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House of Representatives

The House met at 10 a.m. and was called to order by the Speaker pro tempore (Mr. CULBERSON).

DESIGNATION OF THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
February 16, 2005.

I hereby appoint the Honorable JOHN ABNEY CULBERSON to act as Speaker pro tempore on this day.

J. DENNIS HASTERT,
Speaker of the House of Representatives.

PRAYER

The Reverend John H. Parker, Pastor, Central Baptist Church, Washington, D.C., offered the following prayer:

Eternal God, we thank You for the blessings that You have given us this day. We pray, Lord, that the things that are done today will be done pleasing in Your sight, that they will be a blessing unto Your people and edifying unto You.

We pray O Lord, that You continue to bless the President of these United States of America, lead him in every level of his life and all leadership that has been given to and staff to help him. We pray for the protection of our Armed Forces, especially those who are serving in Afghanistan and in Iraq. We pray for their families who are left back here. We ask that You comfort them. I know when the phone rings at night it gets lonely, but be with them.

Guide us and keep us throughout the day and let everything that be done in this institution be done for Your glory and for the benefit of Your people. In Jesus' name we pray, our hearts say, Amen.

THE JOURNAL

The SPEAKER pro tempore. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from North Carolina, (Mr. MCHENRY) come forward and lead the House in the Pledge of Allegiance.

Mr. MCHENRY 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.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Monahan, one of its clerks, announced that the Senate has agreed to a concurrent resolution of the following title:

S. Con. Res. 13. Concurrent resolution congratulating ASME on their 125th anniversary, celebrating the achievements of ASME members, and expressing the gratitude of the American people for ASME's contributions.

INTRODUCTION OF THE REVEREND PARKER

(Mr. RUSH asked and was given permission to address the House for 1 minute.

Mr. RUSH. Mr. Speaker, it is with great honor and privilege that I rise today to introduce our guest chaplain, the Reverend John H. Parker, the pastor of the Central Baptist Church, located right here in Washington, D.C.

Reverend Parker was born and raised in Monroeville, Alabama. He is married to the former Diane Elois Harvey, and they are the proud parents of two lovely daughters, Chandra and Lynne.

After serving in the U.S. Army for 20 years, Reverend Parker moved to Washington, D.C. in 1980 where he became a member of the Central Baptist Church. In 1984 Reverend Parker received his calling into the ministry to preach the Gospel. He was licensed and later ordained as the Pastor of Central Baptist Church in 1988, where he has become the source of much pride and admiration, not only in his church, but also in his surrounding community.

Reverend Parker graduated from the Washington Bible College in 1996, with a Bachelor of Arts Degree in biblical studies and urban ministries. Respected for his dynamic leadership, Reverend Parker thanks God for his guidance and support and he is deeply grateful to the Almighty for saving him so that he might become an instrument for spreading God's word.

Mr. Speaker, again it is an honor for me to introduce and welcome to the U.S. House of Representatives the Reverend John H. Parker, pastor of the Central Baptist Church in Washington, D.C., to deliver our opening prayer.

FRIVOLOUS LAWSUITS HURT AMERICANS

(Mr. SMITH of Texas asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SMITH of Texas. Mr. Speaker, frivolous lawsuits bankrupt individuals, ruin reputations, drive up insurance premiums, increase health care costs and put a drag on the economy.

For example, the chief executive officer of San Antonio's Methodist Children's Hospital was sued after he stepped into a patient's room and simply asked how he was doing.

Of course, a jury cleared him of any wrongdoing. Today, almost any party can bring any suit in almost any jurisdiction. But there is a remedy: The Lawsuit Abuse Reduction Act. It requires judges to issue sanctions, including reimbursement of attorney's

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fees when an attorney files a frivolous claim. This will make a lawyer think twice before filing a frivolous lawsuit.

Also this legislation prevents forum shopping. It requires that personal injury claims be filed only where the plaintiff resides, where the injury occurred, or in the State or county where the defendant's principal place of business is located.

The Lawsuit Abuse Reduction Act is sensible reform that will help restore confidence in America's justice system.

URGING ACTION ON THE HEALTH CARE CRISIS

(Mr. EMANUEL asked and was given permission to address the House for 1 minute.

Mr. EMANUEL. Mr. Speaker, the administration has told us Social Security is in a crisis, headed for an iceberg, going broke, yet last week's revelation that the Medicare drug bill will cost nearly three times more than its original price tag, for a total of $900 billion, known in the real world as a $500 billion overcharge, calls into question the notion of privatizing Social Security.

Apparently the leaders here in Washington are content to ignore the 900–pound gorilla in the room. I would like to remind everyone that it was none other than the Fed Chairman, Alan Greenspan, who told the House Budget Committee in February of 2004, the concern is not so much about Social Security, the outlook for Medicare is much more difficult to assess. We really do not have a clue about the outlook for Medicare and never have.

The distinguished Fed Chairman is an expert on the challenges facing Social Security. He is undoubtedly getting tremendous pressure today to change his story.

Mr. Chairman, Federal Chairman Greenspan, do not get weak in the knees today, or ever. This is no time to change your judgment. Your integrity is a precious asset. I was there at the Budget Committee hearing when you said Medicare is a more serious problem.

Mr. Speaker, we have a health care crisis in this country. Privatizing Social Security is not an ideological solution in search of a crisis.

EXTREME RHETORIC FROM THE LEFT

(Mr. PITTS asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PITTS. Mr. Speaker, the rhetoric of the left these days is becoming outrageous. Democrats in Virginia's legislature took this to new levels last week. Several compared a measure defining marriage as the union of a man and a woman to the Holocaust. Last week, the mayor of Baltimore compared President Bush's budget impact on cities to the murder of 3,000 civilians on 9/11 killed by terrorists. A Colorado professor similarly disparaged 9/11 victims, calling them Nazis, little Eichmanns, working to sustain the Fascist capitalist system.

This demagoguery is an affront to our sense of decency and justice. It blames the victims, not those who murder them, for the most terrible injustices of our time. The Holocaust is incomparable to anything we have ever seen. Fourteen million people were murdered because of their race, ideology, nationality, or disability. Mr. Speaker, 9/11 was perpetrated not by capitalism, but by terrorists. That is the truth of history.

The left would do well to consider what their words really mean when leveling accusations at opponents, not sacrifice decency and truth at the altar of political expediency.

WOMEN AND SOCIAL SECURITY

(Ms. SOLIS asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. SOLIS. Mr. Speaker, today I rise to denounce the so-called Social Security crisis that President Bush is trying to sell the American public.

As the Democratic chair of the Women's Caucus, I am especially concerned about the impact of privatization on women. The President is proposing drastic cuts in Social Security survivor benefits. Nationally, 50 percent of Social Security beneficiaries receive all or part of their benefit either as a widow or widower, spouse or child of a worker or a disabled worker. Over 80 percent of the beneficiaries are women and children. Right now the typical widow receives a Social Security benefit of $865 a month. If the 45 percent cut projected by the Congressional Budget Office were to take effect currently, they will only receive $476 per month.

In my own family, I have a relative who is a widow whose family receives Social Security survivor benefits for her last child. She had three. If it was not for that amount of money, she would be living in poverty.

Democrats believe that all American workers should get the benefits they paid for. We will fight to improve the Social Security system and not dismantle it.

AGGRESSION AGAINST TAIWAN

(Mr. GINGREY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GINGREY. Mr. Speaker, in 1979, Congress passed the Taiwan Relations Act to ensure our friends on the island of Formosa would not be isolated because of our Nation's ''One China'' policy. The Taiwan Relations Act sent a strong message to Communist leaders on mainland China, saying we will conduct business with their country but will not tolerate Communist aggression against a sovereign people.

It is important to emphasize our commitment to the democratically represented citizens in the Republic of China, because recent reports indicate mainland China is about to enact an anti-secession law with the purpose of reuniting China under Communist dictatorship. This action will not only destroy the goodwill between the peoples of Taiwan and China, it will also provoke unnecessary tension in the Taiwan Strait.

By unilaterally changing the status quo, Communist China is also challenging America's will to stand behind the Taiwan Relations Act. After diplomatic improvements in recent years, I believe the anti-secession law is wrong for the region's stability and is a potential misstep that needs to be addressed.

PRESIDENT'S PRIVATE RETIREMENT ACCOUNTS SUBJECT TO HIGHEST LEVEL OF TAXATION

(Mr. GEORGE MILLER of California asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. GEORGE MILLER of California. Mr. Speaker, one of the most interesting things about the President's plan to privatize Social Security is that for those individuals who decide to take out a private account, not only will that lead to benefit cuts into the future, very substantial benefit cuts for the recipients, up to 40 percent, but those who decide to take out the private accounts will find out at the time of their retirement that unless their accounts have earned inflation plus 3 percent, that they will be taxed up to 70 percent or higher of their benefits that they risked and put into that private account.

It is rather interesting that Republicans who so often make ''no tax'' pledges will subject those retirees to the highest level of taxation of anybody else in the country. Most people pay 20, 15, 20, 25 percent of their income, but those retirees on that benefit, on those accounts, the government will take back up to 70 percent of that unless they achieve some remarkable rate of return that is beyond the historical rates of return guaranteed by the marketplace.

Mr. Speaker, it is a rather interesting proposal that that is where they would decide to levy taxes, on those retirees who open those private accounts, to increase savings in this country.

CLASS ACTION REFORM

(Mr. PRICE of Georgia asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PRICE of Georgia. Mr. Speaker, not too long ago, our Nation's courts were a place where Americans were able to seek justice. Today, however,

the system has become a playground for personal injury trial lawyers as they file sham, abusive cases in lawsuit-friendly counties. And all too often the attorneys collect multi-million-dollar settlements for themselves, while their clients, the real victims, get left with nothing more than a coupon, often worth nothing more than the paper upon which it is printed.

Recently, a large national video rental chain, after being named in 23 class-action lawsuits, agreed to provide consumers in the lawsuit with dollar coupons, and attorneys in this case received over $9 million.

Even more outrageous is the case where consumers were awarded 33 cents each in a settlement with a well-known national bank, not even enough to buy a stamp, while attorneys in the case walked away with $4 million.

Mr. Speaker, this amount of money distorts the incentives for personal injury lawyers. They no longer represent their clients; they become coplaintiffs. It is past time we did something about it. That is why we should return commonsense justice to the American people by passing S.5, The Class Action Fairness Act.

EDUCATION BUDGET CUTS

(Mr. PALLONE asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. PALLONE. Mr. Speaker, 3 years ago, President Bush promised that no child would be left behind when he signed education reform legislation into law. But last week the President unveiled a budget with education cuts that breaks his promise to America's children.

The President's budget calls for the elimination of 41 education programs. Just some examples: The President eliminates vocational educational grants that help our States teach high school vocational skills to students in the hope that they will use these skills to find jobs. He eliminates educational technology grants to States, despite the fact that studies show technology can substantially raise student achievement. The President's budget eliminates a promotional effort to create ways to best educate disabled students.

Mr. Speaker, the President broke his promise to millions of children with this budget. We should reject this budget because of the education cuts alone and live up to our promises to see that no child is left behind.

□ 1015

MIDDLE EAST PEACE PROCESS

(Mr. CHOCOLA asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. CHOCOLA. Mr. Speaker, the recent assassination of the former Lebanese Prime Minister reminds us once again how fragile life can be in this part of the world. That is why we must remain resolute in our mission to support efforts in the Middle East that promote stability and promote peace.

In Iraq, we are witnessing an emerging democracy that is bringing new hope and sovereignty to once-vanquished peoples. The recent Israeli-Palestinian truce is the crucial step towards reestablishing the confidence that has so often eluded its leaders. This is a necessary ingredient to advance the cause of peace in a region inflicted by terror and violence.

Mr. Speaker, the historic developments of the past few months are a ray of hope in a region that is often clouded by darkness and give us reason to believe that a new era has begun, one which will eventually lead to peace.

TRADE DEFICIT

(Mrs. MALONEY asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. MALONEY. Mr. Speaker, this administration has repeatedly set records for debts and deficits and the latest is for our enormous trade deficit. We have raised the debt ceiling three times to cover their deficit spending, over $470 billion. That comes out to over $26,000 owed by every man, woman, and child in America.

Their newest record is an all-time high in a trade deficit, nearly $618 billion, the highest in our history. This is a huge burden for our economy because we are borrowing from foreign countries to pay for our imports. We should never build our economic system on a foundation of debts, deficit, and foreign loans. Any day that foundation could become a house of cards.

ENDING FRIVOLOUS LAWSUITS

(Mr. MCHENRY asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. MCHENRY. Mr. Speaker, frivolous lawsuits are hurting our economy, and they must be stopped. Lawsuit abuse affects everyone. Frivolous lawsuits and junk lawsuits jam our judicial system. Frivolous lawsuits increase the cost of medicine and medical treatment. They hurt our health care, hurt the American economy, and they hurt American jobs.

Mr. Speaker, it is because jury awards in civil trials have become blank checks for plaintiff lawyers. Increased numbers of cases and the absurd rewards they yield have resulted in the highest per-person cost of litigation of any country in the world. They cost small businesses the most and many have closed their doors.

It is Congress's duty to ensure that this type of legislation is not abused. President Bush's plan for tort reform lays a strong groundwork to address medical liability reform, class action lawsuit reform, asbestos litigation reform. It is clear that too many of these lawsuits are being abused. Congress must act today to ensure that we have a healthy economy tomorrow.

STRENGTHENING SOCIAL SECURITY

(Mr. SAM JOHNSON of Texas asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SAM JOHNSON of Texas. Mr. Speaker, I salute President Bush's leadership on the need to strengthen Social Security with personal retirement accounts. I am hearing a lot of haranguing on the other side, most of it untrue. This debate begins and ends with our pledge that nothing will change for people 55 and older.

This current debate must focus on the future of younger Americans. Social Security was created for a much different America. Created in 1935, current taxes more than covered current opinions. The average working male lived to age 60, when people retired at age 65. When Social Security started, 42 people supported one retiree. Now 3.3 workers support one retiree, and it is on a downward trend too.

We have got to do better for our children and our grandchildren. We must strengthen Social Security for our children and for America's future.

PROVIDING FOR CONSIDERATION OF H.R. 310, BROADCAST DECENCY ENFORCEMENT ACT OF 2005

Mrs. CAPITO. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 95 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 95

Resolved, That upon the adoption of this resolution it shall be in order without intervention of any point of order to consider in the House the bill (H.R. 310) to increase the penalties for violations by television and radio broadcasters of the prohibitions against transmission of obscene, indecent, and profane material, and for other purposes. The bill shall be considered as read. The previous question shall be considered as ordered on the bill and on any amendment thereto to final passage without intervening motion except: (1) one hour of debate on the bill equally divided and controlled by the chairman and ranking minority member of the Committee on Energy and Commerce; (2) an amendment printed in the report of the Committee on Rules accompanying this resolution, if offered by Representative Upton of Michigan or his designee, which shall be in order without intervention of any point of order or demand for division of the question, shall be considered as read, and shall be separately debatable for 20 minutes equally divided and controlled by the proponent and an opponent; and (3) one motion to recommit with or without instructions.

