSEN

Even more troubling is some misleading commentary regarding climate-science pioneer (and my boss) James Hansen's testimony to Congress in 1988. ''Dr. Hansen overestimated [global warming] by 300 percent,'' says our hero Kenner.

Hansen's testimony did indeed spread awareness of global warming, but not because he exaggerated the problem by 300 percent. In a paper published soon after that testimony, Hansen and colleagues presented three model simulations, each following a different scenario for the growth in CO_2 and other trace gases and forcings. Scenario A had exponentially increasing CO_2, scenario B had a more modest business-as-usual assumption, and scenario C had no further increase in CO_2 after the year 2000. Both B and C assumed a large volcanic eruption in 1995.

Rightly, the authors did not assume they knew what path CO_2 emissions would take, and presented a spectrum of possibilities. The scenario that turned out to be closest to the real path of forcings growth was scenario B, with the difference that Mt. Pinatubo erupted in 1991, not 1995. The temperature change for the '90s predicted under this scenario was very close to the actual 0.11 degree-Celsius change observed.

So, given a good estimate of the forcings, the model did a reasonable job. In fact, in his congressional testimony Hansen only showed results from scenario B, and stated clearly that it was the most probable scenario.

The claim of a ''300 percent'' error comes from noted climate skeptic Patrick Michaels, who in testimony before Congress in 1998 deleted scenarios B and C from the chart he used in order to give the impression that the models were unreliable. Thus a significant success for climate modeling was presented as a complete failure—a willful distortion that Crichton adopts uncritically.

The well-known and exhaustively studied ''urban heat island effect''—the tendency for cities to be warmer than the surrounding countryside due to the built-up surroundings and intensive energy use—is also raised several times in the book. Most recently, a study by David Parker published last year in the journal Nature found no residual effect in the surface temperature record once corrections were made for this undisputed phenomenon. Though Crichton makes much of it, there's no there there.

AUTHORIAL INATTENTION

At the end of the book, Crichton offers a somber author's note. In it, he reiterates the main points of his thesis: that there are some who push claims beyond what is scientifically supported in order to drum up support (and I have some sympathy with this), and that because we don't know everything, we actually know nothing (here, I beg to differ).

He gives us his back-of-a-napkin estimate for the global warming that will occur over the next century—an increase of approximately 0.8 degrees Celsius—and claims that his guess is as good as any model's. He suggests that most of the warming will be due to land-use changes—extremely unlikely, as globally speaking, land-use change has a cooling effect. As his faulty assumptions painfully demonstrate, simulations based on physics are better than just guessing.

Finally, in an appendix, Crichton uses a rather curious train of logic to compare global warming to the 19th century eugenics movement. Eugenics, he notes, was studied in prestigious universities and supported by charitable foundations. Today, global warming is studied in prestigious universities and supported by charitable foundations. Aha!

Presumably Crichton doesn't actually believe that foundation-supported academic research is ipso facto misguided, even evil, but that is certainly the impression left by this peculiar linkage.

In summary, I am disappointed, not least because while researching his book, Crichton visited our lab at the NASA Goddard Institute and discussed some of these issues with me and a few of my colleagues. I suppose we didn't do a very good job of explaining matters. Judging from his bibliography, the rather dry prose of reports by the Intergovernmental Panel on Climate Change did not stir his senses quite like some of the racier contrarian texts. Unsurprisingly, perhaps, Crichton picked fiction over fact.

Scientifically curious readers can find a more detailed version of this review on RealClimate.org.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. I ask unanimous consent that the following Senators be added as cosponsors: Senators FEINSTEIN, SNOWE, DURBIN, CHAFEE, LAUTENBERG, MURRAY, NELSON, CORZINE, DAYTON, CANTWELL, and KERRY.

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

Mr. MCCAIN. Mr. President, I thank my friend, Senator LIEBERMAN, again, and I would like to quote again from Prime Minister Blair, who announced that action on global warming will be his first priority as Chair of the G–8. He has taken a leadership role, choosing to take action and not to hide behind the uncertainties that the science community will soon resolve.

The Prime Minister made it clear in a recent speech at the World Economic Forum in Davos as to his intentions when he said:

. . . if America wants the rest of the world to be part of the agenda it has set, it must be part of their agenda too. . . .

It is past time for our country to show leadership in addressing the world's greatest environmental challenge, climate change.

By Mr. WYDEN (for himself and Mr. SMITH):

S. 343. A bill to provide for qualified withdrawals from the Capital Construction Fund for fishermen leaving the industry and for the rollover of Capital Construction Funds to individual retirement plans, and for other purposes; to the Committee on Finance.

Mr. WYDEN. Mr. President, I am pleased today to introduce the Capital Construction Fund Qualified Withdrawal Act of 2005. My friend and colleague, Senator SMITH, joins me in introducing this important bill.

In January of 2000, a fishery disaster was declared by the Secretary of Commerce for the West Coast groundfish fishery. Due to major declines in fish population, the Pacific Fisheries Management Council decreased groundfish catch quotas by 90 percent. Today, the groundfish fishery in Oregon and adjoining States in the Pacific Northwest

continues to face daunting challenges as a result of this disaster. Fishery income has dropped 55 percent and over a thousand fishers face bankruptcy. This legislation helps by reforming the Capital Construction Fund in a way that will ease the transition by groundfishers and other fishers in economic peril away from fishing.

The Capital Construction Fund, CCF, Merchant Marine Act of 1936, amended 1969, 46 U.S.C. 1177, has been a way for fishers to accumulate funds, free from taxes, solely for the purpose of buying or refitting fishing vessels. It was conceived at a time when the Federal Government wanted to help capitalize and expand American fishing fleets. The program was a success: it led to a larger U.S. fishing fleet. However, fish populations declined and the U.S. commercial fishing fleet is now over-capitalized. The CCF's restrictions have not kept up with the times, and now it exacerbates some problems facing U.S. fisheries.

Now is the time to help those fishers who wish to do so to leave the fleet.

In Oregon, the amounts in CCF accounts range from $10,000 to over $200,000. This legislation changes current law to allow fishers to remove money from their CCF for purposes other than buying new vessels or upgrading current vessels, without losing up to 70 percent of their CCF funds in taxes and penalties. This legislation changes the CCF so fishers who want to opt out of fishing are not penalized for doing so.

This bill takes a significant step towards making the commercial fishing industry sustainable by amending the CCF to allow non-fishing uses of investments. This bill amends the Merchant Marine Act of 1936 and the Internal Revenue Code to allow funds currently in the CCF to be rolled over into an IRA or other type of retirement account, or to be used for the payment of an industry fee authorized by the fishery capacity reduction program, without adverse tax consequences to the account holders. This bill will also encourage innovation and conservation by allowing fishers to use funds deposited in a CCF to develop or purchase new gear that reduces bycatch.

I look forward to working with my colleagues to pass this legislation.

By Mr. DURBIN:

S. 345. A bill to amend title XVIII of the Social Security Act to deliver a meaningful benefit and lower prescription drug prices under the medicare program; to the Committee on Finance.

Mr. DURBIN. Mr. President, I would speak for a moment, if I could, on an issue which is near and dear to not just seniors but their families.

Last night, CMS Administrator Mark McClellan acknowledged the cumulative cost of the Medicare prescription drug program between 2006 and 2015 will reach $1.2 trillion. Although Mr. McClellan said the number would be reduced to $724 billion after seniors pay their premiums and the Federal Government is reimbursed by States for coverage of their Medicaid populations, it is still much higher than originally thought. As recently as September, Mr. McClellan said this program would only cost $534 billion.

Remember this program? This was President Bush's Medicare prescription drug program.

Now, we all understand that Medicare did not cover prescription drugs. Seniors need that coverage because drugs are so expensive, and drugs are essential for them to maintain their health and stay independent and strong for a long period of time. But when we got into this debate on the floor of the Senate about creating this program, the pharmaceutical companies lined the hallways around the Senate with men in expensive three-piece suits and Gucci loafers and said: Whatever you do, don't touch the profits of the pharmaceutical companies.

Too many Senators on both sides of the aisle decided that the profits of the pharmaceutical companies were more important than the cost of the drugs for seniors. So, in the bill we included a provision that prohibits Medicare from negotiating with the pharmaceutical companies to get lower prices for drugs for seniors.

What does it mean? It means every single year the cost of prescription drugs under this Medicare program will inflate like the cost of prescription drugs for people across the United States.

Take a look at the drug price comparisons, just for the years 2005 and 2016, on some common drugs listed on this chart—what we anticipate, using the Bush Administration's calculations for the rate of increase for prescription drugs, will happen to their costs.

Look at Norvasc. It will go from $170 to $525 in 2016; Plavix, $230 to $710; Prevacid, $120 to $374; and Zocor, $124 to $383.

So in this period of time, if you want to know why the prescription drug program's costs are going through the roof, it is because the cost of the drugs is going through the roof. Unless and until Medicare can negotiate the price of these drugs, and keep them reasonable for seniors, there is no way in the world this program is going to be cost-effective. It is interesting to me that when this estimate of cost came out, Senator JUDD GREGG of New Hampshire, the Republican chairman of the Budget Committee, said $400 billion was the original cost of this program, and we have to cut the benefits back to hit that cost, instead of saying, why don't we find a way to reduce the pharmaceutical company profits so we can keep the drugs seniors across America are buying at reasonable prices.

Drug prices are going to continue to rise. The price of 26 drugs most commonly used by seniors increased 21.6 percent, on average, over the last 3 years, and they will continue to increase in the future.

I have gone through some basic drugs on this chart, but I want to tell my friends who are following this debate, this is no surprise. Those of us who voted against the bill said exactly this would happen: If you do not contain the cost of drugs, you cannot afford this program. It will explode in the outyears, and future Members of Congress and Presidents will decide to cut back on the benefits under the program rather than face the reality of what we did in passing this legislation.

Medicare actuaries estimate the prescription drug benefit premium will increase from $35 a month under the President's plan in 2006 to $68 a month in 2015. Deductibles will increase. I think we are at a point where we have to acknowledge the obvious.

Let me say a word about pharmaceutical companies. We want the pharmaceutical industry to be strong and profitable because in their profits is the money for research for new drugs. That is essential for America's health and the world's health. But what we find now is that pharmaceutical companies in America are spending more money on advertising than they are on research. You cannot turn on the television without finding another ad for another drug. Why? Because they want the consuming public to walk into their doctor's office and say: Doctor, I beg you, give me the little purple pill. And doctors do. It is an expensive pill. It may not be the necessary and required pill, but doctors do it. And if you sell more of those little purple pills, the pharmaceutical companies do quite well.

Take a look at the profitability of the Fortune 500 drug companies versus the profits of all Fortune 500 companies in the year 2002. When you take a look at the drug companies on these red bars, and the other companies on the yellow bars, you can see exactly the difference. Profits as revenues: 17 percent for drug companies, 3.1 percent for other companies. Profits as a percentage of equity: 27.6 percent for pharmaceutical companies, 10.2 percent for the rest of the Fortune 500 companies.

They are extremely profitable companies. We want them to make profits, but not at the expense of seniors who cannot afford to pay.

Mr. President, I want to give my colleague an opportunity to speak here. I would say the most important thing I can tell you today is there is an answer. I am reintroducing a bill today that I believe will go a long way to reducing the cost of prescription drugs. The Medicare Prescription Drugs Savings and Choice Act instructs the Secretary of HHS to offer a nationwide Medicare-delivered prescription drug benefit in addition to the current PDP and PPO plans available in the 10 regions. It instructs the Secretary of HHS to set a uniform national premium of $35 for the first year, and it instructs the Secretary of HHS to negotiate group purchasing agreements on behalf of Medicare beneficiaries.

This is the way to lower the costs of drugs. I am honored that my proposal, the legislation which I am introducing, has been endorsed by the AFL–CIO, AFSCME, the Alliance for Retired Americans, the American Federation of Teachers, the American Public Health Association, the American Nurses Association, Campaign for America's Future, Center for Medicare Advocacy, Consumers Union, Families USA, and a host of other groups. It is an indication to me that they know, for their membership and seniors and Americans in general, this legislation is going to be an important step forward.

I invite my colleagues to join me in sponsoring this legislation so we can bring the cost of drugs within the reach of senior citizens and keep a prescription drug program that is affordable.

The PRESIDING OFFICER. The Senator from Washington.

Mrs. MURRAY. Mr. President, I commend my colleague for his leadership on this issue. As I travel around my State, as he does his, too, the No. 1 issue I hear about from people is the cost of health care today.

We had an opportunity when we passed the Medicare prescription drug bill to deal with that issue. We did not. He has introduced legislation today that will focus on that incredibly important issue for our country. I thank him for his leadership.

Mr. DURBIN. Mr. President, 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. 345

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 ''Medicare Prescription Drug Savings and Choice Act of 2005''.

SEC. 2. ESTABLISHMENT OF MEDICARE OPERATED PRESCRIPTION DRUG PLAN OPTION.

(a) IN GENERAL.—Subpart 2 of part D of the Social Security Act is amended by inserting after section 1860D–11 the following new section:

''MEDICARE OPERATED PRESCRIPTION DRUG PLAN OPTION

''SEC. 1860D–11A. (a) IN GENERAL.—Notwithstanding any other provision of this part, for each year (beginning with 2006), in addition to any plans offered under section 1860D–11, the Secretary shall offer one or more medicare operated prescription drug plans (as defined in subsection (c)) with a service area that consists of the entire United States and shall enter into negotiations with pharmaceutical manufacturers to reduce the purchase cost of covered part D drugs for eligible part D individuals in accordance with subsection (b).

''(b) NEGOTIATIONS.—Notwithstanding section 1860D–11(i), for purposes of offering a medicare operated prescription drug plan under this section, the Secretary shall negotiate with pharmaceutical manufacturers with respect to the purchase price of covered part D drugs and shall encourage the use of more affordable therapeutic equivalents to the extent such practices do not override medical necessity as determined by the prescribing physician. To the extent practicable and consistent with the previous sentence, the Secretary shall implement strategies similar to those used by other Federal purchasers of prescription drugs, and other strategies, to reduce the purchase cost of covered part D drugs.

''(c) MEDICARE OPERATED PRESCRIPTION DRUG PLAN DEFINED.—For purposes of this part, the term 'medicare operated prescription drug plan' means a prescription drug plan that offers qualified prescription drug coverage and access to negotiated prices described in section 1860D–2(a)(1)(A). Such a plan may offer supplemental prescription drug coverage in the same manner as other qualified prescription drug coverage offered by other prescription drug plans.

''(d) MONTHLY BENEFICIARY PREMIUM.—

''(1) QUALIFIED PRESCRIPTION DRUG COVERAGE.—The monthly beneficiary premium for qualified prescription drug coverage and access to negotiated prices described in section 1860D–2(a)(1)(A) to be charged under a medicare operated prescription drug plan shall be uniform nationally. Such premium for months in 2006 shall be $35 and for months in succeeding years shall be based on the average monthly per capita actuarial cost of offering the medicare operated prescription drug plan for the year involved, including administrative expenses.

''(2) SUPPLEMENTAL PRESCRIPTION DRUG COVERAGE.—Insofar as a medicare operated prescription drug plan offers supplemental prescription drug coverage, the Secretary may adjust the amount of the premium charged under paragraph (1).

''(3) REQUIREMENT FOR AT LEAST ONE PLAN WITH A $35 PREMIUM IN 2006.—The Secretary shall ensure that at least one medicare operated prescription drug plan offered in 2006 has a monthly premium of $35.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 1860D–3(a) of the Social Security Act (42 U.S.C. 1395w–103(a)) is amended by adding at the end the following new paragraph:

''(4) AVAILABILITY OF THE MEDICARE OPERATED PRESCRIPTION DRUG PLAN.—

''(A) IN GENERAL.—A medicare operated prescription drug plan (as defined in section 1860D–11A(c)) shall be offered nationally in accordance with section 1860D–11A.

''(B) RELATIONSHIP TO OTHER PLANS.—

''(i) IN GENERAL.—Subject to clause (ii), a medicare operated prescription drug plan shall be offered in addition to any qualifying plan or fallback prescription drug plan offered in a PDP region and shall not be considered to be such a plan for purposes of meeting the requirements of this subsection.

''(ii) DESIGNATION AS A FALLBACK PLAN.—Notwithstanding any other provision of this part, the Secretary may designate the medicare operated prescription drug plan as the fallback prescription drug plan for any fallback service area (as defined in section 1860D–11(g)(3)) determined to be appropriate by the Secretary.''.

(2) Section 1860D–13(c)(3) of such Act (42 U.S.C. 1395w–113(c)(3)) is amended—

(A) in the heading, by inserting ''and medicare operated prescription drug plans'' after ''Fallback plans''; and

(B) by inserting ''or a medicare operated prescription drug plan'' after ''a fallback prescription drug plan''.

(3) Section 1860D–16(b)(1) of such Act (42 U.S.C. 1395w–116(b)(1)) is amended—

(A) in subparagraph (C), by striking ''and'' after the semicolon at the end;

(B) in subparagraph (D), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following new subparagraph:

''(E) payments for expenses incurred with respect to the operation of medicare operated prescription drug plans under section 1860D–11A.''.

(4) Section 1860D–41(a) of such Act (42 U.S.C. 141(a)) is amended by adding at the end the following new paragraph:

''(19) MEDICARE OPERATED PRESCRIPTION DRUG PLAN.—The term 'medicare operated prescription drug plan' has the meaning given such term in section 1860D–11A(c).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2071).

By Ms. STABENOW:

S. 346. A bill to amend the Solid Waste Disposal Act to prohibit the importation of Canadian municipal solid waste without State consent; to the Committee on Environment and Public Works.

Ms. STABENOW. Mr. President, I rise today to reintroduce the Canadian Waste Import Ban Act of 2005, to address the rapidly growing problem of Canadian waste shipments to Michigan. Michigan has been known for its beautiful waters, lush forests, and now unfortunately as a top importer of international trash.

My colleagues may be surprised to learn that the biggest source of waste to Michigan is not from another State, but from our neighbor to the north, Canada. The rapid increase in waste shipments is stunning. In 2003, 180 trash trucks crossed the Ambassador and Blue Water bridges into Michigan. Today, that number has more than doubled to 415 trucks per day. You can see these trucks lined up for miles waiting to cross into Michigan, polluting the air and creating traffic congestions. The city of Toronto alone sends over 1 million tons of trash annually to Michigan.

This waste dramatically decreases Michigan's own landfill capacity, and has an incredible negative impact on Michigan's environment and the public health of its citizens. The waste also poses a tremendous homeland security threat, as trucks loaded with garbage are harder for Customs agents to inspect than traditional cargo.

I fought and was successful in the installation of radiation equipment at these crossings. As a result of this equipment, the Blue Water Bridge port director reports that three to four Canadian trash trucks per week are being turned back at the border for containing dangerous radioactive materials such as medical waste. But we need the trash shipments to stop completely.

Michigan already has protections contained in an international agreement between the United States and Canada, but are being ignored. Under the Agreement Concerning the Transboundary Movement of Hazardous Waste, which was entered into in 1986, shipments of waste across the Canadian-U.S. border require government-to-government notification. The

Environmental Protection Agency, EPA, as the designate authority for the United States would receive the notification and then would have 30 days to consent or object to the shipment. Not only have these notification provisions not been enforced, but the EPA has indicated that they would not object to the municipal waste shipments.

Michigan citizens have spoken loud and clear on this issue. More than 165,000 people signed my on-line petition urging the EPA to use their power to stop the Canadian trash shipments. Residents from all 83 Michigan counties have signed the petition—an unprecedented response. I've presented these signatures to both former EPA Administrator Mike Leavitt and Homeland Security Secretary Tom Ridge. But despite these efforts, EPA has not stopped these trash shipments.

That is why I'm reintroducing my bill today. The Canadian Waste Import Ban of 2005 would stop the Canadian trash shipments by placing an immediate Federal ban on the importation of Canadian municipal solid waste. Any State that wishes to receive Canadian trash can opt out of the ban by giving notice to the EPA. The ban will be in place until the EPA enforces the notice and consent provision contained in the binational agreement.

This legislation would also give Michigan residents the protection they deserve from these shipments. In enforcing the agreement, the EPA would have to obtain the consent of the receiving State before consenting to a Canadian municipal solid waste shipment. So if the State of Michigan says no, the EPA must object to the trash shipment.

The EPA would also have to consider the impact of the shipment on homeland security, environment, and public health. These waste shipments should no longer be accepted without an examination of how it will affect the health and safety of Michigan families.

Michigan residents deserve the protections provided by this international agreement and should be provided the ability to stop these dangerous and unhealthy trash shipments. I urge my colleagues to support the Canadian Waste Import Ban of 2005.

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. 346

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 ''Canadian Waste Import Ban Act of 2005''.

SEC. 2. CANADIAN MUNICIPAL SOLID WASTE.

(a) IN GENERAL.—Subtitle D of the Solid Waste Disposal Act (42 U.S.C. 6941 et seq.) is amended by adding at the end the following:

''SEC. 4011. CANADIAN MUNICIPAL SOLID WASTE.

''(a) DEFINITIONS.—In this section:

''(1) AGREEMENT.—The term 'Agreement' means—

''(A) the Agreement Concerning the Transboundary Movement of Hazardous Waste between the United States and Canada, signed at Ottawa on October 28, 1986 (TIAS 11099) and amended on November 25, 1992; and

''(B) any regulations promulgated to implement and enforce that Agreement.

''(2) CANADIAN MUNICIPAL SOLID WASTE.—The term 'Canadian municipal solid waste' means municipal solid waste that is generated in Canada.

''(3) MUNICIPAL SOLID WASTE.—

''(A) IN GENERAL.—The term 'municipal solid waste' means—

''(i) material discarded for disposal by—

''(I) households (including single and multifamily residences); and

''(II) public lodgings such as hotels and motels; and

''(ii) material discarded for disposal that was generated by commercial, institutional, and industrial sources, to the extent that the material—

''(I)(aa) is essentially the same as material described in clause (i); or

''(bb) is collected and disposed of with material described in clause (i) as part of a normal municipal solid waste collection service; and

''(II) is not subject to regulation under subtitle C.

''(B) INCLUSIONS.—The term 'municipal solid waste' includes—

''(i) appliances;

''(ii) clothing;

''(iii) consumer product packaging;

''(iv) cosmetics;

''(v) debris resulting from construction, remodeling, repair, or demolition of a structure;

''(vi) disposable diapers;

''(vii) food containers made of glass or metal;

''(viii) food waste;

''(ix) household hazardous waste;

''(x) office supplies;

''(xi) paper; and

''(xii) yard waste.

''(C) EXCLUSIONS.—The term 'municipal solid waste' does not include—

''(i) solid waste identified or listed as a hazardous waste under section 3001, except for household hazardous waste;

''(ii) solid waste, including contaminated soil and debris, resulting from—

''(I) a response action taken under section 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9604, 9606);

''(II) a response action taken under a State law with authorities comparable to the authorities contained in either of those sections; or

''(III) a corrective action taken under this Act;

''(iii) recyclable material—

''(I) that has been separated, at the source of the material, from waste destined for disposal; or

''(II) that has been managed separately from waste destined for disposal, including scrap rubber to be used as a fuel source;

''(iv) a material or product returned from a dispenser or distributor to the manufacturer or an agent of the manufacturer for credit, evaluation, and possible potential reuse;

''(v) solid waste that is—

''(I) generated by an industrial facility; and

''(II) transported for the purpose of treatment, storage, or disposal to a facility (which facility is in compliance with applicable State and local land use and zoning laws and regulations) or facility unit—

''(aa) that is owned or operated by the generator of the waste;

''(bb) that is located on property owned by the generator of the waste or a company with which the generator is affiliated; or

''(cc) the capacity of which is contractually dedicated exclusively to a specific generator;

''(vi) medical waste that is segregated from or not mixed with solid waste;

''(vii) sewage sludge or residuals from a sewage treatment plant;

''(viii) combustion ash generated by a resource recovery facility or municipal incinerator; or

''(ix) waste from a manufacturing or processing (including pollution control) operation that is not essentially the same as waste normally generated by households.

''(b) BAN ON CANADIAN MUNICIPAL SOLID WASTE.—

''(1) IN GENERAL.—Except as provided in paragraph (2), until the date on which the Administrator promulgates regulations to implement and enforce the Agreement (including notice and consent provisions of the Agreement), no person may import into any State, and no solid waste management facility may accept, Canadian municipal solid waste for the purpose of disposal or incineration of the Canadian municipal solid waste.

''(2) ELECTION BY GOVERNOR.—The Governor of a State may elect to opt out of the ban under paragraph (1), and consent to the importation and acceptance by the State of Canadian municipal solid waste before the date specified in that paragraph, if the Governor submits to the Administrator a notice of that election by the Governor.

''(c) AUTHORITY OF ADMINISTRATOR.—

''(1) IN GENERAL.—Beginning immediately after the date of enactment of this section, the Administrator shall—

''(A) perform the functions of the Designated Authority of the United States described in the Agreement with respect to the importation and exportation of municipal solid waste under the Agreement; and

''(B) implement and enforce the Agreement (including notice and consent provisions of the Agreement).

''(2) CONSENT TO IMPORTATION.—In considering whether to consent to the importation of Canadian municipal solid waste under article 3(c) of the Agreement, the Administrator shall—

''(A) obtain the consent of each State into which the Canadian municipal solid waste is to be imported; and

''(B) consider the impact of the importation on homeland security, public health, and the environment.''.

(b) CONFORMING AMENDMENT.—The table of contents of the Solid Waste Disposal Act (42 U.S.C. prec. 6901) is amended by adding after the item relating to section 4010 the following:

''Sec. 4011. Canadian municipal solid waste''.

By Mr. NELSON of Florida (for himself, Mr. LUGAR, and Mr. ROCKEFELLER):

S. 347. A bill to amend titles XVIII and XIX of the Social Security Act and title III of the Public Health Service Act to improve access to information about individuals' health care operations and legal rights for care near the end of life, to promote advance care planning and decisionmaking so that individuals' wishes are known should they become unable to speak for themselves, to engage health care providers in disseminating information about and assisting in the preparation of advance directives, which include living wills and durable powers of attorney for health care, and for other

purposes; to the Committee on Finance.

Mr. NELSON of Florida. Mr. President, I am pleased to be joined by my colleagues and cosponsors Senators JAY ROCKEFELLER and RICHARD LUGAR as we introduce the Advance Directives Improvement and Education Act of 2005. Senators ROCKEFELLER and COLLINS, along with Senator WYDEN, sponsored legislation with similar goals in the past and have provided invaluable support and counsel in drafting the bill we introduce today.

The Advance Directives Improvement and Education Act of 2005 has a simple purpose: to encourage all adults in America, especially those 65 and older, to think about, talk about and write down their wishes for medical care near the end of life should they become unable to make decisions for themselves. Advance directives, which include a living will stating the individual's preferences for care, and a power of attorney for health care, are critical documents that each of us should have. The goal is clear, but reaching it requires that we educate the public about the importance of advance directives, offer opportunities for discussion of the issues, and reinforce the requirement that health care providers honor patients' wishes. This bill is designed to do just that.

Americans are afraid of death. We don't like to think about it, talk about it, or plan for it. And yet, we will all face it. Not only our own deaths, but our parents, siblings, friends, and sometimes, tragically, children. Today, most Americans face death unprepared. Family members frequently end up making critical medical decisions for incapacitated patients, yet they, too, are unprepared. Only 15–20 percent of adults have advance directives. Among this group, many have not discussed the contents of these important documents with their families or even the person named as the health care proxy.

It is time to bring this discussion into the mainstream. Too much is at stake to continue to deny our mortality. You all know about the tragic situation going on in Florida with Terri Schiavo. Here is a young woman in a persistent vegetative state who is the subject of a debate about her treatment between her husband and her parents, a debate that has been a court case and a legislative quagmire. Why? Because she didn't write down what type of care she would want in the event an accident, illness or other medical condition caused her to be in an incapacitated state. She is young and didn't think about death or dying. If she had an advance directive that made her wishes clear and named a health care proxy to make decisions for her should she be unable to do so for herself, the treatment debate might continue, but there would be no question as to who could decide. The Supreme Court has clearly affirmed that competent adults have the right to refuse unwanted medical treatment, Washington v. Glucksburg and Vacco v. Quill, 1997, but it also stressed that advance directives are a means of safeguarding that right should adults become incapable of deciding for themselves.

Fortunately, situations like Ms. Schiavo's are rare. Of the 2.5 million people who die each year 83 percent are Medicare beneficiaries. In fact, 27 percent of Medicare expenditures cover care in the last year of life. Remember, everyone who enrolls in Medicare will die on Medicare. The Advance Directives Improvement and Education Act encourages all Medicare beneficiaries to prepare advance directives by providing a free physician office visit for the purpose of discussing end-of-life care choices and other issues around medical decision-making in a time of incapacitation. Physicians will be reimbursed for spending time with their patients to help them understand situations in which an advance directive would be useful, medical options, the Medicare hospice benefit and other concerns. The conversation will also enable physicians to learn about their patients' wishes, fears, religious beliefs, and life experiences that might influence their medical care wishes. These are important aspects of a physician-patient relationship that are too often unaddressed.

Another part of our bill will provide funds for the Department of Health and Human Services to conduct a public education campaign to raise awareness of the importance of planning for care near the end of life. This campaign would explain what advance directives are, where they are available, what questions need to be asked and answered, and what to do with the executed documents. HHS, directly or through grants, would also establish an information clearinghouse where consumers could receive state-specific information and consumer-friendly documents and publications.

State-specific information is needed because in addition to the federal Patients Self Determination Act passed in 1990, most states also have enacted advance directive laws. Because the state laws differ, some states may be reluctant to honor advance directives that were executed in another state. The bill we introduce today contains language that would make all advance directives ''portable,'' that is, useful from one state to another. As long as the documents were lawfully executed in the state of origin, they must be accepted and honored in the state in which they are presented, unless to do so would violate state law.

All of the provisions in the Advance Directives Improvement and Education Act of 2005 are there for one reason: to increase the number of people in the United States who have advance directives, who have discussed their wishes with their physicians and families, and who have given copies of the directives to their loved ones, health care providers, and legal representatives.

This new Medicare benefit and education campaign will also lead to a reduction in litigation costs. By encouraging advance directives, cases like Ms. Schiavo's would be less frequent; therefore the long and costly litigation surrounding these unfortunate situations would be reduced.

Senators ROCKEFELLER, LUGAR and I all believe that as our Medicare population grows and life expectancy lengthens, improving care near the end of life must be a priority. Helping people complete these critical documents is an essential part of making the final journey as meaningful and peaceful as possible. In addition, there are growing numbers of health care providers, nonprofit organizations and consumer advocates who recognize the need for change. New palliative care programs, pain protocols and hospice services are being instituted in facilities around the country.

This body is a legislative institution not a medical one—with the exceptions of the distinguished Majority Leader and Senator COBURN, of course. We cannot legislate good medical care or compassion. What we can do, what I hope we will do, is to enact this bill so that the American public can participate in improving end-of-life care—first, by filling out their own advance directives and talking to their families about them; and by raising their voices to demand that our health care systems honor their wishes and improve the way they care for people who are near the end of life. If we can do that, we will have done a great deal.

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:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Advance Directives Improvement and Education Act of 2005''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress makes the following findings:

(1) Every year 2,500,000 people die in the United States. Eighty percent of those people die in institutions such as hospitals, nursing homes, and other facilities. Chronic illnesses, such as cancer and heart disease, account for 2 out of every 3 deaths.

(2) In January 2004, a study published in the Journal of the American Medical Association concluded that many people dying in institutions have unmet medical, psychological, and spiritual needs. Moreover, family members of decedents who received care

at home with hospice services were more likely to report a favorable dying experience.

(3) In 1997, the Supreme Court of the United States, in its decisions in Washington v. Glucksberg and Vacco v. Quill, reaffirmed the constitutional right of competent adults to refuse unwanted medical treatment. In those cases, the Court stressed the use of advance directives as a means of safeguarding that right should those adults become incapable of deciding for themselves.

(4) A study published in 2002 estimated that the overall prevalence of advance directives is between 15 and 20 percent of the general population, despite the passage of the Patient Self-Determination Act in 1990, which requires that health care providers tell patients about advance directives.

(5) Competent adults should complete advance care plans stipulating their health care decisions in the event that they become unable to speak for themselves. Through the execution of advance directives, including living wills and durable powers of attorney for health care according to the laws of the State in which they reside, individuals can protect their right to express their wishes and have them respected.

(b) PURPOSES.—The purposes of this Act are to improve access to information about individuals' health care options and legal rights for care near the end of life, to promote advance care planning and decision-making so that individuals' wishes are known should they become unable to speak for themselves, to engage health care providers in disseminating information about and assisting in the preparation of advance directives, which include living wills and durable powers of attorney for health care, and for other purposes.

SEC. 3. MEDICARE COVERAGE OF END-OF-LIFE PLANNING CONSULTATIONS.

(a) COVERAGE.—Section 1861(s)(2) of the Social Security Act (42 U.S.C. 1395x(s)(2)), as amended by section 642(a) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2322), is amended—

(1) in subparagraph (Y), by striking ''and'' at the end;

(2) in subparagraph (Z), by inserting ''and'' at the end; and

(3) by adding at the end the following new subparagraph:

''(AA) end-of-life planning consultations (as defined in subsection (bbb));''.

(b) SERVICES DESCRIBED.—Section 1861 of the Social Security Act (42 U.S.C. 1395x), as amended by section 706(b) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2339), is amended by adding at the end the following new subsection:

''End-Of-Life Planning Consultation

''(bbb) The term 'end-of-life planning consultation' means physicians' services—

''(1) consisting of a consultation between the physician and an individual regarding—

''(A) the importance of preparing advance directives in case an injury or illness causes the individual to be unable to make health care decisions;

''(B) the situations in which an advance directive is likely to be relied upon;

''(C) the reasons that the development of a comprehensive end-of-life plan is beneficial and the reasons that such a plan should be updated periodically as the health of the individual changes;

''(D) the identification of resources that an individual may use to determine the requirements of the State in which such individual resides so that the treatment wishes of that individual will be carried out if the individual is unable to communicate those wishes, including requirements regarding the designation of a surrogate decision maker (health care proxy); and

''(E) whether or not the physician is willing to follow the individual's wishes as expressed in an advance directive; and

''(2) that are furnished to an individual on an annual basis or immediately following any major change in an individual's health condition that would warrant such a consultation (whichever comes first).''.