The SPEAKER pro tempore (Mr. CULBERSON). The gentlewoman from

West Virginia (Mrs. CAPITO) is recognized for 1 hour.

Mrs. CAPITO. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentlewoman from New York (Ms. SLAUGHTER), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

On Tuesday, the Committee on Rules met and granted a structured rule for H.R. 310, the Broadcast Decency Enforcement Act of 2005. This is a fair rule that I believe all Members of the House should be able to support.

This bipartisan bill brings penalties for network television programming to modern standards. The legislation also enhances the Federal Communications Commission's ability to reprimand networks and individuals who violate indecency standards.

In the last few years, there have been several instances that have prompted the need for this legislation. Two immediately come to mind. During the 2003 Golden Globe Awards, pop star Bono of the band U2 used offensive language while accepting an award on live television; and, of course, there is the infamous debacle that was the 2004 Super Bowl half-time show which I, by the way, was watching with my own family.

Each incident occurred during prime time hours and both programs were widely viewed by families across the Nation. Parents should not have to be unwillingly subjected to vulgar behavior and blatant disregard for what is appropriate for prime time viewing hours.

Provisions in H.R. 310 will increase the FCC fines for indecent broadcasts from $32,000 per incident to $500,000 per incident which will be applied to the network and other parties who knowingly participated and approved of the broadcast. There is also a 3-strikes provision that will give the FCC the option of revoking broadcast licenses of frequent offenders. This legislation protects local networks and broadcast companies from fines if they did not have prior knowledge, if they did not give approval or were unable to prevent the indecent broadcast from the parent company or network from happening in the first place. This provision judiciously places responsibility where it truly lies by protecting innocent parties.

I am a strong supporter of this bipartisan legislation. We have made many strides in recent years providing parents with rating information they can use to determine what is appropriate for their children to view. We cannot tolerate instances where G-rated programming is intentionally and unknowingly to the audience turned into R-rated programming.

These are good changes to improve the quality of television available to our children and families. I urge my colleagues to support the Upton-Markey manager's amendment. It is a strong bipartisan amendment that makes necessary clarifications and improvements to this legislation. To that end, I urge my colleagues to support the rule and the underlying bill.

Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I thank my colleague from West Virginia and congratulate her on her first rule.

Mr. Speaker, I rise today in support of the underlying bill, but I am disappointed that the rule will not let us engage today in the debate that this House and our country desperately need to have, a debate about how the lack of standards in the broadcast media is threatening some of our most basic democratic values.

The underlying bill, which I supported last year and intend to support again today, addresses a very narrow part of the problem of decency within broadcasting. It increases the penalties on media companies who openly flaunt the FCC's rules against obscene broadcasts.

Mr. Speaker, when we give media companies the right to broadcast in our communities on our airwaves, one of the few things we ask in return is they refrain from broadcasting lewd, indecent programs during the hours that children may be listening or watching. That does not seem like a lot to ask, but many media companies seem to find it hard to comply even with the most basic rule, a rule most Americans practice every day in their lives.

Put simply, you do not say crude or offensive things when you are a guest in somebody's home and their children are in the room. This is an American value that we can all embrace, so I would ask why the standards are different for the media. The bottom line is that they should not be.

The FCC has fined a number of broadcast licensees over the past several years for lewd and inappropriate broadcasts, and I hope that the increased penalties in the bill will make these companies think twice before they do it again. But with all the money they make, I doubt that. But refraining from obscene broadcasts does not mean that our media companies are fulfilling their obligation to broadcasts in the public interest. In fact, I would submit that an even greater indecency is the declining standards of fairness, accountability and truth in America's broadcast media today. After all, should we not ensure that our broadcast media present a diversity of views about the most important issues that face the country? Issues upon which our democracy depends should at least be as important as regulating the words and images we allow broadcasters to use in sit-coms and Super Bowl half-time shows.

Sweeps Week stunts only underscore how these large, distant media companies routinely sweep important local news, balance, truth, and objectivity under the rug. I am talking here about core American values, values that most of us were taught as children and practice every day: be accountable for what you say and do; be truthful and fair in your dealings; balance your approach to life. But time and time again, we have failed to demand that mega-media corporations uphold these most basic American values. And all this despite the fact that the same companies use the public airwaves broadcasting into our homes every night and are the primary tool that most Americans use to learn about the world around them.

Ever since the Reagan administration rescinded the Fairness Doctrine in 1987 our broadcast standards have not only been in just a steep decline but they are fast approaching extinction.

When newspeople present political opinion as hard news with no accountability or fact for truth, I call that indecent. When it becomes common practice to pay members of the media to deceptively advocate a political agenda on public airwaves without disclosure to the public, I call that indecent. When a television broadcaster uses his license to present one-sided, factually erroneous documentaries designed to impact the outcome of a national election without equal time or standard for truth, I call that indecent and dangerous.

And what about the so-called reporter who gained access to the White House press room under dubious circumstances to ask loaded rhetorical questions without even his colleagues, much less his audience, knowing he is a fraud? I call that overwhelmingly indecent.

In a relatively short time, we have abandoned the high ethical standards of truth and objectivity demonstrated by such giants as Edward R. Murrow and Walter Cronkite in favor of the bias of pseudo-journalism demonstrated by Armstrong Williams, Jeff Gannon, and Bill O'Reilly. This is a sure recipe for the dumbing-down of America.

In fact, USA Today reported yesterday that despite the fact that 60 percent of Americans get their news from local television, those same companies have nearly given up covering local political races and issues in recent years. According to the article, in the month leading up to the last election, the one just passed, just 8 percent of the local evening newscasts in 11 of the Nation's largest TV markets devoted time to local races and issues.

□ 1030

Ninety-two of them paid no attention. That is 8 percent. In other words, for every minute of news that they show, they spend 4.8 seconds discussing the issues that shape our neighborhoods, our communities and our families, and for most Americans, that is the only news they will get.

Enough is enough. The public deserves better. The American people

know they are being deceived. They are fed up, and they are taking action to do something about it.

Look at the 2 million comments that ordinary Americans sent to the FCC to stop even more media consolidation from taking place last year. The public expects us to do more. They expect us to act in their interests. They expect us to defend and uphold their values, values we should all share: truth, honesty, objectivity and balance. We can do so much more than what we are just discussing here today.

When the committee met to report this rule last night, the gentleman from New York (Mr. HINCHEY) and I brought amendments to the committee that we thought would broaden this debate today into the one we really ought to be having.

The gentleman from New York's (Mr. HINCHEY) amendment would have rolled back broadcast media consolidation rules to their pre-2003 levels, and my amendment would restore the fairness doctrine and bring more accountability to the news, but we were rejected.

They only wanted to talk today about decency, and we were not germane to the bill. In a technical sense, they may be correct, but we all know that to have a real debate on what is happening to our culture today, the House would have to talk about the issues our amendments address. Sadly, that will not happen today.

Mr. Speaker, at the end of the debate, I intend to call for a no vote on the previous question so that I may modify the rule to allow for consideration of my amendment on fairness and accountability in broadcasting, and I hope that all Members of this House will join me in voting against the previous question to have this opportunity to restore fairness and accuracy in the media.

I only hope that in the 109th Congress we will have that discussion. Our democracy could very well depend on it.

Mr. Speaker, I reserve the balance of my time.

Mrs. CAPITO. Mr. Speaker, I continue to reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I am pleased to yield 2 minutes to the gentlewoman from California (Ms. WATSON).

Ms. WATSON. Mr. Speaker, I also rise in strong opposition to the rule for H.R. 310. Yesterday, I too offered several amendments with my colleagues that would require broadcasters to perform minimum public-interest obligations and ask GAO to study the link between indecency and media ownership. I am very disappointed that they were not made in order, and I hope my colleagues will join me in opposing this rule and requesting an open rule.

Mr. Speaker, while we all believe in the need to reduce indecency in media, I do not believe increasing fines addresses the root causes of the problem, namely, the current trend of unfettered media conglomeration and its impact on creative voices. This bill is a response to the anger felt by millions of parents and consumers regarding our dumbed-down media culture today.

The bottom line is, a consolidated media market controlled by profit-driven conglomerates is bound to produce indecent, shock-value programming for the sake of viewership. That is why I joined my colleague, the gentleman from New York (Mr. HINCHEY), in offering an amendment that would request a GAO study on the connection between media ownership and indecency. I am very disappointed that the amendment was rejected.

Furthermore, when big media gets bigger and the race for audiences turns to the lowest denominator in trash programming to appeal to the broadest possible audience, those conglomerates move further away from quality programming and the principles of diversity, localism and competition, crucial for the service of the public interest.

This was why I supported an amendment offered by my colleague, the gentlewoman from New York (Ms. SLAUGHTER), who has been a champion in restoring the fairness doctrine. The Slaughter-Watson amendment would have made basic public-interest obligations an element of the broadcast licensees' renewal requirement. That includes the coverage of diverse interests and viewpoints in the local community, the requirement of holding two public hearings each year to ascertain the needs and interests of the communities licensees are serving, and documentation requirements of such public interest coverage.

Mr. Speaker, the indecent media culture we are witnessing today cannot be simply modified by increased fines. It needs to be transformed through less media consolidation and greater requirements on broadcasters to serve the public interest. I strongly urge my colleagues to oppose the rule. Vote against the bill.

Mrs. CAPITO. Mr. Speaker, I yield 2 minutes to the gentleman from Oklahoma (Mr. COLE), my distinguished colleague and new member of the Committee on Rules with me.

(Mr. COLE of Oklahoma asked and was given permission to revise and extend his remarks, and include extraneous material.)

Mr. COLE of Oklahoma. Mr. Speaker, I rise today in support of the rule for H.R. 301, the Broadcast Decency Enforcement Act of 2005. I believe this is a fair rule and one that accords both sides of the aisle a good opportunity to explore the issues surrounding this legislation.

Just last year, the House took a strong step forward on this issue when it passed H.R. 3717 by a vote of 391 to 22. Unfortunately, the other body was unable to schedule this legislation for consideration before the close of the 108th Congress.

Mr. Speaker, we have a real opportunity today. As a father and a husband, over the years I have had genuine concerns about the suitability of some of the programming that is now aired on television. As my colleagues know, the law holds that indecent material is not appropriate for television. Unfortunately, over the last several years, some in the media have concluded that they are willing to pay fines for the privilege of airing the very material that they know millions of Americans will find offensive.

Mr. Speaker, it is time that we as the people's elected Representatives address the issues surrounding the airing of indecent material. This legislation is a good first step. It will restore some teeth to the law and begin to better protect America's children immediately.

I know that my colleagues agree with me, Mr. Speaker, when I say that no family should be exposed to some of the content that is now regularly aired on television. This legislation does not address just the infamous incident such as the supposed wardrobe malfunction at last year's Super Bowl. While it does not discriminate, it will help to restore a measure of decency to the airwaves.

Again, Mr. Speaker, I urge my colleagues to support the rule. It is a fair rule, one that will allow us to fully explore the issues surrounding the Broadcast Decency Act of 2005.

Ms. SLAUGHTER. Mr. Speaker, I am pleased to yield 2 minutes to the gentlewoman from California (Ms. WOOLSEY).

(Ms. WOOLSEY asked and was given permission to revise and extend her remarks.)

Ms. WOOLSEY. Mr. Speaker, our discussion of the media's responsibility is incomplete without consideration of fairness and without consideration of the fairness doctrine. The public's airwaves are not just a forum for entertainment that might step beyond the bounds of decency but also a home to the marketplace of ideas on which our democracy depends.

In other words, it is not good enough to hold broadcasters accountable for inappropriate wardrobe malfunctions. They must live up to the public good if they want to continue to use the public's airwaves.

Our constituents depend on broadcasters for essential information about issues that affect their families, their lives. Too often, they are unknowingly relying on incomplete, inaccurate, or biased reports.

This happens because we do not hold broadcasters accountable to the public. Under the current rules, corporate conglomerates are free to set the news agenda based on what they think sells or entertains, not what the public needs to know.

Undercover government spokespersons are free to speak their opinions as trustworthy pundits, and media monopolies are free to use their power to provide only one part of the story. Broadcasters are failing the public when the airwaves are used this way.

Mr. Speaker, there is another challenge and threat to our most cherished free speech values: the consolidation of

media ownership. There is a movement that is reshaping the marketplace of ideas and eliminating the diversity of opinion critical to a vibrant democracy.

No newspaper, radio station or TV network is perfect, but allowing single corporations to monopolize the information that average Americans receive gives media corporations and individuals like Rupert Murdoch too much power.

In America ideas are not just another commodity like butter, steel, or cloth. Ideas are the lifeblood of our Nation. The FCC should be defending the free exchange of ideas, not giving a few corporations and their executives power to shut off the flow of ideas to American citizens.

Mr. Speaker, I suggest that we do not vote for this rule until we have everything in it.

Mrs. CAPITO. Mr. Speaker, I yield myself such time as I may consume.

I would like to remind the Members that the issue that we are speaking about today in this bill is the raising of the fines for indecency, caused by several incidents, I think over a million, the gentlewoman from New York (Ms. SLAUGHTER) quoted last night in our Committee on Rules meeting, instances of inappropriate viewing on our television and our airwaves and on our radios.

So I think to keep the focus of this bill and this rule is important for the Members to realize that this is something that goes right to the crux of our families.

Mr. SANDERS. Mr. Speaker, will the gentlewoman yield?

Mrs. CAPITO. I yield to the gentleman from Vermont.

Mr. SANDERS. Mr. Speaker, will the gentlewoman help us define what inappropriate is? Does the gentlewoman think that the film ''Saving Private Ryan,'' which depicted the incredible sacrifice by American troops on D-Day, is inappropriate and should have been kept off of ABC?

Mrs. CAPITO. Mr. Speaker, I think the standard for inappropriate on the airwaves has been established by the FCC, and they are the ones.

This bill does not speak to that. This bill speaks to raising of the fines.

Mr. SANDERS. Mr. Speaker, if the gentlewoman would continue to yield, but this bill leads to self-censorship. Small stations who are fined a half a million dollars are going to be very cautious. ''Saving Private Ryan'' was kept off of dozens of ABC affiliates because they were afraid of a fine.

Mrs. CAPITO. Mr. Speaker, reclaiming my time, in wrapping up my previous statement, I just want to realize what the focus of this bill and what the focus of the rule is on.