(c) WAIVER OF DEDUCTIBLE AND COINSURANCE.—

(1) DEDUCTIBLE.—The first sentence of section 1833(b) of the Social Security Act (42 U.S.C. 1395 *l*(b)) is amended—

(A) by striking ''and'' before ''(6)''; and

(B) by inserting before the period at the end the following: '', and (7) such deductible shall not apply with respect to an end-of-life planning consultation (as defined in section 1861(bbb))''.

(2) COINSURANCE.—Section 1833(a)(1) of the Social Security Act (42 U.S.C. 1395 *l*(a)(1)) is amended—

(A) in clause (N), by inserting ''(or 100 percent in the case of an end-of-life planning consultation, as defined in section 1861(bbb))'' after ''80 percent''; and

(B) in clause (O), by inserting ''(or 100 percent in the case of an end-of-life planning consultation, as defined in section 1861(bbb))'' after ''80 percent''.

(d) PAYMENT FOR PHYSICIANS' SERVICES.—Section 1848(j)(3) of the Social Security Act (42 U.S.C. 1395w–4(j)(3)), as amended by section 611(c) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2304), is amended by inserting ''(2)(AA),'' after ''(2)(W),''.

(e) FREQUENCY LIMITATION.—Section 1862(a)(1) of the Social Security Act (42 U.S.C. 1395y(a)(1)), as amended by section 613(c) of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108–173; 117 Stat. 2306), is amended—

(1) by striking ''and'' at the end of subparagraph (L);

(2) by striking the semicolon at the end of subparagraph (M) and inserting '', and''; and

(3) by adding at the end the following new subparagraph:

''(N) in the case of end-of-life planning consultations (as defined in section 1861(bbb)), which are performed more frequently than is covered under paragraph (2) of such section;''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 2006.

SEC. 4. IMPROVEMENT OF POLICIES RELATED TO THE USE AND PORTABILITY OF ADVANCE DIRECTIVES.

(a) MEDICARE.—Section 1866(f) of the Social Security Act (42 U.S.C. 1395cc(f)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (B), by inserting ''and if presented by the individual (or on behalf of the individual), to include the content of such advance directive in a prominent part of such record'' before the semicolon at the end;

(B) in subparagraph (D), by striking ''and'' after the semicolon at the end;

(C) in subparagraph (E), by striking the period at the end and inserting ''; and''; and

(D) by inserting after subparagraph (E) the following new subparagraph:

''(F) to provide each individual with the opportunity to discuss issues relating to the information provided to that individual pursuant to subparagraph (A) with an appropriately trained professional.'';

(2) in paragraph (3), by striking ''a written'' and inserting ''an''; and

(3) by adding at the end the following new paragraph:

''(5)(A) In addition to the requirements of paragraph (1), a provider of services, Medicare Advantage organization, or prepaid or eligible organization (as the case may be) shall give effect to an advance directive executed outside the State in which such directive is presented, even one that does not appear to meet the formalities of execution, form, or language required by the State in which it is presented to the same extent as such provider or organization would give effect to an advance directive that meets such requirements, except that a provider or organization may decline to honor such a directive if the provider or organization can reasonably demonstrate that it is not an authentic expression of the individual's wishes concerning his or her health care. Nothing in this paragraph shall be construed to authorize the administration of medical treatment otherwise prohibited by the laws of the State in which the directive is presented.

''(B) The provisions of this paragraph shall preempt any State law to the extent such law is inconsistent with such provisions. The provisions of this paragraph shall not preempt any State law that provides for greater portability, more deference to a patient's wishes, or more latitude in determining a patient's wishes.''.

(b) MEDICAID.—Section 1902(w) of the Social Security Act (42 U.S.C. 1396a(w)) is amended—

(1) in paragraph (1)—

(A) in subparagraph (B)—

(i) by striking ''in the individual's medical record'' and inserting ''in a prominent part of the individual's current medical record''; and

(ii) by inserting ''and if presented by the individual (or on behalf of the individual), to include the content of such advance directive in a prominent part of such record'' before the semicolon at the end;

(B) in subparagraph (D), by striking ''and'' after the semicolon at the end;

(C) in subparagraph (E), by striking the period at the end and inserting ''; and''; and

(D) by inserting after subparagraph (E) the following new subparagraph:

''(F) to provide each individual with the opportunity to discuss issues relating to the information provided to that individual pursuant to subparagraph (A) with an appropriately trained professional.'';

(2) in paragraph (4), by striking ''a written'' and inserting ''an''; and

(3) by adding at the end the following paragraph:

''(6)(A) In addition to the requirements of paragraph (1), a provider or organization (as the case may be) shall give effect to an advance directive executed outside the State in which such directive is presented, even one that does not appear to meet the formalities of execution, form, or language required by the State in which it is presented to the same extent as such provider or organization would give effect to an advance directive that meets such requirements, except that a provider or organization may decline to honor such a directive if the provider or organization can reasonably demonstrate that it is not an authentic expression of the individual's wishes concerning his or her health care. Nothing in this paragraph shall be construed to authorize the administration of medical treatment otherwise prohibited by the laws of the State in which the directive is presented.

''(B) The provisions of this paragraph shall preempt any State law to the extent such law is inconsistent with such provisions. The provisions of this paragraph shall not preempt any State law that provides for greater portability, more deference to a patient's wishes, or more latitude in determining a patient's wishes.''.

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Subject to paragraph (2), the amendments made by subsections (a) and (b) shall apply to provider agreements and contracts entered into, renewed, or extended under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.), and to State plans under title XIX of such Act (42 U.S.C. 1396 et seq.), on or after such date as the Secretary of Health and Human Services specifies, but in no case may such date be later than 1 year after the date of enactment of this Act.

(2) EXTENSION OF EFFECTIVE DATE FOR STATE LAW AMENDMENT.—In the case of a State plan under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by subsection (b), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session is considered to be a separate regular session of the State legislature.

SEC. 5. INCREASING AWARENESS OF THE IMPORTANCE OF END-OF-LIFE PLANNING.

Title III of the Public Health Service Act (42 U.S.C. 241 et seq.) is amended by adding at the end the following new part:

"PART R—PROGRAMS TO INCREASE AWARENESS OF ADVANCE DIRECTIVE PLANNING ISSUES

"SEC. 399Z–1. ADVANCE DIRECTIVE EDUCATION CAMPAIGNS AND INFORMATION CLEARINGHOUSES.

''(a) ADVANCE DIRECTIVE EDUCATION CAMPAIGN.—The Secretary shall, directly or through grants awarded under subsection (c), conduct a national public education campaign—

''(1) to raise public awareness of the importance of planning for care near the end of life;

''(2) to improve the public's understanding of the various situations in which individuals may find themselves if they become unable to express their health care wishes;

''(3) to explain the need for readily available legal documents that express an individual's wishes, through advance directives (including living wills, comfort care orders, and durable powers of attorney for health care); and

''(4) to educate the public about the availability of hospice care and palliative care.

''(b) INFORMATION CLEARINGHOUSE.—The Secretary, directly or through grants awarded under subsection (c), shall provide for the establishment of a national, toll-free, information clearinghouse as well as clearinghouses that the public may access to find out about State-specific information regarding advance directive and end-of-life decisions.

''(c) GRANTS.—

''(1) IN GENERAL.—The Secretary shall use at least 60 percent of the funds appropriated under subsection (d) for the purpose of awarding grants to public or nonprofit private entities (including States or political subdivisions of a State), or a consortium of any of such entities, for the purpose of conducting education campaigns under subsection (a) and establishing information clearinghouses under subsection (b).

''(2) PERIOD.—Any grant awarded under paragraph (1) shall be for a period of 3 years.

''(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $25,000,000.''.

SEC. 6. GAO STUDIES AND REPORTS ON END-OF-LIFE PLANNING ISSUES.

(a) STUDY AND REPORT ON COMPLIANCE WITH ADVANCE DIRECTIVES AND OTHER ADVANCE PLANNING DOCUMENTS.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study on the effectiveness of advance directives in making patients' wishes known and honored by health care providers.

(2) REPORT.—Not later than the date that is 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on the study conducted under paragraph (1) together with recommendations for such legislation and administrative action as the Comptroller General of the United States determines to be appropriate.

(b) STUDY AND REPORT ON ESTABLISHMENT OF NATIONAL ADVANCE DIRECTIVE REGISTRY.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study on the implementation of the amendments made by section 3 (relating to medicare coverage of end-of-life planning consultations).

(2) REPORT.—Not later than 2 years after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on the study conducted under paragraph (1) together with recommendations for such legislation and administrative action as the Comptroller General of the United States determines to be appropriate.

(c) STUDY AND REPORT ON ESTABLISHMENT OF NATIONAL ADVANCE DIRECTIVE REGISTRY.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study on the feasibility of a national registry for advance directives, taking into consideration the constraints created by the privacy provisions enacted as a result of the Health Insurance Portability and Accountability Act.

(2) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on the study conducted under paragraph (1) together with recommendations for such legislation and administrative action as the Comptroller General of the United States determines to be appropriate.

By Mr. SANTORUM (for himself and Ms. MIKULSKI):

S. 348. A bill to designate Poland as a program country under the visa waiver program established under section 217 of the Immigration and Nationality Act, and for other purposes; to the Committee on the Judiciary.

Mr. SANTORUM. Mr. President, I rise today to introduce, along with Senator MIKULSKI, a bill that would designate Poland as a program country under the Visa Waiver Program under section 217 of the Immigration Nationality Act.

As we celebrate an historic period with the first Iraqi elections in over fifty years, it is important to appreciate the sacrifices our allies have made to make such an event possible. America must continue to solidify the bond with its allies by assisting their governments and citizens when possible. This legislation brings us closer to a country that has been by our side through a time of war and continues to be a partner in the global freedom.

Since the founding of the United States, Poland has proven its steadfast dedication to the causes of freedom and friendship with the United States. This has been exemplified by the brave actions of Polish patriots such as Casimir Pulaski and Tadeusz Kosciuszco during the American Revolution. Polish history provides pioneering examples of democracy and religious tolerance, and this is reflected in their constitution that states, ''Freedom of faith and religion shall be ensured to everyone.''

Poland's revolt from the Soviet Union's communist stranglehold is a more recent example of their dedication to freedom. They are a prime example of Ronald Reagan's vision to end the Cold War. Last year, when I met Lech Walesa, the tenacious leader of Poland's Solidarity movement and former President of Poland, I was reminded of the profound struggle the country endured to bring democracy to their people.

And their commitment to preserving freedom and global security continues today. On March 12, 1999, Poland became a member of the North Atlantic Treaty Organization. This was followed by admission into the European Union on May 1, 2004. Poland was a staunch ally to the United States in Operation Iraqi Freedom and has committed 2,300 troops to help with the ongoing peace efforts in Iraq.

In addition to Poland's efforts as a global ally, its people have contributed greatly within our borders. Nearly nine million people of Polish ancestry live in the United States. Polish immigrants have played an integral role in the success of industry and agriculture in Pennsylvania and throughout the United States.

Currently, the United States administers the Visa Waiver Program to citizens of twenty-seven countries. The program allows citizens from Visa Waiver Program countries to visit the United States as tourists, and Poland has earned the right to participate. I believe Poland deserves to be the twenty-eighth country to participate in the program. The 100,000 Polish citizens who visit the United States annually must currently pay a $100 fee to apply for a visa. Many of these applicants are visiting family, often for wedding celebrations or funerals. In an expression of good faith, in 1991 the Polish government unilaterally repealed the visa requirement for U.S. citizens traveling to Poland for less than 90 days.

I am aware of past concerns about Polish visa refusal rates, but a closer look shows that refusal rates can be an inaccurate measure because they are based on decisions made by a very short interview process rather than the actual behavior of non-immigrants. Often, refusal rates do not reflect the propensity of nationals from that country to overstay their visas. More importantly, Poland's refusal rate does not reflect a high propensity for terrorism. The State Department has given no indication that the potential for terrorism in Poland significantly exceeds that of the 27 countries currently participating in the Visa Waiver

Program. Please be assured that I am sensitive to arguments that have concerns about our national security at the core. However, our past history with Polish citizens visiting the United States does not favor this argument.

For all Polish citizens and Polish Americans, I ask through this legislation that Poland be deemed a designated program country for the purposes of the Visa Waiver Program. I ask my colleagues for their support.

Ms. MIKULSKI. Mr. President, I rise today to continue the fight to right a wrong in America's visa program. I believe it's time for America to extend the Visa Waiver program to Poland. I'm pleased to have formed a bipartisan partnership with Senator SANTORUM to reintroduce our bill to get it done.

Last fall, Senator SANTORUM and I met with a hero of the Cold War, Lech Walesa. When he jumped over the wall of the Gdansk shipyard, he took Poland and the whole world with him. He told us that the visa issue is a question of honor for Poland. That day, we introduced a bill to once again stand in solidarity with the father of Solidarity by extending the Visa Waiver program to Poland.

This morning, I had the honor of hosting Poland's Foreign Minister, Professor Adam Rotfeld. We reaffirmed and cemented the close ties between the Polish and American peoples. Senator SANTORUM and I heard loud and clear that the visa waiver program remains a high priority for Poland.

My friends, Poland is not some Communist holdover or third-world country begging for a handout. The Cold War is over. Poland is a free and democratic nation. Poland is a NATO ally and a member of the European Union. But America's visa policy still treats Poland as a second-class citizen. That is just wrong.

Poland is a reliable ally, not just by treaty but in deeds. Warsaw hosted an international Conference on Combating Terrorism less than two months after the September 11 attacks. Poland continues to modernize its Armed Forces so they can operate with the Armed Forces of the U.S. and other NATO allies, buying American F–16s and Shadow UAVs and humvees.

More importantly, Polish troops have stood side by side with America's Armed Forces. Polish ships participated in Desert Shield and Desert Storm during the 1990–91 Gulf War. Poland sent troops to Bosnia as part of UNPROFOR and IFOR. Poland sent troops as part of the international coalition in Afghanistan.

Polish troops fought alongside American and British and Australian troops from day one of the Iraq war. They are there because they want to be reliable allies. Because they are ready to stand with us even when the mission is risky and unpopular. Today, Poland still commands multinational forces in the South Central region of Iraq. Nearly 2,500 Polish troops are still on the ground in Iraq, sharing the burden and the risk and the casualties.

So why are Singapore and San Marino among the 27 countries in the Visa Waiver program, but Poland is not?

President Kwasniewski raised this issue with President Bush last year and again this week. The President has said this is a matter for Congress. It's time for us to act.

The bill Senator SANTORUM and I are introducing today will add Poland to the list of designated countries in the Visa Waiver program. That will allow Polish citizens to travel to the U.S. for tourism or business for up to sixty days without needing to stand in line to get a visa. That means it will be easier for Poles to visit family and friends or do business in America. Shouldn't we make it easier for the Pulaskis and Kosciuszkos and Marie Curies of today to visit our country?

We know that our borders will be no less secure because of these Polish visitors to our country. But we know that our alliance will be more secure because of this legislation.

I urge our colleagues to join us in support of this important bill.

By Mr. DOMENICI:

S. 349. A bill to provide for the appointment of additional judges for the district of New Mexico; to the Committee on the Judiciary.

Mr. DOMENICI. Mr. President, I introduce legislation that continues my efforts to address a significant problem in the state of New Mexico, a problem that the Judicial Conference of the United States has previously described as a ''crisis.'' According to the latest survey by the Judicial Conference, the weighted caseload for the District of New Mexico is now the fourth highest in the Nation. This is in spite of the fact that in 2002 Congress approved a temporary judgeship for New Mexico which the President has filled.

Based on this heavy workload, the Judicial Conference recently recommended 2 additional permanent judgeships, as well as an additional temporary judgeship for New Mexico; Only 2 districts in California, one in Florida, and one in New York were recommended to get more judgeships than New Mexico. The legislation I have introduced today reflects this recommendation.

In the 12-month period ending on June 30, 2002, the number of criminal filings per judgeship increased from 222 to 320. This is compared to the national average of 81. You don't have to be a mathematical genius to figure out that this is just short of four times the national average. During this same time period, the number of weighted filings increased from 673 per judgeship to 739. The national average is 504 and the Judicial Conference has set the benchmark at 430 weighted cases per judgeship. The District of New Mexico is clearly in need of relief from this crisis.

The Sixth Amendment of the Constitution guarantees the right to a speedy trial in all criminal cases. The United States Supreme Court has called this guarantee ''one of the most basic rights preserved by our Constitution,'' 386 U.S. 213. We must ensure that our States have the proper judicial resources to guarantee the basic right promised to Americans more than 200 years ago. The bill that I am introducing provides such necessary resources to New Mexico.

Without additional judges, this problem will only continue to grow as the country focuses more intently on the security of our borders. I hope that my colleagues will act quickly to authorize these necessary additional judgeships for New Mexico.

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. 349

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ADDITIONAL JUDGES FOR THE DISTRICT OF NEW MEXICO.

(a) PERMANENT DISTRICT JUDGESHIPS.—

(1) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate, 2 additional district judges for the district of New Mexico.

(2) TECHNICAL AND CONFORMING AMENDMENT.—The table under section 133(a) of title 28, United States Code, is amended by striking the item relating to New Mexico and inserting the following:

''New Mexico ..... 8.''.

(b) TEMPORARY JUDGESHIP.—

(1) IN GENERAL.—The President shall appoint, by and with the advice and consent of the Senate, 1 additional district judge for the district of New Mexico.

(2) VACANCY NOT FILLED.—The first vacancy in the office of district judge in the district of New Mexico occurring 10 years or more after the confirmation date of the judge named to fill the temporary district judgeship created by this subsection, shall not be filled.

By Mr. LUGAR (for himself, Mrs. BOXER, Mr. CHAFEE, Mr. FEINGOLD, Mr. COLEMAN, and Mr. SMITH):

S. 350. A bill to amend the Foreign Assistance Act of 1961 to provide assistance for orphans and other vulnerable children in developing countries, and for other purposes; to the Committee on Foreign Relations.

Mr. LUGAR. Mr. President, I rise to introduce the Assistance for Orphans and Other Vulnerable Children in Developing Countries Act of 2005.

On October 7, 2004, I introduced S. 2939, a bill to improve our ability to provide assistance to orphans and vulnerable children in developing countries. Because of the gravity and urgency of the growing AIDS orphans crisis, I am reintroducing my bill.

The unprecedented AIDS orphan crisis in sub-Saharan Africa has profound

implications for political stability, development, and human welfare that extend far beyond the region. Sub-Saharan African nations stand to lose generations of educated and trained professionals who can contribute meaningfully to their countries' development. Orphaned children, many of whom are homeless, are more likely to resort to prostitution and other criminal behavior to survive. Most frighteningly, these uneducated, poorly socialized, and stigmatized young adults are extremely vulnerable to being recruited into criminal gangs, rebel groups, or extremist organizations that offer shelter and food and act as ''surrogate'' families. It is imperative that the international community respond to this crisis.

An estimated 110 million orphans live in sub-Saharan Africa, Asia, Latin America, and the Caribbean. The HIV/AIDS pandemic is rapidly expanding the orphan population. Currently an estimated 14 million children have been orphaned by AIDS, most of whom live in sub-Saharan Africa. This number is projected to soar to more than 25 million by 2010. The pandemic is orphaning generations of African children and is compromising the overall development prospects of their countries.

Most orphans in the developing world live in extremely disadvantaged circumstances. Poor communities in the developing world struggle to meet the basic food, clothing, health care, and educational needs of orphans. Experts recommend supporting community-based organizations to assist these children. Such an approach enables the children to remain connected to their communities, traditions, rituals, and extended families.

My bill seeks to improve assistance to orphans and other vulnerable children in developing countries. It would require the United States Government to develop a comprehensive strategy for providing such assistance and would authorize the President to support community-based organizations that provide basic care for orphans and vulnerable children.

Orphans are less likely to be in school, and more likely to be working full time. Yet only education can help children acquire the knowledge and develop the skills they need to build a better future.

For many children, the primary barrier to an education is the expense of school fees, uniforms, supplies, and other costs. My bill aims to improve enrollment and access to primary school education by supporting programs that reduce the negative impact of school fees and other expenses. It also would reaffirm our commitment to international school lunch programs. Studies have shown that school food programs provide an incentive for children to stay in school. School meals provide basic nutrition to children who otherwise do not have access to reliable food.

Many children who lose one or both parents often face difficulty in asserting their inheritance rights. Even when the inheritance rights of women and children are spelled out in law, such rights are difficult to claim and are seldom enforced. In many countries it is difficult or impossible for a widow—even if she has small children—to claim property after the death of her husband. This often leaves the most vulnerable children impoverished and homeless. My bill seeks to support programs that protect the inheritance rights of orphans and widows with children.

The AIDS orphan crisis in sub-Saharan Africa has implications for political stability, development, and human welfare that extend far beyond the region, affecting governments and people worldwide. Every 14 seconds another child is orphaned by AIDS. Turning the tide on this crisis will require a coordinated, comprehensive, and swift response. I am hopeful that Senators will join me in backing this legislation.

Mrs. BOXER. Mr. President, I am pleased to join my chairman of the Senate Foreign Relations I Committee, Senator LUGAR, in reintroducing the Assistance for Orphans and Other Vulnerable Children in Developing Countries Act. Today, we are reintroducing a bill that we worked on together in the 108th Congress—a bill that will help those most vulnerable to the HIV/AIDS pandemic throughout the world.

An estimated 14 million children have lost either one or both parents to HIV/AIDS. By the year 2010, It is estimated that this number will grow to 25 million. The pandemic has created an orphans crisis, especially in sub-Sahara Africa where this crisis is most severe.

The struggle of those orphaned by this pandemic is heartbreaking. These children face the trauma of watching their parents die. They are forced at a very young age to care for their younger siblings while suffering from deep poverty, hunger, and sicknesses.

A girl from Uganda who lost her parents to HIV/AIDS at age 11 told the BBC:

> When my mother died we suffered so much. There was no food, and there was no one to look after us. We didn't even have money to buy soap and salt. We wanted to run away to our other grandparents, but we didn't have transport to go there. I tried to be positive, but it was difficult. I missed my mother because I loved her so much.

Picture this story repeated 14 million times throughout the world. We cannot stand by and allow this suffering to continue.

The Lugar-Boxer legislation that is being introduced today is designed to help these orphans and other vulnerable children who have been affected by the HIV/AIDS pandemic.

First, our bill would authorize the President to provide assistance to orphans and other vulnerable children in developing countries. Specific authorization is provided in the areas of basic care, HIV/AIDS treatment, school food programs, protection of inheritance rights, and education and employment training assistance.

Second, this legislation calls on the President to use U.S. foreign assistance to support programs that eliminate school fees. Throughout the world, many orphans are prevented from attending school because they cannot afford to pay school fees or are forced to financially support their families or care for sick relatives.

And, third, our bill would require the President to develop and submit to Congress a strategy for coordinating, implementing, and monitoring assistance programs for orphans and vulnerable children.

This strategy must include measurable performance indicators to ensure that our policies are effective in helping orphans and vulnerable children.

Once again, Mr. President, I thank Chairman LUGAR for working with me on this bipartisan legislation. I also thank Congresswoman LEE for her leadership on this issue in the House of Representatives.

I hope my colleagues will join us in supporting this important bill.

By Mr. KENNEDY (for himself, Mr. KERRY, Mr. AKAKA, Mrs. BOXER, Mrs. CLINTON, Mr. CORZINE, Mr. DODD, Mr. FEINGOLD, Mr. INOUYE, Mr. LAUTENBERG, Mr. LEVIN, Mr. LIEBERMAN, Ms. MIKULSKI, Mr. SARBANES, and Mr. REED):

S. 351. A bill to amend title XVIII of the Social Security Act to provide for patient protection by limiting the number of mandatory overtime hours a nurse may be required to work in certain providers of services to which payments are made under the Medicare Program; to the Committee on Finance.

Mr. KENNEDY. Mr. President, it is a privilege to join my colleagues, Senators KERRY, CLINTON, SARBANES, CORZINE, MIKULSKI, DODD, LEVIN, REED, LIEBERMAN, FEINGOLD, INOUYE, and AKAKA in introducing the Safe Nursing and Patient Care Act.

Current Federal safety standards limit work hours for pilots, flight attendants, truck drivers, railroad engineers and other professionals, in order to protect the public safety. However, no similar limitation currently exists for the nation's nurses, who care for so many of our most vulnerable citizens.

The Safe Nursing and Patient Care Act will limit mandatory overtime for nurses in order to protect patient safety and improve working conditions for nurses. Across the country, the widespread practice of mandatory overtime means that over-worked nurses are often providing care in unacceptable circumstances. A recent study from the University of Pennsylvania School of Nursing found that nurses who work shifts of twelve and a half hours or more are three times more likely to commit an error than nurses who work a standard shift of eight and a half

hours or less. Restrictions for mandatory overtime will help ensure that nurses are able to provide the highest quality of care to their patients.

Some hospitals have already taken action to deal with this serious problem. Over the last few years in Massachusetts, Brockton Hospital and St. Vincent Hospital agreed to limit mandatory overtime as part of negotiations following successful strikes by nurses. These limits will protect patients and improve working conditions for the nurses, and will help in the recruitment and retention of nurses in the future.

Job dissatisfaction and harsh overtime hours are major factors in the current shortage of nurses. Nationally, the shortfall is expected to rise to 20 percent in coming years. A major goal of the Safe Nursing and Patient Care Act is to improve the quality of life for nurses, so that more persons will enter the nursing profession and remain in it.

Improving conditions for nurses is an essential part of our ongoing effort to reduce medical errors, improve patient outcomes, and encourage more Americans to become and remain nurses. The Safe Nursing and Patient Care Act is a significant step that Congress can take to support better quality care for all Americans, and improve working conditions for our nation's nurses, and I urge my colleagues to support it.

By Ms. MIKULSKI (for herself, Mr. GREGG, Mr. LEAHY, Mr. WARNER, Mr. CHAFEE, Mr. THOMAS, Mr. LEVIN, Mr. SALAZAR, Mr. ALLEN, Mr. KENNEDY, Mr. JEFFORDS, Ms. COLLINS, Mr. SARBANES, Ms. SNOWE, Mr. DORGAN, Mr. REED, Mr. DAYTON, and Mr. KERRY):

S. 352. A bill to revise certain requirements for H–2B employers and require submission of information regarding H–2B non-immigrants, and for other purposes; to the Committee on the Judiciary.

Ms. MIKULSKI. Mr. President, today I rise to introduce legislation that is desperately needed by small and seasonal businesses all over the Nation. These businesses are in crisis. They need seasonal workers before the summer so that they can survive. For many years they have relied on the H2B Visa program to meet these needs, but this year they can't get the temporary labor they need because they have been shut out of the H–2B visa program. That program lets them hire temporary foreign workers when no American workers are available.

So today, I join with my colleague Senator GREGG to introduce legislation that provides a quick fix to the H–2B problem. The ''Save our Small and Seasonal Businesses Act'' will help these employers by doing three things—temporarily exempting good actor workers from the H–2B cap, protecting against fraud in the H–2B program and providing a fair and balanced allocation system for H–2B visas. I urge my colleagues to work with us to pass this legislation quickly to save these businesses and the thousands of American jobs they provide.

Many in this body know about the H–2B crisis. All this week we have been talking about the litigation crisis—but a real crisis to thousands of small and seasonal businesses is the worker shortage they face as they approach the summer season. These small businesses count on the H–2B Visa Program to keep their businesses afloat. And this year, because the cap of 66,000 was reached so early in the year, many of these businesses will be unable to get the seasonal workers that they need to survive.

Hitting the cap so early has had a great impact on Maryland. We have a lot of summer seasonal businesses in Maryland, on the Eastern Shore, in Ocean City or working the Chesapeake Bay. Many of our businesses use the program year after year. They hire all the American workers they can find, but they need additional help to meet seasonal demands. Because the cap was reached so early this year, for the second year in a row, summer employers face a disadvantage. They can't use the program, so they can't meet their seasonal needs and many will be forced to limit services, lay-off permanent U.S. workers or, worse yet, close their doors.

These are family businesses and small businesses in small communities in Maryland. If the business suffers the whole community suffers. For seafood companies like J.M. Clayton, what they do is more than a business, it's a way of life. Started over a century ago and run by the great grandsons of the founder, J.M. Clayton works the waters of the Chesapeake Bay, supplying crabs, crabmeat and other seafood, including Maryland's famous oysters, to restaurants, markets, and wholesalers allover the Nation. It is the oldest working crab processing plant in the world and by employing 65 H–2B workers the company can retain over 30 full-time American workers.

But its not just seafood companies that have a long history on the Eastern Shore. It's companies like S.E.W. Friel Cannery, which began its business over 100 years ago when there were 300 canneries on the Eastern Shore. But now those others are gone and Friel's is the last corn cannery left. Ten years ago, when the cannery could not find local workers, it turned to the new H–2B Visa Program. It has used the program every year since, and many workers are repeat users who come each year and then go home after the season. What's important is that having this help each year has not only allowed the company to maintain its American workforce, but it has paved the way for local workers to return to the cannery. They now employ 75 full time and 190 seasonal workers, along with 70 farmers and additional suppliers.

Now these employers can't just turn to the H–2B program whenever they want seasonal workers. First, employers must try to vigorously recruit U.S. workers. They must demonstrate to the Department of Labor that there are no U.S. workers available. Only after that are they allowed to fill seasonal vacancies with H–2B visa workers. The workers that they bring in often participate in the H–2B program year after year. They often work for the same companies. But they cannot and do not stay in the U.S. They return to their home countries, to their families and their U.S. employer must go through the whole visa process again the following year to get them back. That means an employer must prove again to the Department of Labor that they cannot get U.S. workers.

This legislative fix keeps that visa process in place. It's a short-term legislative fix to solve the immediate H–2B visa shortage. It does not take the place of comprehensive immigration reform.

This legislation is a temporary two year fix. And it does four things:

One, it exempts returning seasonal workers from the cap. These are workers who have already successfully participated in the H–2B Visa Program. They received a visa in one of the past three years and have returned home to their families after their seasonal employment with a U.S. company.

Everyone must still play by the rules. Employers must go through the whole visa process, prove they need the seasonal help and only after that are returning employees exempt from the cap. Employees must be those who have left the U.S. and are requesting a new H–2B visa to come back for another season. This new system rewards those who have played by the rules, worked hard and successfully participated in the program. And the bill gives a helping hand to businesses by allowing them to retain workers who they have already trained to do their seasonal jobs.

Next, this bill creates new anti-fraud provisions. To make sure that everyone is playing by the rules and that no one is misusing the program. And it gives government some teeth to prevent fraud and enforce our nation's immigration laws. A $150 anti-fraud fee ensures that government agencies processing the H–2B visas will get added resources to detect and prevent fraud. New sanction provisions for those who misrepresent facts on a petition further strengthens DHS's enforcement power. This section also sends a strong message to employers—don't play games with U.S. jobs. Our bill reserves the highest penalties for employer actions which harm U.S. workers.

And, this bill creates a fair allocation of visas. Now, summer employers lose out because winter employers get all the visas. This bill makes the system fair for all employers. We reserve half of the visas for the winter and half for the summer. Allocating visas ensures that, until a long-term solution is reached, all employers will have an

equal chance of getting the workers that they need.

Finally, the bill adds some simple reporting requirements. So that DHS gives Congress the information it needs to make informed decisions about the H–2B visa program in the future.

This is a quick and simple fix. It lasts just 2 years—the rest of this year and next. And it does not get in the way of comprehensive immigration reform.

I worked with my colleagues to get a bill with strong bipartisan support, a bill that would work.

This bill is realistic. It provides a temporary solution because immediate action is needed to help these small and seasonal businesses stay in business. Yes, we need to help them now. Their seasons start soon. And if they don't get seasonal workers this year, there may not be any businesses around next year to help.

Every Member of the Senate who has heard from their constituents—whether they are seafood processors, landscapers, resorts, timber companies, fisheries, pool companies or carnivals—knows the urgency in their voices, knows the immediacy of the problem and knows that the Congress must act now to save these businesses. I urge my colleagues to join this effort, support the Save our Small and Seasonal Businesses Act, and push this Congress to fix the problem today.

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

S. 352

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 ''Save Our Small and Seasonal Businesses Act of 2005''.

SEC. 2. NUMERICAL LIMITATIONS ON H–2B WORKERS.

(a) IN GENERAL.—Section 214(g) of the Immigration and Nationality Act (8 U.S.C. 1184(g)) is amended by adding at the end the following:

''(9) An alien counted toward the numerical limitations of paragraph (1)(B) during any one of the 3 fiscal years prior to the submission of a petition for a nonimmigrant worker described in section 101(a)(15)(H)(ii)(b) may not be counted toward such limitation for the fiscal year in which the petition is approved.''.

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment in subsection (a) shall take effect as if enacted on October 1, 2004, and shall expire on October 1, 2006.

(2) IMPLEMENTATION.—Not later than the date of enactment of this Act, the Secretary of Homeland Security shall begin accepting and processing petitions filed on behalf of aliens described in section 101(a)(15)(H)(ii)(b), in a manner consistent with this Act and the amendments made by this Act.

SEC. 3. FRAUD PREVENTION AND DETECTION FEE.

(a) IMPOSITION OF FEE.—Section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c)), as amended by section 426(a) of division J of the Consolidated Appropriations Act, 2005 (Public Law 108–447), is amended by adding at the end the following:

''(13)(A) In addition to any other fees authorized by law, the Secretary of Homeland Security shall impose a fraud prevention and detection fee on an employer filing a petition under paragraph (1) for nonimmigrant workers described in section 101(a)(15)(H)(ii)(b).

''(B) The amount of the fee imposed under subparagraph (A) shall be $150.''.