Mr. Speaker, I continue to reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I yield myself such time as I may consume.

In response to my colleague, at the end I am going to amend this rule to include what we are trying to do and what the speakers are speaking to. So that is perfectly legitimate for us to do that.

Mr. Speaker, I yield 4 minutes to the gentleman from Massachusetts (Mr. FRANK).

Mr. FRANK of Massachusetts. Mr. Speaker, the comments from the floor manager of the bill made clear one of the major goals of the Republican Party. It is to shorten the attention span of the American people.

Among the things they think are inappropriate are not just things we might see on television but things we might hear on the floor of the House. The gentlewoman apparently thinks it is inappropriate for us to discuss on the floor of the United States House of Representatives the issue of media concentration.

That is what we are talking about. The gentlewoman said no, no, no, you are off the subject. Well, many of us believe that excessive media concentration is a subject that ought to be addressed, and it is, of course, the intention of the majority party not to allow that to be discussed. Inappropriate to criticize those corporations that are increasing media ownership.

The gentleman from Oklahoma said this is a fair rule. Well it is fair if the scale is poor, fair, good and excellent. In that case, I guess it is a fair rule because my colleagues let in one amendment.

We will be debating, after this rule is adopted, the substance of this bill, probably the only bill that the majority will allow on our communications matter, for 1 hour and 20 minutes; 1 hour and 20 minutes. If the Provisional Assembly in Iraq gave only an hour and 20 minutes to a subject, we would be very critical of them.

Once again I have to say, with regard to the people in Iraq who have been elected to the Provisional Assembly and who we are urging to practice democracy and respect minority rights, if any of them happen to be watching this proceeding, please do not try this at home. Please show more respect for full discussion than these people are showing.

Now, I also want to talk about indecency. It may be one of my last chances to do it because the gentleman from Vermont is correct. What this has done, this furor, is to lead to censorship, self-censorship, but also censorship by the administration.

I regret things like the Janet Jackson incident and what happened with her and that guy, but I think we have a greater danger now. The greater danger is the censorship of the free and open debate of this country. I guess I have more confidence than the majority in the families of America and the parents to be the main protectors of their children, not the majority party; and instead what happens is we have the Secretary of Education criticizing PBS and pressuring them not to run a show because it showed two lesbians.

I guess maybe I am speaking out of self-interest. If these people keep this up, we just had some fool in the Department of Health and Human Services insist that a panel on youth suicide aimed at gay, lesbian, and transgendered teenagers not use the words gay, lesbian and transgendered, because those things are inappropriate; showing lesbians is inappropriate.

I guess, Mr. Speaker, if some of these people had their way, I would be bleeped. I guess there would be a blank screen when I appeared on here, lest some people be somehow corrupted by the very fact that a gay man takes the floor of the House to talk about a rule that is undemocratic and a furor that leads to ''Saving Private Ryan'' being shut off, that leads to PBS being pressured not to show young people that there is in this world such a thing as lesbians, because that might somehow corrupt them.

□ 1045

I voted for this bill last year, so I am grateful to the majority for one thing. I voted for it, and it resulted in a degree of pressure and a degree of intimidation and a degree of intolerance and a failure to understand the value of free debate that I regretted and felt a little guilty about. So I am glad I have a chance to vote against it, as I will do.

But I regret very much that the gentlewoman from West Virginia and those in the majority feel it is inappropriate to discuss media concentrations or any oppositions that might exist. And that is where we are today. We have a bill that will, I believe, result in more censorship, in more excessive attention to a fairly small problem while ignoring very large ones.

I should say, finally, Mr. Speaker, understand why we have to cut this debate so short: because of our workload. We might actually be here until 4 o'clock this Wednesday, today, and we may even begin tomorrow. Of course, we are getting ready for a 10-day recess, so we may need a little extra time to relax. This House has met very little, we have done very little, and so the refusal of the majority to allow a debate on the important topics that we are talking about here, the effort by the gentlewoman from West Virginia to chide us, to say do not bring up media concentration and all those unimportant irrelevancies, is an example of the majority's disrespect of democracy, which they unfortunately continue to manifest.

Mrs. CAPITO. Mr. Speaker, I yield myself such time as I may consume to make a couple of comments regarding the gentleman's observations.

I did not state it was inappropriate to debate this on the House floor, and I am only speaking about the indecency and the raising of fines in terms of a standard that is set by our Federal courts. So I take exception with that.

I also take exception with his ownership of democracy. This is what democracy is. We are debating democracy, we

are debating issues on the House floor, which we do every single day, and I am proud to be a part of that.

The other thing I would say in terms of the bill we are discussing, I think it is important to remember that over 2 years ago, I believe, we passed this bill in enormous bipartisan fashion. It was brought to the committee by both the chairman and the minority Chair of that committee in unison in terms of the manager's amendment and the intent of the bill. So I believe that Members will know this is a bill we have worked on before.

Personally, I was raised in the 1950s and 1960s, when I used to sit down and watch ''Bonanza'' and the ''Wide World of Disney.'' My mother did not have to have the remote control in her hand, which they did not have at the time anyway, to make sure I did not see anything inappropriate. All we are trying to do here is to raise the level of fines for those who willfully and intentionally have indecent and inappropriate action on television.

Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I yield 30 seconds to the gentleman from Massachusetts (Mr. FRANK).

Mr. FRANK of Massachusetts. Mr. Speaker, I would say to the gentlewoman from West Virginia, and I regret she would not want to yield, I guess she did not want to respond to me, even though she has a lot of time left. She is going to turn back her time. But she said she was not saying we should not debate these. I will make a prediction: she and the majority will never allow a debate on concentration.

She says, oh no, we just do not want to debate it now. You do not want to debate it now, you do not want to debate it next month, you do not ever want to debate it. So the fact is this is not simply a case of, oh well, we are only on this one issue. It is the effort of the majority to suppress debate on the important question of media concentration. They will not bring it up now, and they will do everything they can to prevent it.

So, yes, I think I am on the right side of democracy when we talk about whether or not to discuss this issue. Democracy says you should discuss it.

Ms. SLAUGHTER. Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey (Mr. HOLT).

Mr. HOLT. Mr. Speaker, I rise in opposition to this rule. I am happy that we are having this discussion of decency on the public airwaves today, and I am happy to be here with the gentlewoman from New York (Ms. SLAUGHTER), who is one of the greatest champions in America for fair communication of ideas and artistic and creative thinking.

I am surprised and disappointed, however, that this rule does not allow us to debate an issue that is just as important as public content, and that is diversity of viewpoints. The repeal of the Fairness Doctrine has hurt the objectivity of the media, and an amendment dealing with this was denied.

In recent months, we have seen the unfortunate result of media consolidation, lack of local programming control, balance of news and information. One broadcasting company tried to use the public airwaves to air an untruthful and damaging so-called documentary criticizing the war service of a Presidential candidate. We have discovered the administration is using taxpayer funds to pay broadcasters and unqualified journalists to advocate administration policies.

Reinstitution of the Fairness Doctrine would provide at least partial safeguard against such abuses. It would require broadcast licenses to cover both sides of issues or multiple sides of issues of public interest.

As we are considering decency in the public airwaves, we should also give due consideration to fairness, truth, and balance on those same airwaves.

Mrs. CAPITO. Mr. Speaker, may I inquire as to how much time is remaining.

The SPEAKER pro tempore (Mr. CULBERSON). The gentlewoman from West Virginia (Mrs. CAPITO) has 22 minutes remaining, and the gentlewoman from New York (Ms. SLAUGHTER) has 13½ minutes remaining.

Mrs. CAPITO. Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I yield 3 minutes to the gentleman from Vermont (Mr. SANDERS).

Mr. SANDERS. Mr. Speaker, I thank the gentlewoman for yielding me this time, and I rise in opposition to the rule and opposition to the underlying legislation.

As someone who voted in favor of similar legislation last year, I am increasingly alarmed by the culture of censorship that seems to be developing in this country, and I will not be voting for this bill today.

This censorship is being done by the corporate owners of our increasingly consolidated, less diverse media; but it is also significantly being done by the government, and that is what this bill is about today. What we are seeing is an increasing and insidious chill on free expression in the airwaves.

There are a lot of people in Congress on that side of the aisle, my conservative friends, who talk about freedom and freedom and freedom; but apparently they really do not believe that the American people should have the freedom to make the choices themselves about what programs they see on television or on the radio.

There are a lot of people in Congress, including Conservatives, who talk about the intrusive role of government regulators; but today they want government regulators to tell radio and TV stations what they can air. I disagree with that.

A vote for this bill today will make America a less free society. Mr. Speaker, I am not a Conservative. I am a proud Progressive. But on this issue, I agree with some important conservative thinkers. Let me tell my colleagues what Mr. Adam D. Thierer, the director of telecommunications studies at the Cato Institute, extremely conservative think tank, says, and he has it right: ''Those of us who are parents understand that raising a child in today's modern media marketplace is a daunting task at times, but that should not serve as an excuse for inviting Uncle Sam in to play the role of surrogate parent for us and the rest of the public without children. Even if lawmakers have the best interest of children in mind, I take great offense at the notion that government officials must do this job for me and every other American family. Censorship on an individual parental level is a fundamental part of being a good parent. But censorship at a government level is an entirely different matter because it means a small handful of individuals get to decide what the whole Nation is permitted to see, hear, or think.''

That is and that should be the Conservative position. That should be the position of people who say get the government off our backs; we do not want government regulations.

Mr. Speaker, increasingly in this country we are seeing censorship on the airwaves. In January of 2004, CBS refused to air a political advertisement during the Super Bowl by MoveOn.org, and on and on it goes.

Let us vote ''no.'' Let us vote against this bill and support freedom.

Mr. Speaker, I rise in opposition to this legislation.

Mr. Speaker, I think we can all agree that we do not want our children exposed to obscenity on the public airwaves. That goes without saying.

As someone who last year voted in favor of similar legislation, I am increasingly alarmed by the culture of censorship that seems to be developing in this country, and I will not be voting for this bill today. This censorship is being conducted by the corporate owners of our increasingly consolidated, less diverse media. And it is being done by the government. This result is an insidious chill on free expression on our airwaves.

There are a lot of people in Congress who talk about freedom, freedom and freedom but, apparently, they do not really believe that the American people should have the "freedom" to make the choice about what they listen to on radio or watch on TV. There are a lot of people in Congress who talk about the intrusive role of "government regulators," but today they want government regulators to tell radio and TV stations what they can air. I disagree with that. A vote for this bill today will make America a less free society.

Mr. Speaker, I am not a conservative. But on this issue I find myself in strong agreement with Mr. Adam D. Thierer, the Director of Telecommunications Studies at the Cato Institute—a very conservative think tank. And here is the very common sense, pro-freedom position that he brings forth:

Those of use who are parents understand that raising a child in today's modern media marketplace is a daunting task at times. But

that should not serve as an excuse for inviting Uncle Sam in to play the role of surrogate parent for us and the rest of the public without children.

Even if lawmakers have the best interest of children in mind, I take great offense at the notion that government officials must do this job for me and every other American family.

Censorship on an individual/parental level is a fundamental part of being a good parent. But censorship at a government level is an entirely different matter because it means a small handful of individuals get to decide what the whole nation is permitted to see, hear or think.

I've always been particularly troubled by the fact that so many conservatives, who rightly preach the gospel of personal and parental responsibility about most economic issues, seemingly give up on this notion when it comes to cultural issues.

Mr. Speaker, the specter of censorship is growing in America today, and we have got to stand firmly in opposition to it. What America is about is not necessarily liking what you have to say or agreeing with you, but it is your right to say it. Today, it is Janet Jackson's wardrobe malfunction or Howard Stern's vulgarity. What will it be tomorrow?

Let me give just a couple of examples of increased censorship on the airwaves. In January 2004, CBS refused to air a political advertisement during the Super Bowl by MoveOn.org that was critical of President Bush's role in cheating the Federal deficit. Last November, 66 ABC affiliates refused to air the brilliant World War II movie ''Saving Private Ryan,'' starring Tom Hanks, for fear that they would be fined for airing programming containing profanity and graphic violence, even though ABC had aired the uncut movie in previous years. This ironically was a movie that showed the unbelievable sacrifices that American soldiers made on D-Day fighting for freedom against Hitler, but ABC affiliates around the country didn't feel free to show it. Last November, CBS and NBC refused to run a 30-second ad from the United Church of Christ because it suggested that gay couples were welcome to their Church. The networks felt that it was ''too controversial'' to air. And just last month, many PBS stations refused to air an episode of Postcards with Buster, a children's show, because Education Secretary Spellings objected to the show's content, which included Buster, an 8-year old bunny-rabbit, learning how to make maple syrup from a family with two mothers in Vermont.

Mr. Speaker, each of these examples represent a different aspect of the culture of censorship that is growing in America today. My fear is that the legislation we have before us today will only compound this problem and make a bad situation worse.

This legislation would impose vastly higher fines on broadcasters for so-called indecent material. But this legislation does not provide any relief from the vague standard of indecency that can be arbitrarily applied by the FCC. That means broadcasters, particularly small broadcasters, will have no choice but to engage in a very dangerous cycle of self-censorship to avoid a fine that could drive some of them into bankruptcy. Broadcasters are already doing it now. Imagine what will happen when a violation can bring a $500,000 fine. If this legislation is enacted, the real victim will be free expression and Americans' First Amendment rights.

In the past week I have sought out the views of broadcasters in my own State of Vermont and I have heard from many of them. Without exception they are extremely concerned about the effect this legislation will have on programming decisions.

Mr. Speaker, I am enclosing a copy of a statement by Mr. John King, President and CEO of Vermont Public Television.

STATEMENT OF MR. JOHN KING, PRESIDENT AND CEO OF VERMONT PUBLIC TELEVISION ON H.R. 310

Vermont Public Television, like other local broadcasters, does its best to serve the needs and interests of its local community. It's a great privilege and a great responsibility to have a broadcast license. While we acknowledge that there must be sanctions for broadcasters who misuse the public airwaves, we believe the sanctions proposed in H.R. 310 are extreme.

The FCC's proposals for increased fines for obscenity, indecency and profanity have already had a chilling effect on broadcasters nationally and locally, including Vermont Public Television. The legislation also makes lodging a complaint easier and puts the burden of proof on the station. Codifying these proposals into law will make the situation worse.

While many people might assume the new sanctions are aimed at commercial broadcasters, public broadcasters are feeling the effects every day. Public television's educational programming for children has always provided a safe haven. The same public television stations that take such care of their young viewers also respect the intelligence and discretion of their adult viewers to make the best viewing choices for themselves.