(b) USE OF FEES.—

(1) FRAUD PREVENTION AND DETECTION ACCOUNT.—Subsection (v) of section 286 of the Immigration and Nationality Act (8 U.S.C. 1356), as added by section 426(b) of division J of the Consolidated Appropriations Act, 2005 (Public Law 108–447), is amended—

(A) in paragraphs (1), (2)(A), (2)(B), (2)(C), and (2)(D) by striking ''H1–B and L'' each place it appears;

(B) in paragraph (1), as amended by subparagraph (A), by striking ''section 214(c)(12)'' and inserting ''paragraph (12) or (13) of section 214(c)'';

(C) in paragraphs (2)(A)(i) and (2)(B), as amended by subparagraph (A), by striking ''(H)(i)'' each place it appears and inserting ''(H)(i), (H)(ii), ''; and

(D) in paragraph (2)(D), as amended by subparagraph (A), by inserting before the period at the end ''or for programs and activities to prevent and detect fraud with respect to petitions under paragraph (1) or (2)(A) of section 214(c) to grant an alien nonimmigrant status described in section 101(a)(15)(H)(ii)''.

(2) CONFORMING AMENDMENT.—The heading of such subsection 286 is amended by striking ''H1–B AND L''.

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall take effect on October 1, 2005.

SEC. 4. SANCTIONS.

(a) IN GENERAL.—Section 214(c) of the Immigration and Nationality Act (8 U.S.C. 1184(c)), as amended by section 3, is further amended by adding at the end the following:

''(14)(A) If the Secretary of Homeland Security finds, after notice and an opportunity for a hearing, a substantial failure to meet any of the conditions of the petition to admit or otherwise provide status to a nonimmigrant worker under section 101(a)(15)(H)(ii)(b) or a willful misrepresentation of a material fact in such petition—

''(i) the Secretary of Homeland Security may, in addition to any other remedy authorized by law, impose such administrative remedies (including civil monetary penalties in an amount not to exceed $10,000 per violation) as the Secretary of Homeland Security determines to be appropriate; and

''(ii) the Secretary of Homeland Security may deny petitions filed with respect to that employer under section 204 or paragraph (1) of this subsection during a period of at least 1 year but not more than 5 years for aliens to be employed by the employer.

''(B) The Secretary of Homeland Security may delegate to the Secretary of Labor, with the agreement of the Secretary of Labor, any of the authority given to the Secretary of Homeland Security under subparagraph (A)(i).

''(C) In determining the level of penalties to be assessed under subparagraph (A), the highest penalties shall be reserved for willful failures to meet any of the conditions of the petition that involve harm to United States workers.

''(D) In this paragraph, the term 'substantial failure' means the willful failure to comply with the requirements of this section that constitutes a significant deviation from the terms and conditions of a petition.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 2005.

SEC. 5. ALLOCATION OF H–2B VISAS DURING A FISCAL YEAR.

Section 214(g) of the Immigration and Nationality Act (8 U.S.C. 1184(g)), as amended by section 2, is further amended by adding at the end the following new paragraph:

''(10) The numerical limitations of paragraph (1)(B) shall be allocated for a fiscal year so that the total number of aliens who enter the United States pursuant to a visa or other provision of nonimmigrant status under section 101(a)(15)(H)(ii)(b) during the first 6 months of such fiscal year is not more than 33,000.''.

SEC. 6. SUBMISSION TO CONGRESS OF INFORMATION REGARDING H–2B NONIMMIGRANTS.

Section 416 of the American Competitiveness and Workforce Improvement Act of 1998 (title IV of division C of Public Law 105–277; 8 U.S.C. 1184 note) is amended—

(1) by striking ''Attorney General'' each place that term appears and inserting ''Secretary of Homeland Security''; and

(2) by adding at the end the following new subsection:

''(d) PROVISION OF INFORMATION.—

''(1) QUARTERLY NOTIFICATION.—Beginning not later than March 1, 2006, the Secretary of Homeland Security shall notify, on a quarterly basis, the Committee on the Judiciary of the Senate and the Committee on the Judiciary of House of Representatives of the number of aliens who during the preceding 1-year period—

''(A) were issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)); or

''(B) had such a visa or such status expire or be revoked or otherwise terminated.

''(2) ANNUAL SUBMISSION.—Beginning in fiscal year 2007, the Secretary of Homeland Security shall submit, on an annual basis, to the Committees on the Judiciary of the House of Representatives and the Senate—

''(A) information on the countries of origin of, occupations of, and compensation paid to aliens who were issued visas or otherwise provided nonimmigrant status under section 101(a)(15)(H)(ii)(b) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii)(b)) during the previous fiscal year;

''(B) the number of aliens who had such a visa or such status expire or be revoked or otherwise terminated during each month of such fiscal year; and

''(C) the number of aliens who were provided nonimmigrant status under such section during both such fiscal year and the preceding fiscal year.

''(3) INFORMATION MAINTAINED BY STATE.—If the Secretary of Homeland Security determines that information maintained by the Secretary of State is required to make a submission described in paragraph (1) or (2), the Secretary of State shall provide such information to the Secretary of Homeland Security upon request.''.

Mr. WARNER. Mr. President, I rise today in support of S. 352, the Save Our Small and Seasonal Businesses Act. This legislation, which I'm proud to cosponsor, would provide emergency relief to thousands of small and seasonal businesses across the country, many of which are significant employers in the Commonwealth of Virginia.

I am pleased to be joined in this effort by my colleague from Virginia, Senator GEORGE ALLEN. I particularly would like to thank Senator BARBARA MIKULSKI and Senator JUDD GREGG, the sponsors of this bipartisan bill, for their leadership in this area.

Our legislation is simple. It makes common-sense reforms to our H–2B visa program that will allow our small and seasonal companies an opportunity to remain open for business. Without these modifications, these employers will continue to struggle in their efforts to find the necessary employees to keep their businesses running.

The H–2B visa program is designed to allow nonagricultural businesses to supplement their workforce with nonimmigrant workers when American workers cannot be found. The cap is set at 66,000 per fiscal year, which begins on October 1 of each year. Employers can only apply for a visa 120 days before the work is needed.

For each of the last two years, this statutory cap was reached soon after the fiscal year began. In 2004, the cap was reached on March 20. As a result, many businesses, mostly summer employers, were unable to obtain the temporary workers they needed because the cap was filled prior to the day they could even apply for the visas.

Consequently, these businesses sustained significant economic losses.

This year the H–2B visa cap was reached on January 3, 2005. Now, even more businesses, especially in the seafood industry which has a long history in Virginia and the Chesapeake Bay, are susceptible to significant losses.

The hardships in these and other businesses are very real. Many in the seafood industry in Virginia have come to my office, looked me straight in the eye, and told me that their businesses aren't going to make it another year if something isn't done. Only through passage of this legislation can this detrimental cycle be interrupted and these business can be saved.

There are three main criticisms of this program which I am certain some will raise: these H–2B workers are taking jobs away from Americans; automation of these jobs makes H–2B workers unnecessary; and finally, these workers come into the U.S. under the guise of returning home after they've finished, but they never do. In my view, these criticisms of the H–2B program simply do not reflect the reality.

Believe me, I am a strong supporter of efforts to help those Americans who want to work get the skills they need to be successful in the workforce. But these H–2B workers are not taking jobs from Americans, they are filling in the gaps left vacant by Americans that don't want them. The jobs we are talking about here are seasonal, labor intensive, and require a certain amount of skill, mainly in the areas of oyster and crab harvesting, seafood processing, landscaping, reforestation, and seasonal resorts and other hospitality services.

Furthermore, most of these jobs cannot be automated. What kind of machine will you use to fully landscape a yard, to arrange and plant flowers? Some in the seafood industry already tried to automate parts of crab harvesting, but it was a complete failure. The machines failed to remove most of the bits of crab shells from the meat, and the consumers flat out rejected it.

As for the criticism that these temporary workers won't leave, a long review of the management of this program reveals otherwise. The employers have successfully ensured that the workers return to their home country. If they don't, employers aren't able to participate in the program next year, and neither are the workers. Most consulates in their home countries require the workers to present themselves personally to prove that they have returned home.

The future success of the H–2B visa program rests on the ability of businesses to participate in it, but right now, many will be denied access to the program for the second year in a row. The bill introduced today helps fix this problem by focusing on three main objectives to help make the H–2B program more effective and more fair.

First, the bill will reward good workers and employers by exempting from the cap H–2B workers who have participated in the program successfully in one of the past three years. These are companies and employees that have faithfully abided by the law, and they have a successful track record of working together.

Second, the bill will make sure that the government agencies processing the H–2B visas have the resources they need to detect and prevent fraud. Starting on October 1, 2005, employers participating in the program will pay an additional fee that will be placed in a Fraud Prevention and Detection account. The Departments of State, Homeland Security, and Labor can use these funds to educate and train their employees to prevent and detect fraudulent visas.

Finally, the bill implements a visa allocation system that is fair for all employers. Half of the 66,000 visas will be reserved for employers needing workers in the winter and the other half will be reserved for companies needing workers for the summer. This provision allows both winter employers and summer employers an equal chance to obtain the workers they desperately need.

These seasonal businesses just can't find enough American workers to meet their business needs. And ultimately, that is why this program is so important. Without Americans to fill these jobs, these businesses need to be able to participate in the H–2B program. The current system isn't treating small and seasonal businesses fairly and must be reformed if we want these employers to stay in business.

In closing, I strongly support this legislation, and I hope my colleagues in the Senate will join with me to help these small and seasonal businesses by passing this legislation as quickly as possible.

Mr. JEFFORDS. Mr. President, I am proud to be a strong supporter and original cosponsor of the Save Our Small and Seasonal Businesses Act, which is being introduced today. This legislation will ensure that the seasonal businesses in our country have the workers they need to support our economy and enable the economy to flourish.

I would first like to thank Senators MIKULSKI and GREGG for bringing such a large, bipartisan group of Senators together to create this legislative solution. Last year, the United States Citizenship and Immigration Services announced in March that they had received enough petitions to meet the cap on H–2B visas. As a result, they stopped accepting petitions for these temporary work visas halfway through the Federal fiscal year. This announcement was a shock to many businesses around the country that depend on foreign workers to fill their temporary and seasonal positions.

Tourism is the largest sector of Vermont's economy and as a result, many Vermont businesses hire seasonal staff during their winter, summer or fall foliage seasons. Last year, I heard from many Vermont businesses that they were unable to employ foreign workers for their summer and fall seasons because the cap had been reached. Not only was this unexpected, but many of the employees were people who had been returning to the same employer year after year. These employers lost essential staff and, in many cases, well trained, experienced staff.

Many employers told me it is extremely difficult to find Americans to fill these seasonal positions, especially in areas of Vermont where the unemployment rate is less than 2 percent. One Vermont resort only survived Vermont's fall foliage season because of the dedication of their permanent employees. Instead of 35 housekeeping staff, they made do with 8. Staff was asked to work 12 to 14 hours per day, 6 or 7 days per week. At this particular resort, the vice president, general manager, administrative and technology managers, and marketing manager all cleaned rooms. While they are proud of the work of their staff, they believe their business and their personnel will suffer if they are not able to employ seasonal foreign workers again this year. They foresee a devastating effect on the family business they have owned and operated for the past 40 years if they are not able to bring in foreign workers soon.

I have also heard from Vermont businesses that had to lay off or not hire American workers because they could not find enough employees to fill their crews. Without the workers to complete projects, they could not hire or maintain their year-round staff. They also could not bid on projects and many had to scale back their operations. In these instances, the lack of seasonal workers had a direct effect on our economy and the employment of American workers.

As many may know, I believe strongly that American workers must be

given the opportunity to fill jobs and strengthen our nation's workforce. However, the companies I have referred to today, and all of the others that have contacted me, did their utmost to find Americans for the positions available. Efforts to find workers included: working closely with the State of Vermont's Employment and Training office; increasing wages and benefits; and implementing aggressive year-round recruiting.

While many Vermont businesses were able to survive last year, thanks to that old Yankee ingenuity, I am not optimistic about this year. The cap on H–2B visas was reached in early January, barely a quarter of the way through the fiscal year. It is imperative we immediately address this problem in order to prevent further harm to this Nation's small businesses and the economy.

Ms. COLLINS. Mr. President, the recent shortage of H–2B nonimmigrant visas for ernporary or seasonal non-agricultural foreign workers is a matter of great concern to many small businesses in my home state of Maine, particularly those in the hospitality sector that rely on these seasonal workers to supplement their local employees during the height of the tourism season.

On January 4, a mere three months into fiscal year 2005, the U.S. Citizenship and Immigration Services, CIS, announced that it would immediately stop accepting applications for H–2B visas because the annual statutory cap of 66,000 visas had been met. In other words, many employers who require temporary workers in the spring, summer, or fall will be unable to hire such workers because all 66,000 H–2B visas already will have been issued within the first few months of the fiscal year. Once again, Maine's employers will be left out in the cold, disadvantaged by the simple fact of their later tourism season.

Without these visas, employers will be unable to hire enough workers to keep their businesses running at normal levels. Last year, unable to locate enough American workers willing and able to take these jobs, and without temporary foreign workers to fill the gap, many business owners were forced to initiate stop-gap measures that were neither ideal nor sustainable in the long term. Many of these businesses fear that, this year, they will have to decrease their hours of operation during what is their busiest time of year. This would translate into lost jobs for American workers, lost income for American businesses, and lost tax revenue from those businesses. These losses will be significant, and they can be avoided.

Today, I am pleased to join Senators MIKULSKI and GREGG, along with several other of my distinguished colleagues, in introducing the Save Our Small and Seasonal Businesses Act of 2005. Similar to legislation that I cosponsored last year, as well as legislation that I have introduced in the current Congress, this bill would exclude from the cap returning workers who were counted against the cap within the past 3 years. This legislation also seeks to address the inequities in the current system by limiting the number of H–2B visas that can be issued in the first 6 months of the fiscal year to no more than 33,000 visas, or one half of the total number of visas available under the cap. By allocating visas equally between each half of the year, employers across the country, operating both in the winter and summer seasons, will have a fair and equal Opportunity to hire these much-needed workers.

In addition, this legislation includes important new anti-fraud provisions that will strengthen our ability to detect, prevent, and deter, fraud by those who would seek to abuse the H–2B program. These include sanctions for employers who are found to have misrepresented II If facts on an H–2B petition, and the creation of a Fraud Prevention and Detection Fee of $150 for each H–2B petition. Similar to anti-fraud fees charged in other visa categories, funds raised from this fee will be placed in an account with the U.S. Treasury and made available to the agencies involved in processing H–2B visas—CIS, the Department of Labor, and the Department of State—to educate and train employees to recognize and protect against fraud in the visa applicant process.

I believe that this anti-fraud fee serves a worthy goal, and that the government agencies should have the resources they need to ensure the integrity of the H–2B visa application process. However, I am concerned about the impact that a fee of this size, in addition to the filing fees that employers already pay, may have on many smaller businesses. I intend to examine this issue further in order to ensure that smaller businesses are not unfairly impacted by this provision.

We must act quickly on this legislation, or we will be too late to help thousands of American businesses that need our help now. We cannot be content to say: ''It's too late for this year; maybe next year.'' It is true that comprehensive, long-term solutions may be necessary, but we have immediate needs as well. This problem demands immediate solutions.

In my home state of Maine, the economic impact of this visa shortage will be harmful and widespread. When people think of Maine, what often comes to mind is its rugged coastline, picturesque towns and villages, and its abundant lakes and forests. Not surprisingly, tourism is the state's largest industry. Temporary and seasonal workers play an important role in this very important industry.

Unfortunately, there are not enough American workers willing and able to fill the thousands of jobs necessary to provide the level of service that Maine's visitors have come to expect. Over the years, seasonal workers have filled this gap, becoming an integral part of Maine's tourism and hospitality industry. In Fiscal Year 2003, the last time Maine's employers were able to fully utilize the H–2B program, Maine employed more than 3,000 seasonal workers. The majority of these individuals worked in the State's resorts, inns, hotels, and restaurants. Many are people who have returned to the same employer summer after summer.

Let me emphasize that employers are not permitted to hire these foreign workers unless they can prove that they have tried, and failed, to locate available and qualified American workers through advertising and other means. As a safeguard, current regulations require the U.S. Department of Labor to certify that such efforts have occurred before CIS will process the visa applications. In Maine, as in other States, our state Department of Labor takes the lead in ensuring that employers have taken sufficient steps to try to find local workers to fill the positions. Unless and until more H–2B visas are made available, many seasonal jobs will remain unfilled and American businesses will suffer.

A similar situation faces Maine's forest products industry, which contributes approximately $5.6 billion annually to Maine's economy. In 2003, more than 600 temporary workers—mostly from Canada—were employed as forestry workers in Maine. Many work in remote areas of the state where there are not enough Americans able to take these jobs. By some estimates, these foreign workers account for as much as 30–40 percent of the wood fiber that supplies paper and saw mills throughout Maine and the Northeast. This number represents roughly 4.8 million tons of wood annually. With an already significant shortage in the wood supply, the loss of these temporary workers poses a serious threat to the industry and to Maine's economy. With fewer workers available to bring wood out of the forest and into mills, supplies will dwindle, prices will continue to rise, and mills may be forced to curtail production, or even temporarily discontinue operations. If this happens, it is American workers that may lose their jobs.

The effects of the H–2B visa shortage are not limited to the tourism and forest products industries, however. It will also be felt by fisheries and lobstermen, junior league hockey and minor league baseball teams. It win affect small businesses and large, visitors and locals, young and old, from Maine to Maryland, to Wyoming and Alaska.

Mr. President, the shortage of nonimmigrant temporary or seasonal worker visas is a problem that must be addressed, and soon. I believe that this legislation offers a workable short-term solution, and I urge us to move forward. We must resist the tendency to let this problem, and the people who are affected by it, become entangled in the larger debate about our Nation's

immigration policies. This is not about the number of immigrants we should allow to come to the United States each year, or what to do with those who violate our immigration laws. It is about temporary workers who, for the most part, respect our laws, go home at the end of their authorized stay, and in many cases, return again next year to provide services that benefit our Nation's economy. It is about American businesses that rely on these workers to take jobs that many Americans do not want. It is about the economic impact that will be felt across the Nation if these businesses are unable to hire temporary workers. We need to solve this problem now, before it is too late and our economy is harmed and jobs lost.

Mr. SARBANES. Mr. President, I rise in support of the Save Our Small and Seasonal Businesses Act being introduced by Senator MIKULSKI today. This legislation offers a measured approach to provide needed relief to the many small businesses that have been struggling to find enough employees to operate during seasonal spikes in workload. Small businesses that are seasonal often need a large number of employees for a short portion of the year, but cannot afford to retain the same number of people as full-time, year-round employees. They instead must rely on temporary workers to fill the gap in their high season. In my home State of Maryland, for example, our seafood processors are busy in the summer and early fall, but have very little work in the winter. To accommodate this changing need, they hire college students and local residents as extra workers in the summer. But even with those workers they often find themselves short-staffed. So they turn to temporary employees who are willing to leave their home countries for a few months to come to the U.S. and work.

Specifically, the bill being introduced today will allow anyone who has had an H–2B visa for one of the last 3 years to return this summer or next if an employer petitions for them to do so. Importantly, employers still must demonstrate that they have tried and failed to find available, qualified U.S. citizens to fill these jobs before they file an H–2B visa application. In addition, the bill would ensure that our summer employers are not disadvantaged by allowing no more than half of the 66,000 visas to be allocated in the first half of the year. Finally, the bill imposes antifraud fees on employers who willfully misrepresent any statement on their H–2B petition and requires the Department of Homeland Security to file reports on the demographics of those utilizing the H–2B program.

Any changes to our immigration laws must balance the interests of U.S. citizens and our economy while providing a fair, legal framework for those seeking to come to our Nation from other countries. For example, our current immigration laws already contain several general reasons an alien seeking admission into the United States may be denied entry: security and terrorist concerns, health-related grounds, criminal history, public charge, i.e., indigence, seeking to work without proper labor certification, illegal entry and/or immigration law violations, lack of proper documents, ineligibility for citizenship, and previous removal. Ensuring the safety of our country requires preserving these categories.

This legislation would leave this existing framework intact. It simply provides a fair and equitable means of distributing a very scarce number of visas so that all employers who require extra assistance during one season of the year may obtain that assistance. We must resist the temptation to let the H–2B situation and the small businesses affected by it become entangled in the larger debate over immigration reform. Workers who use H–2B visas come to the U.S. for a temporary period of time and are required to leave when that time period has run. These workers respect our laws, work hard, provide services that benefit our economy, and then return to their families at the end of the season. For their sake and that of the small, seasonal businesses that rely on them, we need to resolve this H–2B crisis soon.

Without this fix, our seafood processors cannot operate at full capacity. That becomes a problem for the rest of the seafood industry, including our watermen, who will be forced to curtail their fishing because of an insufficient number of locations to process their catches. In the end, the people who suffer are not the seafood processors or the temporary workers but the watermen who cannot feed their families. This bill provides the assistance necessary to keep our watermen, seafood processors, and a number of other industries such as landscapers, pool operators, and summer camps working at full capacity this summer. I urge my colleagues to support its passage.

By Mr. CONRAD (for himself and Mr. DORGAN):

S. 353. A bill to amend the Water Resources Development Act of 1999 to direct the Secretary of the Army to provide assistance to design and construct a project to provide a continued safe and reliable municipal water supply system for Devils Lake, to the Committee on Environment and Public Works.

Mr. CONRAD. Mr. President, I rise today to introduce legislation to authorize the U.S. Army Corps of Engineers to construct a new municipal water supply system for the city of Devils Lake, ND. This project is very important to the reliability of the water supply for the residents of Devils Lake and is needed to mitigate long-term consequences from the rising flood waters of Devils Lake.

As many of my colleagues know, the Devils Lake region has been plagued by a flooding disaster since 1993. During that time, Devils Lake, a closed basin lake, has risen 25 feet, consuming land, destroying homes, and impacting vital infrastructure. As a result of this disaster, the city of Devils Lake faces a significant risk of losing its water supply. Currently, six miles or approximately one-third of the city's 40-year-old water transmission line is covered by the rising waters of Devils Lake. The submerged section of the water line includes numerous gate valves, air relief valves, and blow-off discharges.

All of the water for the city's residents and businesses must flow through this single transmission line. It is also the only link between the water source and the city's water distribution system. Since the transmission line is operated under relatively low pressures and is under considerable depths of water, a minor leak could cause significant problems. If a failure in the line were to occur, it would be almost impossible to identify the leak and make necessary repairs, and the city would be left without a water supply.

The city is in the process of accessing a new water source due both to the threat of a transmission line failure and the fact that its current water source exceeds the new arsenic standard that will take affect in 2006. The city has worked closely with the North Dakota State Water Commission in identifying a new water source that will not be affected by the rising flood waters and will provide the city with adequate water to meet its current and future needs.

The bill I am introducing today will authorize the Corps to construct a new water supply system for the city. I believe the Federal Government has a responsibility to assist communities mitigate the adverse consequences resulting from this ongoing flooding disaster. In my view, the Corps should be responsible for addressing the unintended consequences of this flood and mitigate its long-term consequences. This bill will help the Federal Government live up to its responsibility and ensure that the residents of Devils Lake have a safe and reliable water supply. I urge my colleagues to review this legislation quickly so we can pass it this year.

By Mr. DORGAN (for himself and Mrs. CLINTON):

S. 355. A bill to require Congress to impose limits on United States foreign debt, to the Committee on Foreign Relations.

Mr. DORGAN. Mr. President, there are many issues we confront these days that are significant and serious. I wanted to bring one to the attention of the Chamber as I introduce legislation.

I send a bill to the desk and ask for its appropriate referral on behalf of myself and Senator CLINTON.

The PRESIDING OFFICER. The bill will be received and appropriately referred.

Mr. DORGAN. Mr. President, this legislation deals with trade. Let me describe what was announced this morning by the administration.

Last year's trade deficit was $618 billion. You can see from this chart what has happened in the last 8 or 9 years. Our trade deficit has gone in the red by a dramatic amount, ending up at $618 billion for 2004.

What does that mean? That means we purchased from other countries $618 billion worth of goods more than we sold to other countries. In other words, every single day, 7 days a week, $1.8 billion leaves this country and goes into foreign hands to pay for goods that we purchased from abroad.

As a result, foreign entities have $2.5 trillion worth of claims against our assets, our property, our stocks, and our assets. We are, with our trade policies, selling America.

With China alone, we have a $161 billion trade deficit. This is unbelievably out of balance. We purchase China's trinkets, trousers, shirts, and shoes. Now they're making plans to ship Chinese automobiles to this country.

By the way, as I told my colleagues before, in the last trade agreement with China we agreed they could charge a tariff on imported U.S. cars which is 10 times higher than the tariff we can charge on Chinese cars sold in the United States.

Who did that? I don't know; some trade negotiator.

It is the same old story with cars from China, cars from Korea, wheat to China, beef to Japan. It is the same old story.

I mentioned to my colleagues many times what Will Rogers said in the 1930s: ''The United States of America has never lost a war and never won a conference.'' He said we can't send negotiators to Costa Rica and come back with our shirts on. He surely must have been thinking about the people who had been negotiating trade agreements that resulted in these kinds of deficits.

Now our trade deficit on a yearly basis is over 5 percent of our gross domestic product. Who holds this debt? Japan holds $715 billion of asset claims against our country, and China, $191 billion.

Does anybody think this is healthy for our country? This kind of trade deficit and combined trade debt is going to injure America's future economic growth and continue to accelerate the movement of U.S. jobs overseas. That is what is behind all of these numbers.

American corporations in recent decades have discovered that you can move technology and capital at the speed of light. And they have discovered there are a billion people in other parts of the world who are willing to work for 30 cents an hour. When you can ship technology and capital to someone overseas willing to work for 30 cents an hour, you begin to hollow out the manufacturing sector in this country.

The news this morning of the largest trade deficit in the history of this country is sober news. This town will sleep through it once again. The White House will sleep through it, and so will the Congress. It doesn't matter much to most people.

We have a debt limit in this country that says once the government borrows a certain amount, we have to have a debate, and vote on it. Otherwise, you can't go any further.

But there is no trade debt limit. Whatever the trade debt is, it is. Katy bar the door, no matter how high it is. There is no requirement to do anything about it.

The legislation I introduced, along with my colleague Senator CLINTON, will establish a trade debt limit and a trade deficit limit. When the trade deficit exceeds 5 percent of our gross domestic product, then it requires certain things. It is an alarm clock that requires the administration's trade review group to have an emergency meeting, and within 45 days the administration and the trade ambassador have to submit to Congress a plan to reduce the trade deficit.

Somebody someplace, someday, some way has to decide the current situation can't continue. This is all about jobs and future economic opportunity. This is real, and it is immediate. And we have to do something about it.

That is why we have introduced this legislation. This country has been in a deep sleep about an abiding trade problem in which we link with other countries in bilateral agreements. In almost every case these are not mutually beneficial. Instead, the agreements are beneficial to them and detrimental to us. Yet, we have people on street corners chanting ''free trade.''

I think trade is fine, I think fair trade is important, and I think expanding trade is valuable. But I believe free trade, if it means a trade agreement which undercuts this country's ability to compete, free trade which pulls the rug out from under our workers, and establishes conditions under which we cannot compete, is wrong for this country.

I will not go through again the list of issues of potato flakes going to Korea, beef to Japan, wheat to China. I could go through dozens of them. I will not do that again today. My point is that at some point somebody has to have the backbone and the will and the nerve to stand up for this country's economic interests. That has not been done for a long while. It needs to be done now because this trade deficit has reached crisis proportions.

One final chart: Some said that last month the trade deficit was actually a little better than the month before. This is a town of warped reality on a lot of issues. Let me describe what has happened to our trade deficit month by month since 1998. It does not take a sharp eye to see what is happening.

This trade deficit is growing. It is dangerous. It is harmful to the long-term economic interests of this country. We have to do something about it.

By Mr. BINGAMAN (for himself, Mrs. HUTCHISON, Mr. NELSON of Florida, Mrs. CLINTON, and Mr. MARTINEZ):

S. 357. A bill to expand and enhance post baccalaureate opportunities at Hispanic-serving institutions, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. BINGAMAN. Mr. President, I rise today to introduce the next generation of Hispanic Serving Institutions legislation. This legislation is critical if we, as a Nation, are going to continue to compete in a global economy. Education is the key to building a strong and dynamic economy, and therefore, it is our obligation to ensure quality educational opportunities for all Americans. That is why I am introducing, along with my colleague Senator HUTCHISON, the Next Generation Hispanic Serving Institutions Act of 2005. This legislation is supported by the Hispanic Education Coalition, an ad hoc coalition of national organizations dedicated to improving educational opportunities for more than 40 million Hispanics living in the United States, including groups like National Council of La Raza, HACU, and MALDEF. Senators BILL NELSON and CLINTON have joined in this effort as cosponsors.

According to Census Bureau data, Hispanic population in the United States grew by 25.7 million between 1970 and 2000 and continues to grow at a very brisk pace. The most recent census data puts the Hispanic population at over 40 million, representing approximately 14 percent of the U.S. population and making it the Nation's largest minority group. Estimates project that the Hispanic population will grow by 25 million between 2000 and 2020. By the year 2050, 1 in 4 Americans will be of Hispanic origin.

Currently, Hispanics make up about 13 percent of the U.S. labor force. While the overall labor force is projected to slow down over the next decades as an increasing number of workers reach retirement age, the Hispanic labor force is expected to continue growing at a fast pace. It will expand by nearly 10 million workers between now and 2020, through a combination of immigration and native-born youth reaching working age.

Our Nation's economic and social success rests, in large part, on the level of skills and knowledge attained by our Hispanic population.

I was one of the authors and lead supporters of the original Hispanic Serving Institutions proposal when it was enacted as part of the Higher Education Act in 1992 in order to increase educational opportunities for Hispanic students. Since then, Hispanic-Serving Institutions, HSIs, have made significant strides in increasing the number of Hispanic students enrolling in and graduating from college. Although Hispanic-serving institutions account for only 5 percent of all institutions of higher education in the United States,

HSIs enroll over half, 51 percent, of all Hispanics pursuing higher education degrees in the 50 States, the District of Columbia and Puerto Rico.

While Hispanic high school graduates go on to college at higher rates than they did even ten years ago, Hispanics still lag behind their non-Hispanic peers in postsecondary school enrollment. In 2000, only 21.7 percent of all Hispanics ages 18 through 24 were enrolled in postsecondary degree-granting institutions in the United States.

We must take HSIs to the next level. While the percentage of Hispanics attending college has increased significantly over the past few years, Hispanic students are disproportionately enrolled in 2-year colleges, and are much less likely to finish college than their non-Hispanic peers. In 2001, only slightly more than 1 in 10 Hispanics ages 25 years and over had received a bachelor's degree or higher.

According to the Department of Education, in 2000, Hispanics only earned 6 percent of all bachelor's degrees awarded, 4 percent of all master's degrees, and only 3 percent of all doctorates. But the pace of bachelor's degrees or higher earned by Hispanics is accelerating rapidly, according to the Department of Education. Therefore, we must keep pace. We must increase the capacity of our institutions of higher education to serve the increasing number of Hispanic students.

The Next Generation HSI bill does just that. Simply, this legislation will improve educational opportunities for Hispanic students by establishing a competitive grant program to expand post-baccalaureate degree opportunities at HSIs, and by eliminating unnecessary and burdensome administrative requirements HSIs must contend with.

Current law only provides support for 2-year and 4-year Hispanic Serving Institutions. This legislation will support graduate fellowships and support services for graduate students, facilities improvement, faculty development, technology and distance education, and collaborative arrangements with other institutions. This legislation will build capacity and establish a long overdue graduate program for HSIs.

In addition, current law places a number of unnecessary, burdensome administrative and regulatory barriers at the gates of our HSIs. If our goal is to increase educational opportunities for all students, and particularly Hispanic students, then we must eliminate bureaucratic barriers that impede access.

Accordingly, this legislation removes a 2-year period in which HSIs must wait before becoming eligible to apply for another grant under title V of the Higher Education Act. This 2-year wait out period obstructs the efforts of many HSIs to implement continuing programs and conduct long range planning. As a result, many HSIs cannot maintain continuity in educational programming. We should be creating opportunities to improve the quality of education, and eliminating this wait-out period is a step in the right direction.

In addition, this bill eliminates another onerous requirement on HSIs that other minority-serving institutions are not required to follow. Currently, in order to be eligible as an HSI, the institution must serve ''needy students''—meaning at least 50 percent of the degree students are receiving Federal need-based assistance or the institution's percentage of Pell Grant recipients exceeds the median percentage for similar institutions receiving Pell Grants. Also, to be eligible, 25 percent of the full time, undergraduate population must be Hispanic. However, unlike other grant programs in the Higher Education Act, HSIs must also show that 50 percent of the Hispanic population is low income.

This last requirement is particularly burdensome, as it is duplicative and unfair, and, in many cases, prevents HSIs from providing vital educational services to Hispanic students. This provision requires the institutions to collect information and data that is not readily available or easily acquirable. It requires the schools to come up with data beyond what is required for financial aid purposes. Further, there is no other requirement in Federal law for institutions to collect this type of data. As a result, many institutions with large Hispanic student populations must divert critical resources and staff to acquire this information, or they simply do not qualify as an HSI.

To ensure that the institution continues to serve low-income students, the Next Generation HSI Act maintains the requirement that the institution serve needy students, but eliminates the additional requirement that the school demonstrate that 50 percent of its Hispanic students are low-income. The elimination of this requirement will ease the administrative burdens placed on our schools, and further our goals of increasing access and improving quality.

Finally, this bill facilitates the transition of Hispanic students from 2-year colleges to 4-year colleges. As I noted earlier, Hispanics are disproportionately enrolled in 2-year colleges as compared to their non-Hispanic peers. To encourage and support these students' continued education, this legislation adds as an authorized activity programs that assist a student's transfer from a 2-year institution to a 4-year institution.