Vermont Public Television has always operated responsibility in our programming for adults. At times, our programs included adult language and situations appropriate to the informational or artistic purpose of a program. While there have always been prohibitions against gratuitous indecency, the FCC always took context into account. Now, it seems that context is no longer considered.

Much as we might like to invoke our First Amendment rights, we dare not risk the large fine that could come with a single violation. The $500,000 maximum fine could put a small station like VPT out of business.

Last year, when the FCC proposed increased fines and told broadcasters there was one word that would never be appropriate on the air, PBS and its member stations, including Vermont Public Television, began to make content choices so as not to run afoul of the new FCC restrictions.

PBS programmers began making edits to national programs being distributed to stations. An ''American Experience'' documentary on Emma Goldman was scrutinized for what might possibly look like a bare breast and edited, just be to sure. On ''Antiques Roadshow,'' a nude poster was edited. This month, most PBS stations will air a drama from HBO called ''Dirty War.'' In the story, a woman showers to remove radiation. When the program airs on PBS, that shower scene will be edited.

Our programming director, and no doubt most local programmers, have become very cautious. Once the FCC starts telling broadcasters they must not use certain words or situations, programmers tend to avoid producing and airing programs with words and situations that might even come close to content that could be subject to fines.

At VPT, we produce many live local programs with panelists representing many points of view. We take calls from viewers live on the air. There has never been a problem with language, but the legislation's reference to using a ''time delay blocking mechanism'' makes us worry. We don't use a time delay. Are we subject to a fine if a panelist or a caller uses a word considered obscene, indecent or profane?

Our programming director says the FCC proposals have already made us rule out airing independent films on our ''Reel Independent'' program. Films by Vermont filmmakers that we would have aired in past years are not being accepted for broadcast now.

We cannot support H.R. 310 as it is written.

Mrs. CAPITO. Mr. Speaker, I continue to reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I yield 3 minutes to the gentleman from New York (Mr. HINCHEY).

Mr. HINCHEY. Mr. Speaker, this bill and the rule really missed the point. The point is that we are experiencing here in this House and across this country limitations on political debate, and that is the way this rule is structured, to limit political debate so that the American people do not understand what is going on.

For more than 2 decades now, the Republican Party has sought to consolidate the media in America across the board, and they have done so also to limit debate by eliminating the Fairness Doctrine. This bill makes no mention whatsoever of the link between media consolidation and the rising number of indecency complaints.

What do we have today as a result of the Republican Party's consolidation of the media in America? Five companies own the broadcast networks and 90 percent of the top 50 cable networks. They produce three-quarters of all prime time programming. They control 70 percent of the prime time television market share. These same companies that own the Nation's most popular newspapers and networks also own 85 percent of the top 20 Internet news sites.

Two-thirds of America's independent newspapers have been lost. According to the Department of Justice's ''Merger Guidelines,'' every local newspaper market in the United States today is highly concentrated as a result of actions begun under President Reagan in 1987 and that continue today under President George W. Bush and the Republican leadership of this House.

One-third of America's independent TV stations have vanished. There has been a 34 percent decline in the number of radio station owners since the passage of the 1996 Telecommunications Act under the leadership of this House. There has also been a severe decline in minority-owned broadcasters.

As the major networks have been allowed greater vertical integration, the percentage of independently produced new programming on broadcast networks has declined from 87.5 percent in 1990 to 22.5 percent in 2002. It is barely one-fourth of what it was 15 years ago, independent programming, thanks to the leadership of this House and Republican Presidents.

Almost 60 years ago, the Supreme Court declared: ''The widest possible dissemination of information from diverse and antagonistic sources is essential to the welfare of the public; that a free press is a condition of a free society.''

We no longer have a free press or free media in our country, as a result of the conscious, intentional consolidation of the media that has been authorized and orchestrated by the Republican leadership in this House and successive Republican Presidents.

I have no doubt that every Member of this body would agree that the court sentiments that I mention here today should hold true, but it is also true that we are not allowed to debate this point and bring it up on the floor of the House.

We have a lot to do here, and our Republican colleagues are not allowing it to be done. Free press is essential to a free and open society.

□ 1100

Mrs. CAPITO. Mr. Speaker, I yield 2 minutes to my colleague, the gentleman from Georgia (Mr. GINGREY) and a new member of the Rules Committee.

Mr. GINGREY. Mr. Speaker, I want to remind my colleagues, especially for those on the other side of the aisle, that this Broadcast Decency Enforcement Act does not change the definition of decency, and it is not about censorship. It is about increasing the penalties and the fines for those entertainers and owners of radio and television stations that knowingly and willfully violate, and do it in a repeated manner, what we already know is a definition of decency.

So it is disingenuous to suggest that we are trying to impose censorship or redefine what has already been well defined in regard to decency. I want to give, Mr. Speaker, an example. The Member from the other side of the aisle, the gentleman from Virginia (Mr. MORAN) had an amendment, and I do not want to dwell on this too much because he is here and I think he may be speaking about that. But he brought an amendment to the Rules Committee concerning a certain ad that we see many times on prime-time hour on television. And he had great concerns about that. And many members of the Rules Committee on both sides of the aisle, both Republicans and Democrats, agreed that this advertisement was possibly a little on the tacky side, but that amendment was not approved by the Rules Committee because of that question of a redefinition of what is decent.

So I just want to remind my colleagues that this is not about censorship or redefining decency on the airwaves, it is making sure that those who continue to abuse their privilege of broadcasting on our public airwaves, that they pay a significant fine and one that hopefully will disincentivize them from continuing this activity.

Ms. SLAUGHTER. Mr. Speaker, I just wanted to comment that there is censorship because the Democrats are not allowed amendments.

Mr. Speaker, I am pleased to yield 3 minutes to the gentleman from North Carolina (Mr. PRICE).

(Mr. PRICE of North Carolina asked and was given permission to revise and extend his remarks.)

Mr. PRICE of North Carolina. Mr. Speaker, a year ago I stood before this Chamber during debate of this same legislation and remarked that by increasing fines for indecency violations we were addressing the symptoms of a problem but not the underlying causes.

One year later, despite all of the public outcry, despite the millions of citizens who contacted the FCC and Congress advocating for localism and decency standards and unbiased news, despite all of the politicians bemoaning what is on our airwaves today, not much has really changed.

Last year we fought unsuccessfully for an amendment that would have addressed the true effect of media consolidation by commissioning a GAO study on the relationship between consolidation and indecency on the airwaves. This amendment was not made in order by the Republican majority.

It should come as no surprise that we will not get a vote on this amendment again this year. Once again, the leadership has shown us that the concerns of ordinary people are trumped by the interests of media conglomerates and of the Bush administration.

We should allow the GAO to study the consequences of media consolidation and we should turn these results into action, passing legislation to ensure that a handful of companies will not get to dominate our airwaves, be it with filth or foul language or political propaganda or anything else that viewers would opt not to see.

And I tell you, we Members who are involved in this are not going to rest until we put control of our airwaves back where it belongs, in our local communities and in the hands of the American people.

To this end, I have joined with a number of colleagues in forming a media reform caucus, which will be working to make sure that the voices of the communities we represent are present at the table as Congress revisits the issues of media ownership and telecommunications regulation.

And for those who share our concerns about the state of the media industry, I urge you to join in this fight. I assure you, Mr. Speaker, you have not heard the last from us; this fight is not over.

Let me just comment on this court decision which a number of people have cited. Last June the 4th Circuit echoed the concerns I have been addressing here today, when it stayed the implementation of the FCC's relaxed ownership rules. But we have no guarantee that the FCC will not pass a new version that would again make it easier for a few big conglomerates to control our airwaves.

In fact, it is quite likely that they will. We will have this fight all over again. So we should spare ourselves and the American people all of that trouble and do the right thing right now, and that is to commission this GAO study on the relationship between filth on the airwaves and consolidation, and in the meantime forbid any further action on putting the control of the airwaves in the hands of these big conglomerates.

I thank the gentlewoman for yielding the time.

Mrs. CAPITO. Mr. Speaker, I yield 2 minutes to the gentleman from Missouri (Mr. AKIN).

Mr. AKIN. Mr. Speaker, I rise today in support of the rule and the underlying bill, H.R. 310, the Broadcast Decency Enforcement Act. This is not about who is running the media, this is about the question of the shock jocks who have been pushing the moral envelope for all too long and the vulgar and indecent comments that come over the public airwaves.

I think that seems to be a very different subject than who happens to own how many shares of stock somewhere. And there was, of course, the Bono use of vulgarity during the Golden Globe Awards, and of course the infamous Janet Jackson wardrobe malfunction during last year's Super Bowl and the half-time show.

This was the last straw for many Americans, and families and parents and concerned viewers erupted in outrage, and rightly so. There is simply no excuse for that crudeness on the public airwaves. I want to emphasize that the anecdotes I just cited are only among the most well-known commercial media strident efforts to edge ever further into the terrain of immorality and debasement.

I commend outgoing Federal Communications Commissioner Michael Powell for showing leadership and for enforcing decency regulations. But at a time where a 30-second television ad costs $2.4 million, is a $32,500 cap on penalties, that seems almost absurd.

The legislation before us today would give the FCC true enforcement authority. It increases the cap to half a million dollars, which is a significant fine. It allows the fines to occur per violation instead of per broadcast, and it also permits the fines to be levied against individuals as well as broadcasters and establishes a three-strikes-and-you-are-out policy.

Each of those provisions strengthens the FCC's ability to enforce existing decency regulations and protect the airwaves, and thereby ordinary Americans, from offensive material.

So I would urge that we proceed on the subject before us, which is dealing with these offenses, and worry about the other questions about who owns stocks where at a different time.

Ms. SLAUGHTER. Mr. Speaker, I yield 3 minutes to the gentleman from Virginia (Mr. MORAN).

Mr. MORAN of Virginia. I thank my friend and colleague from New York (Ms. SLAUGHTER) for yielding the time.

Mr. Speaker, I plan on voting for this bill because I think it is about doing the right thing for the public interest.

But I am going to vote against the rule, because we are missing an opportunity. We miss an opportunity to address the fairness issue, which is a very important one. I also think we miss an opportunity to strike a blow for family values over corporate profit.

It seems that too often when the two are in conflict, invariably this Congress lets corporate profit trump family values. What I am referring to is an amendment that I offered. It is a bill that the gentleman from Nebraska (Mr. OSBORNE), myself, and others have cosponsored, that I put in the form of an amendment because it seemed relevant. What it would do is to treat ED ads on television in the same way that we treat ads for tobacco and hard liquor. They cannot be shown until after 10 o'clock. The reason for doing this is that our airwaves are saturated with these ads for erectile dysfunction drugs. I think it has gotten out of hand and I do not think it is right.

When I bring this subject up, people giggle and it is awkward to talk about it, but it is wrong in prime-time viewing hours, such as the Super Bowl when you have got tens of millions of people watching, a lot of them young kids, to be saturating the American public's mind with these pitches for ED drugs. It is just wrong. Most of it is for the purpose of competing between brands.

It is a particularly relevant issue to the Congress and to the American taxpayer because next year this administration has decided to let Medicare cover these drugs. So here we have a finite amount of Medicare that needs to be used for cancer treatment and heart disease and any number of serious illnesses, and yet we are going to take a substantial amount of this taxpayers' money and use it to give to the drug companies to help them pay for advertising.

As my colleagues know, in the Medicare prescription drug bill, we forbid the Federal Government from negotiating for lower prices of these drugs. These drug companies are paying half a billion dollars a year for advertising these drugs. And now as of next year, the American taxpayer is going to be footing a substantial amount of that bill. It is wrong. These things should not be advertised during family viewing times.

It was one thing when Bob Dole and people of a certain age, which is pretty much my age as well, were the pitchmen. But these are younger actors today. It is disingenuous to be describing this drug as medically necessary. As is the way that they warn of side effects, be careful for a 4-hour experience and so on. We know how disingenuous that is. We can giggle about it, but the fact is it is wrong. It is not appropriate when young, impressionable, teenagers and children are watching. We have some responsibility for what goes across the airwaves. They are public airwaves. This amendment should have been added to this bill for consideration today.

Ms. SLAUGHTER. Mr. Speaker, I yield myself the balance of my time.

I urge Members to vote ''no'' on the previous question so I can change the rule to include my amendment to restore fairness and accountability in the media by requiring broadcast licensees to air programming that offers diverse views on issues important to the local communities in which they broadcast. This amendment was offered in the Rules Committee yesterday but was defeated on a party line vote. The majority may claim that the amendment is technically nongermane to the bill, but I think it is an integral part of this discussion.

Mr. Speaker, this issue is not a partisan one. Every Member of the House should be concerned by the direction that the broadcast media has taken, particularly in the last two decades since the rescission of the fairness doctrine. Ratings and sensationalism far too often replace responsible, nonbiased, and comprehensive reporting of the news. News is meant to provide balanced and important information on the issues that impact the lives of our citizens. The media has a most important responsibility to its communities to deliver the type of programming that meets the unique needs of each broadcast audience. In fact, it is more than a responsibility, it is an obligation.

Vote ''no'' on the previous question so that we can include this important amendment. I want to make it very clear that a ''no'' vote will not stop us from considering the legislation. We will still be able to consider the broadcast decency enforcement bill in its entirety. We will still be able to consider and vote on the Upton-Markey manager's amendment. However, a ''yes'' vote will prevent us from having any opportunity this year, and probably this term, to debate and vote on the very serious matter of media fairness and responsibility.

Mr. Speaker, I ask unanimous consent to insert the text of the amendment immediately prior to the vote on the previous question. I urge a ''no'' vote on the previous question.

The SPEAKER pro tempore (Mr. CULBERSON). Is there objection to the request of the gentlewoman from New York?

There was no objection.

The SPEAKER pro tempore. The time of the gentlewoman has expired.

Mrs. CAPITO. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, most of this debate has focused not on the issue before the House, whether we should raise fines on broadcasters and artists for violating the FCC standards for indecent conduct, but on the unrelated issue of media fairness. I want to point out to the Members that the amendment proposed by the gentlewoman from New York would violate House rules because it is not germane to the underlying bill. Simply, we have broad bipartisan agreement that we need to be tougher on broadcasters and artists to make sure that children and parents are not surprised by indecent conduct during prime time. We should defer to the committee of jurisdiction, I believe, to evaluate the issues raised by the gentlewoman's well-intentioned but nongermane amendment.

In closing, I would like to reiterate that the FCC has been looking at this issue of indecency and the fines related to it and it is through their efforts that this bipartisan bill has come to bear.

This is about the preservation of family time on our airwaves. It is about preserving the core values and ridding the airwaves during family time of indecency and it ups and makes much more stringent the penalties of those broadcasters and artists who engage in this indecent and inappropriate behavior on the airwaves.

One of the things my colleague from New York said in her opening statement is that viewers need to know what they will see, and I think that is the crux of this bill and this rule. Viewers need to know, families need to know that when they sit down with their families to watch television, they are not going to be exposed to inappropriate and indecent comments or actions on the airwaves.

This is a bipartisan bill. It passed overwhelmingly in the last Congress. I believe it will pass overwhelmingly again here. I urge my colleagues to not only support the rule but to support the underlying bill.

The material previously referred to by Ms. SLAUGHTER is as follows:

PREVIOUS QUESTION FOR H. RES. 95—RULE ON H.R. 310, BROADCAST DECENCY ENFORCEMENT ACT OF 2005

TEXT

''In the resolution strike ''and (3)'' and insert the following:

''(3) the amendment printed in Section 2 of this resolution if offered by Representative Slaughter of New York or a designee, which shall be in order without intervention of any point of order or demand for division of the question, shall be considered as read, and shall be separately debatable for 60 minutes equally divided and controlled by the proponent and an opponent; and (4)''.

Sec. 2. The amendment by Representative Slaughter referred to in Section 1 is as follows:

AMENDMENT TO H.R. 310, AS REPORTED OFFERED BY MS. SLAUGHTER OF NEW YORK

Public interest standard enforcement

After section 9, insert the following new section (and redesignate the succeeding sections accordingly):

SEC. 10. IMPLEMENTATION OF PUBLIC INTEREST STANDARDS.

(a) IMPLEMENTATION IN LICENSE ISSUANCE AND RENEWAL.—Section 309 of the Communications Act of 1934 (47 U.S.C. 309) is amended by adding at the end the following new subsection:

''*(l)* IMPLEMENTATION OF PUBLIC INTEREST STANDARD.—

''(1) PURPOSE.—The purposes of this subsection are—

''(A) to restore fairness in broadcasting;

''(B) to ensure that broadcasters meet their public interest obligations;

''(C) to promote diversity, localism, and competition in American media; and

''(D) to ensure that all radio and television broadcasters—

''(i) are accountable to the local communities they are licensed to serve;

''(ii) offer diverse views on issues of public importance, including local issues; and

''(iii) provide regular opportunities for meaningful public dialogue among listeners, viewers, station personnel, and licensees.

''(2) STANDARDS FOR PUBLIC INTEREST DETERMINATIONS.—The Commission may not issue or renew any license for a broadcasting station based upon a finding that the issuance or renewal serves the public interest, convenience, and necessity unless such station is in compliance with the requirements of this subsection.

''(3) COVERAGE OF ISSUES OF PUBLIC IMPORTANCE.—Each broadcast station licensee shall, consistent with the purposes of this subsection, cover issues of importance to their local communities in a fair manner, taking into account the diverse interests and viewpoints in the local community.

''(4) HEARINGS ON NEEDS AND INTERESTS OF THE COMMUNITY.—Each broadcast station licensee shall hold two public hearings each year in its community of license during the term of each license to ascertain the needs and interests of the communities they are licensed to serve. One hearing shall take place two months prior to the date of application for license issuance or renewal. The licensee shall, on a timely basis, place transcripts of these hearings in the station's public file, make such transcripts available via the Internet or other electronic means, and submit such transcripts to the Commission as a part of any license renewal application. All interested individuals shall be afforded the opportunity to participate in such hearings.

''(5) DOCUMENTATION OF ISSUE COVERAGE.—Each broadcast station licensee shall document and report in writing, on a biannual basis, to the Commission, the programming that is broadcast to cover the issues of public importance ascertained by the licensee under paragraph (4) or otherwise, and on how such coverage reflects the diverse interests and viewpoints in the local community of such station. Such documents shall also be placed, on a timely basis, in the station's public file and made available via the Internet or other electronic means.

''(6) CONSEQUENCES OF FAILURE.—

''(A) PETITIONS TO DENY.—Any interested person may file a petition to deny a license renewal on the grounds of—

''(i) the applicant's failure to afford reasonable opportunities for presentation of opposing points of view on issues of public importance in its overall programming, or the applicant's non-compliance with the Commission's programming rules and policies relating to news staging and sponsorship identification;

''(ii) the failure to hold hearings as required by paragraph (4);

''(iii) the failure to ascertain the needs and interests of the community; or

''(iv) the failure to document and report on the manner in which fairness and diversity have been addressed in local programming.

''(B) COMMISSION REVIEW.—Any petition to deny filed under subparagraph (A) shall be reviewed by the Commission. If the Commission finds that the petition provides prima facie evidence of a violation, the Commission shall conduct a hearing in the local community of license to further investigate the charges prior to renewing the license that is the subject of such petition.

''(C) OTHER REMEDIES.—Nothing in this subsection shall preclude the Commission from imposing on a station licensee any other sanction available under this Act or in law for a failure to comply with the requirements of this subsection.

''(7) ANNUAL REPORT.— The Commission shall report annually to the Congress on petitions to deny received under this subsection, and on the Commission's decisions regarding those petitions.''.

(b) TERM OF LICENSE.—

(1) AMENDMENT.—Section 307(c)(1) of the Communications Act of 1934 (47 U.S.C. 307(c)(1)) is amended by striking ''8 years'' each place it appears and inserting ''4 years''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall be effective with respect to any license granted by the Federal Communications Commission after the date of enactment of this Act.

Ms. CAPITO. Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

□ 1115

The SPEAKER pro tempore (Mr. CULBERSON). The question is on ordering the previous question.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Ms. SLAUGHTER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this question will be postponed.

PROVIDING FOR CONSIDERATION OF S. 5, CLASS ACTION FAIRNESS ACT OF 2005

Mr. GINGREY. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 96 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 96

Resolved, That upon the adoption of this resolution it shall be in order without intervention of any point of order to consider in the House the bill (S. 5) to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, and for other purposes. The bill shall be considered as read. The previous question shall be considered as ordered on the bill and on any amendment thereto to final passage without intervening motion except: (1) 90 minutes of debate on the bill equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary; (2) the amendment in the nature of a substitute printed in the report of the Committee on Rules accompanying this resolution, if offered by Representative Conyers of Michigan or his designee, which shall be in order without intervention of any point of order, shall be considered as read, and shall be separately debatable for 40 minutes equally divided and controlled by the proponent and an opponent; and (3) one motion to commit with or without instructions.

The SPEAKER pro tempore. The gentleman from Georgia (Mr. GINGREY) is recognized for 1 hour.

Mr. GINGREY. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Massachusetts (Mr. MCGOVERN), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, House Resolution 96 is a structured rule providing 90 minutes of debate for consideration of S. 5, the Class Action Fairness Act of 2005. The rule waives all points of order against consideration of the bill, makes in order one amendment in the nature of a substitute, it waives all points of order against this amendment, and it provides one motion to recommit with or without instructions.

Mr. Speaker, I urge support for the rule because we have before us a fair rule. I could say an excellent rule. The previous gentleman from Massachusetts was rating these rules. But this is fair in both senses of that term, a fair rule that gives Members on both sides of the aisle a chance to discuss their ideas on class action reform. I believe there is a general consensus that our system for class action litigation is flawed.

As demonstrated by the other body, there is bipartisan support for the measure that will be coming before us. In fact, the other body passed this measure by a vote of 72 to 26 with strong bipartisan support. Even with that bipartisan support, however, there are differences of opinion on how to reform our class action system. This bill through granting consideration of a substitute amendment will allow us to openly discuss these opinions and ideas.

Mr. Speaker, our general tort system costs American businesses $129 billion each and every year. Even our smallest companies pay collectively about $33 billion a year, or 26 percent of the overall tort costs to businesses borne by our smallest companies. Class action reform is a first step in litigation reform aimed at providing relief for these small businesses. I am pleased that we are finally seeing the light at the end of the tunnel. This Chamber has passed class action litigation reform on four previous occasions. It is about time that we sent a reform package to the President's desk for his signature.

The underlying bill will make several key reforms including expanding Federal jurisdiction over large interstate class actions as originally intended by our Founding Fathers, create exceptions that keep truly local disputes in State courts, provide an end to the harassment of local businesses as part of this forum shopping game, and create a consumer class action bill of rights.

Mr. Speaker, I would like to again urge my colleagues to support this rule which passed out of the Committee on Rules without objection and to vote in favor of the underlying bill which will provide this much needed reform.

Mr. Speaker, I reserve the balance of my time.

Mr. MCGOVERN. Mr. Speaker, I yield myself such time as I may consume,

and I thank the gentleman from Georgia (Mr. GINGREY) for yielding me the customary 30 minutes.

Mr. Speaker, for years the Republican majority proposed so-called ''reforms'' to class action lawsuits. Time after time, the House would pass legislation limiting class action plaintiffs only to see their attempts to dismantle the class action system die either with Senate inaction or in conference.

Mr. Speaker, it looks as though the Republican leadership has finally gamed the system to the point where it appears that they will succeed in severely limiting the rights of many of the most vulnerable citizens in this country.

Dismantling the class action lawsuit system has long been a big priority for big business groups. Last year, for instance, the Chamber spent $50 million in lobbying. Now they are getting what they paid for, because this bill obliterating the class action system is one of the first bills to be considered in this Congress.

Mr. Speaker, it is clear to me that despite the McCain-Feingold Campaign Finance Reform law, we still have a pay-to-play system. The other body considered this bill first. The plan was that the House take up the Senate bill if the other body could pass a clean bill without any amendments. The Senate succeeded in passing a bad bill and the House is now following suit.

Let me be clear. Despite the rhetoric on the other side, this is still a bad bill. Today, the other side will tell scary stories about greedy trial lawyers and how awful and unfair their practices are, but the Republican leadership will not talk about how this bill limits the rights of low-wage workers to seek justice from employers who have cheated them out of their wages or have discriminated against them. They will not talk about how they are limiting workers' rights and, with the passage of this bill, are encouraging the bad apples in the big business community to continue cheating their employees out of their hard-earned wages and rights.

In most cases, State laws provide greater civil rights protections than Federal law. Every State has passed a law prohibiting discrimination on the basis of disability. Some States have laws that go beyond the Federal Americans with Disabilities Act.

The same is true with age discrimination. There are also States that provide protections that are not covered by Federal law. These Federal laws are intended to be floors, not ceilings. We should commend States that extend further rights to their citizens, not punish them.

This bill federalizes class action and mass torts, moving these cases from State to Federal courts. If the bill is signed into law, hard-working Americans will be denied the right to use their own State courts to bring class actions against corporations that violate laws that are unique to their State.

Consider, for example, a class action lawsuit brought against a national corporation by employees of a store in Massachusetts because that store discriminates on the basis of ancestry, place of birth, or citizenship status. Massachusetts provides protections afforded by State law, but not by Federal law. Under this bill, except in very rare instances, that case would be sent to a Federal court instead of State court, even though the case is based on a violation of State law.

A class action lawsuit against Wal-Mart was recently filed in Massachusetts. The suit alleges that Wal-Mart failed to pay employees for the time worked and did not give them proper meal and rest breaks. These are serious charges. If the Class Action Fairness Act is signed into law, future cases like this would not be tried in Massachusetts court, but instead would be transferred to Federal court.

Mr. Speaker, we know that the Federal courts are already over burdened, but we also know that the Federal courts are less likely to certify classes or provide relief for violations of State law. In effect, this bill is rigging the system on behalf of the corporations and against the interests of workers.

We often hear a lot of lofty rhetoric on the other side about States rights. Apparently the other side only supports the rights of States if they agree with the laws of those States.

Mr. Speaker, this bill is opposed by the Leadership Conference of Civil Rights; the Alliance for Justice; the National Conference of State Legislatures; 14 State Attorneys General; AFSCME; and environmental groups like Friends of the Earth, Greenpeace, the Sierra Club, and the National Environmental Trust. These are just a few of the groups who oppose this bill, and none of them represent the trial lawyers. They oppose this bill because it will limit fairness, it will limit justice, and it will ultimately hurt everyday Americans.

Mr. Speaker, this is not about trial lawyers; it is about average citizens. The opponents of this bill are committed to fairness. We are committed to justice. And this bill robs the American people of their rights to fairness and justice in the judicial system. It closes the courthouse door in the face of people who need and deserve help.

I oppose this bill, and I urge my colleagues to support the Conyers substitute.

Mr. Speaker, I reserve the balance of my time.

Mr. GINGREY. Mr. Speaker, I yield 2 minutes to the gentlewoman from West Virginia (Mrs. CAPITO), my colleague on the Committee on Rules.

Mrs. CAPITO. Mr. Speaker, I rise in support of the Class Action Fairness Act because we cannot act fast enough. We have been trying to act to address the dire needs of our Nation's judicial system.

Today, predatory lawyers take advantage of class action law by shopping for venues where they can find sympathetic judges and juries. Each time a lawyer goes venue shopping, it costs taxpayers and it costs our economy by bogging down job creators with frivolous and excessive litigation.

National Review magazine has called my home State of West Virginia one of the worst States because of its cruel legal climate. Data and statistics indicate that since 1978, legal costs in West Virginia have risen more than 10 times faster than the State economy as a whole. As a result, our economy has not grown as fast as the rest of the Nation, and the jobs that West Virginians seek to support their families are not as readily available as they are in other parts of our country.

West Virginia's civil justice system has been ranked as one of the worst when it comes to the treatment of class actions. As a result of West Virginia's relaxation and less vigorous application of procedural rules, courts are generally viewed by lawyers as more favorable and advantageous to plaintiffs, and accordingly West Virginia has become a magnet of mass tort litigation. What is very alarming is when a victim receives little or no compensation.

The Class Action Fairness Act aims to curb class settlements that provide significant fees to a lawyer with marginal benefits to victims. The Class Action Fairness Act takes strong steps to ensure injured consumers recoup real awards from victorious verdicts, rather than settlements that involve coupons, which largely benefit the lawyers.

□ 1130

The Class Action Fairness Act creates important reforms that will reduce lawsuit abuse and protect individuals. It is as simple as that. I urge support for this legislation, and for the fair and balanced rule before us.

Mr. MCGOVERN. Mr. Speaker, I include for the RECORD a letter signed by 14 Attorneys General, including Darrell McGraw, the Attorney General of the State of West Virginia, in opposition to this bill.

STATE OF NEW YORK,
OFFICE OF THE ATTORNEY GENERAL,
Albany, NY, February 7, 2005.

Hon. BILL FRIST,
Majority Leader, U.S. Senate, Dirksen Senate Office Building, Washington, DC.
Hon. HARRY REID,
Minority Leader, U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR MR. MAJORITY LEADER AND MR. MINORITY LEADER: On behalf of the Attorneys General of California, Illinois, Iowa, Kentucky, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New Mexico, New York, Oklahoma, Oregon, Vermont and West Virginia, we are writing in opposition to S. 5, the so-called ''Class Action Fairness Act,'' which will be debated today and is scheduled to be voted on this week. Despite improvements over similar legislation considered in prior years, we believe S. 5 still unduly limits the right of individuals to seek redress for corporate wrongdoing in their state courts. We therefore strongly recommend that this legislation not be enacted in its present form.