Hispanic students now account for nearly 17 percent of the total kindergarten through grade 12 student population. Estimates project that this student population will grow from 11 million in 2005 to 16 million in 2020. We must provide our institutions of higher education with the resources and flexibility they need to build capacity and serve the increasing Hispanic student population. We must be ready for the next generation of students to meet the demands of a competitive workforce and to fully participate in the global economy. I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 357

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 ''Next Generation Hispanic Serving Institutions Act''.

TITLE I—GRADUATE OPPORTUNITIES AT HISPANIC-SERVING INSTITUTIONS

SEC. 101. POSTBACCALAUREATE OPPORTUNITIES FOR HISPANIC AMERICANS.

(a) ESTABLISHMENT OF PROGRAM.—Title V of the Higher Education Act of 1965 (20 U.S.C. 1101 et seq.) is amended—

(1) by redesignating part B as part C;

(2) by redesignating sections 511 through 518 as sections 521 through 528, respectively; and

(3) by inserting after section 505 the following:

''PART B—PROMOTING POSTBACCALAUREATE OPPORTUNITIES FOR HISPANIC AMERICANS

''SEC. 511. FINDINGS AND PURPOSES.

''(a) FINDINGS.—Congress finds the following:

''(1) According to the United States Census, by the year 2050, 1 in 4 Americans will be of Hispanic origin.

''(2) Despite the dramatic increase in the Hispanic population in the United States, the National Center for Education Statistics reported that in 1999, Hispanics accounted for only 4 percent of the master's degrees, 3 percent of the doctor's degrees, and 5 percent of first-professional degrees awarded in the United States.

''(3) Although Hispanics constitute 10 percent of the college enrollment in the United States, they comprise only 3 percent of instructional faculty in college and universities.

''(4) The future capacity for research and advanced study in the United States will require increasing the number of Hispanics pursuing postbaccalaureate studies.

''(5) Hispanic-serving institutions are leading the Nation in increasing the number of Hispanics attaining graduate and professional degrees.

''(6) Among Hispanics who received master's degrees in 1999–2000, 25 percent earned them at Hispanic-serving institutions.

''(7) Between 1991 and 2000, the number of Hispanic students earning master's degrees at Hispanic-serving institutions grew 136 percent, the number receiving doctor's degrees grew by 85 percent, and the number earning first-professional degrees grew by 47 percent.

''(8) It is in the national interest to expand the capacity of Hispanic-serving institutions to offer graduate and professional degree programs.

''(9) Research is a key element in graduate education and undergraduate preparation, particularly in science and technology, and Congress desires to strengthen the role of research at Hispanic-serving institutions. University research, whether performed directly or through a university's nonprofit research institute or foundation, is considered an integral part of the institution and mission of the university.

''(b) PURPOSES.—The purposes of this part are—

''(1) to expand postbaccalaureate educational opportunities for, and improve the

academic attainment of, Hispanic students; and

''(2) to expand and enhance the postbaccalaureate academic offerings of high quality that are educating the majority of Hispanic college students and helping large numbers of Hispanic students and low-income individuals complete postsecondary degrees.

''SEC. 512. PROGRAM AUTHORITY AND ELIGIBILITY.

''(a) PROGRAM AUTHORIZED.—Subject to the availability of funds appropriated to carry out this part, the Secretary shall award competitive grants to eligible institutions.

''(b) ELIGIBILITY.—For the purposes of this part, an 'eligible institution' means an institution of higher education that—

''(1) is a Hispanic-serving institution (as defined under section 502); and

''(2) offers a postbaccalaureate certificate or degree granting program.

''SEC. 513. AUTHORIZED ACTIVITIES.

''Grants awarded under this part shall be used for 1 or more of the following activities:

''(1) Purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional and research purposes.

''(2) Construction, maintenance, renovation, and improvement in classroom, library, laboratory, and other instructional facilities, including purchase or rental of telecommunications technology equipment or services.

''(3) Purchase of library books, periodicals, technical and other scientific journals, microfilm, microfiche, and other educational materials, including telecommunications program materials.

''(4) Support for needy postbaccalaureate students including outreach, academic support services, mentoring, scholarships, fellowships, and other financial assistance to permit the enrollment of such students in postbaccalaureate certificate and degree granting programs.

''(5) Support of faculty exchanges, faculty development, faculty research, curriculum development, and academic instruction.

''(6) Creating or improving facilities for Internet or other distance learning academic instruction capabilities, including purchase or rental of telecommunications technology equipment or services.

''(7) Collaboration with other institutions of higher education to expand postbaccalaureate certificate and degree offerings.

''(8) Other activities proposed in the application submitted pursuant to section 514 that—

''(A) contribute to carrying out the purposes of this part; and

''(B) are approved by the Secretary as part of the review and acceptance of such application.

''SEC. 514. APPLICATION AND DURATION.

''(a) APPLICATION.—Any eligible institution may apply for a grant under this part by submitting an application to the Secretary at such time and in such manner as determined by the Secretary. Such application shall demonstrate how the grant funds will be used to improve postbaccalaureate education opportunities for Hispanic and low-income students and will lead to such students' greater financial independence.

''(b) DURATION.—Grants under this part shall be awarded for a period not to exceed 5 years.

''(c) LIMITATION.—The Secretary may not award more than 1 grant under this part in any fiscal year to any Hispanic-serving institution.''.

(b) COOPERATIVE ARRANGEMENTS.—Section 524(a) of the Higher Education Act of 1965 (as redesignated by subsection (a)(2)) is amended by inserting ''and section 513'' after ''section 503''.

(c) AUTHORIZATION OF APPROPRIATIONS.—Section 528(a) of the Higher Education Act of 1965 (as redesignated by subsection (a)(2)) is amended to read as follows:

''(a) AUTHORIZATIONS.—

''(1) PART A.—There are authorized to be appropriated to carry out part A of this title $175,000,000 for fiscal year 2006 and such sums as may be necessary for each of the 4 succeeding fiscal years.

''(2) PART B.—There are authorized to be appropriated to carry out part B of this title $125,000,000 for fiscal year 2006 and such sums as may be necessary for each of the 4 succeeding fiscal years.''.

(d) CONFORMING AMENDMENTS.—Title V of the Higher Education Act of 1965 (20 U.S.C. 1101 et seq.) is amended—

(1) in section 502—

(A) in subsection (a)(2)(A)(ii), by striking ''section 512(b)'' and inserting ''section 522(b)''; and

(B) in subsection (b)(2), by striking ''section 512(a)'' and inserting ''section 522(a)'';

(2) in section 521(c)(6) (as redesignated by subsection (a)(2)), by striking ''section 516'' and inserting ''section 526''; and

(3) in section 526 (as redesignated by subsection (a)(2)), by striking ''section 518'' and inserting ''section 528''.

TITLE II—REDUCING REGULATORY BARRIERS FOR HISPANIC-SERVING INSTITUTIONS

SEC. 201. DEFINITIONS.

Section 502(a) of the Higher Education Act of 1965 (20 U.S.C. 1101a(a)) is amended—

(1) in paragraph (5)—

(A) in subparagraph (A), by inserting ''and'' after the semicolon;

(B) in subparagraph (B), by striking ''; and'' and inserting a period; and

(C) by striking subparagraph (C); and

(2) by striking paragraph (7).

SEC. 202. AUTHORIZED ACTIVITIES.

Section 503(b)(7) of the Higher Education Act of 1965 (20 U.S.C. 1101b(b)(7)) is amended to read as follows:

''(7) Articulation agreements and student support programs designed to facilitate the transfer from 2-year to 4-year institutions.''.

SEC. 203. ELIMINATION OF WAIT-OUT PERIOD.

Section 504(a) of the Higher Education Act of 1965 (20 U.S.C. 1101c(a)) is amended to read as follows:

''(a) AWARD PERIOD.—The Secretary may award a grant to a Hispanic-serving institution under this title for 5 years.''.

SEC. 204. APPLICATION PRIORITY.

Section 521(d) of the Higher Education Act of 1965 (as redesignated by section 101(a)(2)) is amended by striking ''(from funds other than funds provided under this title)''.

Mrs. HUTCHISON. Mr. President, I rise today to introduce a bill that will amend the Higher Education Act of 1965 to revise provisions for Hispanic-serving institutions, HSIs, under Title V, Developing Institutions. The changes will expand opportunities in postgraduate education, an essential part of our economy that enables our workforce to maintain the knowledge that keeps our nation at the forefront of science and technology.

The bill will establish a program of competitive grants for HSIs that offer post-baccalaureate certifications or degrees. Grants will support graduate fellowships, services for students, facilities improvement and faculty development, among other things. It authorizes $125 million in grants for fiscal year 2006, and will reduce red tape by eliminating the requirement that an HSI certify half of its students are low-income, thus making it easier for students to transfer from two to four year colleges.

According to the 2000 Census, Hispanics represent the nation's largest minority population. Unfortunately, too few graduate from high school or college, despite being the fastest-growing ethnicity in that age group. We need more resources to support Hispanic educational opportunities. Hispanic-Serving Institutions are currently educating 51 percent of the 457,000 Hispanic higher education students in the United States. Although HSIs account for 5 percent of all institutions of higher education, almost one-half of the 1.5 million Hispanic students currently in college programs attend them.

Between 1991 and 2000, the number of Hispanics earning master's degrees grew 136 percent and the number of doctor's degrees grew 85 percent. Our Nation's economic strength and prosperity will depend on the knowledge, skills, and leadership of a population that already makes up one of three new workers joining the U.S. labor force today.

As a member of the Senate Appropriations Committee, I have been committed to increasing federal support of HSIs. Since 1995, Title V funding has increased from $12 million to $95 million in fiscal year 2005. I believe this is an important investment to ensure our nation's youngest and largest ethnic population has access to the educational opportunities needed to excel.

Because I believe the success of Hispanic students will play a critical role in determining this country's future, I am proud to offer this bill that will improve options for graduate and postgraduate study, and I urge my colleagues to support it. Mr. President, I ask unanimous consent that a copy of the bill be printed in the RECORD.

By Mr. DURBIN (for himself, Mr. SPECTER, Mr. BYRD, Mr. ROCKEFELLER, Mr. COCHRAN, Ms. MIKULSKI, Mr. BAYH, and Mr. SARBANES):

S. 358. A bill to maintain and expand the steel import licensing and monitoring program; to the Committee on Finance

Mr. DURBIN. Mr. President, 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. 358

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. MAINTENANCE AND EXPANSION OF STEEL IMPORT LICENSING AND MONITORING PROGRAM.

(a) MAINTENANCE OF PROGRAM.—The steel import licensing and monitoring program established by the Secretary of the Treasury

and the Secretary of Commerce pursuant to the Memorandum signed by the President on March 5, 2002 (67 Fed. Reg. 10593 through 10597) (pursuant to the authority of the President under section 203(g) of the Trade Act of 1974), shall, notwithstanding any other action taken by the President under section 203 of the Trade Act of 1974 concerning the steel products described in the Memorandum, remain in effect and be established by the Secretary of Commerce as a permanent program.

(b) EXPANSION OF PROGRAM.—

(1) IN GENERAL.—In carrying out the program in accordance with subsection (a), the Secretary of the Treasury and the Secretary of Commerce shall expand the program to include all iron and steel, and all articles of iron or steel, described in paragraph (2). The import and licensing data made available to the public as part of this program shall be released based upon classifications at the tenth digit level of the Harmonized Tariff Schedule of the United States.

(2) IRON AND STEEL DESCRIBED.—The iron and steel, and articles of iron or steel, referred to in subparagraph (A) are the iron and steel, and articles of iron or steel, contained in the following headings and subheadings of the Harmonized Tariff Schedule of the United States:

(A) Each of the headings 7206 through 7229 (relating to mill products).

(B) Each of the headings 7301 through 7307 (relating to rails, structurals, pipe and tubes, and fittings and flanges).

(C) Heading 7308 (relating to fabricated structurals).

(D) Subheading 7310.10.00 (relating to barrels and drums).

(E) Heading 7312 (relating to strand and rope).

(F) Heading 7313.00.00 (relating to barbed and fence wire).

(G) Headings 7314, 7315, and 7317.00 (relating to fabricated wire).

(H) Heading 7318 (relating to industrial fasteners).

(I) Heading 7326 (relating to fence posts).

(c) ADDITIONAL AUTHORITY.—The Secretary of the Treasury and the Secretary of Commerce are hereby authorized and directed to take such actions as are necessary—

(1) to maintain the program described in subsection (a) in accordance with such subsection; and

(2) to expand, as necessary and appropriate, such program in accordance with subsection (b).

By Mr. CRAIG (for himself, Mr. KENNEDY, Mr. HAGEL, Mr. SPECTER, Mr. LAUTENBERG, Mr. VOINOVICH, Mr. SCHUMER, Mr. LUGAR, Mr. DURBIN, Mr. COLEMAN, Mr. KERRY, Mr. MCCAIN, Mr. DODD, Mr. COCHRAN, Mr. DOMENICI, Ms. CANTWELL, Mr. DEWINE, Mr. LIEBERMAN, Mr. BURNS, Mrs. BOXER, Mr. ROBERTS, Mr. LEAHY, Mr. HATCH, Mr. AKAKA, Mr. LOTT, Mr. NELSON of Nebraska, Mr. BROWNBACK, Mr. LEVIN, Mr. STEVENS, Mr. WYDEN, Mr. MARTINEZ, Mr. SALAZAR, Mr. CHAFEE, and Mrs. MURRAY):

S. 359. 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; to the Committee on the Judiciary.

Mr. CRAIG. Mr. President, I have introduced what I believe to be a very important piece of legislation that the Senate will consider this year, dealing with an issue that is certainly on the minds of many Americans and No. 1 on the minds of some Americans. It is on the question of immigration reform and dealing with it in an appropriate fashion, to create a transparency in the process, and to begin to end and identify the 8 million to 12 million undocumented foreign nationals currently in our country.

Over the last 5 years, I have worked in a bipartisan way with many of my colleagues, and literally hundreds of organizations around the country, in focusing on a specific area of immigration, and that is the H–2A area, or those who work in agricultural employment.

What we have discovered over the course of time is a broken system, which in large part now allows the possibility of well over a million foreign nationals working illegally in this country, but working in an economy where they are desperately needed to bring the food products from our fields, to process those products and put them on the shelves of the American consuming public. As a result of that great concern, I, working with my colleague Senator TED KENNEDY in the Senate, with Congressman HOWARD BERMAN and Congressman CHRIS CANNON over in the House for some time, have produced legislation that brings all sides of this very diverse and oftentimes very contentious issue together, to therefore be able to offer tonight a piece of legislation that has at this moment nearly 40 Members of the Senate, Democrats and Republicans, supporting it; whereas last year, identical legislation had over 63 Senators, and we believe we will have that same support again this year.

Americans, after 9/11, cried out to the Congress and to our Government, saying: What is wrong? Why were people allowed to come to our country who then turned on us to kill our citizens? Why did we let that happen?

Well, we learned that the immigration policies of our country were largely broken and that the Congress, over years and years, had turned its back on the issue, either not funding immigration appropriately or not enforcing the laws already on the books regarding immigration.

As a result of that, it is now estimated that there are between 8 million to 12 million foreign nationals living in this country, the vast majority of them working and living in law-abiding, peaceful ways, but working here to better themselves and their families for their own human well-being. We did find out there were a few who were here to do evil things to Americans.

In the legislation I bring to the floor tonight, in legislation we call the Agricultural Job Opportunity Benefit and Security Act, I focus rather narrowly on what is believed to be about 1.6 million of the total number, to recognize that clearly the vast majority of them are here for peaceful purposes, to better themselves and their families, and, in the meantime, cause American agriculture to work as effectively and efficiently as it does.

Oftentimes, these men and women do work that American citizens do not want to do or will not do—toiling in the hot fields of American agriculture day in and day out, dirty, tough work, but seeing it as an opportunity for themselves and an opportunity for their children to have a better life.

In so failing to recognize that need, we have oftentimes caused them to live in the back alleys and the shadows of America in an illegal status, but we still rely heavily on them for the services they provide.

Americans need and expect a stable, predictable, legal workforce in American agriculture, and consumers in our country deserve a safe, stable, domestic food supply. Willing American workers deserve a system that puts them first in line for the jobs that are available with a fair market wage, and our legislation does that. All workers deserve decent treatment and protection of basic rights under the law, and our legislation does that. American citizens and taxpayers deserve secure borders, a safe homeland, and a government that works, and our legislation helps accomplish those three very important goals.

Yet we are threatened on all fronts because of a growing shortage now of legal workers in American agriculture. Last year, in 2 of the 12 months, we were net importers of agricultural food products. For the first time in the history of our country that happened. I grew up being told—and most of us did—that because of our great American agriculture always being able to feed us, we were a secure, safe nation, and our food supply was such that we would never be dependent upon foreign interests to feed the American consumer.

Last year it happened 2 out of 12 months that we grew dependent. This year, USDA tells us that we will break even at about 50–50. There will be no surplus agriculture trade. We will be importing as much as we are exporting, and that will be a historic first for our Nation.

What it tells me, as someone who grew up in American agriculture, is that agriculture as an economy is becoming increasingly fragile. It no longer has the strength or the dynamics it once had. It grows increasingly dependent on the high cost of inputs—energy, equipment, other supplies necessary to produce the bounty of the American farm field. But one of those key inputs is labor—labor that is stable, labor that you know will be there, and, most importantly, labor that can get the job done at the right time,

when the crop in the field is ripe and ready to harvest.

That labor pool is largely undocumented today. It is estimated that anywhere from 72 to 75 percent of those who work in American agriculture today are undocumented foreign nationals; in other words, illegal. And yet they toil in the fields, they pick our food, they help prepare it through the processing plants to get it to the consumer's shelf.

If in our effort to protect our borders and to create a law enforcement community that can apprehend a person who has entered this country illegally, if all of that happens and we do not create a system that stabilizes and provides a legal foreign national workforce, we could literally collapse American agriculture.

We are working at trying to protect our borders. We have invested heavily in it for the last good number of years. We just passed an intelligence reform bill in the latter part of the last session of the 108th Congress dealing closely with our borders. Members on the House side are ready to introduce new forms of legislation to tighten up and allow the driver's license to become a more secure legal documentation—an American citizen versus one who would not be.

I support nearly all of those things because they are the right thing to do for America to reclaim herself and to control her borders. But at the same time, there is a legitimate and responsible need to recognize the importance—the critical importance—of foreign nationals in our workforce helping to provide for our economy.

In the late nineties, we were near 100-percent employment in our country. Anyone who wanted to work could work and was working. Those who were not probably either did not want to or could not. Yet during that time, we were still employing an estimated 8 million foreign nationals in our country. That is not a negative, that is the character of a great country. That is the character of a great economy and a strong economy.

It is also that diversity that has produced the great American way, the idea of the American dream, the phenomenal hybrid vigor of a diverse character that is this country and has always been. And American agriculture has been a part of that. Those who toil in American agriculture have been a big part of that.

What we do today by this legislation is reach out and attempt to recognize those who are here in an undocumented way and cause them to come forward to be recognized, to have a background check done, to make sure they are not law violators or felons who are here for some other purpose. If they have been here and worked a period of 100 days since January 1, 2005, we will provide for them a temporary green card and then allow them to work and earn the right for permanent work status in our country.

To me, that seems fair and responsible. All of the parties involved in American agriculture today from the workforce to the producer themselves, they, too, agree that is a fair and responsible fashion. It is not giving anything away. It is attempting to correct a problem. It is doing the background checks. It is making sure we have a legal and legitimate workforce so that as we plug all of these holes and change the character of a broken immigration law, we do so without collapsing the very economy that feeds our country, recognizing that they became too dependent as agricultural producers on a workforce that was not legal.

So we do not just wipe the workforce away. We attempt to identify it, shape it, and cause it to be legal and do so in a responsible fashion. That is clearly what our legislation does. That is why 63 Senators supported it last year, and well over 100 in the House were cosponsors of it. We are working hard at this very moment to pass this legislation, to get it to the President's desk, and recognize that it may be a template, it may be a pilot for others to look at for a more comprehensive approach toward immigration reform.

There is no question in my mind that our immigration laws are broken, and I am not going to stand here tonight and suggest I have the wisdom to fix it all. But I and others and hundreds of organizations and interest groups from around this country have spent the last 5 years trying to solve this problem.

When we started, many of us were 180 degrees apart. Slowly but surely we came together out of need, the clear recognition of the necessity of providing a legal, recognizable, and stable workforce for American agriculture.

I do not think any citizen in our country would sleep well if they knew that a majority of our foodstuffs were imported, if they knew that we were dependent upon foreign nations and their producers for our food supply.

I think they would grow frustrated over the risk that would be at hand there, the stability, the availability, the safety issue. Many have suggested that if we are going to have a terrorist attack again some day, one of the approaches terrorists might use would be to attack our food supply.

If we control our workforce, if we produce it here, the possibility of that happening is considerably lessened. That goes right back to the old historic belief that a nation that can feed itself and its people is a nation that is inherently stable, and without question the produce of the American farm has allowed us to be that generation after generation, war after war.

We are now at a very fine point and balance in our Nation's history where this year we will zero out that old historic belief of stability. We will be importing as much as we are exporting. So American agriculture deserves our attention.

The people who labor there deserve our attention and respect. They deserve to be treated fairly as we would expect all people in our country to be, to have proper conditions and proper wages and to be recognized for the quality of work they do, instead of simply shoving them into the shadows in the back streets of America and denying they are there but knowing that we need them. That is an interesting contradiction in the current immigration laws in our country and America knows it and has reacted accordingly.

It is why our President says immigration reform is critical and necessary and has proposed ways to accomplish it. It is why it is in the top list of issues and concerns that most Americans hold about what Government ought to be doing to create a safer, stronger America, from controlling our borders to an effective law enforcement system, to assuring that we know those who are within our borders and why they are here and what their intent is. That is all part of the agricultural jobs bill we introduce tonight, the Agricultural Job Opportunity Benefit and Security Act of 2005.

I am proud that 40 Senators, nearly 50–50 in partisan split, have already endorsed this legislation. We will strive for that number of 60-plus again. In doing so, I will ask my colleagues to help us bring this bill to the floor very early in this session, to debate it, to pass it out, to work with our House colleagues and to put it on the President's desk. I believe it is a positive and necessary start in marching down the road toward comprehensive immigration reform.

To do anything less than we are proposing is once again to do the very thing we have done for well over a decade, and that is to turn our back on the problem and the issue, to know it is there but to deny it exists, and then to have a broken system produce the crisis that occurred on 9/11.

We are a better country than that, and this Senate is a more responsible legislative body than that.

So tonight I bring to my colleagues what I think is a major first step in immigration reform necessary and important to protecting our borders, to making sure we are secure at home, to stabilizing a food supply, to assuring that American agriculture has a predictable, stable workforce, and to say to all at hand that those who come here to toil, in the benefit of the American economy, will be treated in a fair, just, and responsible way.

I yield the floor.

By Ms. SNOWE (for herself and Mr. KERRY):

S. 360. A bill to amend the Coastal Zone Management Act; to the Committee on Commerce, Science, and Transportation.

Ms. SNOWE. Mr. President, I rise today to introduce the Coastal Zone Enhancement Reauthorization Act of 2005. I am pleased to have worked with my cosponsor, Senator KERRY, in developing this bill, which will enable our

Nation to improve the way we manage our valuable, yet vulnerable, coastal resources.

More than three decades ago, Congress enacted the Coastal Zone Management Act of 1972, or CZMA, in response to concerns over growing threats to our Nation's coastal environments and resources. While this act has been instrumental in facilitating better coastal planning and management, the September 2004 Final Report of the U.S. Commission on Ocean Policy reminded us that the pressures facing our coastal regions have greatly increased since the CZMA was enacted.

America's coastal zone comprises only 17 percent of the contiguous U.S. land area, yet nearly 53 percent of all Americans live in these coastal areas. Attracted by economic opportunity as well as beaches and other recreational amenities, more than 3,600 people are moving to this area each year. This relatively small portion of our country supports approximately 361 sea ports, including most of our largest cities. At the same time, it provides critical habitat for a variety of plants and animals, ranging from rare microscopic organisms to commercially valuable fish stocks.

The CZMA established a unique State-Federal framework for facilitating sound coastal planning, and any amendments to this act must uphold and strengthen this arrangement. Under the authorities in the CZMA, coastal States can elect to participate in a voluntary Federal Coastal Zone Management Program. The 34 participating States and territories create individualized coastal zone management plans, taking their State's specific needs and problems into account, and then receive Federal matching funds to help implement their plans. This systems respects states' rights while empowering them to better identify and meet their environmental, social, and economic goals for their coastal areas. As a result of this program's success, more than 99.9 percent of the United States 95,376 shoreline miles are managed under this system.

Even though our coastal States and territories have benefitted from this vital CZMA program, our coastal areas continue to face increasing demands to expand working waterfronts as well as increasing rates of nonpoint source water pollution. These persistent threats have outpaced the ability of many States to keep up with coastal zone conservation. Although the States are currently taking action to address this problem under existing authorities, the Coastal Zone Enhancement Reauthorization of 2005 would encourage them to take additional voluntary steps to combat these problems through the Coastal Community Program.

The coastal community initiative would provide participating States with the funding and flexibility necessary to deal with a broad array of specific nonpoint source pollution problems.

The State of Maine, like many coastal States, is working to reduce nonpoint source pollution programs, and its efforts have led to the reopening of hundreds of acres of shellfish beds and the restoration of fish nursery areas. Even with these successes, Maine needs to do more and is looking forward to this new opportunity.

The Coastal Community Program authorized in this bill would also aide States in developing and implementing creative, community-based initiatives to deal with problems other than nonpoint source pollution. It would increase Federal and State support of local grassroots programs that target coastal environmental issues, such as the impact of development and sprawl on coastal resources and activities.

The bill I offer today would reauthorize the CZMA and make a number of improvements to strengthen our Nation's coastal management system. The Coastal Zone Enhancement Reauthorization of 2005 significantly increases the authorization levels for the Coastal Zone Management Program, enabling States to better achieve their coastal management goals. The bill authorizes $137.5 million for fiscal year 2006 and increases the authorization levels up to $160,000,000 for fiscal year 2010. This increase in funding would enable the States' coastal programs to achieve their full potential.

Within these authorized funding levels, this bill would increase authorization for the National Estuarine Research Reserve System to $18 million in fiscal year 2006 with an additional $1 million increase each year through fiscal year 2010. This system is a network of reserves around the country that support coastal science, research, education and conservation, and they are operated as a cooperative Federal-State partnership. Additional authorizations, including funds to support construction at designated reserve sites, will help strengthen this nationwide program which has not received increased funding commensurate with the addition of new reserves.

In this bill, we have tried to rectify a very serious problem facing the Coastal Zone Management Program. The funding for this program is based on administrative grants, under section 306 of the CZMA, in which the amount of funding for each State is determined by a formula that takes into account both the length of the coastline and population of each State. However, since 1992, the Appropriations Committee has imposed a million a $2 million cap per State on administrative grants in an attempt to treat all participating States equally.

Even while overall program funding has increased in recent years, this arbitrary cap has remained in place, and by fiscal year 2000, 13 States had reached it. These 13 States account for 83 percent of our Nation's coastline and 76 percent of our coastal population. Despite appropriators' desire for equal treatment, it is simply not equitable to have the 13 States with the largest coastlines and populations stuck at a $2 million cap, despite overall program funding increases. While smaller States have enjoyed additional programmatic success due to an influx of funding, progress in some of the larger States—with some of the most pressing coastal management problems—has stagnated.

This bill contains new language that would direct the Secretary of Commerce to ensure equitable increases or decreases in annual administrative grant funding for each State. It further 2 requires that States should not experience a decrease in base program funds in any year when the overall appropriations increase. I must thank my former colleague, Senator HOLLINGS, for his many years of effort and cooperation in helping us develop this new grant funding allocation language. His leadership and commitment to all ocean and coastal conservation matters continues to guide our efforts today.

The State-Federal Coastal Zone Management Program has a long record of helping States achieve their coastal area management goals, and having clean, safe, and productive coastlines ultimately serves the best interest of our Nation. This program enjoys widespread support among coastal States, as demonstrated by the many Commerce Committee members who have worked with me to strengthen this program over the past several years.

I am pleased to introduce this legislation to provide our coastal States with the funding and management frameworks necessary to meet the ever-increasing conservation and development challenges facing our coastal communities, and I urge my colleagues to support it.

Mr. President, I ask unanimous consent that the Coastal Zone Enhancement Reauthorization of 2005 be printed in the RECORD.

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

S. 360

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 ''Coastal Zone Enhancement Reauthorization Act of 2005''.

SEC. 2. AMENDMENT OF COASTAL ZONE MANAGEMENT ACT.

Except as otherwise expressly provided, whenever 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 Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.).

SEC. 3. FINDINGS.

Section 302 (16 U.S.C. 1451) is amended—

(1) by redesignating paragraphs (a) through (m) as paragraphs (1) through (13);

(2) by inserting ''ports,'' in paragraph (3) (as so redesignated) after ''fossil fuels,'';

(3) by inserting ''including coastal waters and wetlands,'' in paragraph (4) (as so redesignated) after ''zone,'';

(4) by striking ''therein,'' in paragraph (4) (as so redesignated) and inserting ''dependent on that habitat,'';

(5) by striking ''well-being'' in paragraph (5) (as so redesignated) and inserting ''quality of life'';

(6) by striking paragraph (11) (as so redesignated) and inserting the following:

''(11) Land and water uses in the coastal zone and coastal watersheds may significantly affect the quality of coastal waters and habitats, and efforts to control coastal water pollution from activities in these areas must be improved.''; and

(7) by adding at the end thereof the following:

''(14) There is a need to enhance cooperation and coordination among states and local communities, to encourage local community-based solutions that address the impacts and pressures on coastal resources and on public facilities and public service caused by continued coastal demands, and to increase state and local capacity to identify public infrastructure and open space needs and develop and implement plans which provide for sustainable growth, resource protection and community revitalization.''.

SEC. 4. POLICY.

Section 303 (16 U.S.C. 1452) is amended—

(1) by striking ''the states'' in paragraph (2) and inserting ''state and local governments'';

(2) by striking ''waters,'' each place it appears in paragraph (2)(C) and inserting ''waters and habitats,'';

(3) by striking ''agencies and state and wildlife agencies; and'' in paragraph (2)(J) and inserting ''and wildlife management; and'';

(4) by inserting ''other countries,'' after ''agencies,'' in paragraph (5);

(5) by striking ''and'' at the end of paragraph (5);

(6) by striking ''zone.'' in paragraph (6) and inserting ''zone;''; and

(7) by adding at the end thereof the following:

''(7) to create and use a National Estuarine Research Reserve System as a Federal, state, and community partnership to support and enhance coastal management and stewardship; and

''(8) to encourage the development, application, and transfer of innovative coastal and estuarine environmental technologies and techniques for the long-term conservation of coastal ecosystems.''.

SEC. 5. CHANGES IN DEFINITIONS.

Section 304 (16 U.S.C. 1453) is amended—

(1) by striking ''and the Trust Territories of the Pacific Islands,'' in paragraph (4);

(2) by striking paragraph (8) and inserting the following:

''(8) The term 'estuarine reserve' means a coastal protected area which may include any part or all of an estuary and any island, transitional area, and upland in, adjoining, or adjacent to the estuary, and which constitutes to the extent feasible a natural unit, established to provide long-term opportunities for conducting scientific studies and educational and training programs that improve the understanding, stewardship, and management of estuaries.''; and

(3) by adding at the end thereof the following:

''(19) The term 'coastal nonpoint pollution control strategies and measures' means strategies and measures included as part of the coastal nonpoint pollution control program under section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 (16 U.S.C. 1455b).

''(20) The term 'qualified local entity' means—

''(A) any local government;

''(B) any areawide agency referred to in section 204(a)(1) of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3334 (a)(1));

''(C) any regional agency;

''(D) any interstate agency;

''(E) any nonprofit organization; or

''(F) any reserve established under section 315.''.

SEC. 6. REAUTHORIZATION OF MANAGEMENT PROGRAM DEVELOPMENT GRANTS.

Section 305 (16 U.S.C. 1454) is amended to read as follows:

''SEC. 305. MANAGEMENT PROGRAM DEVELOPMENT GRANTS.

''(a) STATES WITHOUT PROGRAMS.—In fiscal years 2006 and 2007, the Secretary may make a grant annually to any coastal state without an approved program if the coastal state demonstrates to the satisfaction of the Secretary that the grant will be used to develop a management program consistent with the requirements set forth in section 306. The amount of any such grant shall not exceed $200,000 in any fiscal year, and shall require State matching funds according to a 4-to-1 ratio of Federal-to-State contributions. After an initial grant is made to a coastal state under this subsection, no subsequent grant may be made to that coastal state under this subsection unless the Secretary finds that the coastal state is satisfactorily developing its management program. No coastal state is eligible to receive more than 4 grants under this subsection.

''(b) SUBMITTAL OF PROGRAM FOR APPROVAL.—A coastal state that has completed the development of its management program shall submit the program to the Secretary for review and approval under section 306.''.

SEC. 7. ADMINISTRATIVE GRANTS.

(a) PURPOSES.—Section 306(a) (16 U.S.C. 1455(a)) is amended by inserting ''including developing and implementing coastal nonpoint pollution control program components,'' after ''program,''.

(b) EQUITABLE ALLOCATION OF FUNDING.—Section 306(c) (16 U.S.C. 1455(c)) is amended by adding at the end thereof ''In promoting equity, the Secretary shall consider the overall change in grant funding under this section from the preceding fiscal year and minimize the relative increases or decreases among all the eligible States. The Secretary shall ensure that each eligible State receives increased funding under this section in any fiscal year for which the total amount appropriated to carry out this section is greater than the total amount appropriated to carry out this section for the preceding fiscal year.

(c) ACQUISITION CRITERIA.—Section 306(d)(10)(B) (16 U.S.C. 1455(d)(10)(B)) is amended by striking ''less than fee simple'' and inserting ''other''.

SEC. 8. COASTAL RESOURCE IMPROVEMENT PROGRAM.

Section 306A (16 U.S.C. 1455a) is amended—

(1) by inserting ''or other important coastal habitats'' in subsection (b)(1)(A) after ''306(d)(9)'';

(2) by inserting ''or historic'' in subsection (b)(2) after ''urban'';

(3) by adding at the end of subsection (b) the following:

''(5) The coordination and implementation of approved coastal nonpoint pollution control plans.