As you know, under S. 5, almost all class actions brought by private individuals in state court based on state law claims would be removed to federal court, and, as explained below, many of these cases may not be able to continue as class actions. We are concerned with such a limitation on the availability of the class action device because, particularly in these times of tightening state budgets, class actions provide an important ''private attorney general'' supplement to the efforts of state Attorneys General to prosecute violations of state consumer protection, civil rights, labor, public health and environmental laws.

We recognize that some class action lawsuits in both state and federal courts have resulted in only minimal benefits to class members, despite the award of substantial attorneys' fees. While we support targeted efforts to prevent such abuses and preserve the integrity of the class action mechanism, we believe S. 5 goes too far. By fundamentally altering the basic principles of federalism, S. 5, if enacted in its present form, would result in far greater harm than good. It therefore is not surprising that organizations such as AARP, AFL–CIO, Consumer Federation of America, Consumers Union, Leadership Conference on Civil Rights, NAACP and Public Citizen all oppose this legislation in its present form.

1. CLASS ACTIONS SHOULD NOT BE ''FEDERALIZED''

S. 5 would vastly expand federal diversity jurisdiction, and thereby would result in most class actions being filed in or removed to federal court. This transfer of jurisdiction in cases raising questions of state law will inappropriately usurp the primary role of state courts in developing their own state tort and contract laws, and will impair their ability to establish consistent interpretations of those laws. There is no compelling need or empirical support for such a sweeping change in our long-established system for adjudicating state law issues. In fact, by transferring most state court class actions to an already overburdened federal court system, this bill will delay (if not deny) justice to substantial numbers of injured citizens. Moreover, S. 5 is fundamentally flawed because under this legislation, most class actions brought against a defendant who is not a ''citizen'' of the state will be removed to federal court, no matter how substantial a presence the defendant has in the state or how much harm the defendant has caused in the state.

2. CLARIFICATION IS NEEDED THAT S. 5 DOES NOT APPLY TO STATE ATTORNEY GENERAL ACTIONS

State Attorneys General frequently investigate and bring actions against defendants who have caused harm to our citizens, usually pursuant to the Attorney General's parens patriae authority under our respective state consumer protection and antitrust statutes. In some instances, such actions have been brought with the Attorney General acting as the class representative for the consumers of the state. We are concerned that certain provisions of S. 5 might be misinterpreted to impede the ability of the Attorneys General to bring such actions, thereby interfering with one means of protecting our citizens from unlawful activity and its resulting harm. That Attorney General enforcement actions should proceed unimpeded is important to all our constituents, but most significantly to our senior citizens living on fixed incomes and the working poor. S. 5 therefore should be amended to clarify that it does not apply to actions brought by any State Attorney General on behalf of his or her respective state or its citizens. We understand that Senator Pryor will be offering an amendment on this issue, and we urge that it be adopted.

3. MANY MULTI-STATE CLASS ACTIONS CANNOT BE BROUGHT IN FEDERAL COURT

Another significant problem with S. 5 is that many federal courts have refused to certify multi-state class actions because the court would be required to apply the laws of different jurisdictions to different plaintiffs—even if the laws of those jurisdictions are very similar. Thus, cases commenced as state class actions and then removed to federal court may not be able to be continued as class actions in federal court.

In theory, injured plaintiffs in each state could bring a separate class action lawsuit in federal court, but that defeats one of the main purposes of class actions, which is to conserve judicial resources. Moreover, while the population of some states may be large enough to warrant a separate class action involving only residents of those states, it is very unlikely tbat similar lawsuits will be brought on behalf of the residents of many smaller states. This problem should be addressed by allowing federal courts to certify nationwide class actions to the full extent of their constitutional power—either by applying one state's law with sufficient ties to the underlying claims in the case, or by ensuring that a federal judge does not deny certification on the sole ground that the laws of more than one state would apply to the action. We understand that Senator Jeff Bingaman will be proposing an amendment to address this problem, and that amendment should be adopted.

4. CIVIL RIGHTS AND LABOR CASES SHOULD BE EXEMPTED

Proponents of S. 5 point to allegedly ''collusive'' consumer class action settlements in which plaintiffs' attorneys received substantial fee awards, while the class members merely received ''coupons'' towards the purchase of other goods sold by defendants. Accordingly, this ''reform'' should apply only to consumer class actions. Class action treatment provides a particularly important mechanism for adjudicating the claims of low-wage workers and victims of discrimination, and there is no apparent need to place limitations on these types of actions. Senator Kennedy reportedly will offer an amendment on this issue, which also should be adopted.

5. THE NOTIFICATION PROVISIONS ARE MISGUIDED

S. 5 requires that federal and state regulators, and in many cases state Attorneys General, be notified of proposed class action settlements, and be provided with copies of the complaint, class notice, proposed settlement and other materials. Apparently this provision is intended to protect against ''collusive'' settlements between defendants and plaintiffs' counsel, but those materials would be unlikely to reveal evidence of collusion, and thus would provide little or no basis for objecting to the settlement. Without clear authority in the legislation to more closely examine defendants on issues bearing on the fairness of the proposed settlement (particularly out-of-state defendants over whom subpoena authority may in some circumstances be limited), the notification provision lacks meaning. Class members could be misled into believing that their interests are being protected by their government representatives, simply because the notice was sent to the Attorney General of the United States, State Attorneys General and other federal and state regulators.

Equal access to the American system of justice is a foundation of our democracy. S. 5 would effect a sweeping reordering of our nation's system of justice that will disenfranchise individual citizens from obtaining redress for harm, and thereby impede efforts against egregious corporate wrongdoing. Although we fully support the goal of preventing abusive class action settlements, and would be willing to provide assistance in your effort to implement necessary reforms, we are likewise committed to maintaining our federal system of justice and safeguarding the interests of the public. For these reasons, we oppose S. 5 in its present form.

Sincerely,

Eliot Spitzer, Attorney General of the State of New York; W.A. Drew Edmondson, Attorney General of the State of Oklahoma; Bill Lockyer, Attorney General of the State of California; Lisa Madigan, Attorney General of the State of Illinois; Tom Miller, Attorney General of the State of Iowa; Gregory D. Stumbo, Attorney General of the State of Kentucky; G. Steven Rowe, Attorney General of the State of Maine; J. Joseph Curran, Attorney General of the State of Maryland; Tom Reilly, Attorney General of the State of Massachusetts; Mike Hatch, Attorney General of the State of Minnesota; Patricia A. Madrid, Attorney General of the State of New Mexico; Hardy Myers, Attorney General of the State of Oregon; William H. Sorrell, Attorney General of the State of Vermont; Darrell McGraw, Attorney General of the State of West Virginia.

Mr. MCGOVERN. Mr. Speaker, I yield 7 minutes to the gentleman from Massachusetts (Mr. MARKEY), the dean of our delegation.

Mr. MARKEY. Mr. Speaker, I thank the gentleman for his excellent work on this very important piece of legislation. I rise in opposition to this rule and I rise in opposition to the underlying legislation.

In the 1960s, President Kennedy used to say, ''Ask not what your country can do for you, but what you can do for your country.'' Today, Republican leaders in Washington have issued a new challenge: ''Ask not what your country can do for you, but what you can do for the country club.''

That is what this bill is all about. It is protecting the country club members from the responsibility for the harm which they potentially inflict from their corporate perspectives on ordinary citizens within our society.

The class-action bill is part of an overall strategy which the Republican Party has put in place in order to harm consumers all across our country, to repeal the protections that have been placed upon the books for two generations that ensure that the individual in our society is given the protection which they need. Here is their strategy. It is a simple, four-part strategy.

Number one, first is the ''borrow and spend'' strategy. That is all part of this idea that Paul O'Neill mentioned, the former Secretary of Treasury for George Bush, when he said that DICK CHENEY said to him, ''Reagan proved that deficits don't matter.''

Of course, the reason they do not matter is that, as Grover Norquist has pointed out quite clearly, the architect of this Republican strategy, the key goal has to be to starve the beast; the beast, of course, being the Federal Government's ability to help ordinary people, to help ordinary citizens, to help

ordinary consumers in our country when they are being harmed.

So this idea that there is less and less money then starves the Federal agencies given the responsibility for protecting the public, the Federal Drug Administration, the Consumer Product Safety Commission; agency after agency left with not enough resources to protect the consumer, which they were intended to do.

Secondly, there is the grim reaper of regulatory relief, where the Office of Management and Budget inside of the Bush administration ensures that any regulation that is meant to protect the consumer is tied up in endless rounds of peer review and cost-benefit analysis, weighing the lives of ordinary consumers against the money that corporations might have to spend in order to make sure that their products are not defective, that they do not harm ordinary citizens across our country.

Then there is stage three, the fox in the hen house. This is where the Bush administration then appoints somebody from the industry that is meant to be regulated as the head of the agency, knowing that that individual has no likelihood of actually putting on the books the kinds of protections which are needed.

Then, finally, after the Federal Government is not capable of really protecting ordinary citizens, their safety, their health, then what they say to the citizen is, by the way, now we are going to make it almost impossible for you to go to court to protect yourself, to bring a case.

That is what this bill is all about, that final step. You cannot even as an individual partner with other people to go to court. And here is what it says. It says that all of these cases are going to Federal Court, unless a significant defendant is in fact a citizen of the State.

Well, think about this. Let us go to New Hampshire. New Hampshire is a perfect example. New Hampshire has a suit which it has brought against 22 oil and chemical companies because of the pollution in the State's waterways with MTBE, a deadly, dangerous material which has harmed people all across our country, but New Hampshire is the best example.

Under this new law, because the principal defendant in the case is Amerada Hess and because it is headquartered in New York and it is the principal defendant, not only Amerada Hess but the other 22 companies, not only is Amerada Hess, this big company, and the other 22 companies who have arrived in New Hampshire, polluting the State, given the relief of not having the case be held in the State of New Hampshire, with New Hampshire judges and New Hampshire citizens, instead it is removed to the Federal Court, so the Republicans can name judges who they know are going to be sympathetic to the companies, not the State of New Hampshire, not their judges, not their people.

That is what this is all about. It is making sure that ordinary citizens in New Hampshire, whose families have been harmed, whose health is permanently ruined, cannot bring a case against large corporations.

Who gets the benefit of this? The defendant. The defendant. They come in from out-of-state, they pollute, they harm, they ruin the lives of people, and then the defendant says, ''I don't want to be tried in New Hampshire. I don't want to be tried in Texas. I don't want to be tried in that State. I want to go some other place.''

What about the plaintiffs? What about the people who have been harmed? What about the mothers? What about the children? What about the people who have lost their health?

This is the final nail that the Republicans are putting in the coffin of the rights of ordinary citizens to be able to protect themselves. All of these cases should be brought in the State courts where the large corporation caused the harm, not in a Federal Court away from the closest people who know what is right and wrong inside of that State.

Mr. Speaker, vote no on this critical bill. Vote no on the rule. Vote to protect the consumers, the families, the children, the seniors in our country who the Republicans are going to allow to be jeopardized by moving the cases from where they live to places where the defendants, the largest corporations, will be able to protect their own selfish self-interests.

Mr. GINGREY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, in response to some of the comments that were made by the gentleman from Massachusetts, I want to share with my colleagues some facts.

The Class Action Fairness Act contains several provisions specifically designed to ensure that class members, not their attorneys, class members, not their attorneys, are the primary beneficiaries of the class-action process.

For example, the act, number one, requires that judges carefully review all coupon settlements and limit attorney's fees paid in such settlements to the value actually received by the class members.

Second, it requires careful scrutiny of ''net loss'' settlements in which the class members end up losing money.

Thirdly, it bans settlements that award some class members a larger recovery just because they live closer to the court.

Lastly, it allows Federal courts to maximize the benefits of class-action settlements by requiring that unclaimed coupons or settlement funds be donated to charitable organizations.

In addition, the bill would require that notice of proposed settlements be provided to appropriate State and Federal officials, such as State Attorneys General.

Let me also address one other issue raised, and I think this is very important.

This myth is being circulated that the Class Action Fairness Act would move all or virtually all class actions to Federal courts, overwhelming Federal judges and denying State courts the ability to resolve local disputes. Well, a recent study examined class actions in the State courts of Connecticut, Delaware, Maine, Massachusetts, New York and Rhode Island, to determine what effect the bill would have on the class actions filed in those respective States.

Here is what they found in regard to the State of Massachusetts. Sixty-one percent, 30 out of 49 of the reported class actions, would have presumedly remained in State court. At least 10 of the 19 Massachusetts cases that would be affected by this bill, the Class Action Fairness Act, involved nationwide classes, cases primarily involving citizens living in other states.

Mr. Speaker, I am proud to yield 2 minutes to the gentlewoman from Tennessee (Mrs. BLACKBURN) a former member of the Committee on the Judiciary and an original cosponsor of this bill in the 108th Congress.

Mrs. BLACKBURN. Mr. Speaker, I thank the gentleman from Georgia for providing some of that information. It seems that our colleagues probably are so wrong on this bill they cannot even talk about it. They want to come down here and talk about all sorts of other things that are not involved in class action.

They are talking about protection. Well, I would like the American people to know and our colleagues to know we are talking about protection. We are talking about protecting Americans' pockets books, because our constituents know somebody is going to pay, and if greedy lawyers are getting big settlements, they are going to be paying more at the cash register every single time they go buy something.

An entire industry has grown up over attorneys seeking cash in these class-action lawsuits. Our courts are to be designed for fairness, a forum of fairness and justice, but they have become a virtual ATM for greedy lawyers when it comes to class-action lawsuits. Lawyers go file a class-action lawsuit and collect millions of dollars, just as the gentleman from Georgia was saying; and the clients, who they barely know, most times they have never even met most of these folks, those clients are receiving pennies.

Mr. Speaker, my colleague spoke saying this would not help the victims. I would like people to know the Class Action Fairness Act does not restrict true victims from filing class-action lawsuits. It will prevent attorneys from choosing which State to file in, because we know sometimes they choose where they think they can get the biggest monetary award. We are putting the focus back on justice, back on justice in this bill.

In addition, the reform provides greater consumer protection by allowing our courts to scrutinize those settlements that provide victims with

coupons while those attorneys are getting millions and millions and millions of dollars.

Mr. Speaker, this is an overdue reform. We have worked tirelessly on this in the House, and I urge everyone to support it.

Mr. MCGOVERN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, my colleague from Georgia had kind of quoted from a study implying that most of these class-action cases would remain in States, that the whole purpose of this bill is to try to move them to Federal courts.