''(6) The preservation, restoration, enhancement or creation of coastal habitats.'';

(4) by striking ''and'' after the semicolon in subsection (c)(2)(D);

(5) by striking ''section.'' in subsection (c)(2)(E) and inserting ''section;'';

(6) by adding at the end of subsection (c)(2) the following:

''(F) work, resources, or technical support necessary to preserve, restore, enhance, or create coastal habitats; and

''(G) the coordination and implementation of approved coastal nonpoint pollution control plans.''; and

(7) by striking subsections (d), (e), and (f) and inserting after subsection (c) the following:

''(d) SOURCE OF FEDERAL GRANTS; STATE MATCHING CONTRIBUTIONS.—

''(1) IN GENERAL.—If a coastal state chooses to fund a project under this section, then—

''(A) it shall submit to the Secretary a combined application for grants under this section and section 306;

''(B) it shall match the combined amount of such grants in the ratio required by section 306(a) for grants under that section; and

''(C) the Federal funding for the project shall be a portion of that state's annual allocation under section 306(a).

''(2) USE OF FUNDS.—Grants provided under this section may be used to pay a coastal state's share of costs required under any other Federal program that is consistent with the purposes of this section.

''(e) ALLOCATION OF GRANTS TO QUALIFIED LOCAL ENTITY.—With the approval of the Secretary, the eligible coastal state may allocate to a qualified local entity a portion of any grant made under this section for the purpose of carrying out this section; except that such an allocation shall not relieve that state of the responsibility for ensuring that any funds so allocated are applied in furtherance of the state's approved management program.

''(f) ASSISTANCE.—The Secretary shall assist eligible coastal states in identifying and obtaining from other Federal agencies technical and financial assistance in achieving the objectives set forth in subsection (b).''.

SEC. 9. COASTAL ZONE MANAGEMENT FUND.

(a) TREATMENT OF LOAN REPAYMENTS.—Section 308(a)(2) (16 U.S.C. 1456a(a)(2)) is amended to read as follows:

''(2) Loan repayments made under this subsection—

''(A) shall be retained by the Secretary and deposited into the Coastal Zone Management Fund established under subsection (b); and

''(B) subject to amounts provided in Appropriations Acts, shall be available to the Secretary for purposes of this title and transferred to the Operations, Research, and Facilities account of the National Oceanic and Atmospheric Administration to offset the costs of implementing this title.''.

(b) USE OF AMOUNTS IN FUND.—Section 308(b) (16 U.S.C. 1456a(b)) is amended by striking paragraphs (2) and (3) and inserting the following:

''(2) Subject to Appropriation Acts, amounts in the Fund shall be available to the Secretary to carry out the provisions of this Act.''.

SEC. 10. COASTAL ZONE ENHANCEMENT GRANTS.

Section 309 (16 U.S.C. 1456b) is amended—

(1) by striking subsection (a)(1) and inserting the following:

''(1) Protection, restoration, enhancement, or creation of coastal habitats, including wetlands, coral reefs, marshes, and barrier islands.'';

(2) by inserting ''and removal'' after ''entry'' in subsection (a)(4);

(3) by striking ''on various individual uses or activities on resources, such as coastal wetlands and fishery resources.'' in subsection (a)(5) and inserting ''of various individual uses or activities on coastal waters, habitats, and resources, including sources of polluted runoff.'';

(4) by adding at the end of subsection (a) the following:

''(10) Development and enhancement of coastal nonpoint pollution control program components, including the satisfaction of conditions placed on such programs as part of the Secretary's approval of the programs.

''(11) Significant emerging coastal issues as identified by coastal states, in consultation with the Secretary and qualified local entities.'';

(5) by striking ''proposals, taking into account the criteria established by the Secretary under subsection (d).'' in subsection (c) and inserting ''proposals.'';

(6) by striking subsection (d) and redesignating subsection (e) as subsection (d);

(7) by striking ''section, up to a maximum of $10,000,000 annually'' in subsection (f) and inserting ''section.''; and

(8) by redesignating subsections (f) and (g) as subsections (e) and (f), respectively.

SEC. 11. COASTAL COMMUNITY PROGRAM.

The Act is amended by inserting after section 309 the following:

''SEC. 309A. COASTAL COMMUNITY PROGRAM.

''(a) COASTAL COMMUNITY GRANTS.—The Secretary may make grants to any coastal state that is eligible under subsection (b)—

''(1) to assist coastal communities in assessing and managing growth, public infrastructure, and open space needs in order to provide for sustainable growth, resource protection and community revitalization;

''(2) to provide management-oriented research and technical assistance in developing and implementing community-based growth management and resource protection strategies in qualified local entities;

''(3) to fund demonstration projects which have high potential for improving coastal zone management at the local level;

''(4) to assist in the adoption of plans, strategies, policies, or procedures to support local community-based environmentally-protective solutions to the impacts and pressures on coastal uses and resources caused by development and sprawl that will—

''(A) revitalize previously developed areas;

''(B) undertake conservation activities and projects in undeveloped and environmentally sensitive areas;

''(C) emphasize water-dependent uses; and

''(D) protect coastal waters and habitats; and

''(5) to assist coastal communities to coordinate and implement approved coastal nonpoint pollution control strategies and measures that reduce the causes and impacts of polluted runoff on coastal waters and habitats.''.

''(b) ELIGIBILITY.—To be eligible for a grant under this section for a fiscal year, a coastal state shall—

''(1) have a management program approved under section 306; and

''(2) in the judgment of the Secretary, be making satisfactory progress in activities designed to result in significant improvement in achieving the coastal management objectives specified in section 303(2)(A) through (K).

''(c) ALLOCATIONS; SOURCE OF FEDERAL GRANTS; STATE MATCHING CONTRIBUTIONS.—

''(1) ALLOCATION.—Grants under this section shall be allocated to coastal states as provided in section 306(c).

''(2) APPLICATION; MATCHING.—If a coastal state chooses to fund a project under this section, then—

''(A) it shall submit to the Secretary a combined application for grants under this section and section 306; and

''(B) it shall match the amount of the grant under this section on the basis of a total contribution of section 306, 306A, and this section so that, in aggregate, the match is 1:1.

''(d) ALLOCATION OF GRANTS TO QUALIFIED LOCAL ENTITY.—

''(1) IN GENERAL.—With the approval of the Secretary, the eligible coastal state may allocate to a qualified local entity amounts received by the state under this section.

''(2) ASSURANCES.—A coastal state shall ensure that amounts allocated by the state under paragraph (1) are used by the qualified local entity in furtherance of the state's approved management program, specifically furtherance of the coastal management objectives specified in section 303(2).

''(e) ASSISTANCE.—The Secretary shall assist eligible coastal states and qualified local entities in identifying and obtaining from other Federal agencies technical and financial assistance in achieving the objectives set forth in subsection (a).''.

SEC. 12. TECHNICAL ASSISTANCE.

Section 310(b) (16 U.S.C. 1456c(b)) is amended by adding at the end thereof the following:

''(4) The Secretary may conduct a program to develop and apply innovative coastal and estuarine environmental technology and methodology through a cooperative program. The Secretary may make extramural grants in carrying out the purpose of this subsection.''.

SEC. 13. PERFORMANCE REVIEW.

Section 312(a) (16 U.S.C. 1458(a)) is amended by inserting ''coordinated with National Estuarine Research Reserves in the state'' after ''303(2)(A) through (K),''.

SEC. 14. WALTER B. JONES AWARDS.

Section 314 (16 U.S.C. 1460) is amended—

(1) by striking ''shall, using sums in the Coastal Zone Management Fund established under section 308'' in subsection (a) and inserting ''may, using sums available under this Act'';

(2) by striking ''field.'' in subsection (a) and inserting the following: ''field of coastal zone management. These awards, to be known as the 'Walter B. Jones Awards', may include—

''(1) cash awards in an amount not to exceed $5,000 each;

''(2) research grants; and

''(3) public ceremonies to acknowledge such awards.'';

(3) by striking ''shall elect annually—'' in subsection (b) and inserting ''may select annually if funds are available under subsection (a)—''; and

(4) by striking subsection (e).

SEC. 15. NATIONAL ESTUARINE RESEARCH RESERVE SYSTEM.

(a) Section 315(a) (16 U.S.C. 1461(a)) is amended by striking ''consists of—'' and inserting ''is a network of areas protected by Federal, state, and community partnerships which promotes informed management of the Nation's estuarine and coastal areas through interconnected programs in resource stewardship, education and training, and scientific understanding consisting of—''.

(b) Section 315(b)(2)(C) (16 U.S.C. 1461(b)(2)(C)) is amended by striking ''public education and interpretation; and''; and inserting ''education, interpretation, training, and demonstration projects; and''.

(c) Section 315(c) (16 U.S.C. 1461(c)) is amended—

(1) by striking ''RESEARCH'' in the subsection caption and inserting ''RESEARCH, EDUCATION, AND RESOURCE STEWARDSHIP'';

(2) by striking ''conduct of research'' and inserting ''conduct of research, education, and resource stewardship'';

(3) by striking ''coordinated research'' in paragraph (1)) and inserting ''coordinated research, education, and resource stewardship'';

(4) by striking ''research'' before ''principles'' in paragraph (2);

(5) by striking ''research programs'' in paragraph (2) and inserting ''research, education, and resource stewardship programs'';

(6) by striking ''research'' before ''methodologies'' in paragraph (3);

(7) by striking ''data,'' in paragraph (3) and inserting ''information,'';

(8) by striking ''research'' before ''results'' in paragraph (3);

(9) by striking ''research purposes;'' in paragraph (3) and inserting ''research, education, and resource stewardship purposes;'';

(10) by striking ''research efforts'' in paragraph (4) and inserting ''research, education, and resource stewardship efforts'';

(11) by striking ''research'' in paragraph (5) and inserting ''research, education, and resource stewardship''; and

(12) by striking ''research'' in the last sentence.

(d) Section 315(d) (16 U.S.C. 1461(d)) is amended—

(1) by striking ''ESTUARINE RESEARCH.—'' in the subsection caption and inserting ''ESTUARINE RESEARCH, EDUCATION, AND RESOURCE STEWARDSHIP.—'';

(2) by striking ''research purposes'' and inserting ''research, education, and resource stewardship purposes'';

(3) by striking paragraph (1) and inserting the following:

''(1) giving reasonable priority to research, education, and stewardship activities that use the System in conducting or supporting activities relating to estuaries; and'';

(4) by striking ''research.'' in paragraph (2) and inserting ''research, education, and resource stewardship activities.''; and

(5) by adding at the end thereof the following:

''(3) establishing partnerships with other Federal and state estuarine management programs to coordinate and collaborate on estuarine research.''.

(e) Section 315(e) (16 U.S.C. 1461(e)) is amended—

(1) by striking ''reserve,'' in paragraph (1)(A)(i) and inserting ''reserve; and'';

(2) by striking ''and constructing appropriate reserve facilities, or'' in paragraph (1)(A)(ii) and inserting ''including resource stewardship activities and constructing reserve facilities; and'';

(3) by striking paragraph (1)(A)(iii);

(4) by striking paragraph (1)(B) and inserting the following:

''(B) to any coastal state or public or private person for purposes of—

''(i) supporting research and monitoring associated with a national estuarine reserve that are consistent with the research guidelines developed under subsection (c); or

''(ii) conducting educational, interpretive, or training activities for a national estuarine reserve that are consistent with the education guidelines developed under subsection (c).'';

(5) by striking ''therein or $5,000,000, whichever amount is less.'' in paragraph (3)(A) and inserting ''therein. Non-Federal costs associated with the purchase of any lands and waters, or interests therein, which are incorporated into the boundaries of a reserve up to 5 years after the costs are incurred, may be used to match the Federal share.'';

(6) by striking ''and (iii)'' in paragraph (3)(B);

(7) by striking ''paragraph (1)(A)(iii)'' in paragraph (3)(B) and inserting ''paragraph (1)(B)'';

(8) by striking ''entire System.'' in paragraph (3)(B) and inserting ''System as a whole.''; and

(9) by adding at the end thereof the following:

''(4) The Secretary may—

''(A) enter into cooperative agreements, financial agreements, grants, contracts, or other agreements with any nonprofit organization, authorizing the organization to solicit donations to carry out the purposes and policies of this section, other than general administration of reserves or the System and which are consistent with the purposes and policies of this section; and

''(B) accept donations of funds and services for use in carrying out the purposes and policies of this section, other than general administration of reserves or the System and which are consistent with the purposes and policies of this section.

Donations accepted under this section shall be considered as a gift or bequest to or for the use of the United States for the purpose of carrying out this section.''.

(f) Section 315(f)(1) (16 U.S.C. 1461(f)(1)) is amended by inserting ''coordination with other state programs established under sections 306 and 309A,'' after ''including''.

SEC. 16. COASTAL ZONE MANAGEMENT REPORTS.

Section 316 (16 U.S.C. 1462) is amended—

(1) by striking ''to the President for transmittal'' in subsection (a);

(2) by striking ''zone and an evaluation of the effectiveness of financial assistance under section 308 in dealing with such consequences;'' and inserting ''zone;'' in the provision designated as (10) in subsection (a);

(3) by inserting ''education,'' after the ''studies,'' in the provision designated as (12) in subsection (a);

(4) by striking ''Secretary'' in the first sentence of subsection (c)(1) and inserting ''Secretary, in consultation with coastal states, and with the participation of affected Federal agencies,'';

(5) by striking the second sentence of subsection (c)(1) and inserting the following: ''The Secretary, in conducting such a review, shall coordinate with, and obtain the views of, appropriate Federal agencies.'';

(6) by striking ''shall promptly'' in subsection (c)(2) and inserting ''shall, within 4 years after the date of enactment of the Coastal Zone Enhancement Reauthorization Act of 2005,''; and

(7) by adding at the end of subsection (c)(2) the following: ''If sufficient funds and resources are not available to conduct such a review, the Secretary shall so notify the Congress.''.

SEC. 17. AUTHORIZATION OF APPROPRIATIONS.

Section 318 (16 U.S.C. 1464) is amended—

(1) by striking paragraphs (1) and (2) of subsection (a) and inserting the following:

''(1) for grants under sections 306, 306A, and 309—

''(A) $90,500,000 for fiscal year 2006;

''(B) $94,000,000 for fiscal year 2007;

''(C) $98,000,000 for fiscal year 2008;

''(D) $102,000,000 for fiscal year 2009; and

''(E) $106,000,000 for fiscal year 2010.

''(2) for grants under section 309A—

''(A) $29,000,000 for fiscal year 2006;

''(B) $30,000,000 for fiscal year 2007;

''(C) $31,000,000 for fiscal year 2008;

''(D) $32,000,000 for fiscal year 2009; and

''(E) $32,000,000 for fiscal year 2010.

of which $10,000,000, or 35 percent, whichever is less, shall be for purposes set forth in section 309A(a)(5);

''(3) for grants under section 315—

''(A) $18,000,000 for fiscal year 2006;

''(B) $19,000,000 for fiscal year 2007;

''(C) $20,000,000 for fiscal year 2008;

''(D) $21,000,000 for fiscal year 2009; and

''(E) $22,000,000 for fiscal year 2010.

''(4) for grants to fund construction projects at estuarine reserves designated under section 315, $15,000,000 for each of fiscal years 2006, 2007, 2008, 2009, and 2010; and

''(5) for costs associated with administering this title, $7,000,000 for fiscal year 2006 and such sums as are necessary for fiscal years 2007–2010.'';

(2) by striking ''306 or 309.'' in subsection (b) and inserting ''306.'';

(3) by striking ''during the fiscal year, or during the second fiscal year after the fiscal year, for which'' in subsection (c) and inserting ''within 3 years from when'';

(4) by striking ''under the section for such reverted amount was originally made available.'' in subsection (c) and inserting ''to states under this Act.''; and

(5) by adding at the end thereof the following:

''(d) PURCHASE OF OTHERWISE UNAVAILABLE FEDERAL PRODUCTS AND SERVICES.—Federal funds allocated under this title may be used by grantees to purchase Federal products and services not otherwise available.

''(e) RESTRICTION ON USE OF AMOUNTS FOR PROGRAM, ADMINISTRATIVE, OR OVERHEAD COSTS.—Except for funds appropriated under subsection (a)(5), amounts appropriated under this section shall be available only for grants to states and shall not be available for other program, administrative, or overhead costs of the National Oceanic and Atmospheric Administration or the Department of Commerce.''.

SEC. 18. SENSE OF CONGRESS.

It is the sense of Congress that the Undersecretary for Oceans and Atmosphere should re-evaluate the calculation of shoreline mileage used in the distribution of funding under the Coastal Zone Management Program to ensure equitable treatment of all regions of the coastal zone, including the Southeastern States and the Great Lakes States.

By Ms. SNOWE (for herself, Mr. KERRY, Mr. STEVENS, Mr. INOUYE, and Ms. COLLINS):

S. 361. A bill to develop and maintain an integrated system of ocean and coastal observations for the Nation's coasts, oceans and Great Lakes, improve warnings of tsunamis and other natural hazards, enhance homeland security, support maritime operations, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Ms. SNOWE. Mr. President, I rise today to introduce the Ocean and Coastal Observation Systems Act of 2005, a bill that would forever change our understanding of the marine environment.

As our Nation saw with the devastating Indian Ocean tsunami only weeks ago, the oceans are alive and ever-changing. While our Nation's coast escaped the direct reach of this recent tragedy, it reminds us that those who live near or along our Nation's 95,000-plus miles of shoreline need to be able to monitor a range of ocean conditions and quickly assess ocean-based threats, including tsunamis, hurricanes, harmful algal blooms, and pollution. The purpose of this bill is to fulfil these needs for ocean and coastal observation and warning systems surrounding the United States.

This bi-partisan, science-based bill would authorize the National Oceanic and Atmospheric Administration, or NOAA, to establish and maintain an integrated network of ocean observing and communication systems around our Nation's coastlines. This system would collect instantaneous data and information on ocean conditions—such as temperature, wave height, wind speed, currents, dissolved oxygen, salinity, contaminants, and other variables—that are essential to marine science and resource management as well as maritime transportation, safety, and commerce.

As Chair of the Fisheries and Coast Guard Subcommittee of the Commerce, Science, and Transportation Committee, and as a representative of a state with more than 5,000 miles of shoreline, I want to ensure that the citizens of Maine, and all coastal states, have the tools they need to monitor and assess what is happening off their shores. The State of Maine has a strong and proud history rooted in our connection to the sea, as do other coastal states, and our coastal communities are highly dependent on the fisheries resources, coastal habitats, tourist destinations, safe harbors, and other essential services connected to the sea. The people of this country's livelihoods are directly linked to how well we understand and adapt to changing ocean conditions.

Our ability to understand ocean dynamics took a great leap forward in 2001, when marine scientists and educators launched an innovative partnership known as the Gulf of Maine Ocean Observing System, or GoMOOS, to start gathering a range of ocean data on a large regional scale. This prototype system, which started with ten observation buoys, has transformed how we observe and track ocean conditions over time. The GoMOOS system takes ocean and surface condition measurements on an hourly basis through a network of linked buoys, and these real-time measurements can be monitored and accessed by the public via the GoMOOS Web site. The unprecedented geographical range and frequency of measurements revolutionized our knowledge about the Gulf of Maine, and GoMOOS continues to provide a tremendous public service for New England.

Of course, the need to access this type of ocean information is not limited to the Gulf of Maine. Similar observing systems are planned or developed in other coastal regions, many in conjunction with NOAA, universities, and State agencies. Data from these independent regional systems, however, are often incompatible with data from other regions, making it difficult to compile, manage, process, and communicate data across networks. As a result, there is a possibility that these systems would be unable to link their data and develop a comprehensive picture of coastal and ocean conditions around the Nation.

The Ocean and Coastal Observation Systems Act of 2005 seeks to rectify this situation by integrating ocean and coastal observation efforts in cooperation with NOAA. This Act would encourage further development of the regional systems, enable their data to be linked through a national network, provide information that anyone could access, and facilitate timely public warnings of hazardous ocean conditions. It would authorize the National Ocean Research Leadership Council to have general oversight for research and

development of this national undertaking. This Council would establish an interagency program office that would plan and coordinate operational activities and budgets, and NOAA would be the lead Federal agency charged with ensuring that this national network of regional observation associations, such as GoMOOS and others under development, effectively integrates and utilizes ocean data for the benefit of the American public.

As the U.S. Ocean Commission made clear in its final report issued in September 2004, ocean and coastal observations are a cornerstone of sound marine science, management, and commerce, and the potential uses of this system are nearly unlimited. For example, fisheries scientists and managers can use ocean data to better predict ocean productivity and use this information to facilitate ecosystem management. Fishermen, sailors, shippers, Coast Guard search-and-rescue units, and other seafarers can better monitor sea conditions to more safely navigate rough seas. Ocean scientists and regulators can better predict and respond to marine pollution, harmful algal bloom outbreaks, or other hazardous conditions and issue prompt alerts to potentially vulnerable communities. Clearly, anyone who uses and depends upon the ocean stands to benefit from this integrated system.

I am very proud to introduce this bill, and I would like to thank my cosponsors, Senators KERRY, STEVENS, and INOUYE, for contributing to this legislation and supporting this national initiative. Of course, our current and expanding ocean observation and communication system would not be possible without the work of dedicated professionals in the ocean and coastal science, management, and research communities—they have taken the initiative to develop the grassroots regional observation systems as well as contribute to this legislation. Thanks to their ongoing efforts, ocean observations will continue to provide a tremendous service to the American ocean-dependent public.

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. 361

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 ''Ocean and Coastal Observation System Act of 2005''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) Ocean and coastal observations provide vital information for protecting human lives and property from marine hazards, enhancing national and homeland security, predicting weather and global climate change, improving ocean health and providing for the protection, sustainable use, and enjoyment of the resources of the Nation's coasts, oceans, and Great Lakes.

(2) The continuing and potentially devastating threat posed by tsunamis, hurricanes, storm surges, and other marine hazards requires immediate implementation of strengthened observation and communications systems to provide timely detection, assessment, and warnings to the millions of people living in coastal regions of the United States and throughout the world.

(3) The 95,000-mile coastline of the United States, including the Great Lakes, is vital to the Nation's prosperity, contributing over $117 billion to the national economy in 2000, supporting jobs for more than 200 million Americans, handling $700 billion in waterborne commerce, and supporting commercial and sport fisheries valued at more than $50 billion annually.

(4) Safeguarding homeland security, conducting search and rescue operations, responding to natural and man-made coastal hazards such as oil spills and harmful algal blooms, and managing fisheries and other coastal activities require improved monitoring of the Nation's waters and coastline, including the ability to track vessels and to provide rapid response teams with real-time environmental conditions necessary for their work.

(5) While knowledge of the ocean and coastal environment and processes is far from complete, advances in sensing technologies and scientific understanding have made possible long-term and continuous observation from shore, from space, and in situ of ocean and coastal characteristics and conditions.

(6) Many elements of a ocean and coastal observing system are in place, but require national investment, consolidation, completion, and integration at Federal, regional, State, and local levels.

(7) The Commission on Ocean Policy recommends a national commitment to a sustained and integrated ocean and coastal observing system and to coordinated research programs in order to assist the Nation and the world in understanding the oceans and the global climate system, enhancing homeland security, improving weather and climate forecasts, strengthening management of ocean and coastal resources, improving the safety and efficiency of maritime operations, and mitigating marine hazards.

(8) In 2003, the United States led more than 50 nations in affirming the vital importance of timely, quality, long-term global observations as a basis for sound decision-making, recognizing the contribution of observation systems to meet national, regional, and global needs, and calling for strengthened cooperation and coordination in establishing a Global Earth Observation System of Systems, of which an integrated ocean and coastal observing system is an essential part.

(b) PURPOSES.—The purposes of this Act are to provide for—

(1) the development and maintenance of an integrated ocean and coastal observing system that provides the data and information to ensure national security and public safety, support economic development, sustain and restore healthy marine ecosystems and the resources they support, enable advances in scientific understanding of the oceans, and strengthen science education and communication;

(2) implementation of research and development and education programs to improve understanding of the oceans and Great Lakes and achieve the full national benefits of an integrated ocean and coastal observing system;

(3) implementation of a data and information management system required by all components of an integrated ocean and coastal observing system and related research to develop early warning systems; and

(4) establishment of a system of regional ocean and coastal observing systems to address local needs for ocean information.

SEC. 3. DEFINITIONS.

In this Act:

(1) COUNCIL.—The term ''Council'' means the National Ocean Research Leadership Council established under section 7902(a) of title 10, United States Code.

(2) OBSERVING SYSTEM.—The term ''observing system'' means the integrated coastal, ocean and Great Lakes observing system to be established by the Committee under section 4(a).

(3) NATIONAL OCEANOGRAPHIC PARTNERSHIP PROGRAM.—The term ''National Oceanographic Partnership Program'' means the program established under section 7901 of title 10, United States Code.

(4) INTERAGENCY PROGRAM OFFICE.—The term ''interagency program office'' means the office established under section 4(d).

SEC. 4. INTEGRATED OCEAN AND COASTAL OBSERVING SYSTEM.

(a) ESTABLISHMENT.—The President, acting through the Council, shall establish and maintain an integrated system of ocean and coastal observations, data communication and management, analysis, modeling, research, and education designed to provide data and information for the timely detection and prediction of changes occurring in the ocean and coastal environment that impact the Nation's social, economic, and ecological systems. The observing system shall provide for long-term, continuous and quality-controlled observations of the coasts, oceans, and Great Lakes for the following purposes:

(1) Improving the health of the Nation's coasts, oceans, and Great Lakes.

(2) Protecting human lives and livelihoods from hazards such as tsunamis, hurricanes, coastal erosion, and fluctuating Great Lakes water levels.

(3) Supporting national defense and homeland security efforts.

(4) Understanding the effects of human activities and natural variability on the state of the coasts and oceans and the Nation's socioeconomic well-being.

(5) Measuring, explaining, and predicting environmental changes.

(6) Providing for the sustainable use, protection, and enjoyment of ocean and coastal resources.

(7) Providing a scientific basis for implementation and refinement of ecosystem-based management.

(8) Educating the public about the role and importance of the oceans and Great Lakes in daily life.

(9) Tracking and understanding climate change and the ocean and Great Lakes' roles in it.

(10) Supplying critical information to marine-related businesses such as marine transportation, aquaculture, fisheries, and offshore energy production.

(11) Supporting research and development to ensure continuous improvement to ocean and coastal observation measurements and to enhance understanding of the Nation's ocean and coastal resources.

(b) SYSTEM ELEMENTS.—In order to fulfill the purposes of this Act, the observing system shall consist of the following program elements:

(1) A national program to fulfill national observation priorities, including the Nation's ocean contribution to the Global Earth Observation System of Systems and the Global Ocean Observing System.

(2) A network of regional associations to manage the regional ocean and coastal observing and information programs that collect, measure, and disseminate data and information products to meet regional needs.

(3) A data management and communication system for the timely integration and dissemination of data and information products from the national and regional systems.

(4) A research and development program conducted under the guidance of the Council.

(5) An outreach, education, and training program that augments existing programs, such as the National Sea Grant College Program and the Centers for Ocean Sciences Education Excellence program, to ensure the use of the data and information for improving public education and awareness of the Nation's oceans and building the technical expertise required to operate and improve the observing system.

(c) COUNCIL FUNCTIONS.—In carrying out responsibilities under this section, the Council shall—

(1) serve as the oversight body for the design and implementation of all aspects of the observing system;

(2) adopt plans, budgets, and standards that are developed and maintained by the interagency program office in consultation with the regional associations;

(3) coordinate the observing system with other earth observing activities including the Global Ocean Observing System and the Global Earth Observing System of Systems;

(4) coordinate and administer programs of research and development and education to support improvements to and the operation of an integrated ocean and coastal observing system and to advance the understanding of the oceans;

(5) establish pilot projects to develop technology and methods for advancing the development of the observing system;

(6) support the development of institutional mechanisms to further the goals of the program and provide for the capitalization of the required infrastructure;

(7) provide, as appropriate, support for and representation on United States delegations to international meetings on ocean and coastal observing programs, including those under the jurisdiction of the International Joint Commission involving Canadian waters; and

(8) in consultation with the Secretary of State, coordinate relevant Federal activities with those of other nations.

(d) INTERAGENCY PROGRAM OFFICE.—The Council shall establish an interagency program office to be known as ''OceanUS''. The interagency program office shall be responsible for program planning and coordination of the observing system. The interagency program office shall—

(1) prepare annual and long-term plans for consideration by the Council for the design and implementation of the observing system that promote collaboration among Federal agencies and regional associations in developing the global and national observing systems, including identification and refinement of a core set of variables to be measured by all systems;

(2) coordinate the development of agency priorities and budgets for implementation of the observing system, including budgets for the regional associations;

(3) establish and refine standards and protocols for data management and communications, including quality standards, in consultation with participating Federal agencies and regional associations;

(4) develop a process for the certification of the regional associations and their periodic review and recertification; and

(5) establish an external technical committee to provide biennial review of the observing system.

(e) LEAD FEDERAL AGENCY.—The National Oceanic and Atmospheric Administration shall be the lead Federal agency for implementation and operation of the observing system. Based on the plans prepared by the interagency program office and adopted by the Council, the Administrator of the National Oceanic and Atmospheric Administration shall—

(1) coordinate implementation, operation and improvement of the observing system;

(2) establish efficient and effective administrative procedures for allocation of funds among Federal agencies and regional associations in a timely manner and according to the budget adopted by the Council;

(3) implement and maintain appropriate elements of the observing system;

(4) provide for the migration of scientific and technological advances from research and development to operational deployment;

(5) integrate and extend existing programs and pilot projects into the operational observation system; and

(6) certify regional associations that meet the requirements of subsection (f).

(f) REGIONAL ASSOCIATIONS OF OCEAN AND COASTAL OBSERVING SYSTEMS.—The Administrator of the National Oceanic and Atmospheric Administration may certify one or more regional associations to be responsible for the development and operation of regional ocean and coastal observing systems to meet the information needs of user groups in the region while adhering to national standards. To be certifiable by the Administrator, a regional association shall—

(1) demonstrate an organizational structure capable of supporting and integrating all aspects of ocean and coastal observing and information programs within a region;

(2) operate under a strategic operations and business plan that details the operation and support of regional ocean and coastal observing systems pursuant to the standards established by the Council;

(3) provide information products for multiple users in the region;

(4) work with governmental entities and programs at all levels within the region to provide timely warnings and outreach and education to protect the public; and

(5) meet certification standards developed by the interagency program office in conjunction with the regional associations and approved by the Council.

(g) CIVIL LIABILITY.—For purposes of section 1346(b)(1) and chapter 171 of title 28, United States Code, the Suits in Admiralty Act (46 U.S.C. App. 741 et seq.), and the Public Vessels Act (46 U.S.C. App. 781 et seq.), any regional ocean and coastal observing system that is a designated part of a regional association certified under this section shall, in carrying out the purposes of this Act, be deemed to be part of the National Oceanic and Atmospheric Administration, and any employee of such system, while acting within the scope of his or her employment in carrying out such purposes, shall be deemed to be an employee of the Government.

SEC. 5. RESEARCH AND DEVELOPMENT AND EDUCATION.

The Council shall establish programs for research and development and education for the ocean and coastal observing system, including projects under the National Oceanographic Partnership Program, consisting of the following:

(1) Basic research to advance knowledge of ocean and coastal systems and ensure continued improvement of operational products, including related infrastructure and observing technology.

(2) Focused research projects to improve understanding of the relationship between the coasts and oceans and human activities.

(3) Large scale computing resources and research to advance modeling of ocean and coastal processes.

(4) A coordinated effort to build public education and awareness of the ocean and coastal environment and functions that integrates ongoing activities such as the National Sea Grant College Program and the Centers for Ocean Sciences Education Excellence.

SEC. 6. INTERAGENCY FINANCING.

The departments and agencies represented on the Council are authorized to participate in interagency financing and share, transfer, receive, obligate, and expend funds appropriated to any member of the Council for the purposes of carrying out any administrative or programmatic project or activity under this Act or under the National Oceanographic Partnership Program, including support for the interagency program office, a common infrastructure, and system integration for a ocean and coastal observing system. Funds may be transferred among such departments and agencies through an appropriate instrument that specifies the goods, services, or space being acquired from another Council member and the costs of the same.

SEC. 7. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the National Oceanic and Atmospheric Administration for the implementation of an integrated ocean and coastal observing system under section 4, and the research and development program under section 5, including financial assistance to the interagency program office, the regional associations for the implementation of regional ocean and coastal observing systems, and the departments and agencies represented on the Council, such sums as may be necessary for each of fiscal years 2006 through 2010. At least 50 percent of the sums appropriated for the implementation of the integrated ocean and coastal observing system under section 4 shall be allocated to the regional associations certified under section 4(f) for implementation of regional ocean and coastal observing systems. Sums appropriated pursuant to this section shall remain available until expended.

SEC. 8. REPORTING REQUIREMENT.

Not later than March 31, 2010, the President, acting through the Council, shall transmit to Congress a report on the programs established under sections 4 and 5. The report shall include a description of activities carried out under the programs, an evaluation of the effectiveness of the programs, and recommendations concerning reauthorization of the programs and funding levels for the programs in succeeding fiscal years.

By Mr. INOUYE (for himself, Mr. STEVENS, Ms. CANTWELL, Ms. SNOWE, Mr. KERRY, and Mr. LAUTENBERG):

S. 362. A bill to establish a program within the National Oceanic and Atmospheric Administration and the United States Coast Guard to help identify, determine sources of, assess, reduce, and prevent marine debris and its adverse impacts on the marine environment and navigation safety, in coordination with non-Federal entities, and for other purposes; to the Committee on Commerce, Science, and Transportation.

RESEARCH AND REDUCTION ACT

Mr. INOUYE. Mr. President, today I am introducing the Marine Debris Research and Reduction Act. From the shore, our oceans seem vast and limitless, but I fear that we often overlook the impacts our actions have on the sea and its resources. The Act that I am introducing today with my friends and colleagues, Senators STEVENS, CANTWELL, SNOWE, KERRY, and LAUTENBERG, focuses on one particular impact that goes unnoticed by many: marine debris. I am proud to say that the Senate unanimously passed this bill in the 108th Congress, and we look for swift action on this legislation again this year.

In a high-tech era of radiation, carcinogenic chemicals, and human-induced climate change, the problem of the trash produced by ocean-going vessels or litter swept out to sea must seem old-fashioned by comparison. Sea garbage would seem to be a simple issue that surely cannot rise to the priority level of the stresses our 21st century civilization places on the natural environment.

Regrettably, that perception is wrong. While marine debris includes conventional ''trash,'' it also includes a vast array of additional materials. It is discarded or lost fishing gear. It is cargo washed overboard. It is abandoned equipment from our commercial fleets. Nor does the ''low-tech'' nature of solid refuse diminish its deadly impact on the creatures of the sea. Whether an animal dies from a immune system weakened by toxic chemicals, or drowns entangled in a discarded fishing net, the result is the same—and in many cases, preventable.

Global warming, disease, and toxic contamination of our seas has already stressed these fragile ecosystems. These threats have been described in last year's Final Report of the U.S. Commission on Ocean Policy, which also dedicated an entire chapter to the threats posed by marine debris. The bill we introduce today adopts the measures recommended by the Commission to help remove man-made marine debris from the list of ocean threats. It also follows the recommendations of the International Marine Debris Conference held in my home State of Hawaii in 2000.

The bill establishes a Marine Debris Prevention and Removal Program within the National Oceanic and Atmospheric Administration, NOAA, directs the U.S. Coast Guard to improve enforcement of laws designed to prevent ship-based pollution from plastics and other garbage, reinvigorates an interagency committee on marine debris, and improves our research and information on marine debris sources, threats, and prevention.

In Hawaii, we are able to see the impacts of marine debris more clearly than most because of the convergence caused by the North Pacific Tropical High. Atmospheric forces cause ocean surface currents to converge on Hawaii, bringing with them the vast amount of debris floating throughout the Pacific. Since 1996, a total of 484 tons of debris have been removed from coral reefs in the Northwestern Hawaiian Islands, which is also home to many endangered marine species. But the job is not done, because more arrives daily. In 2004 alone, the program removed over 125 tons of debris.

I am pleased that the coordinated approach taken to address the threats posed by marine debris in the Northwestern Hawaiian Islands has provided a model for the nation. NOAA's Pacific Islands Region Fisheries Science Center is leading this interagency partnership, which also includes the U.S. Fish and Wildlife Service, Hawaii's business and university communities, and conservation groups. Not only have we removed debris that poses harm to endangered species, but with the help of donated services, we have recycled the abandoned nets into energy to power residential homes.

We have learned that our best path to success lies in partnering with one another to share resources, and it is my hope that others may adapt our project to their own shores through the partnership and funding opportunities set forth in this bill. This is why the bill strengthens and reestablishes an Interagency Committee on Marine Debris to coordinate marine debris prevention and removal efforts among federal agencies state governments, universities, and nongovernmental organizations.

We must also bear in mind that no matter how zealously we reform our practices, the ultimate solution lies in international cooperation. The oceans connect the coastal nations of the world, and we must work together to reduce this increasing threat to our seas and shores. The Marine Debris Research and Reduction Act will provide he United States with the tools to develop effective marine debris prevention and removal programs on a worldwide basis, including reporting and information requirements that will assist in the creation of an international marine debris database.

Mr. President, I hope you will join me in supporting enactment of the Marine Debris Research and Reduction Act. This bill will provide the United States with the programs and resources necessary to protect our most valuable resources, our oceans. I ask unanimous consent that the full 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. 362

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 ''Marine Debris Research Prevention and Reduction Act''.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress makes the following findings:

(1) The oceans, which comprise nearly three quarters of the Earth's surface, are an important source of food and provide a wealth of other natural products that are important to the economy of the United States and the world.

(2) Ocean and coastal areas are regions of remarkably high biological productivity, are of considerable importance for a variety of recreational and commercial activities, and provide a vital means of transportation.

(3) Ocean and coastal resources are limited and susceptible to change as a direct and indirect result of human activities, and such changes can impact the ability of the ocean to provide the benefits upon which the Nation depends.

(4) Marine debris, including plastics, derelict fishing gear, and a wide variety of other objects, has a harmful and persistent effect on marine flora and fauna and can have adverse impacts on human health.

(5) Marine debris is also a hazard to navigation, putting mariners and rescuers, their vessels, and consequently the marine environment at risk, and can cause economic loss due to entanglement of vessel systems.

(6) Modern plastic materials persist for decades in the marine environment and therefore pose the greatest potential for long-term damage to the marine environment.

(7) Insufficient knowledge and data on the source, movement, and effects of plastics and other marine debris in marine ecosystems has hampered efforts to develop effective approaches for addressing marine debris.

(8) Lack of resources, inadequate attention to this issue, and poor coordination at the Federal level has undermined the development and implementation of a Federal program to address marine debris, both domestically and internationally.

(b) PURPOSES.—The purposes of this Act are—

(1) to establish programs within the National Oceanic and Atmospheric Administration and the United States Coast Guard to help identify, determine sources of, assess, reduce, and prevent marine debris and its adverse impacts on the marine environment and navigation safety, in coordination with other Federal and non-Federal entities;

(2) to re-establish the Inter-agency Marine Debris Coordinating Committee to ensure a coordinated government response across Federal agencies;

(3) to develop a Federal information clearinghouse to enable researchers to study the sources, scale and impact of marine debris more efficiently; and

(4) to take appropriate action in the international community to prevent marine debris and reduce concentrations of existing debris on a global scale.

SEC. 3. NOAA MARINE DEBRIS PREVENTION AND REMOVAL PROGRAM.

(a) ESTABLISHMENT OF PROGRAM.—There is established, within the National Oceanic and Atmospheric Administration, a Marine Debris Prevention and Removal Program to reduce and prevent the occurrence and adverse impacts of marine debris on the marine environment and navigation safety.

(b) PROGRAM COMPONENTS.—Through the Marine Debris Prevention and Removal Program, the Administrator shall carry out the following activities:

(1) MAPPING, IDENTIFICATION, IMPACT ASSESSMENT, REMOVAL, AND PREVENTION.—The Administrator shall, in consultation with relevant Federal agencies, undertake marine debris mapping, identification, impact assessment, prevention, and removal efforts, with a focus on marine debris posing a threat to living marine resources (particularly endangered or protected species) and navigation safety, including—

(A) the establishment of a process, building on existing information sources maintained by Federal agencies such as the Environmental Protection Agency and the Coast Guard, for cataloguing and maintaining an inventory of marine debris and its impacts found in the United States navigable waters and the United States exclusive economic zone, including location, material, size, age, and origin, and impacts on habitat, living marine resources, human health, and navigation safety;

(B) measures to identify the origin, location, and projected movement of marine debris within the United States navigable waters, the United States exclusive economic zone, and the high seas, including the use of oceanographic, atmospheric, satellite, and remote sensing data; and

(C) development and implementation of strategies, methods, priorities, and a plan for preventing and removing marine debris from United States navigable waters and within the United States exclusive economic zone, including development of local or regional protocols for removal of derelict fishing gear.

(2) REDUCING AND PREVENTING LOSS OF GEAR.—The Administrator shall improve efforts and actively seek to prevent and reduce fishing gear losses, as well as to reduce adverse impacts of such gear on living marine resources and navigation safety, including—

(A) research and development of alternatives to gear posing threats to the marine environment, and methods for marking gear used in specific fisheries to enhance the tracking, recovery, and identification of lost and discarded gear; and

(B) development of voluntary or mandatory measures to reduce the loss and discard of fishing gear, and to aid its recovery, such as incentive programs, reporting loss and recovery of gear, observer programs, toll-free reporting hotlines, computer-based notification forms, and providing adequate and free disposal recepticals at ports.

(3) OUTREACH.—The Administrator shall undertake outreach and education of the public and other stakeholders, such as the fishing industry, fishing gear manufacturers, and other marine-dependent industries, on sources of marine debris, threats associated with marine debris and approaches to identify, determine sources of, assess, reduce, and prevent marine debris and its adverse impacts on the marine environment and navigational safety. Including outreach and education activities through public-private initiatives. The Administrator shall coordinate outreach and education activities under this paragraph with any outreach programs conducted under section 2204 of the Marine Plastic Pollution Research and Control Act of 1987 (33 U.S.C. 1915).

(c) GRANTS.—

(1) IN GENERAL.—The Administrator shall provide financial assistance, in the form of grants, through the Marine Debris Prevention and Removal Program for projects to accomplish the purposes of this Act.

(2) 50 PERCENT MATCHING REQUIREMENT.—

(A) IN GENERAL.—Except as provided in subparagraph (B), Federal funds for any project under this section may not exceed 50 percent of the total cost of such project. For purposes of this subparagraph, the non-Federal share of project costs may be provided by in-kind contributions and other noncash support.

(B) WAIVER.—The Administrator may waive all or part of the matching requirement under subparagraph (A) if the Administrator determines that no reasonable means are available through which applicants can meet the matching requirement and the probable benefit of such project outweighs the public interest in such matching requirement.

(3) AMOUNTS PAID AND SERVICES RENDERED UNDER CONSENT.—

(A) CONSENT DECREES AND ORDERS.—The non-Federal share of the cost of a project carried out under this Act may include money paid pursuant to, or the value of any in-kind service performed under, an administrative order on consent or judicial consent decree that will remove or prevent marine debris.

(B) OTHER DECREES AND ORDERS.—The non-Federal share of the cost of a project carried out under this Act may not include any money paid pursuant to, or the value of any in-kind service performed under, any other administrative order or court order.

(4) ELIGIBILITY.—Any natural resource management authority of a State, Federal or other government authority whose activities directly or indirectly affect research or regulation of marine debris, and any educational or nongovernmental institutions with demonstrated expertise in a field related to marine debris, are eligible to submit to the Administrator a marine debris proposal under the grant program.

(5) GRANT CRITERIA AND GUIDELINES.—Within 180 days after the date of enactment of this Act, the Administrator shall promulgate necessary guidelines for implementation of the grant program, including development of criteria and priorities for grants. Such priorities may include proposals that would reduce new sources of marine debris and provide additional benefits to the public, such as recycling of marine debris or use of biodegradable materials. In developing those guidelines, the Administrator shall consult with—

(A) the Interagency Marine Debris Committee;

(B) regional fishery management councils established under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.);

(C) State, regional, and local governmental entities with marine debris experience;

(D) marine-dependent industries; and

(E) non-governmental organizations involved in marine debris research, prevention, or removal activities.

(6) PROJECT REVIEW AND APPROVAL.—The Administrator shall review each marine debris project proposal to determine if it meets the grant criteria and supports the goals of the Act. Not later than 120 days after receiving a project proposal under this section, the Administrator shall—

(A) provide for external merit-based peer review of the proposal;

(B) after considering any written comments and recommendations based on the review, approve or disapprove the proposal; and

(C) provide written notification of that approval or disapproval to the person who submitted the proposal.

(7) PROJECT REPORTING.—Each grantee under this section shall provide periodic reports as required by the Administrator. Each report shall include all information required by the Administrator for evaluating the progress and success in meeting its stated goals, and impact on the marine debris problem.

SEC. 4. COAST GUARD PROGRAM.

The Commandant of the Coast Guard shall, in cooperation with the Administrator, undertake measures to reduce violations of MARPOL Annex V and the Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.) with respect to the discard of plastics and other garbage from vessels. The measures shall include—

(1) the development of a strategy to improve monitoring and enforcement of current laws, as well as recommendations for statutory or regulatory changes to improve compliance and for the development of any appropriate amendments to MARPOL;

(2) regulations to address implementation gaps with respect to the requirement of MARPOL Annex V and section 6 of the Act to Prevent Pollution from Ships (33 U.S.C. 1905) that all United States ports and terminals maintain receptacles for disposing of plastics and other garbage, which may include measures to ensure that a sufficient quantity of such facilities exist at all such ports and terminals, requirements for logging the waste received, and for Coast Guard comparison of vessel and port log books to determine compliance;

(3) regulations to close record keeping gaps, which may include requiring fishing vessels under 400 gross tons entering United States ports to maintain records subject to Coast Guard inspection on the disposal of plastics and other garbage, that, at a minimum, include the time, date, type of garbage, quantity, and location of discharge by latitude and longitude or, if discharged on land, the name of the port where such material is offloaded for disposal;

(4) regulations to improve ship-board waste management, which may include expanding to smaller vessels existing requirements to maintain ship-board receptacles and maintain a ship-board waste management plan, taking into account potential economic impacts and technical feasibility;

(5) the development, through outreach to commercial vessel operators and recreational boaters, of a voluntary reporting program, along with the establishment of a central reporting location, for incidents of damage to vessels caused by marine debris, as well as observed violations of existing laws and regulations relating to disposal of plastics and other marine debris; and

(6) a voluntary program encouraging United States flag vessels to inform the Coast Guard of any ports in other countries that lack adequate port reception facilities for garbage.

SEC. 5. INTERAGENCY COORDINATION.

(a) INTERAGENCY MARINE DEBRIS COMMITTEE ESTABLISHED.—There is established an Interagency Committee on Marine Debris to coordinate a comprehensive program of marine debris research and activities among Federal agencies, in cooperation and coordination with non-governmental organizations, industry, universities, and research institutions, State governments, Indian tribes, and other nations, as appropriate, and to foster cost-effective mechanisms to identify, determine sources of, assess, reduce, and prevent marine debris, and its adverse inpact on the marine environment and navigational safety, including the joint funding of research and mitigation and prevention strategies.

(b) MEMBERSHIP.—The Committee shall include a senior official from—

(1) the National Oceanic and Atmospheric Administration, who shall serve as the chairperson of the Committee;

(2) the United States Coast Guard;

(3) the Environmental Protection Agency;

(4) the United States Navy;

(5) the Maritime Administration of the Department of Transportation;

(6) the National Aeronautics and Space Administration;

(7) the U.S. Fish and Wildlife Service;

(8) the Department of State;

(9) the Marine Mammal Commission; and

(10) such other Federal agencies that have an interest in ocean issues or water pollution prevention and control as the Administrator determines appropriate.

(c) MEETINGS.—The Committee shall meet at least twice a year to provide a public,

interagency forum to ensure the coordination of national and international research, monitoring, education, and regulatory actions addressing the persistent marine debris problem.

(d) DEFINITION.—The Committee shall develop and promulgate through regulation a definition of the term ''marine debris''.

(e) REPORTING.—

(1) INTERAGENCY REPORT ON MARINE DEBRIS IMPACTS AND STRATEGIES.—Not later than 12 months after the date of the enactment of this Act, the Committee, through the chairperson, and in cooperation with the coastal States, Indian tribes, local governments, and non-governmental organizations, shall complete and submit to the Congress a report identifying the source of marine debris, examining the ecological and economic impact of marine debris, alternatives for reducing, mitigating, preventing, and controlling the harmful affects of marine debris, the social and economic costs and benefits of such alternatives, and recommendations regarding both domestic and international marine debris issues.

(2) CONTENTS.—The report submitted under paragraph (1) shall provide recommendations on—

(A) establishing priority areas for action to address leading problems relating to marine debris;

(B) developing an effective strategy and approaches to preventing, reducing, removing, and disposing of marine debris, including through private-public partnerships;

(C) providing appropriate infrastructure for effective implementation and enforcement of measures to prevent and remove marine debris, especially the discard and loss of fishing gear;

(D) establishing effective and coordinated education and outreach activities; and

(E) ensuring Federal cooperation with, and assistance to, the coastal States (as defined in section 304(4) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453(4))), Indian tribes, and local governments in the identification, determination of sources, prevention, reduction, management, mitigation, and control of marine debris and its adverse impacts.

(3) ANNUAL PROGRESS REPORTS.—Not later than 2 years after the date of the enactment of this Act, and every year thereafter, the Committee, through the chairperson, shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives a report that evaluates United States and international progress in meeting the purposes of this Act. The report shall include—

(A) the status of implementation of the recommendations of the Committee and analysis of their effectiveness;

(B) a summary of the marine debris inventory to be maintained by the National Oceanic and Atmospheric Administration;

(C) a review of the National Oceanic and Atmospheric Administration program authorized by section 3 of this Act, including projects funded and accomplishments relating to reduction and prevention of marine debris;

(D) a review of United States Coast Guard programs and accomplishments relating to marine debris removal, including enforcement and compliance with MARPOL requirements; and

(E) estimated Federal and non-Federal funding provided for marine debris and recommendations for priority funding needs.

(f) MONITORING.—The Administrator, in cooperation with the Administrator of the Environmental Protection Agecny, shall utilize the marine debris data derived under this Act and title V of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 2801 et seq.) to assist—

(1) the Committee in ensuring coordination of research, monitoring, education, and regulatory actions; and

(2) the United States Coast Guard in assessing the effectiveness of this Act and the Act to Prevent Pollution from Ships (33 U.S.C. 1901 et seq.) in ensuring compliance under section 2201 of the Marine Plastic Pollution Research and Control Act of 1987 (33 U.S.C. 1913).

(g) CONFORMING AMENDMENT.—Section 2203 of the Marine Plastic Pollution Research and Control Act of 1987 (33 U.S.C. 1914) is repealed.

SEC. 6. INTERNATIONAL COOPERATION.

The Interagency Marine Debris Committee shall develop a strategy and pursue in the International Maritime Organization and other appropriate international and regional forums, international action to reduce the incidence of marine debris, including—

(1) the inclusion of effective and enforceable marine debris prevention and removal measures in international and regional agreements, including fisheries agreements and maritime agreements;

(2) measures to strengthen and to improve compliance with MARPOL Annex V;

(3) national reporting and information requirements that will assist in improving information collection, identification and monitoring of marine debris;

(4) the establishment of an international database, consistent with the information clearinghouse established under section 7, that will provide current information on location, source, prevention, and removal of marine debris;

(5) the establishment of public-private partnerships and funding sources for pilot programs that will assist in implementation and compliance with marine debris requirements in international agreements and guidelines;

(6) the identification of possible amendments to and provisions in the International Maritime Organization Guidelines for the Implementation of Annex V of MARPOL for potential inclusion in Annex V; and

(7) when appropriate assist the responsible Federal agency in bilateral negotiations to effectively enforce marine debris prevention.

SEC. 7. FEDERAL INFORMATION CLEARINGHOUSE.

The Administrator, in coordination with the Committee, shall maintain a Federal information clearinghouse on marine debris that will be available to researchers and other interested parties to improve source identification, data sharing, and monitoring efforts through collaborative research and open sharing of data. The clearinghouse shall include—

(1) standardized protocols to map locations of commercial fishing and aquaculture activities using Geographic Information System techniques;

(2) a world-wide database which describes fishing gear and equipment, and fishing practices, including information on gear types and specifications;

(3) guidance on the identification of types of fishing gear fragments and their sources developed in consultation with persons of relevant expertise; and

(4) the data on mapping and identification of marine debris to be developed pursuant to section 3(b)(1) of this Act.

SEC. 8. DEFINITIONS.

In this Act:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the National Oceanic and Atmospheric Administration.

(2) COMMITTEE.—The term ''Committee'' means the Interagency Marine Debris Committee established by section 5 of this Act.

(3) UNITED STATES EXCLUSIVE ECONOMIC ZONE.—The term ''United States exclusive economic zone'' means the zone established by Presidential Proclamation Numbered 5030, dated March 10, 1983, including the ocean waters of the areas referred to as ''eastern special areas'' in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990.

(4) MARPOL; ANNEX V; CONVENTION.—The terms ''MARPOL'', ''Annex 5'', and ''Convention'' have the meaning given those terms in paragraphs (3) and (4) of section 2(a) of the Act to Prevent Pollution from Ships (33 U.S.C. 1901(a)).

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated for each fiscal year 2006 through 2010—

(1) to the Administrator for the purpose of carrying out sections 3 and 7 of this Act, $10,000,000, of which no more than 10 percent may be for administrative costs; and

(2) to the Secretary of the Department in which the Coast Guard is operating, for the use of the Commandant of the Coast Guard in carrying out sections 4 and 6 of this Act, $5,000,000, of which no more than 10 percent may be used for administrative costs.

By Mr. INOUYE (for himself, Mr. STEVENS, Mr. AKAKA, and Mr. LAUTENBERG):

S. 363. A bill to amend the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 to establish vessel ballast water management requirements, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. INOUYE. Mr. President. I rise today to introduce the Ballast Water Management Act of 2005. I am joined by my friend and colleague, Senator TED STEVENS. For some time we have recognized the impacts of land-based invasive species. In Hawaii, the impacts of such alien species on native species have been among the most significant in the country.

While not as visible, invasive species pose an equally great threat. One of the major ways that aquatic invasives make their way around the globe is through the ballast water used by vessels.

Modern maritime commerce depends on ships stabilized by the uptake and discharge of huge volumes of ocean water for ballast. Regrettably, ships do not transport such water alone—but also the plants and animals, as well as human diseases such as cholera, that it contains. An estimated 10,000 aquatic organisms travel around the globe each day in the ballast water of cargo vessels. Over 2 billion gallons of ballast water are discharged into waters of the United States each year.

From the zebra mussel fouling the facilities and shores of the Great Lakes, to the noxious algae that choke the coral reefs of Hawaii, aquatic invasive species pose a serious threat to delicate marine ecosystems and human health. The economic costs are also staggering—the direct and indirect costs of

aquatic invasive species to the economy of the United States amount to billions of dollars each year.

We must find an effective solution to this problem, while at the same time ensuring that our maritime industry can continue to operate in a cost-effective manner. We will need to rely on the steady collaborative efforts of industry, science, government, and coastal communities as we move forward.

The bill I introduce today lays the foundation for such progress. It establishes standards for ballast water treatment that will be effective but on a schedule that our maritime fleet can realistically achieve. It recognizes safety as a paramount concern, and allows flexibility in ballast exchange practices to safeguard vessels and their passengers and crew. Looking to the future, my bill will also encourage the development and adoption of new ballast water treatment technologies, as well as innovative technologies to address other vessel sources of invasives such as hull fouling, through a grant program.

The bill closely tracks and is consistent with an agreement recently negotiated in the International Maritime Organization. It would phase-in ballast water treatment requirements on the same schedule as that adopted by the IMO agreement, and require ballast water exchange to be used until treatment systems are in place. Importantly, the international agreement includes a provision assuring that parties can adopt more stringent measures than those included in the agreement. This provision was sought by the United States and is important to assure the sovereignty of nations in addressing their needs while striving for international cooperation. In light of this provision, the bill includes a standard for treatment that is more effective than that adopted by the international community to ensure that the impacts in the United States are adequately prevented.

Finally, the bill would require a report on other vessel pathways of invasive species, including hull fouling, and the development of standards to reduce the introduction of invasive species through such pathways. This issue is particularly important for Hawaii.

I hope that my colleagues will join me in supporting this bill. 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. 363

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 ''Ballast Water Management Act of 2005''.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) The introduction of aquatic invasive species into the Nation's waters is one of the most urgent issues facing the marine environment in the United States.

(2) The direct and indirect costs of aquatic invasive species to the economy of the United States amount to billions of dollars per year.

(3) Invasive species are thought to have been involved in 70 percent of the last century's extinctions of native aquatic species.

(4) Invasive aquatic species are a significant problem in all regions of the United States, including Hawaii, Alaska, San Francisco Bay, the Great Lakes, the Southeast, and the Chesapeake Bay.

(5) Ballast water from ships is one of the largest pathways for the introduction and spread of aquatic invasive species.

(6) It has been estimated that some 10,000 non-indigenous aquatic organisms travel around the globe each day in the ballast water of cargo ships.

(7) Over 2 billion gallons of ballast water are discharged in United States waters each year. Ballast water may be the source of the largest volume of foreign organisms released on a daily basis into American ecosystems.

(8) Ballast water has been found to transport not only invasive plants and animals but human diseases as well, such as cholera.

(9) Invasive species may also be introduced by other vessel conduits, including the hulls of ships.

(10) Invasive aquatic species may originate in other countries, or from distinct regions in the United States.

(11) An average of 72 percent of all fish species introduced in the Southeast have become established, many of which are native to the United States but transplanted outside their native ranges.

(12) The introduction of non-indigenous species has been closely correlated with the disappearance of indigenous species in Hawaii and other islands.

(13) Despite the efforts of more than 20 State, Federal, and private agencies, unwanted alien pests are entering Hawaii at an alarming rate——about 2 million times more rapid than the natural rate.

(14) Current Federal programs are insufficient to effectively address this growing problem.

(15) Preventing aquatic invasive species from being introduced is the most cost-effective approach for addressing this issue, because once established, they are costly and sometimes impossible to control.

SEC. 3. BALLAST WATER MANAGEMENT.

(a) IN GENERAL.—Section 1101 of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4711) is amended to read as follows:

''SEC. 1101. BALLAST WATER MANAGEMENT.

''(a) VESSELS TO WHICH SECTION APPLIES.—

''(1) IN GENERAL.—This section applies to a vessel that is designed or constructed to carry ballast water; and

''(A) is a vessel of the United States (as defined in section 2101(46) of title 46, United States Code); or

''(B) is a foreign vessel that—

''(i) is en route to a United States port; or

''(ii) has departed from a United States port and is within the exclusive economic zone.

''(2) EXCEPTIONS.—Notwithstanding paragraph (1), this section does not apply to—

''(A) permanent ballast water in a sealed tank on a vessel that is not subject to discharge;

''(B) a vessel of the Armed Forces; or

''(C) a vessel, or category of vessels, exempted by the Secretary under paragraph (4).

''(3) STANDARDS FOR VESSELS OF THE ARMED FORCES.—With respect to a vessel of the Armed Forces that is designed or constructed to carry ballast water, the Secretary of Defense, after consultation with the Administrator of the Environmental Protection Agency and the Secretary, shall promulgate ballast water and sediment management standards for such vessels that, so far as is reasonable and practicable, achieve environmental results that are comparable to those achieved by the requirements of this section in waters subject to the jurisdiction of the United States. In promulgating those standards, the Secretary of Defense may take into account the standards promulgated for such vessels under section 312 of the Clean Water Act (33 U.S.C. 1322) to the extent that compliance with those standards would meet the requirements of this Act.

''(4) VESSEL EXEMPTIONS BY SECRETARY.—The Secretary may exempt a vessel, or category of vessels, from the application of this section if the Secretary determines, after consultation with the Administrator of the Environmental Protection Agency and the Administrator of the National Oceanic and Atmospheric Administration, that ballast water discharge from the vessel or category of vessels will not have an adverse impact (as defined in section 1003(1) of this Act), based on factors including the origin and destination of the voyages undertaken by such vessel or category of vessels.

''(5) COAST GUARD ASSESSMENT AND REPORT.—Within 180 days after the date of enactment of the Ballast Water Management Act of 2005, the Commandant of the Coast Guard shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure containing—

''(A) an assessment of the magnitude of ballast water operations from vessels designed or constructed to carry ballast water that are not described in paragraph (1) that are transiting waters subject to the jurisdiction of the United States; and

''(B) recommendations, including legislative recommendations if appropriate, of options for addressing such ballast water operations.

''(b) UPTAKE AND DISCHARGE OF BALLAST WATER AND SEDIMENT.—

''(1) PROHIBITION.—The operator of a vessel to which this section applies may not conduct the uptake or discharge of ballast water and sediment except as provided in this section.

''(2) EXCEPTIONS.—Paragraph (1) does not apply to the uptake or discharge of ballast water and sediment in the following circumstances:

''(A) The uptake or discharge is solely for the purpose of—

''(i) ensuring the safety of vessel in an emergency situation; or

''(ii) saving a life at sea.

''(B) The uptake or discharge is accidental and the result of damage to the vessel or its equipment and—

''(i) all reasonable precautions to prevent or minimize ballast water and sediment discharge have been taken before and after the damage occurs, the discovery of the damage, and the discharge; and

''(ii) the owner or officer in charge of the vessel did not willfully or recklessly cause the damage.

''(C) The uptake or discharge is solely for the purpose of avoiding or minimizing the discharge of pollution from the vessel.

''(D) The uptake and subsequent discharge on the high seas of the same ballast water and sediment.

''(E) The uptake or discharge of ballast water and sediment occurs at the same location where the whole of the ballast water and sediment that is discharged was taken up and there is no mixing with unmanaged ballast water and sediment from another area.

''(3) SPECIAL RULE FOR THE GREAT LAKES.—Paragraph (2) does not apply to a vessel subject to the regulations under subsection (e)(2) until the vessel is required to conduct ballast water treatment in accordance with subsection (f) of this section.

''(c) VESSEL BALLAST WATER MANAGEMENT PLAN.—

''(1) IN GENERAL.—A vessel to which this section applies shall conduct all its ballast water management operations in accordance with a ballast water management plan that—

''(A) meets the requirements prescribed by the Secretary by regulation; and

''(B) is approved by the Secretary.

''(2) APPROVAL CRITERIA.—The Secretary may not approve a ballast water management plan unless the Secretary determines that the plan—

''(A) describes in detail safety procedures for the vessel and crew associated with ballast water management;

''(B) describes in detail the actions to be taken to implement the ballast water management requirements established under this section;

''(C) describes in detail procedures for disposal of sediment at sea and on shore;

''(D) designates the officer on board the vessel in charge of ensuring that the plan is properly implemented;

''(E) contains the reporting requirements for vessels established under this section; and

''(F) meets all other requirements prescribed by the Secretary.

''(3) COPY OF PLAN ON BOARD VESSEL.—The owner or operator of a vessel to which this section applies shall maintain a copy of the vessel's ballast water management plan on board at all times.

''(d) VESSEL BALLAST WATER RECORD BOOK.—

''(1) IN GENERAL.—The owner or operator of a vessel to which this section applies shall maintain a ballast water record book on board the vessel in which—

''(A) each operation involving ballast water is fully recorded without delay, in accordance with regulations promulgated by the Secretary; and

''(B) each such operation is described in detail, including the location and circumstances of, and the reason for, the operation.

''(2) AVAILABILITY.—The ballast water record book—

''(A) shall be kept readily available for examination by the Secretary at all reasonable times; and

''(B) notwithstanding paragraph (1), may be kept on the towing vessel in the case of an unmanned vessel under tow.

''(3) RETENTION PERIOD.—The ballast water record book shall be retained—

''(A) on board the vessel for a period of 2 years after the date on which the last entry in the book is made; and

''(B) under the control of the vessel's owner for an additional period of 3 years.

''(4) REGULATIONS.—In the regulations prescribed under this section, the Secretary shall require, at a minimum, that—

''(A) each entry in the ballast water record book be signed and dated by the officer in charge of the ballast water operation recorded; and

''(B) each completed page in the ballast water record book be signed and dated by the master of the vessel.

''(5) ALTERNATIVE MEANS OF RECORDKEEPING.—The Secretary may provide by regulation for alternative methods of recordkeeping, including electronic recordkeeping, to comply with the requirements of this subsection.

''(e) BALLAST WATER EXCHANGE REQUIREMENTS.—

''(1) IN GENERAL.—Until a vessel conducts ballast water treatment in accordance with the requirements of subsection (f) of this section, the operator of a vessel to which this section applies may not conduct the uptake or discharge of ballast water unless the operator conducts ballast water exchange, in accordance with regulations prescribed by the Secretary, in a manner that results in an efficiency of at least 95 percent volumetric exchange of the ballast water for each ballast water tank.

''(2) SPECIAL RULE FOR VESSELS IN THE GREAT LAKES.—

''(A) IN GENERAL.—Notwithstanding any other provision of this subsection, under regulations prescribed by the Secretary to prevent the introduction and spread of aquatic nuisance species into the Great Lakes through the ballast water of vessels, operators of vessels equipped with ballast water tanks that enter a United States port on the Great Lakes after operating on the waters beyond the exclusive economic zone shall—

''(i) carry out exchange of ballast water on the waters beyond the exclusive economic zone prior to entry into any port within the Great Lakes; or

''(ii) carry out an exchange of ballast water in other waters where the exchange does not pose a threat of infestation or spread of aquatic nuisance species in the Great Lakes and other waters of the United States, as recommended by the Task Force under section 1102(a)(1).

''(B) ADDITIONAL MATTERS COVERED BY THE REGULATIONS.—The regulations shall—

''(i) not affect or supersede any requirements or prohibitions pertaining to the discharge of ballast water into waters of the United States under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);

''(ii) provide for sampling procedures to monitor compliance with the requirements of the regulations;

''(iii) prohibit the operation of a vessel in the Great Lakes if the master of the vessel has not certified to the Secretary or the Secretary's designee by not later than the departure of that vessel from the first lock in the St. Lawrence Seaway that the vessel has complied with the requirements of the regulations;

''(iv) protect the safety of—

''(I) each vessel; and

''(II) the crew and passengers of each vessel;

''(v) take into consideration different operating conditions; and

''(vi) be based on the best scientific information available.

''(C) HUDSON RIVER PORT.—The regulations under this paragraph also apply to vessels that enter a United States port on the Hudson River north of the George Washington Bridge.

''(D) EDUCATION AND TECHNICAL ASSISTANCE PROGRAMS.—The Secretary may carry out education and technical assistance programs and other measures to promote compliance with the regulations issued under this paragraph.

''(3) EXCHANGE AREAS.—

''(A) IN GENERAL.—Except as provided in subparagraphs (B), (C), and (D), the operator of a vessel to which this section applies shall conduct ballast water exchange in accordance with regulations prescribed by the Secretary—

''(i) at least 200 nautical miles from the nearest land; and

''(ii) in water at least 200 meters in depth.

''(B) MINIMUM DISTANCE AND DEPTH.—

''(i) IN GENERAL.—Except as provided in subparagraph (C), if the operator of a vessel is unable to conduct ballast water exchange in accordance with subparagraph (A), the ballast water exchange shall be conducted in water that is—

''(I) as far as possible from land;

''(II) at least 50 nautical miles from land; and

''(III) in water of at least 200 meters in depth.