Let me quote from a CBO cost estimate which says that under this bill, most class-action lawsuits would be heard in Federal District Court, rather than in the State court.

Mr. Speaker, I yield 5 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, I am always amazed to hear the remarks of my colleagues, and I welcome those remarks, because it is well-known that free and open debate lies at the very heart of the democratic process. But I wonder if we rephrased the terminology ''greedy lawyers'' and made the American people truly understand what the give and take of the judicial process is all about.

□ 1145

I wonder, if we said the lawyers that represented the 9/11 families could be considered greedy lawyers, thousands who lost loved ones, and their engagement in seeking to have redress of their grievances done in a class-action manner, is that evidence of greedy lawyers? Or maybe the thalidomide families, babies who were born deformed in the 1950s and class actions were utilized, is that a signal of greedy lawyers?

Frankly, Mr. Speaker, what we have here is a complete abuse of the democratic process. Why do we not think about a situation where you are a college student enrolled in a world history class, you enter the first day and the professor says, welcome, it is now time to take the final exam. No discussion, no notes, no teaching, no nothing. This is what this rule represents. It is to walk on this floor and take the final exam. It is to close the door of the opportunity for the American people to go into the courthouse and to have a jury of their peers decide whether or not, as a collective class, they have been injured.

If my friends would tell the truth, they would know that plaintiffs prevail in such a small percentage of times all over America that this is ridiculous and ludicrous legislation. They would also refer you to the Cato Institute in 1983 when they talked about attacking liberal legal opportunities, or liberal bills. They said, this is guerilla warfare. We are going after tort litigation, we are going after Social Security, we are going after Medicare. Guerilla warfare.

The reason why this is guerilla warfare is because we have a process, Mr. Speaker. These actions come to our committee, the Committee on the Judiciary and a number of other committees; we have opportunity for amendment, give and take, hearings. This legislation has seen no light of day in any committee. It did not see the light of day on the Senate side, no hearings, no markup; it did not see the light of day on the House side, no hearings, no markup. So the American people are being fooled by the fact that they think we are doing business as the Constitution would want us to do, that we are open to the rules of this House, that we understand that we must have the oversight of this House. And frankly, Mr. Speaker, shame on us, for we are shaming the process, and the American people should rightly be ashamed of this and of us.

I ask my Republicans, we know you have the overwhelming majority, you have the two-thirds, in essence, you have the bully pulpit, and you use it. But the bad thing about it is that you are using it to overwhelm the rules of this House. Mr. Speaker, you are literally ignoring the Rules of the House. And some people would say to me, Congresswoman JACKSON-LEE, this is inside the ball game, inside the ballpark, inside the Beltway. The American people are not interested in process. I believe they are. Because the American people know about school boards and process, they know about the parent-teacher meetings and process, they know about their places of faith and process, and they know that process is to be respected. Here in this House we are not respecting process.

I argue that the one amendment that we have as the manager's amendment should be the amendment that should be accepted, and that is the one that includes the idea of protecting civil rights and wage-and-hour carve-outs and prohibits those companies that have formulated their companies in another country, United States companies incorporated elsewhere, in order to be able to participate in this abusive process.

Let me read what the New York Times said. ''Instead of narrowly focusing on real abuses of the system, the measure that is before us today reconfigures the civil justice system to achieve a significant rollback of corporate accountability and people's rights. The main impact of the bill, which has a sort of propagandistic title normally assigned to such laws as the Class Action Fairness Act will be to funnel nearly all major class-action lawsuits out of State courts and into all overburdened Federal courts. That will inevitably make it harder for Americans to pursue legitimate claims successfully against companies that violate State consumer, health, civil rights, and environmental protection laws.''

Mr. and Mrs. America, let me tell you something. When this legislation passes on the Republican clock, I am going to tell you that the doors of the courthouse will be closed to you; and if you have Johnny Jones, the country lawyer, trying to bring justice to rural America, Johnny Jones will have to take his small-time practice and mortgage his house to get into the Federal court. And not only that, you might get there 50 years from the time that action occurs.

This is the greatest abomination and insult to justice that I have ever seen. It is an outrage, and I ask my colleagues to vote down the rule, vote for the Democratic substitute, and put this terrible bill where it needs to go, packing out of the door.

Mr. Speaker, free and open debate lies at the heart of the democratic process. Without it, true democracy will surely wither away to nothing. It is in this light that I rise to support H. Res. 96—only insofar as it allows consideration of the Democratic substitute that was ruled in order by the Committee on Rules and offered by the distinguished Ranking Member of the Judiciary Committee, Mr. CONYERS. We should have an open rule on this important issue, however.

For real and honest debate to take place on such an important issue as defining diversity jurisdiction in the Federal courts for class actions, we must have available an alternate option to S. 5, the legislation that is before the committee of the whole House. The Democratic substitute creates that option. I congratulate the Rules committee for their foresight in enabling this open debate.

This bill, despite its name, is *not* fair to all complainants who come to the courts for relief. In addition, it fails to render accountability to parties who are in the best financial position. One issue that I planned to address by way of amendment was that of punishing fraudulent parties to class action proceedings by preventing them from removing the matter to Federal court.

I am a co-sponsor of the amendment in nature of a substitute that will be offered by my colleagues. With the provisions that it contains, requirements for Federal diversity jurisdiction will not be watered down resulting in the removal of nearly all class actions to Federal court. A wholesale stripping of jurisdiction from the State courts should not be supported by this body. Therefore, it needs to be made more stringent as to all parties and it needs to contain provisions to protect all claimants and their right to bring suit.

Contained within the amendment in nature of a substitute is a section that I proposed in the context of the Terrorist Penalties Enhancement Act that was included in the bill passed into law. This section relates to holding ''Benedict Arnold corporations'' accountable for their terrorist acts. With respect to S. 5, the right to seek removal to Federal courts will be precluded for Benedict Arnold corporations.

The ''Benedict Arnold corporation'' refers to a company that, in bad faith, takes advantage of loopholes in our tax code to establish bank accounts or to ship jobs abroad for the main purpose of tax avoidance. A tax-exempt group that monitors corporate influence called ''Citizen Works'' has compiled a list of 25 Fortune

500 Corporations that have the most offshore tax-haven subsidiaries. The percentage of increase in the number of tax havens held by these corporations since 1997 ranges between 85.7 percent and 9,650 percent.

This significant increase in the number of corporate tax havens is no coincidence when we look at the benefits that can be found in doing sham business transactions. Some of these corporations are "Benedict Arnolds" because they have given up their American citizenship; however, they still conduct a substantial amount of their business in the United States and enjoy tax deductions of domestic corporations.

The provision in the substitute amendment will preclude these corporations from enjoying the benefit of removing State class actions to Federal court. Forcing these corporate entities to defend themselves in State courts will ensure that these class action claims will be fairly and fully litigated.

I support the amendment in nature of a substitute.

Mr. GINGREY. Mr. Speaker, I yield myself such time as I may consume.

I want to address the remarks of the gentlewoman from Texas. I want to remind her that the Committee on Rules voted unanimously in favor of this rule and granted an amendment in order in the form of a substitute that includes each and every one of the provisions that she just spoke of. I also would like to remind my colleagues that each and every one of those amendments were also proffered in the other body, and each and every one of those amendments were voted down in a strong bipartisan vote.

So to suggest, Mr. Speaker, that this is something that had not been looked at and we have not talked about, I would remind my colleague that it was addressed in the 105th Congress, in the 106th Congress, in the 107th Congress, in the 108th Congress, and finally we are here, and we are going to get this rule passed and this bill passed and on to the President for his signature.

Mr. Speaker, I yield 3 minutes to the gentleman from Oklahoma (Mr. COLE), my colleague on the Committee on Rules.

Mr. COLE of Oklahoma. Mr. Speaker, I thank the gentleman from Georgia for yielding me this time and, frankly, for making that important point, that this matter is proceeding to this floor under a bipartisan unanimous vote by the Committee on Rules; and the suggestion that the process was unfair or defective is not borne out by both the nature of the debate in the Committee on Rules and by the unanimous vote that sent this rule to the floor.

Let me move now, Mr. Speaker, to my prepared remarks. I rise today in support of the rule for S. 5, the Class Action Fairness Act of 2005. I believe it to be a fair rule and one that allows us to fully explore the issues surrounding this legislation. Furthermore, it makes in order a substantive amendment in the nature of a substitute that the gentleman from Michigan (Mr. CONYERS) has worked hard to produce. I believe that this will allow a spirited debate and one that will fully explore the many complex issues surrounding class-action reform while still enabling the House to act in an expeditious fashion.

Mr. Speaker, while I fully agree that class-action lawsuits are a legitimate tool in civil procedure, these lawsuits are a tool that has been frequently abused over the past years. There exist a certain small subset of attorneys who do not represent the best traditions of their colleagues in the legal profession and primarily are concerned with lining their pockets by abusing the class-action process. Often, this is done through the popular so-called coupon settlement process, where the class of plaintiffs only receive coupons to use from the very same companies they are suing, while the attorneys walk away from the table with millions in cash.

Mr. Speaker, this legislation is a necessary step to better ensure and protect our citizens' rights. The ongoing flood of meritless labor and employment litigation has often destroyed reputable companies and has resulted in thousands of layoffs and business restructurings that hurt innocent workers and shareholders alike.

This legislation would incentivize only those who have legitimate class-action claims to move forward in the legal process and, at the same time, it would disincentivize lawyers from filing meritless claims by increasing sanctions against those who do so.

Mr. Speaker, this legislation is a necessary first step and the rule that accompanies it is one that I believe all Members should support. Those who support another approach have the full opportunity to explore it in the minority's amendment in the nature of a substitute. Therefore, I urge all Members to support the rule and the underlying legislation.

Mr. MCGOVERN. Mr. Speaker, I yield 1 minute to the gentlewoman from Texas (Ms. JACKSON-LEE).

Ms. JACKSON-LEE of Texas. Mr. Speaker, it is interesting to hear the distinguished gentleman from Georgia mention the Committee on Rules, and I respect the power of the Committee on Rules. The Committee on Rules is not a jurisdictional committee. This bill did not go through the committee process on the Senate side or on the House side.

I might also say when we talk about coupons and the amount of dollars that lawyers may receive, might I remind the body that we are talking about thousands upon thousands of plaintiffs in a class action who would never have their grievances addressed and the corporate culprit would have never been punished had it not been for this class action. So to manipulate it to suggest that it is abused is manipulation, just that.

This did not go through the committee process. We are avoiding the committee process. Therefore, we are stamping on democracy and this rule and this bill should be voted down enthusiastically.

Mr. GINGREY. Mr. Speaker, I yield myself such time as I may consume.

In response to the gentlewoman from Texas, the Committee on Rules has jurisdiction, and anybody that knows the history of this body knows and understands that the Committee on Rules certainly has jurisdiction.

Let me just give a little history for my colleagues and particularly for the gentlewoman from Texas in regard to this bill. Again, in the 105th Congress, Senate bill 2083, the Class Action Fairness Act, Senate held hearing, reported by subcommittee. House Resolution 3789, Class Action Jurisdiction Act of 1998, committee hearing and markup held, reported from the House Committee on the Judiciary, 17 to 12.

Mr. Speaker, in the 106th Congress, H.R. 1875, Interstate Class Action Jurisdiction Act of 1999. Committee hearing and markup held, passed floor 222 to 207.

In the 107th Congress, H.R. 2341, Class Action Fairness Act of 2001. Committee hearing and markup held; passed floor, 233 to 190.

In the 108th Congress, H.R. 1115, Class Action Fairness Act of 2003, committee hearing and markup held, passed floor, 253 to 170.

No hearings? Indeed.

Mr. Speaker, I yield 3 minutes to the gentleman from Florida (Mr. KELLER).

Mr. KELLER. Mr. Speaker, I thank the gentleman from Georgia for yielding me this time.

Mr. Speaker, I rise today in strong support of both the rule and the underlying class-action reform legislation.

Mr. Speaker, the bottom line is that class-action reform is badly needed. Currently, certain crafty lawyers are able to game the system by filing large, nationwide class-action suits in certain preferred State courts such as Madison County, Illinois, where judges are quick to certify classes and quick to approve settlements that give millions of dollars to attorneys and only worthless coupons to their clients.

Looking at this chart, for example, we can see the history of Madison County, Illinois, which has been called the number one judicial hellhole in the United States. There were 77 class-action filings in 2002, and 106 class-action lawsuits filed in 2003. Now, the movie Bridges of Madison County was a love story. ''The Judges of Madison County'' would be a horror flick.

Unfortunately, all too often, it is the lawyers who drive these class-action suits and not the individuals who allegedly have been injured. For example, in a suit against Blockbuster over late fees, the attorneys received $9.25 million; their clients got a $1 off coupon for their next video rental. Similarly, in a lawsuit against the company that makes Cheerios, the attorneys received $2 million for themselves, while their clients received a coupon for a free box of Cheerios. In a nutshell, these out-of-control class-action lawsuits are killing jobs, they are hurting small business people who cannot afford to defend

themselves, and they are hurting consumers who have to pay a higher price for goods and services.

Fortunately, this legislation provides much-needed reform in 2 key areas. First, it eliminates much of the forum shopping by requiring that most of the nationwide class-action suits be filed in Federal court. Second, it cracks down on these coupon-based class-action settlements by requiring that attorney fee awards be based on either the value of the coupons actually redeemed, or by the hours actually billed by the attorney prosecuting the case.

Mr. Speaker, this legislation will and should comfortably pass the House of Representatives. Last week, this exact bill received 72 votes in the U.S. Senate, and last year we passed a similar bill with 253 votes. I urge my colleagues to vote yes on the bill and vote yes on the rule.

□ 1200

Mr. MCGOVERN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I guess it is politically popular to attack lawyers and judges, but what I am concerned about is what this bill will do to average people who are seeking remedies for being mistreated.

I want to read an excerpt from the Leadership Conference on Civil Rights, AFL/CIO, and the Alliance for Justice statement. One of things they point out is that nowhere has a case been made that abuses exist in anti-discrimination and wage and hour class action litigation.

They point out by allowing dozens of employees to bring one lawsuit together, the class action device is frequently the only means for low-wage workers who have been denied mere dollars a day to recover their lost wages. Moreover, class actions are also often the only means to effectively change a policy of discrimination.

Wage and hour class actions are most often brought in States under the law of the State in which the claim arises. The reason is that State wage and hour laws typically provide more complete remedies for victims of wage and hour violations than the Federal wage and hour statute. For instance, the Federal Fair Labor Standards Act offers no protection, no protection for a worker who works 30 hours and is paid for 20, so long as the worker's total pay for the 30 hours worked exceeds the Federal minimum wage. However, many States have payment of wage laws that would require that the workers be fully paid for those additional 10 hours of work.