''(ii) LIMITATION.—The operator of a vessel may not conduct ballast water exchange in accordance with clause (i) in any area with respect to which the Secretary has determined, after consultation with the Administrators of the Environmental Protection Agency and the National Oceanic and Atmospheric Administration, that ballast water exchange in the area will have an adverse impact, notwithstanding the fact that the area meets the distance and depth criteria of clause (i).

''(C) EXCHANGE IN DESIGNATED AREA.—

''(i) IN GENERAL.—If the operator of a vessel is unable to conduct ballast water exchange in accordance with subparagraph (B), the operator of the vessel may conduct ballast water exchange in an area that does not meet the distance and depth criteria of subparagraph (B) in such areas as may be designated by the Administrator of the National Oceanic and Atmospheric Administration, determined in consultation with the Secretary and the Administrator of the Environmental Protection Agency, for that purpose.

''(ii) CHARTING.—The Administrator of the National Oceanic and Atmospheric Administration, in consultation with the Secretary, shall designate such areas on nautical charts.

''(iii) LIMITATION.—The Administrator may not designate an area under clause (i) if a ballast water exchange in that area could have an adverse impact, as determined by the Secretary in consultation with the Administrator of the Environmental Protection Agency.

''(D) SAFETY OR STABILITY EXCEPTION.—

''(i) IN GENERAL.—Subparagraphs (A), (B), and (C) do not apply to the discharge or uptake of ballast water if the master of a vessel determines that compliance with subparagraph (A), (B), or (C), whichever applies, would threaten the safety or stability of the vessel, its crew, or its passengers because of adverse weather, ship design or stress, equipment failure, or any other relevant condition.

''(ii) NOTIFICATION REQUIRED.—Whenever the master of a vessel conducts a ballast water discharge or uptake under the exception described in clause (i), the master of the vessel shall notify the Secretary as soon as practicable thereafter but no later than 24 hours after the ballast water discharge or uptake commenced.

''(iii) LIMITATION ON VOLUME.—The volume of any ballast water taken up or discharged under the exception described in clause (i) may not exceed the volume necessary to ensure the safe operation of the vessel.

''(iv) REVIEW OF CIRCUMSTANCES.—If the master of a vessel conducts a ballast water discharge or uptake under the exception described in clause (i) on more than 2 out of 6 sequential voyages, the Secretary shall review the circumstances to determine whether those ballast water discharges or uptakes met the requirements of this subparagraph. The review under this clause shall be in addition to any other enforcement activity by the Secretary.

''(E) INABILITY TO COMPLY WITH EXCHANGE AREA REQUIREMENTS.—

''(i) DEVIATION OR DELAY OF VOYAGE.—In determining the ability of the operator of a vessel to conduct ballast water exchange in accordance with the requirements of subparagraph (A) or (B), a vessel is not required

to deviate from its intended voyage or unduly delay its voyage to comply with those requirements.

''(ii) PARTIAL COMPLIANCE.—An operator of a vessel that is unable to comply fully with the requirements of subparagraph (A) or (B), shall conduct ballast water exchange to the maximum extent feasible in compliance with those subparagraphs.

''(F) SPECIAL RULE FOR THE GREAT LAKES.—This paragraph does not apply to vessels subject to the regulations under paragraph (2).

''(f) BALLAST WATER TREATMENT REQUIREMENTS.—

''(1) IN GENERAL.—Subject to the implementation schedule in paragraph (3), before discharging ballast water in waters subject to the jurisdiction of the United States a vessel to which this section applies shall conduct ballast water treatment so that the ballast water discharged will contain—

''(A) less than 0.1 living organisms per cubic meter that are 50 or more micrometers in minimum dimension;

''(B) less than 0.1 living organisms per milliliter that are less than 50 micrometers in minimum dimension and more than 10 micrometers in minimum dimension;

''(C) concentrations of indicator microbes that are less than—

''(i) 1 colony-forming unit of Toxicogenic vibrio cholera (O1 and O139) per 100 milliliters, or less than 1 colony-forming unit of that microbe per gram of wet weight of zoological samples;

''(ii) 126 colony-forming units of escherichi coli per 100 milliliters; and

''(iii) 33 colony-forming units of intestinal enterococci per 100 milliliters; and

''(D) concentrations of such indicator microbes as may be specified in regulations promulgated by the Secretary that are less than the amount specified in those regulations.

''(2) RECEPTION FACILITY EXCEPTION.—Paragraph (1) does not apply to a vessel that discharges ballast water into a reception facility that meets standards prescribed by the Secretary, in consultation with the Administrator of the Environmental Protection Agency, for the reception of ballast water that provide for the reception of ballast water and its disposal or treatment in a way that does not impair or damage the environment, human health, property, or resources. The Secretary may not prescribe such standards that are less stringent than any otherwise applicable Federal, State, or local law requirements.

''(3) IMPLEMENTATION SCHEDULE.—Paragraph (1) applies to vessels in accordance with the following schedule:

''(A) FIRST PHASE.—Beginning January 1, 2009, for vessels constructed on or after that date with a ballast water capacity of less than 5,000 cubic meters.

''(B) SECOND PHASE.—Beginning January 1, 2012, for vessels constructed on or after that date with a ballast water capacity of 5,000 cubic meters or more.

''(C) THIRD PHASE.—Beginning January 1, 2014, for vessels constructed before January 1, 2009, with a ballast water capacity of 1,500 cubic meters or more but not more than 5,000 cubic meters.

''(D) FOURTH PHASE.—Beginning January 1, 2016, for vessels constructed—

''(i) before January 1, 2009, with a ballast water capacity of less than 1,500 cubic meters or 5,000 cubic meters or more; or

''(ii) on or after January 1, 2009, and before January 1, 2012, with a ballast water capacity of 5,000 cubic meters or more.

''(4) REVIEW OF STANDARDS.—

''(A) IN GENERAL.—In December, 2012, and in every third year thereafter, the Secretary shall review the treatment standards established in paragraph (1) of this subsection to determine, in consultation with the Administrator of the National Oceanic and Atmospheric Administration and the Administrator of the Environmental Protection Agency, if the standards should be revised to reduce the amount of organisms or microbes allowed to be discharged using the best available technology economically available. The Secretary shall revise such standards as necessary by regulation.

''(B) APPLICATION OF ADJUSTED STANDARDS.—In the regulations, the Secretary shall provide for the prospective application of the adjusted standards prescribed under this paragraph to vessels constructed after the date on which the adjusted standards apply and for an orderly phase-in of the adjusted standards to existing vessels.

''(5) DELAY OF APPLICATION FOR VESSEL PARTICIPATING IN PROMISING TECHNOLOGY EVALUATIONS.—

''(A) IN GENERAL.—If a vessel participates in a program approved by the Secretary to test and evaluate promising ballast water treatment technologies with the potential to result in treatment technologies achieving a standard that is the same as or more stringent than the standard that applies under paragraph (1) before the first date on which paragraph (1) applies to that vessel, the Secretary may postpone the date on which paragraph (1) would otherwise apply to that vessel for not more than 5 years.

''(B) VESSEL DIVERSITY.—The Secretary—

''(i) shall seek to ensure that a wide variety of vessel types and voyages are included in the program; but

''(ii) may not grant a delay under this paragraph to more than 1 percent of the vessels to which subparagraph (A), (B), (C), or (D) of paragraph (3) applies.

''(C) TERMINATION OF POSTPONEMENT.—The Secretary may terminate the 5-year postponement period if participation of the vessel in the program is terminated without the consent of the Secretary.

''(6) FEASIBILITY REVIEW.—

''(A) IN GENERAL.—Not less than 2 years before the date on which paragraph (1) applies to vessels under each subparagraph of paragraph (3), the Secretary shall complete a review to determine whether appropriate technologies are available to achieve the standards set forth in paragraph (1) for the vessels to which they apply under the schedule set forth in paragraph (3).

''(B) DELAY IN SCHEDULED APPLICATION.—If the Secretary determines, on the basis of the review conducted under subparagraph (A), that compliance with the standards set forth in paragraph (1) in accordance with the schedule set forth in any subparagraph of paragraph (3) is not feasible, the Secretary shall—

''(i) extend the date on which that subparagraph first applies to vessels for a period of not more than 36 months; and

''(ii) recommend action to ensure that compliance with the extended date schedule for that subparagraph is achieved.

''(7) TREATMENT SYSTEM APPROVAL REQUIRED.—The operator of a vessel may not use a ballast water treatment system to comply with the requirements of this subsection unless the system is approved by the Secretary. The Secretary shall promulgate regulations establishing a process for such approval.

''(g) WARNINGS CONCERNING BALLAST WATER UPTAKE.—

''(1) IN GENERAL.—The Secretary shall notify mariners of any area in waters subject to the jurisdiction of the United states in which vessels should not uptake ballast water due to known conditions.

''(2) CONTENTS.—The notice shall include—

''(A) the coordinates of the area; and

''(B) if possible, the location of alternative areas for the uptake of ballast water.

''(h) SEDIMENT MANAGEMENT.—

''(1) IN GENERAL.—The operator of a vessel to which this section applies may not remove or dispose of sediment from spaces designed to carry ballast water except in accordance with this subsection and the ballast water management plan required under subsection (c).

''(2) DESIGN REQUIREMENTS.—

''(A) NEW VESSELS.—No person may remove and dispose of such sediment from a vessel to which this section applies in waters subject to the jurisdiction of the United States that is constructed on or after January 1, 2009, unless the vessel is designed and constructed in a manner that—

''(i) minimizes the uptake and entrapment of sediment;

''(ii) facilitates removal of sediment; and

''(iii) provides for safe access for sediment removal and sampling.

''(B) EXISTING VESSELS.—The operator of a vessel to which this section applies that was constructed before January 1, 2009, may not remove and dispose of such sediment in waters subject to the jurisdiction of the United States unless—

''(i) the vessel has been modified, to the extent practicable and in accordance with regulations promulgated by the Secretary, to achieve the objectives described in clauses (i), (ii), and (iii) of subparagraph (A); or

''(ii) the removal and disposal of the sediment is conducted in such a manner as to achieve those objectives to the greatest extent practicable and in accordance with those regulations.

''(C) REGULATIONS.—The Secretary shall promulgate regulations establishing design and construction standards to achieve the objectives of subparagraph (A) and providing guidance for modifications and practices under subparagraph (B). The Secretary shall incorporate the standards and guidance in the regulations governing the ballast water management plan.

''(3) SEDIMENT RECEPTION FACILITIES.—

''(A) STANDARDS.—The Administrator of the Environmental Protection Agency in consultation with the Secretary, shall promulgate regulations governing facilities for the reception of vessel sediment from spaces designed to carry ballast water that provide for the disposal of such sediment in a way that does not impair or damage the environment, human health, or property or resources of the disposal area. The Administrator may not prescribe standards under this subparagraph that are less stringent than any otherwise applicable Federal, State, or local law requirements.

''(B) DESIGNATION.—The Secretary shall designate facilities for the reception of vessel sediment that meet the requirements of the regulations promulgated under subparagraph (A) at ports and terminals where ballast tanks are cleaned or repaired.

''(i) EXAMINATIONS AND CERTIFICATIONS.—

''(1) INITIAL EXAMINATION.—

''(A) IN GENERAL.—The Secretary shall examine vessels to which this section applies to determine whether—

''(i) there is a ballast water management plan for the vessel; and

''(ii) the equipment used for ballast water and sediment management in accordance with the requirements of this section and the regulations promulgated hereunder is installed and functioning properly.

''(B) NEW VESSELS.—For vessels constructed on or after January 1, 2009, the Secretary shall conduct the examination required by subparagraph (A) before the vessel is placed in service.

''(C) EXISTING VESSELS.—For vessels constructed before January 1, 2009, the Secretary shall—

''(i) conduct the examination required by subparagraph (A) before the date on which subsection (f)(1) applies to the vessel according to the schedule in subsection (f)(3); and

''(ii) inspect the vessel's ballast water record book required by subsection (d).

''(2) SUBSEQUENT EXAMINATIONS.—The Secretary shall examine vessels no less frequently than once each year to ensure vessel compliance with the requirements of this section.

''(3) INSPECTION AUTHORITY.—In order to carry out the provisions of this section, the Secretary may take ballast water samples at any time on any vessel to which this section applies to ensure its compliance with this Act.

''(4) REQUIRED CERTIFICATE.—

''(A) IN GENERAL.—If, on the basis of an initial examination under paragraph (1) the Secretary finds that a vessel complies with the requirements of this section and the regulations promulgated hereunder, the Secretary shall issue a certificate under this paragraph as evidence of such compliance. The certificate shall be valid for a period of not more than 5 years, as specified by the Secretary. The certificate or a true copy shall be maintained on board the vessel.

''(B) FOREIGN CERTIFICATES.—The Secretary may treat a certificate issued by a foreign government as a certificate issued under subparagraph (A) if the Secretary determines that the standards used by the issuing government are equivalent to or more stringent than the standards used by the Secretary under subparagraph (A).

''(5) NOTIFICATION OF VIOLATIONS.—If the Secretary finds, on the basis of an examination under paragraph (1) or (2), sampling under paragraph (3), or any other information, that a vessel is being operated in violation of the requirements of this section and the regulations promulgated hereunder, the Secretary shall—

''(A) notify—

''(i) the master of the vessel; and

''(ii) the captain of the port at the vessel's next port of call; and

''(B) take such other action as may be appropriate.

''(j) DETENTION OF VESSELS.—

''(1) IN GENERAL.—The Secretary, by notice to the owner, charterer, managing operator, agent, master, or other individual in charge of a vessel, may detain that vessel if the Secretary has reasonable cause to believe that—

''(A) the vessel is a vessel to which this section applies;

''(B) the vessel does not comply with the requirements of this section or of the regulations issued hereunder or is being operated in violation of such requirements; and

''(C) the vessel is about to leave a place in the United States.

''(2) CLEARANCE.—

''(A) IN GENERAL.—A vessel detained under paragraph (1) may obtain clearance under section 4197 of the Revised Statutes (46 U.S.C. App. 91) only if the violation for which it was detained has been corrected.

''(B) WITHDRAWAL.—If the Secretary finds that a vessel detained under paragraph (1) has received a clearance under section 4197 of the Revised Statutes (46 U.S.C. App. 91) before it was detained under paragraph (1), the Secretary shall request the Secretary of the Treasury to withdraw the clearance. Upon request of the Secretary, the Secretary of the Treasury shall withhold or revoke the clearance.

''(k) SANCTIONS.—

''(1) CIVIL PENALTIES.—Any person who violates a regulation promulgated under this section shall be liable for a civil penalty in an amount not to exceed $25,000. Each day of a continuing violation constitutes a separate violation. A vessel operated in violation of the regulations is liable in rem for any civil penalty assessed under this subsection for that violation.

''(2) CRIMINAL PENALTIES.—Any person who knowingly violates the regulations promulgated under this section is guilty of a class C felony.

''(3) REVOCATION OF CLEARANCE.—Except as provided in subsection (j)(2), upon request of the Secretary, the Secretary of the Treasury shall withhold or revoke the clearance of a vessel required by section 4197 of the Revised Statutes (46 U.S.C. App. 91), if the owner or operator of that vessel is in violation of the regulations issued under this section.

''(4) EXCEPTION TO SANCTIONS.—This subsection does not apply to a failure to exchange ballast water if—

''(A) the master of a vessel, acting in good faith, decides that the exchange of ballast water will threaten the safety or stability of the vessel, its crew, or its passengers; and

''(B) the recordkeeping and reporting requirements of the Act are complied with.

''(l) CONSULTATION WITH CANADA, MEXICO, AND OTHER FOREIGN GOVERNMENTS.—In developing the guidelines issued and regulations promulgated under this section, the Secretary is encouraged to consult with the Government of Canada, the Government of Mexico, and any other government of a foreign country that the Secretary, in consultation with the Task Force, determines to be necessary to develop and implement an effective international program for preventing the unintentional introduction and spread of nonindigenous species.

''(m) INTERNATIONAL COOPERATION.—The Secretary, in cooperation with the International Maritime Organization of the United Nations and the Commission on Environmental Cooperation established pursuant to the North American Free Trade Agreement, is encouraged to enter into negotiations with the governments of foreign countries to develop and implement an effective international program for preventing the unintentional introduction and spread of nonindigenous species. The Secretary is particularly encouraged to seek bilateral or multilateral agreements with Canada, Mexico, and other nations in the Wider Caribbean (as defined in the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean (Cartagena Convention) under this section.

''(n) NON-DISCRIMINATION.—The Secretary shall ensure that vessels registered outside of the United States do not receive more favorable treatment than vessels registered in the United States when the Secretary performs studies, reviews compliance, determines effectiveness, establishes requirements, or performs any other responsibilities under this Act.

''(o) SUPPORT FOR FEDERAL BALLAST WATER DEMONSTRATION PROJECT.—In addition to amounts otherwise available to the Maritime Administration, the National Oceanographic and Atmospheric Administration, and the United States Fish and Wildlife Service for the Federal Ballast Water Demonstration Project, the Secretary shall provide support for the conduct and expansion of the project, including grants for research and development of innovative technologies for the management, treatment, and disposal of ballast water and sediment, for ballast water exchange, and for other vessel vectors of invasive aquatic species such as hull fouling. There are authorized to be appropriated to the Secretary $25,000,000 for each fiscal year to carry out this subsection.

''(p) CONSULTATION WITH TASK FORCE.—The Secretary shall consult with the Task Force in carrying out this section.

''(q) PREEMPTION.—Notwithstanding any other provision of law, the provisions of subsections (e) and (f) (other than subsection (f)(2)) supersede any provision of State or local law determined by the Secretary to be inconsistent with the requirements of that subsection or to conflict with the requirements of that subsection.

''(r) REGULATIONS.—The Secretary may issue such regulations as may be necessary to carry out this section and the terms defined in section 1003 that are used in this section.''.

(b) DEFINITIONS.—Section 1003 of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4702) is amended—

(1) by redesignating—

(A) paragraphs (1), (2), and (3) as paragraphs (2), (3), and (4), respectively;

(B) paragraphs (4), (5), (6), (7), and (8) as paragraphs (8), (9), (10), (11), and (12), respectively;

(C) paragraphs (9) and (10) as paragraphs (14) and (15) respectively;

(D) paragraphs (11) and (12) as paragraphs (17) and (18), respectively;

(E) paragraphs (13), (14), and (15) as paragraphs (20), (21), and (22), respectively;

(F) paragraph (16) as paragraph (26); and

(G) paragraph (17) as paragraph (23) and inserting it after paragraph (22), as redesignated;

(2) by inserting before paragraph (2), as redesignated, the following:

''(1) 'adverse impact' means the direct or indirect result or consequence of an event or process that—

''(A) creates a hazard to the environment, human health, property, or a natural resource;

''(B) impairs biological diversity; or

''(C) interferes with the legitimate use of waters subject to the jurisdiction of the United States;'';

(3) by striking paragraph (4), as redesignated, and inserting the following:

''(4) 'ballast water'—

''(A) means water taken on board a vessel to control trim, list, draught, stability, or stresses of the vessel, including matter suspended in such water; but

''(B) does not include potable or technical water that does not contain harmful aquatic organisms or pathenogens that is taken on board a vessel and used for a purpose described in subparagraph (A) if such potable or technical water is discharged in compliance with section 312 of the Clean Water Act (33 U.S.C. 1322);'';

(4) by inserting after paragraph (4) the following:

''(5) 'ballast water capacity' means the total volumetric capacity of any tanks, spaces, or compartments on a vessel that is used for carrying, loading, or discharging ballast water, including any multi-use tank, space, or compartment designed to allow carriage of ballast water;

''(6) 'ballast water management' means mechanical, physical, chemical, and biological processes used, either singularly or in combination, to remove, render harmless, or avoid the uptake or discharge of harmful aquatic organisms and pathogens within ballast water and sediment;

''(7) 'constructed' means a state of construction of a vessel at which—

''(A) the keel is laid;

''(B) construction identifiable with the specific vessel begins;

''(C) assembly of the vessel has begun comprising at least 50 tons or 1 percent of the estimated mass of all structural material of the vessel, whichever is less; or

''(D) the vessel undergoes a major conversion;'';

(5) by inserting after paragraph (12), as redesignated, the following:

''(13) 'harmful aquatic organisms and pathogens' means aquatic organisms or pathogens that have been determined by the Secretary, after consultation with the Administrator of the National Oceanographic and Atmospheric Administration and the Administrator of the Environmental Protection Agency, to cause an adverse impact if introduced into the waters subject to the jurisdiction of the United States;'';

(6) by inserting after paragraph (15), as redesignated, the following:

''(16) 'major conversion' means a conversion of a vessel, that—

''(A) changes its ballast water carrying capacity by at least 15 percent;

''(B) changes the vessel class;

''(C) is projected to prolong the vessel's life by at least 10 years (as determined by the Secretary); or

''(D) results in modifications to the vessel's ballast water system, except—

''(i) component replacement-in-kind; or

''(ii) conversion of a vessel to meet the requirements of section 1101(e);'';

(7) by inserting after paragraph (18), as redesignated, the following:

''(19) 'sediment' means matter that has settled out of ballast water within a vessel;'';

(8) by inserting after paragraph (23), as redesignated, the following:

''(24) 'United States port' means a port, river, harbor, or offshore terminal under the jurisdiction of the United States, including ports located in Puerto Rico, Guam, the Northern Marianas, and the United States Virgin Islands;

''(25) 'vessel of the Armed Forces' means—

''(A) any vessel owned or operated by the Department of Defense, other than a time or voyage chartered vessel; and

''(B) any vessel owned or operated by the Department of Homeland Security that is designated by the Secretary of the department in which the Coast Guard is operating as a vessel equivalent to a vessel described in subparagraph (A);''; and

(9) by inserting after paragraph (26), as redesignated, the following:

''(27) 'waters subject to the jurisdiction of the United States' means navigable waters and the territorial sea of the United States, the exclusive economic zone, and the Great Lakes.''.

(c) GREAT LAKES REGULATIONS.—Until vessels described in section 1101(e)(2) of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4711(e)(2)), as amended by this Act, are required to conduct ballast water treatment in accordance with the requirements of section 1101(f) of that Act (16 U.S.C. 1101(f)), as amended by this Act, the regulations promulgated by the Secretary of Transportation under section 1101 of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4711), as such regulations were in effect on the day before the date of enactment of this Act, shall remain in full force and effect for, and shall continue to apply to, such vessels.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

Section 1301(a) of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4741(a)) is amended—

(1) by striking ''and'' after the semicolon in paragraph (4)(B);

(2) by striking ''1102(f).'' in paragraph (5)(B) and inserting ''1102(f); and''; and

(3) by adding at the end the following:

''(6) $10,000,000 for each of fiscal years 2006 through 2010 to the Secretary to carry out section 1101.''.

SEC. 5. COAST GUARD REPORT ON OTHER VESSEL-RELATED VECTORS OF INVASIVE SPECIES.

(a) IN GENERAL.—Within 90 days after the date of enactment of this Act, the Commandant of the Coast Guard shall transmit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on vessel-related vectors of harmful aquatic organisms and pathogens other than ballast water and sediment, including vessel hulls and equipment, and from vessels equipped with ballast tanks that carry no ballast water on board.

(b) BEST PRACTICES.—As soon as practicable, the Coast Guard shall develop best practices standards and procedures designed to reduce the introduction of invasive species into and within the United States from vessels and establish a timeframe for implementation of those standards and procedures by vessels, in addition to the mandatory requirements set forth in section 1101 for ballast water. Such standards and procedures should include designation of geographical locations for uptake and discharge of untreated ballast water, as well as standards and procedures for other vessel vectors of invasive aquatic species. The Commandant shall transmit a report to the Committees describing the standards and procedures developed and the implementation timeframe, together with any recommendations, including legislative recommendations if appropriate, the Commandant deems appropriate. The Secretary of the department in which the Coast Guard is operating may promulgate regulations to incorporate and enforce standards and procedures developed under this subsection.

By Mr. INOUYE (for himself, Mr. STEVENS, Mr. LOTT, Ms. CANTWELL, Ms. SNOWE, Mr. KERRY, and Mr. LAUTENBERG):

S. 364. A bill to establish a program within the National Oceanic Atmospheric Administration to integrate Federal coastal and ocean mapping activities; to the Committee on Commerce, Science, and Transportation.

Mr. INOUYE. Mr. President, today I am introducing the Ocean and Coastal Mapping Integration Act, and I am pleased to be joined by my Commerce Committee Chairman, Senator STEVENS, and fellow Committee members Senators LOTT, CANTWELL, SNOWE, KERRY, and LAUTENBERG, who are all original cosponsors of the bill. I am pleased to report that the Senate passed this bill unanimously in the 108th Congress, and we look forward to moving this legislation quickly this year, particularly because of its importance to coastal planning for natural hazards such as tsunami.

The jurisdiction of the United States extends 200 miles beyond its coastline and includes the U.S. Territorial Sea and Exclusive Economic Zone, or ''EEZ.'' Regrettably, nearly 90 percent of this expanse remains unmapped by modern technologies, meaning that we have almost no information about a swath of ocean as large as the terra firma of the entire United States.

There was a time in the history of our Nation when our best efforts to map the seas meant lowering weights tied to piano wire over the side of a vessel, and measuring how deep they went. These efforts led to the development of rudimentary nautical charts designed to help mariners navigate safely. The rapidly increasing uses of our coastal and ocean waters, however, call for development of a new generation of ecosystem-oriented mapping and assessment products and services.

The technologies of today create richly layered mapping products that expand far beyond just charting for safe navigation. Now, by combining such information as mineral surveys of the U.S. Geological Service, habitat characterizations of the National Oceanic Atmospheric Administration NOAA, and watershed assessments of the Environmental Protection Agency into a single product, map users are able to consider the impacts of their actions on multiple facets of the marine environment.

Last year, the U.S. Commission on Ocean Policy issued a report highlighting the urgent need to modernize, improve, expand, and integrate federal mapping efforts to improve navigation, safety and resource management decisionmaking. By employing integrated mapping approaches, urban and residential growth can be directed away from areas of high risk from ocean-based threats such as tsunami and tidal surge. The risks of maritime activities can be minimized by identifying hazards that could impact on sensitive ecosystems, and devising appropriate mitigation plans. Living marine resource managers can also gauge where and how best to focus their efforts to restore essential marine habitats.

The bill we are introducing today will lay the foundation for producing the ocean maps of the 21st century. It mandates coordination among the many federal agencies with mapping missions with NOAA as the lead in developing national mapping priorities and strategies. The bill would also establish national hydrographic centers to manage comprehensively the mapping data produced by the federal government, encourage innovation in technologies, and authorize the funding necessary to implement this comprehensive effort.

Perhaps the most important lesson that comprehensive, integrated mapping can afford is an awareness of a web of human marine communities as rich and varied as the ocean itself. From awareness grows understanding, respect, and cooperation.

I hope that my colleagues will join me in supporting this measure that will, in turn, support the development of healthy coastal communities across the nation. I ask unanimous consent that the text of this bill be printed in the RECORD.

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

S. 364

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 ''Ocean and Coastal Mapping Integration Act''.

SEC. 2. INTEGRATED OCEAN AND COASTAL MAPPING PROGRAM.

(a) IN GENERAL.—The Administrator of the National Oceanic and Atmospheric Administration shall establish a program to develop, in coordination with the Interagency Committee on Ocean and Coastal Mapping, a coordinated and comprehensive Federal ocean and coastal mapping plan for the Great Lakes and Coastal State waters, the territorial sea, the exclusive economic zone, and the continental shelf of the United States that enhances ecosystem approaches in decision-making for conservation and management of marine resources and habitats, establishes research priorities, supports the siting of research and other platforms, and advances ocean and coastal science.

(b) PROGRAM PARAMETERS.—In developing such a program, the Administrator shall work with the Committee to—

(1) identify all Federal and Federally-funded programs conducting shoreline delineation and ocean or coastal mapping, noting geographic coverage, frequency, spatial coverage, resolution, and subject matter focus of the data and location of data archives;

(2) promote cost-effective, cooperative mapping efforts among all Federal agencies conducting ocean and coastal mapping agencies by increasing data sharing, developing data acquisition and metadata standards, and facilitating the interoperability of in situ data collection systems, data processing, archiving, and distribution of data products;

(3) facilitate the adaptation of existing technologies as well as foster expertise in new ocean and coastal mapping technologies, including through research, development, and training conducted in cooperation with the private sector, academia, and other non-Federal entities;

(4) develop standards and protocols for testing innovative experimental mapping technologies and transferring new technologies between the Federal government and the private sector or academia;

(5) centrally archive, manage, and distribute data sets as well as provide mapping products and services to the general public in service of statutory requirements;

(6) develop specific data presentation standards for use by Federal, State, and other entities that document locations of Federally permitted activities, living and nonliving resources, marine ecosystems, sensitive habitats, submerged cultural resources, undersea cables, offshore aquaculture projects, and any areas designated for the purposes of environmental protection or conservation and management of living marine resources; and

(7) identify the procedures to be used for coordinating Federal data with State and local government programs.

SEC. 3. INTERAGENCY COMMITTEE ON OCEAN AND COASTAL MAPPING.

(a) ESTABLISHMENT.—There is hereby established an Interagency Committee on Ocean and Coastal Mapping.

(b) MEMBERSHIP.—The Committee shall be comprised of senior representatives from Federal agencies with ocean and coastal mapping and surveying responsibilities. The representatives shall be high-ranking officials of their respective agencies or departments and, whenever possible, the head of the portion of the agency or department that is most relevant to the purposes of this Act. Membership shall include senior representatives from the National Oceanic and Atmospheric Administration, the Chief of Naval Operations, the United States Geological Survey, Minerals Management Service, National Science Foundation, National Geospatial-Intelligence Agency, United States Army Corps of Engineers, United States Coast Guard, Environmental Protection Agency, Federal Emergency Management Agency and National Aeronautics and Space Administration, and other appropriate Federal agencies involved in ocean and coastal mapping.

(c) CHAIRMAN.—The Committee shall be chaired by the representative from the National Oceanic and Atmospheric Administration. The chairman may create subcommittees chaired by any member agency of the committee. Working groups may be formed by the full Committee to address issues of short duration.

(d) MEETINGS.—The Committee shall meet on a quarterly basis, but subcommittee or working group meetings shall meet on an as-needed basis.

(e) COORDINATION.—The committee should coordinate activities, when appropriate, with—

(1) other Federal efforts, including the Digital Coast, Geospatial One-Stop, and the Federal Geographic Data Committee;

(2) international mapping activities; and

(3) States and user groups through workshops and other appropriate mechanisms.

SEC. 4. NOAA INTEGRATED MAPPING INITIATIVE.

(a) IN GENERAL.—Not later than 6 months after the date of enactment of this Act, the Administrator, in consultation with the Committee, shall develop and submit to the Congress a plan for an integrated ocean and coastal mapping initiative within the National Oceanic and Atmospheric Administration.

(b) PLAN REQUIREMENTS.—The plan shall—

(1) identify and describe all ocean and coastal mapping programs within the agency, including those that conduct mapping or related activities in the course of existing missions, such as hydrographic surveys, ocean exploration projects, living marine resource conservation and management programs, coastal zone management projects, and ocean and coastal science projects;

(2) establish priority mapping programs and establish and periodically update priorities for geographic areas in surveying and mapping, as well as minimum data acquisition and metadata standards for those programs;

(3) encourage the development of innovative ocean and coastal mapping technologies and applications through research and development through cooperative or other agreements at joint centers of excellence and with the private sector;

(4) document available and developing technologies, best practices in data processing and distribution, and leveraging opportunities with other Federal agencies, nongovernmental organizations, and the private sector;

(5) identify training, technology, and other resource requirements for enabling the National Oceanic and Atmospheric Administration's programs, ships, and aircraft to support a coordinated ocean and coastal mapping program;

(6) identify a centralized mechanism or office for coordinating data collection, processing, archiving, and dissemination activities of all such mapping programs within the National Oceanic and Atmospheric Administration, including—

(A) designating primary data processing centers to maximize efficiency in information technology investment, develop consistency in data processing, and meet Federal mandates for data accessibility; and

(B) designating a repository that is responsible for archiving and managing the distribution of all ocean and coastal mapping data to simplify the provision of services to benefit Federal and State programs; and

(6) set forth a timetable for implementation and completion of the plan, including a schedule for periodic Congressional progress reports, and recommendations for integrating approaches developed under the initiative into the interagency program.

(c) NOAA JOINT OCEAN AND COASTAL MAPPING CENTERS.—The Administrator is authorized to maintain and operate up to 3 joint ocean and coastal mapping centers, including a joint hydrographic center, which shall be co-located with an institution of higher education. The centers shall serve as hydrographic centers of excellence and are authorized to conduct activities necessary to carry out the purposes of this Act, including—

(1) research and development of innovative ocean and coastal mapping technologies, equipment, and data products;

(2) mapping of the United States outer continental shelf;

(3) data processing for non-traditional data and uses;

(4) advancing the use of remote sensing technologies, for related issues, including mapping and assessment of essential fish habitat and of coral resources, ocean observations and ocean exploration; and

(5) providing graduate education in ocean and coastal mapping sciences for National Oceanic and Atmospheric Administration Commissioned Officer Corps, personnel of other agencies with ocean and coastal mapping programs, and civilian personnel.

SEC. 5. INTERAGENCY PROGRAM REPORTING.

No later than 18 months after the date of enactment of this Act, and bi-annually thereafter, the Chairman of the Committee shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Resources a report detailing progress made in implementing the provisions of this Act, including—

(1) an inventory of ocean and coastal mapping data, noting the metadata, within the territorial seas and the exclusive economic zone and throughout the continental shelf of the United States, noting the age and source of the survey and the spatial resolution (metadata) of the data;

(2) identification of priority areas in need of survey coverage using present technologies;

(3) a resource plan that identifies when priority areas in need of modern ocean and coastal mapping surveys can be accomplished;

(4) the status of efforts to produce integrated digital maps of ocean and coastal areas;

(5) a description of any products resulting from coordinated mapping efforts under this Act that improve public understanding of the coasts, oceans, or regulatory decision-making;

(6) documentation of minimum and desired standards for data acquisition and integrated metadata;

(7) a statement of the status of Federal efforts to leverage mapping technologies, coordinate mapping activities, share expertise, and exchange data;

(8) a statement of resource requirements for organizations to meet the goals of the program, including technology needs for data acquisition, processing and distribution systems;

(9) a statement of the status of efforts to declassify data gathered by the Navy, the National Geospatial-Intelligence Agency and other agencies to the extent possible without jeopardizing national security, and make it available to partner agencies and the public; and

(10) a resource plan for a digital coast integrated mapping pilot project for the northern Gulf of Mexico that will—

(A) cover the area from the authorized coastal counties through the territorial sea;

(B) identify how such a pilot project will leverage public and private mapping data and resources, such as the United States Geological Survey National Map, to result in an operational coastal change assessment program for the subregion; and

(11) the status of efforts to coordinate Federal programs with State and local government programs and leverage those programs.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—In addition to the amounts authorized by section 306 of the Hydrographic Services Improvement Act of 1998 (33 U.S.C. 892d), there are authorized to be appropriated to the Administrator to carry out this Act—

(1) $20,000,000 for fiscal year 2006;

(2) $26,000,000 for fiscal year 2007;

(3) $32,000,000 for fiscal year 2008;

(4) $38,000,000 for fiscal year 2009; and

(5) $45,000,000 for each of fiscal years 2010 through 2013.

(b) JOINT OCEAN AND COASTAL MAPPING CENTERS.—Of the amounts appropriated pursuant to subsection (a), the following amounts shall be used to carry out section 4(c) of this Act:

(1) $10,000,000 for fiscal year 2006.

(2) $11,000,000 for fiscal year 2007.

(3) $12,000,000 for fiscal year 2008.

(4) $13,000,000 for fiscal year 2009.

(5) $15,000,000 for each of fiscal years 2010 through 2013.

(c) INTERAGENCY COMMITTEE.—Notwithstanding any other provision of law, from amounts authorized to be appropriated for fiscal years 2006 through 2013 to the Department of Defense, the Department of the Interior, the Department of Homeland Security, the Environmental Protection Agency, and the National Aeronautics and Space Administration, the head of each such department or agency may make available not more than $10,000,000 per fiscal year to carry out interagency activities under section 3 of this Act.

SEC. 7. DEFINITIONS.

In this Act:

(1) ADMINISTRATOR.—The term ''Administrator'' means the Administrator of the National Oceanic and Atmospheric Administration.

(2) COASTAL STATE.—The term ''coastal state'' has the meaning given that term by section 304(4) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453(4).

(3) COMMITTEE.—The term ''Committee'' means the Interagency Ocean Mapping Committee established by section 3.

(4) EXCLUSIVE ECONOMIC ZONE.—The term ''exclusive economic zone'' means the exclusive economic zone of the United States established by Presidential Proclamation No. 5030, of March 10, 1983.

(5) OCEAN AND COASTAL MAPPING.—The term ''ocean and coastal mapping'' means the acquisition, processing, and management of physical, biological, geological, chemical, and archaeological characteristics and boundaries of ocean and coastal areas, resources, and sea beds through the use of acoustics, satellites, aerial photogrammetry, light and imaging, direct sampling, and other mapping technologies.

(6) TERRITORIAL SEA.—The term ''territorial sea'' means the belt of sea measured from the baseline of the United States determined in accordance with international law, as set forth in Presidential Proclamation Number 5928, dated December 27, 1988.

By Mr. COLEMAN (for himself and Mr. DAYTON):

S. 365. A bill to amend the Torture Victims Relief Act of 1998 to authorize appropriations to provide assistance for domestic and foreign centers and programs for the treatment of victims of torture, and for other purposes; to the Committee on Foreign Relations.

Mr. COLEMAN. Mr. President, torture is a fundamental violation of human rights. It is an act that aims not only to destroy the body but to destroy a person's spirit, leaving a psychologically crippled victim as a warning to others in their community.

Approximately 500,000 survivors of torture have found refuge in the United States, with many more around the world. The survivors of this terrible experience require treatment to recover from the effects of torture and to rebuild their shattered lives.

Fortunately, we have the ability to provide such treatment. There are 30 torture treatment centers in the United States located in 16 states, all helping former victims to recover from the trauma they experienced. We in Minnesota are tremendously proud of the work of Minnesota's Center for Victims of Torture, a world leader in administering this kind of treatment.

The Torture Victims Relief Reauthorization Act will authorize $92 million in funding for both domestic and foreign treatment centers for victims of torture. $50 million of the funding goes directly to domestic programs. The remaining funds assist foreign treatment centers through the U.S. Agency for International Development and the U.N. Voluntary Fund for Victims of Torture.

This reauthorization comes at a critical time. With the liberation of the people of Iraq and Afghanistan and other events around the world, even more survivors of torture around the world are seeking treatment. I look forward to the prompt consideration of this legislation and urge my colleagues to support this and other effort to assist victims of torture.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 365

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 ''Torture Victims Relief Reauthorization Act of 2005''.

SEC. 2. AUTHORIZATION OF APPROPRIATIONS FOR DOMESTIC TREATMENT CENTERS FOR VICTIMS OF TORTURE.

Section 5(b)(1) of the Torture Victims Relief Act of 1998 (22 U.S.C. 2152 note) is amended—

(1) by striking ''and 2005'' and inserting '', 2005, 2006, and 2007'';

(2) by striking ''2004 and'' and inserting ''2004,''; and

(3) by striking the period at the end and inserting '', $25,000,000 for the fiscal year 2006, and $25,000,000 for the fiscal year 2007.''.

SEC. 3. AUTHORIZATION OF APPROPRIATIONS FOR FOREIGN TREATMENT CENTERS FOR VICTIMS OF TORTURE.

Section 4(b)(1) of the Torture Victims Relief Act of 1998 (22 U.S.C. 2152 note) is amended—

(1) by striking ''and 2005'' and inserting '', 2005, 2006, and 2007'';

(2) by striking ''2004 and'' and inserting ''2004,''; and

(3) by striking the period at the end and inserting '', $12,000,000 for the fiscal year 2006, and $13,000,000 for the fiscal year 2007.''.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS FOR THE UNITED STATES CONTRIBUTION TO THE UNITED NATIONS VOLUNTARY FUND FOR VICTIMS OF TORTURE.

Of the amounts authorized to be appropriated for fiscal years 2006 and 2007 pursuant to chapter 3 of part I of the Foreign Assistance Act of 1961 (22 U.S.C. 2221 et seq.), there are authorized to be appropriated to the President for a voluntary contribution to the United Nations Voluntary Fund for Victims of Torture $8,000,000 for fiscal year 2006 and $9,000,000 for fiscal year 2007.

By Mr. LAUTENBERG (for himself, Mr. KENNEDY, and Mrs. MURRAY):

S. 368. A bill to provide assistance to reduce teen pregnancy, HIV/AIDS, and other sexually transmitted diseases and to support healthy adolescent development; to the Committee on Health, Education, Labor, and Pensions.

Mr. LAUTENBERG. Mr. President, I rise to introduce the Responsible Education About Life or ''REAL'' Act along with my cosponsors Senators KENNEDY, and Mrs. MURRAY.

The REAL Act aims to reduce adolescent pregnancy, HIV rates, and other sexually transmitted diseases, by providing federal funds for comprehensive sex education in schools. Comprehensive sex education is medically accurate, age appropriate, education that includes information about both contraception and abstinence. It is an approach that doesn't hide important information from our kids.

For years, taxpayer dollars have been flooded into unproven ''abstinence-only'' programs—while no federal program is dedicated to comprehensive sex education. Under the Bush Administration, federal support for ''abstinence-only'' education has expanded rapidly.

The proof is in the numbers. In fiscal year 2004 the federal government spent $138 million dollars on ''abstinence only'' programs. In fiscal year 2005 the federal government increased funding for these programs by $30 million dollars. This year President Bush is asking for $206 million dollars for ''abstinence only'' education—a 50 percent increase over the 2004 funding level. Would you like to know how much money has the government devoted to comprehensive sex education programs over this same time? Zero dollars.

Much of the taxpayer funds going to ''abstinence-only'' programs are essentially being wasted. Teens need information, not censorship. ''Abstinence-only'' education only tells young people half the story, and they need the full picture. These programs are not getting the job done.

After years of ''abstinence only'' programs, the United States still has the—highest rates of teen pregnancy in the industrialized world. The American public knows what works. Parents do not want sexual education programs limited to abstinence in schools. Even the Heritage Foundation had to admit this when their own poll showed that ''75 percent of parents want teens to be taught about both abstinence and contraception.'' Other polls show numbers as high as 93 percent in support of high school programs that include information about contraception.

The REAL Act also has the support of the National Education Association (NEA), the American Academy of Pediatrics (AAP), the American Nurses Association (ANA), the Child Welfare League of America and more than 130 other medical and professional organizations. It is a fact that teenagers who receive sex education that includes discussion of contraception are more likely to delay sexual activity than those who receive abstinence-only education. Comprehensive sex education simply works better.

The stakes are high: of the 19 million cases of sexually transmitted diseases every year in the United States, almost half of them strike young people between the ages of 15 and 24. And each year in the United States, about 20,000 young people are newly infected with HIV.

These aren't just numbers. These are our sons and daughters whose health and well-being are jeopardized when ideology comes before sound public policy. That is why we are introducing this legislation today. It's time for a more balanced approach; it's time to protect out kids, and it's time to get REAL. Our bill authorizes $206 million per year in federal funds to states for comprehensive sexual education programs.

The REAL Act is step in a more effective direction. It brings sex education up-to-date in a way that will reflect the serious issues and real life situations millions of young people find themselves in every year. Young people have a right to accurate and complete information that could protect their health and even save their lives. I urge my colleagues to support the REAL Act and make it possible to give young people the tools to make safe and responsible decisions. Mr. President, 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. 368

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 ''Responsible Education About Life Act''.

SEC. 2. FINDINGS.

The Congress finds as follows:

(1) The American Medical Association (''AMA''), the American Nurses Association (''ANA''), the American Academy of Pediatrics (''AAP''), the American College of Obstetricians and Gynecologists (''ACOG''), the American Public Health Association (''APHA''), and the Society of Adolescent Medicine (''SAM''), support responsible sexuality education that includes information about both abstinence and contraception.

(2) Recent scientific reports by the Institute of Medicine, the American Medical Association and the Office on National AIDS Policy stress the need for sexuality education that includes messages about abstinence and provides young people with information about contraception for the prevention of teen pregnancy, HIV/AIDS and other sexually transmitted diseases (''STDs'').

(3) Research shows that teenagers who receive sexuality education that includes discussion of contraception are more likely than those who receive abstinence-only messages to delay sexual activity and to use contraceptives when they do become sexually active.

(4) Comprehensive sexuality education programs respect the diversity of values and beliefs represented in the community and will complement and augment the sexuality education children receive from their families.

(5) The median age of puberty is 13 years and the average age of marriage is over 26 years old. American teens need access to full, complete, and medically and factually accurate information regarding sexuality, including contraception, STD/HIV prevention, and abstinence.

(6) Although teen pregnancy rates are decreasing, there are still between 750,000 and 850,000 teen pregnancies each year. Between 75 and 90 percent of teen pregnancies among 15- to 19-year olds are unintended.

(7) Studies estimate that 50 to 75 percent of the reduction in adolescent pregnancy rates is attributable to improved contraceptive use; the remainder to increased abstinence.

(8) More than eight out of ten Americans believe that young people should have information about abstinence and protecting themselves from unplanned pregnancies and sexually transmitted diseases.

(9) United States teens and young adults acquire an estimated 4,000,000 sexually transmitted infections each year. By age 25, at least 1 of every 2 sexually active people will have contracted a sexually transmitted disease.

(10) More than 2 young people in the United States are infected with HIV every hour of every day. African American and Hispanic youth have been disproportionately affected by the HIV/AIDS epidemic. Although about 15 percent of the adolescent population (ages 13 to 19) in the United States is African American, nearly 60 percent of AIDS cases through 2002 among 13- to 19-year olds were among African Americans. Hispanics comprise nearly 16 percent of the adolescent population (ages 13 to 19) in the United States and 22 percent of reported adolescent AIDS cases through June 2002.

SEC. 3. ASSISTANCE TO REDUCE TEEN PREGNANCY, HIV/AIDS, AND OTHER SEXUALLY TRANSMITTED DISEASES AND TO SUPPORT HEALTHY ADOLESCENT DEVELOPMENT.

(a) IN GENERAL.—Each eligible State shall be entitled to receive from the Secretary of Health and Human Services, for each of the fiscal years 2006 through 2010, a grant to conduct programs of family life education, including education on both abstinence and contraception for the prevention of teenage pregnancy and sexually transmitted diseases, including HIV/AIDS.

(b) REQUIREMENTS FOR FAMILY LIFE PROGRAMS.—For purposes of this Act, a program of family life education is a program that—

(1) is age-appropriate and medically accurate;

(2) does not teach or promote religion;

(3) teaches that abstinence is the only sure way to avoid pregnancy or sexually transmitted diseases;

(4) stresses the value of abstinence while not ignoring those young people who have had or are having sexual intercourse;

(5) provides information about the health benefits and side effects of all contraceptives and barrier methods as a means to prevent pregnancy;

(6) provides information about the health benefits and side effects of all contraceptives and barrier methods as a means to reduce the risk of contracting sexually transmitted diseases, including HIV/AIDS;

(7) encourages family communication about sexuality between parent and child;

(8) teaches young people the skills to make responsible decisions about sexuality, including how to avoid unwanted verbal, physical, and sexual advances and how not to make unwanted verbal, physical, and sexual advances; and

(9) teaches young people how alcohol and drug use can affect responsible decisionmaking.

(c) ADDITIONAL ACTIVITIES.—In carrying out a program of family life education, a State may expend a grant under subsection (a) to carry out educational and motivational activities that help young people—

(1) gain knowledge about the physical, emotional, biological, and hormonal changes of adolescence and subsequent stages of human maturation;

(2) develop the knowledge and skills necessary to ensure and protect their sexual and reproductive health from unintended pregnancy and sexually transmitted disease, including HIV/AIDS throughout their lifespan;

(3) gain knowledge about the specific involvement of and male responsibility in sexual decisionmaking;

(4) develop healthy attitudes and values about adolescent growth and development, body image, gender roles, racial and ethnic diversity, sexual orientation, and other subjects;

(5) develop and practice healthy life skills including goal-setting, decisionmaking, negotiation, communication, and stress management;

(6) promote self-esteem and positive interpersonal skills focusing on relationship dynamics, including, but not limited to, friendships, dating, romantic involvement, marriage and family interactions; and

(7) prepare for the adult world by focusing on educational and career success, including developing skills for employment preparation, job seeking, independent living, financial self-sufficiency, and workplace productivity.

SEC. 4. SENSE OF CONGRESS.

It is the sense of Congress that while States are not required to provide matching funds, they are encouraged to do so.

SEC. 5. EVALUATION OF PROGRAMS.

(a) IN GENERAL.—For the purpose of evaluating the effectiveness of programs of family life education carried out with a grant under section 3, evaluations of such program shall be carried out in accordance with subsections (b) and (c).

(b) NATIONAL EVALUATION.—

(1) IN GENERAL.—The Secretary shall provide for a national evaluation of a representative sample of programs of family life education carried out with grants under section 3. A condition for the receipt of such a grant is that the State involved agree to cooperate with the evaluation. The purposes of the national evaluation shall be the determination of—

(A) the effectiveness of such programs in helping to delay the initiation of sexual intercourse and other high-risk behaviors;

(B) the effectiveness of such programs in preventing adolescent pregnancy;

(C) the effectiveness of such programs in preventing sexually transmitted disease, including HIV/AIDS;

(D) the effectiveness of such programs in increasing contraceptive knowledge and contraceptive behaviors when sexual intercourse occurs; and

(E) a list of best practices based upon essential programmatic components of evaluated programs that have led to success in subparagraphs (A) through (D).

(2) REPORT.—A report providing the results of the national evaluation under paragraph (1) shall be submitted to the Congress not later than March 31, 2009, with an interim report provided on a yearly basis at the end of each fiscal year.

(c) INDIVIDUAL STATE EVALUATIONS.—

(1) IN GENERAL.—A condition for the receipt of a grant under section 3 is that the State involved agree to provide for the evaluation of the programs of family education carried out with the grant in accordance with the following:

(A) The evaluation will be conducted by an external, independent entity.

(B) The purposes of the evaluation will be the determination of—

(i) the effectiveness of such programs in helping to delay the initiation of sexual intercourse and other high-risk behaviors;

(ii) the effectiveness of such programs in preventing adolescent pregnancy;

(iii) the effectiveness of such programs in preventing sexually transmitted disease, including HIV/AIDS; and

(iv) the effectiveness of such programs in increasing contraceptive knowledge and contraceptive behaviors when sexual intercourse occurs.

(2) USE OF GRANT.—A condition for the receipt of a grant under section 3 is that the State involved agree that not more than 10 percent of the grant will be expended for the evaluation under paragraph (1).

SEC. 6. DEFINITIONS.

For purposes of this Act:

(1) The term ''eligible State'' means a State that submits to the Secretary an application for a grant under section 3 that is in such form, is made in such manner, and contains such agreements, assurances, and information as the Secretary determines to be necessary to carry out this Act.

(2) The term ''HIV/AIDS'' means the human immunodeficiency virus, and includes acquired immune deficiency syndrome.

(3) The term ''medically accurate'', with respect to information, means information that is supported by research, recognized as accurate and objective by leading medical, psychological, psychiatric, and public health organizations and agencies, and where relevant, published in peer review journals.

(4) The term ''Secretary'' means the Secretary of Health and Human Services.

SEC. 7. APPROPRIATIONS.

(a) IN GENERAL.—For the purpose of carrying out this Act, there is authorized to be appropriated $206,000,000 for each of fiscal years 2006 through 2010.

(b) ALLOCATIONS.—Of the amounts appropriated under subsection (a) for a fiscal year—

(1) not more than 7 percent may be used for the administrative expenses of the Secretary in carrying out this Act for that fiscal year; and

(2) not more than 10 percent may be used for the national evaluation under section 5(b).

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 47—EXPRESSING THE SENSE OF THE SENATE COMMENDING CIVILIAN EMPLOYERS OF MEMBERS OF THE RESERVE COMPONENTS OF THE ARMED FORCES FOR THEIR SUPPORT OF MEMBERS WHO ARE CALLED TO ACTIVE DUTY AND FOR THEIR SUPPORT OF THE MEMBERS' FAMILIES

Mr. BAYH submitted the following resolution; which was referred to the Committee on Armed Services:

S. RES. 47

Whereas, over 450,000 members of the reserve components of the Armed Force have been called to active duty between September 11, 2001, and February of 2005, and have had to leave their families and employers to serve and protect their country;

Whereas, the reservists called to active duty provide critical support of United States military operations abroad by serving as engineers, medics, military police, and civil affairs specialists, and in other military specialities;

Whereas, more than half of all reservists are married, and about half of them have children or other dependents;

Whereas, extended active-duty service in the performance of critical national security missions abroad has required reservists to make significant sacrifices, in time spent away from their family and, in some cases, loss of income;

Whereas, the business community in the United States has played a crucial role in supporting our reservists by providing significant financial assistance for reservists ordinarily in their workforce who experience a reduction in income due to extended active-duty service;

Whereas, this financial support by civilian employers makes it possible, in many cases, for the families of reservists to meet daily expenses associated with raising children and attaining the American dream;

Whereas the business community continues to provide this critical assistance so that the Nation's reservists may serve their country without worrying about the financial condition of their family; and

Whereas the following Indiana employers, among others, provide assistance to their employees when, as reservists, they are called to active duty, and the employers deserve public recognition for their role in supporting our troops: Eli Lilly and Company, Cummins, Inc., Guidant Corporation, Alcoa, Inc., ConAgra Foods, Inc., CSX Corporation, Daimler Chrysler, Delphi Technologies, Inc., The Dow Chemical Company, FedEx Corporation, General Dynamics Corporation, Raytheon Company, General Electric Company, American International Group, Inc., Bristol-Myers Squibb Company, Pfizer, Inc., United Parcel Service of America, Inc., Smiths Group plc, Honeywell International, Inc., and Am General, LLC: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) the members of the reserve components of the Armed Forces and the businesses that ordinarily employ them are a cornerstone of the United States' successful prosecution of the war on terror, and the Federal Government should take steps to assist businesses that are providing this critical support to the citizen-soldiers among their employees who are away in the military service of the United States;

(2) the business community deserves the Nation's gratitude for the role it continues to perform in supporting the members of the reserve components of the Armed Forces, their families, and this Nation; and

(3) the appropriate officials of the Federal Government should carefully review the adverse effects of mobilizations and demobilizations of the reserve components on the community of employers within the United States.

SENATE RESOLUTION 48—EXPRESSING THE SENSE OF THE SENATE REGARDING TRAFFICKING IN PERSONS

Mr. LUGAR submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 48

Whereas an estimated 600,000 to 800,000 people are trafficked annually;

Whereas approximately 70 percent of trafficked persons are female and 50 percent are children;

Whereas approximately 250,000 people are trafficked in, out, and through the South East Asia region each year;

Whereas the tsunami that struck South East Asia, South Asia, and East Africa on December 26, 2004, killed more than 160,000 people, affected 5,000,000 people, and left an estimated 35,000 children orphaned;

Whereas these orphaned children are particularly vulnerable to being trafficked for sexual exploitation, forced labor, or to be child soldiers;

Whereas governments of countries affected by the earthquake and tsunami in the Indian Ocean have taken measures to prevent the trafficking of children and other vulnerable persons;

Whereas President Susilo Bambang Yudhyono of Indonesia has ordered that immigration and police officers not allow children from Aceh to be removed from the country;

Whereas Prime Minister Abdullah Badawi of Malaysia undertook measures to prevent child trafficking by directing immigration enforcement officials at entry points in Malaysia to be on the alert for child trafficking and by imposing a temporary ban on the adoption of foreign children;

Whereas, in India, the State Government of Tamil Nadu opened shelters to protect orphaned or separated children and pledged that it would provide orphans of the tsunami support and education;

Whereas the Royal Thai Government has placed all tsunami orphans in that country in the protective custody of extended family members and has awarded boarding school scholarships to children affected by the tsunami;

Whereas, in Sri Lanka, the National Child Protection Authority (NCPA), UNICEF, and nongovernmental organizations have mobilized teams to identify and register all children who have been separated from their immediate families;

Whereas the United Nations Convention Against Transnational Organized Crime (hereafter in this resolution referred to as the ''Organized Crime Convention'') and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, a protocol to the Organized Crime Convention (hereafter in this resolution referred to as the ''Trafficking Protocol''), require countries to enact laws to criminalize trafficking in persons, punish traffickers, and assist victims;

Whereas the United States, on December 13, 2000, signed, but has not yet ratified, the

Organized Crime Convention and the Trafficking Protocol;

Whereas ratification by the United States of the Organized Crime Convention and the Trafficking Protocol would enhance the ability of the United States Government to render and receive assistance on a global basis in the common struggle to prevent, investigate, and prosecute trafficking in persons; and

Whereas, like the United States, most countries affected by the tsunami disaster have signed, but not yet ratified, the Organized Crime Convention and the Trafficking Protocol: Now, therefore, be it

Resolved, That it is the sense of the Senate that—

(1) combating trafficking in persons should continue to be a priority of United States foreign policy;

(2) the United States should ratify the United Nations Convention Against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children;

(3) the President should commend the efforts of the governments of those countries affected by the December 26, 2004, tsunami to protect their children from the dangers of trafficking; and

(4) the President should urge all countries to ratify the United Nations Convention Against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, particularly those countries that have been most affected by the tsunami and in which children face the resulting increased risk of being abducted and trafficked.

Mr. LUGAR. Mr. President, I rise to submit a resolution expressing the Sense of the Senate regarding the trafficking in children following the Asian tsunami.

The recent tsunami in the Indian Ocean region was a natural disaster unlike anything in recent human history. It is estimated that the tsunami claimed the lives of more than 160,000 people throughout the region and displaced more than 1 million.

This disaster has taken an incredible toll on children. The United Nations Children Fund, UNICEF, estimates that children comprise more than one-third of all deaths. Tens of thousands of children have lost family members and friends and are coping with unspeakable trauma. Nearly 35,000 children have been orphaned, and many more have been separated from their families. These children are in need of food, water, and shelter. They face the imminent threats of hunger, disease, and diarrhea.

In addition to these dangers, these children are also vulnerable to being trafficked for sexual exploitation, forced labor, or to be child soldiers. According to the Office to Monitor and Combat Trafficking in Persons at the Department of State, an estimated 600,000 to 800,000 people are trafficked every year, some 50 percent of whom are children. In South East Asia alone, nearly 250,000 people are trafficked in, out, and through the region. Without their families, the children orphaned by the tsunami lack protection from predators who would profit from their tragedy.

My resolution acknowledges this uniquely vulnerable group and urges the United States and other countries to ratify the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and the underlying U.N. Convention Against Transnational Organized Crime. The Protocol requires countries to enact laws to criminalize trafficking in persons, punish traffickers and assist victims. In addition, the Protocol would enhance our ability to give and receive assistance on a global basis in the common struggle to prevent, investigate and prosecute trafficking.

On December 13, 2000, the United States signed these international agreements. Last June, the Senate Committee on Foreign Relations held a hearing on these very important law enforcement treaties. At the earliest opportunity, I intend to schedule a vote on the Convention Against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons at a business meeting of the Committee. By ratifying the Trafficking Protocol, and urging other countries to do the same, we would send a strong message to the world that this modern-day form of slavery must be stopped and that the United States is committed to ensuring that perpetrators are punished and that victims are helped.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on February 10, 2005, at 9:30 a.m., in open session to receive testimony on the defense authorization request for fiscal year 2006 and the future years defense program.

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

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on February 10, 2005, at 10:00 a.m., to conduct a hearing on ''The Role of the Government-Sponsored Enterprises in the Mortgage Market.''

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

COMMITTEE ON FOREIGN RELATIONS

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, February 10, 2005, at 9:30 a.m., to hold a hearing on the Tsunami.

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

COMMITTEE ON THE JUDICIARY

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on Thursday, February 10, 2005 at 10:15 a.m. on ''Bankruptcy Reform.'' The hearing will take place in the Dirksen Senate Office Building Room 226.

Witness List

Mr. Kenneth Beine, President & CEO, Shoreline Credit Union, Two Rivers, WI; Mr. Malcom Bennett, President, International Realty & Investments, Inc., Los Angeles, CA; Mr. Dave McCall, Director, District 1, United Steel Workers of America, AFL–CIO, Columbus, OH; Mr. R. Michael Stewart Menzies, Sr., President & CEO, East Bank and Trust Company, Easton, MD; Mr. Philip Strauss, Retired Attorney, Family Support Bureau in the Office, District Attorney Office in San Francisco, on behalf of the National Child Support Enforcement Association, San Francisco, CA; Ms. Maria Vullo, Partner, Paul, Weiss, Rifkind, Wharton & Garrison LLP, New York, NY; Prof. Elizabeth Warren, Leo Gottlieb Professor of Law, Harvard Law School, Cambridge, MA; and Prof. Todd J. Zywicki, Visiting Professor of Law, Georgetown University Law Center, Washington, DC.

SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT, THE FEDERAL WORKFORCE, AND THE DISTRICT OF COLUMBIA

Mr. HATCH. Mr. President, I ask unanimous consent that the Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia be authorized to meet on Thursday, February 10, 2005 at 10:00 a.m. for a hearing entitled, ''Unlocking the Potential within Homeland Security; the New Human Resources System.''

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. HATCH. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on February 10, 2005 at 2:30 p.m. to hold a closed meeting.

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

PRIVILEGE OF THE FLOOR

Mr. LIEBERMAN. Mr. President, I ask unanimous consent that privilege of the floor be granted to Joe Helble and Lydia Olander, both science fellows in my office, during consideration of the Climate Stewardship Act of 2005.

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

NATIONAL SCHOOL COUNSELING WEEK

Mr. FRIST. Mr. President, I ask unanimous consent that the Judiciary Committee be discharged from further consideration of S. Res. 37, and that the Senate then proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 37) designating the week of February 7 through February 11, 2005, as ''National School Counseling Week''.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. I ask unanimous consent that the resolution and preamble be agreed to en bloc, the motion to reconsider be laid on the table, that any statement relating thereto be printed in the RECORD.

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

The resolution (S. Res. 37) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 37

Whereas the American School Counselor Association has declared the week of February 7 through February 11, 2005, as ''National School Counseling Week'';

Whereas the Senate has recognized the importance of school counseling through the inclusion of elementary and secondary school counseling programs in the reauthorization of the Elementary and Secondary Education Act of 1965;

Whereas school counselors have long advocated that the education system of the United States must leave no child behind and must provide opportunities for every student;

Whereas personal and social growth results in increased academic achievement;

Whereas school counselors help develop well-rounded students by guiding them through their academic, personal, social, and career development;

Whereas school counselors were instrumental in helping students, teachers, and parents deal with the trauma of terrorism inflicted on the United States on September 11, 2001, and the aftermath of that trauma;

Whereas students face myriad challenges every day, including peer pressure, depression, and school violence;

Whereas school counselors are usually the only professionals in a school building that are trained in both education and mental health;

Whereas the roles and responsibilities of school counselors are often misunderstood, and the school counselor position is often among the first to be eliminated in order to meet budgetary constraints;

Whereas the national average ratio of students to school counselors of 485-to-1 is more than double the 250-to-1 ratio recommended by the American School Counselor Association, the American Counseling Association, the American Medical Association, the American Psychological Association, and other organizations; and

Whereas the celebration of ''National School Counseling Week'' would increase awareness of the important and necessary role school counselors play in the lives of students in the United States: Now, therefore, be it

Resolved,

SECTION 1. DESIGNATION OF NATIONAL SCHOOL COUNSELING WEEK.

(a) SENSE OF THE SENATE.—It is the sense of the Senate that the President should designate the week of February 7 through February 11, 2005, as ''National School Counseling Week''.

(b) PROCLAMATION.—The Senate requests the President to issue a proclamation—

(1) designating the week of February 7 through February 11, 2005, as ''National School Counseling Week''; and

(2) calling on the people of the United States and interested groups to observe the week with appropriate ceremonies and activities that promote awareness of the role school counselors perform in the school and the community at large to prepare students for fulfilling lives as contributing members of society.

APPOINTMENTS

The PRESIDING OFFICER. The Chair, on behalf of the President pro tempore, and upon the recommendation of the majority leader, pursuant to Public Law 96–388, as amended by Public Law 97–84, and Public Law 106–292, appoints the following Senators to the United States Holocaust Memorial Council for the 109th Congress: The Senator from Utah, Mr. HATCH; the Senator from Maine, Ms. COLLINS; the Senator from Minnesota, Mr. COLEMAN.

The Chair, on behalf of the President pro tempore, pursuant to Public Law 106–398, as amended by Public Law 108–7, in accordance with the qualifications specified under section 1238(b)(3)(E) of Public Law 106–398, and upon the recommendation of the majority leader, in consultation with the chairmen of the Senate Committee on Armed Services and the Senate Committee on Finance, appoints the following individual to the United States-China Economic Security Review Commission: Mr. Thomas Donnelly of Maryland for a term expiring December 31, 2006.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nomination on the calendar: Calendar No. 9, Allen Weinstein, to be Archivist of the United States. I further ask unanimous consent that the nomination be confirmed, the motion to reconsider be laid on the table, the President be immediately notified of the Senate's action, and the Senate then resume legislative session.

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

The nomination considered and confirmed is as follows:

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Allen Weinstein, of Maryland, to be Archivist of the United States.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

Mr. FRIST. Mr. President, I ask unanimous consent that on Monday, February 14, at 12 noon, the Senate proceed to executive session to consider the nomination of Michael Chertoff to be Secretary of Homeland Security; that the nomination be debated for up to 6 hours equally divided on Monday; that the Senate resume debate on the nomination on Tuesday; February 15, at 2:15 p.m., with the time prior to 4 p.m. to be equally divided and that the Senate vote on the nomination at 4 p.m. on Tuesday; that the President be immediately notified of the Senate's action; and the Senate then return to legislative session; further, that all time be equally divided between the two leaders or their designees.

Mr. DURBIN. Mr. President, on our side, on Monday I designate Senator LEVIN to control 2 hours, Senator DODD to control 20 minutes.

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

ORDERS FOR MONDAY, FEBRUARY 14, 2005

Mr. FRIST. I ask unanimous consent that when the Senate completes its business today, it adjourn until 12 noon on Monday, February 14. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate then proceed to executive session for the consideration of the nomination of Michael Chertoff to be Secretary of Homeland Security, as provided under the previous order.

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

PROGRAM

Mr. FRIST. On Monday at noon the Senate will begin consideration of the Chertoff nomination for Secretary of Homeland Security. Under the agreement, we will debate the nomination throughout the afternoon on Monday, with the vote on confirmation at 4 p.m. during Tuesday's session. Therefore, as I announced earlier, there will be no rollcall votes on Monday.

For the remainder of next week we will consider any legislative or executive business available for action.

Mr. President, I do thank our colleagues, once again, for the participation and the efficiency with which we had the Senate consider the Class Action Fairness Act which was finally voted upon now several hours ago. People worked together very well, and I think it does bode well for bills that come to the floor in this manner in the future.

ADJOURNMENT UNTIL MONDAY, FEBRUARY 14, 2005

Mr. FRIST. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 4:57 p.m., adjourned until Monday, February 14, 2005, at 12 noon.

NOMINATIONS

Executive nomination received by the Senate February 10, 2005:

DEPARTMENT OF STATE

ROBERT B. ZOELLICK, OF VIRGINIA, TO BE DEPUTY SECRETARY OF STATE, VICE RICHARD LEE ARMITAGE, RESIGNED.

CONFIRMATION

Executive nomination confirmed by the Senate Thursday, February 10, 2005:

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

ALLEN WEINSTEIN, OF MARYLAND, TO BE ARCHIVIST OF THE UNITED STATES.

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.