Also, Federal law provides no remedy for part-time workers who often work 10- to 16-hour days, yet earn no overtime because they work less than 40 hours per week. At least six States and territories, however, including California and Alaska, require payment of overtime after a prescribed number of hours of work in a single day. Likewise, State laws increasingly provide greater civil rights protections than Federal laws. For example, every State has passed a law prohibiting discrimination on the basis of disability. Some of these State statutes provide a broader definition of disability and a greater range of protection in comparison to the Federal Americans with Disabilities Act, including California, Minnesota, New Jersey, New York, Rhode Island, Washington, and West Virginia.

In addition, every State has enacted a law prohibiting age discrimination in employment. Some of these State laws, including those in California, Michigan, Ohio and the District of Columbia, contain provisions affording greater protection to older workers than comparable provisions of the Federal Age Discrimination and Employment Act. In addition, many State laws provide protections to classifications not covered by Federal law. For example, many States provide expanded benefits based on marital status, and I could go on and on and on.

The point of the matter here is that this legislation is basically denying people the rights and the protections that many of them have fought so hard to earn in their States, and it leads to more injustice and more unfairness.

LEADERSHIP CONFERENCE ON CIVIL RIGHTS, ALLIANCE FOR JUSTICE, AFL–CIO,

Washington, DC, February 2, 2005.

EXEMPT CIVIL RIGHTS AND WAGE AND HOUR CASES FROM S. 5

DEAR SENATORS, On behalf of the undersigned civil rights and labor organizations, we write to urge you to support an amendment being offered by Senators Kennedy and Cantwell to the Class Action Fairness Act (S. 5), which would exempt civil rights and wage and hour state law cases. The amendment is necessary in order to ensure that S. 5 does not adversely impact the workplace and civil rights of ordinary Americans by making it extremely difficult to enforce civil rights and labor rights.

During Congress' extensive examination of the merits of class action lawsuits, nowhere has a case been made that abuses exist in anti-discrimination and wage and hour class-action litigation. By allowing dozens of employees to bring one lawsuit together, the class-action device is frequently the only means for low wage workers who have been denied mere dollars a day to recover their lost wages. Moreover, class actions also are often the only means to effectively change a policy of discrimination. These suits level the playing field between individuals and those with more power and resources, and permit courts to decide cases more efficiently.

Wage and hour class actions are most often brought in state courts under the law of the state in which the claims arise. The reason is that state wage and hour laws typically provide more complete remedies for victims of wage and hour violations than the federal wage and hour statute. For instance, the federal Fair Labor Standards Act (FLSA) offers no protection for a worker who works 30 hours and is paid for 20, so long as the worker's total pay for the 30 hours worked exceeds the federal minimum wage. However, many states have ''payment of wage'' laws that would require that the worker be fully paid for those additional 10 hours of work. Also, federal law provides no remedy for part-time workers who often work 10–16 hour days, yet earn no overtime because they work less than 40 hours per week. At least six states and territories, however, including California and Alaska, require payment of overtime after a prescribed number of hours are worked in a single day.

Likewise, state laws increasingly provide greater civil rights protection than federal law. For example, every state has passed a law prohibiting discrimination on the basis of disability. Some of these states statutes provide a broader definition of disability and a greater range of protection in comparison to the federal Americans with Disabilities Act, including California, Minnesota, New Jersey, New York, Rhode Island, Washington, and West Virginia. In addition, every state has enacted a law prohibiting age discrimination in employment, and some of these state laws—including those of California, Michigan, Ohio and the District of Columbia—contain provisions affording greater protection to older workers than comparable provisions of the federal Age Discrimination in Employment Act (ADEA).

In addition, many state laws provide protections to classifications not covered by federal law. For example, the following states provide protection for marital status: Alaska, California, Connecticut, Delaware, Florida, Hawaii, Illinois, Maryland, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Oregon, Virginia, Washington, and Wisconsin. Moreover, several states have expanded Title VII's ban on national origin discrimination to prohibit discrimination on the basis of ancestry, or place of birth, or citizenship status. These states include Arkansas, California, Colorado, Connecticut, Hawaii, Illinois, Indiana, Kansas, Maine, Massachusetts, Missouri, New Jersey, New Mexico, Ohio, Pennsylvania, South Dakota, Vermont, West Virginia, Wisconsin, Wyoming, and the Virgin Islands.

Finally, 31 states have enacted legislation prohibiting genetic discrimination in the workplace—an important protection given the rapid increase in the ability to gather this type of information. The 31 states are Arizona, Arkansas, California, Connecticut, Delaware, Hawaii, Iowa, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, Oklahoma, Oregon, Rhode Island, South Dakota, Texas, Utah, Vermont, Virginia, Washington, and Wisconsin. In addition, Florida and Illinois have enacted more limited protections against genetic discrimination.

Under S. 5, citizens are denied the right to use their own state courts to bring class actions against corporations that violate these state wage and hour and state civil rights laws, even where that corporation has hundreds of employees in that state. Moving these state law cases into federal court will delay and likely deny justice for working men and women and victims of discrimination. The federal courts are already overburdened. Additionally, federal courts are less likely to certify classes or provide relief for violations of state law.

In light of the lack of any compelling need to sweep state wage and hour and civil rights claims into the scope of the bill, we urge you to support an amendment to exempt these claims from the provisions of S. 5. If you have any questions, or need further information, please call Nancy Zirkin, Deputy Director of the Leadership Conference on Civil Rights (202–263–2880); Sandy Brantley, Legislative Counsel, Alliance for Justice (202–822–6070); or Bill Samuel, Legislative Director, AFL–CIO (202–637–5320).

Sincerely,

AARP.

AFL–CIO.
Alliance for Justice.
American-Arab Anti-Discrimination Committee.
American Association of People with Disabilities.
American Association of University Women.
American Civil Liberties Union.
American Federation for the Blind.
American Federation of Government Employees.
American Federation of School Administrators.
American Federation of State, County & Municipal Employees.
American Federation of Teachers.
American Jewish Committee.
Americans for Democratic Action.
The Arc of the United States.
Association of Flight Attendants.
Bazelon Center for Mental Health Law.
Center for Justice and Democracy.
Coalition of Black Trade Unionists.
Communications Workers of America.
Consortium for Citizens with Disabilities Civil Rights Task Force.
Department for Professional Employees, AFL–CIO.
Disability Rights Education and Defense Fund.
Epilepsy Foundation.
Federally Employed Women.
Federally Employed Women's Legal & Education Fund, Inc.
Food & Allied Service Trades Department, AFL–CIO.
Human Rights Campaign.
International Association of Machinists and Aerospace Workers.
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers.
International Brotherhood of Electrical Workers.
International Brotherhood of Teamsters.
International Federation of Professional & Technical Engineers.
International Union of Bricklayers and Allied Craftworkers.
International Union of Painters and Allied Trades of the United States and Canada.
International Union, United Automobile, Aerospace & Agricultural Workers of America.
Jewish Labor Committee.
Lawyers' Committee for Civil Rights Under Law.
Leadership Conference on Civil Rights.
Legal Momentum.
Mexican American Legal Defense and Educational Fund.
NAACP.
NAACP Legal Defense & Educational Fund, Inc.
National Alliance of Postal and Federal Employees.
National Asian Pacific American Legal Consortium.
National Association for Equal Opportunity in Higher Education.
National Association of Protection and Advocacy Systems.
National Association of Social Workers.
National Employment Lawyers Association.
National Fair Housing Alliance.
National Organization for Women.
National Partnership for Women and Families.
National Women's Law Center.
Paper, Allied-Industrial, Chemical and Energy Workers International Union.
Paralyzed Veterans of America.
People For the American Way.
Pride At Work, AFL–CIO.
Service Employees International Union.
Transport Workers Union of America.
Transportation Communications International Union.
UAW.
Unitarian Universalist Association of Congregations.
UNITE!
United Cerebral Palsy.
United Food and Commercial Workers International Union.
United Steelworkers of America.
Utility Worker Union of America.
Women Employed.

Mr. Speaker, I reserve the balance of my time.

Mr. GINGREY. Mr. Speaker, I yield 2 minutes to the gentleman from Georgia (Mr. WESTMORELAND), the former minority leader of the Georgia House of Representatives.

Mr. WESTMORELAND. Mr. Speaker, I rise today to support the rule and the underlying legislation; and I want to thank my colleague from Georgia for yielding me time.

Mr. Speaker, we have all received the class action settlement notices in our mail boxes, I know I have, not even realizing we were part of a class action lawsuit nor ever asking to be part of the lawsuit. And not only that, but you never get to meet this attorney who will represent you.

As consumers, we need to know that we will eventually bear the cost of these companies that have to settle large class actions because it is easier to settle than to try to litigate against the trial lawyers.

Earlier this week, the Georgia General Assembly moved forward with major legislation to reform the legal system, something I fought for during my time there. This legislation continues that effort and takes a huge step forward to protect consumers by limiting these huge interstate class action lawsuits.

Mr. Speaker, Federal courts have had jurisdiction over substantial cases between citizens of different States since the founding of this Nation. But due to the interpretations of the laws, State courts have had to bear the brunt of class action lawsuits in this country.

This legislation is a fantastic bipartisan effort to reform the legal system and is a good first step toward addressing the costs of litigation on small businesses, large businesses, and all Americans. I encourage my colleagues to support this effort; and I appreciate the leadership shown by the Speaker, the majority leader, and the chairman of the Committee on the Judiciary towards getting this legislation passed through the Senate and on the desk of the President.

I urge my colleagues to support this measure, the rule and the legislation.

Mr. MCGOVERN. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I would like to read a couple of cases here.

Mrs. Higgins of Tennessee was a 39-year-old woman who died of a sudden heart attack after taking Vioxx. She was the mother of a 9-year-old son. When she was diagnosed with the early onset of rheumatoid arthritis, Vioxx was prescribed. She had no former cardiac problems or family history. According to her medical records, Mrs. Higgins was in otherwise excellent health; but on September 25, 2004, she died of a sudden heart attack, less than a month after she started taking Vioxx. She was buried on the very day in September that Merck took Vioxx off the market.

On October 28, 2004, her husband, Monty, filed a claim against Merck in the Superior Court of New Jersey, Atlantic City Division.

Why New Jersey? This couple is from Tennessee. Because that is the State where Merck is headquartered. In an interview on ''60 Minutes,'' Mr. Higgins said, ''I believe my wife would be here if Merck had decided to take Vioxx off the market just 1 month earlier.''

Then there is Richard ''Dickie'' Irvin of Florida who was a 53-year-old former football coach and president of the Athletic Booster Association. He had received his college football scholarship and was inducted into the school's football hall of fame. He went on to play in Canadian league football until suffering a career-ending injury. In addition to coaching, he worked at a family-owned seafood shop where he was constantly moving crates of seafood. He rarely went to see a doctor and had no major medical problems.

In April of 2001, Mr. Irvin was prescribed Vioxx for his football knee injury from years ago. Approximately 23 days after he began taking Vioxx, Mr. Irvin died from a sudden, unexpected heart attack. An autopsy revealed that his heart attack was caused by a sudden blood clot. This is the exact type of injury that has been associated with Vioxx use. Mr. Irvin and his wife of 31 years had four children and three grandchildren.

I could read more cases involving Vioxx, but most people in this House, Mr. Speaker, probably agree with me that Merck should be held accountable if they knew about the harmful effects of Vioxx.

The class action section of this bill, however, would allow Merck and other corporate defendants to delay their day of reckoning for years and years and years; and justice for these individuals' families would be delayed; and justice delayed is justice denied. Again, this bill should be defeated.

Mr. Speaker, I reserve the balance of my time.

Mr. GINGREY. Mr. Speaker, how much time do I have remaining?

The SPEAKER pro tempore (Mr. LATOURETTE). The gentleman from Georgia (Mr. GINGREY) has 10 minutes remaining.

Mr. GINGREY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, the gentleman from Massachusetts (Mr. MCGOVERN) presented that case; and I want to present the real crux of this problem, and let me read a suit, Shields, et al v. Bridgestone/Firestone, Incorporated in Texas, a suit in Texas.

This suit involves customers who had Firestone tires that were among those that the National Highway Traffic Safety Administration investigated or recalled but who did not suffer any personal injury or property damage. After a Federal appeals court rejected class certification, plaintiffs' counsel and Firestone negotiated a settlement which has now been approved by a Texas State court. Under the settlement, the company has agreed to redesign certain tires, a move that was already underway irrespective of the suit, and to develop a 3-year consumer education and awareness campaign, but the members of the class received nothing. The lawyers, they got $19 million.

Mr. Speaker, I yield 2 minutes to the gentlewoman from Pennsylvania (Ms. HART), a former member for 4 years of the Committee on the Judiciary and an original co-sponsor of H.R. 1115.

(Ms. HART asked and was given permission to revise and extend her remarks.)

Ms. HART. Mr. Speaker, I would like to thank the gentleman for the opportunity to speak on this bill today. He has been leading a very important discussion and one that I am very pleased has finally come to fruition.

Mr. Speaker, there has been a lot of discussion today about class actions and what they do to the economy; class actions, what they have done to law, because State courts are making national law. But I think the most important point about a class action is that a class action's purpose is to award the plaintiffs who have been injured. The intent of these suits is to allow large groups who were similarly harmed by something to recover damages.

Unfortunately, it is the attorneys who have been recovering more money. The injured plaintiffs in many cases are recovering basically nothing. First, they are denied real relief, and then the attorneys pocket huge amounts of money. Examples, Bank of Boston case, the lawyers got 8.5 million. The plaintiffs actually lost money. In the Blockbuster case, the lawyers, 9.25 million. The plaintiffs got $1 off their next movie. The Coca-Cola case, the lawyers got 1.5 million; the plaintiffs, a 50-cent coupon.

Obviously, these lawsuits are not helping their intended beneficiaries. This act will create a consumer class action bill of rights. It will protect consumers from the egregious abuses of the class action practice today. The plan will require the judges carefully review the settlement and limit the attorneys fees when the value of the settlement received by those class members is minor in comparison or when there is a net loss in the settlement, such as this example where the class members could end up losing money.

It also will ban settlements that award some class members a large recovery because they live closer to the court. It will also allow Federal courts to maximize the benefit of class action settlements by requiring that unclaimed settlement funds be donated to charitable organizations.

Mr. Speaker, it is just obvious to me that this is a long-overdue bill. I encourage my colleagues to support it. I encourage my colleagues to ensure that the plaintiffs actually receive their due in these cases.

Mr. MCGOVERN. Mr. Speaker, I yield myself such time as I may consume.

Let me close by saying, this bill is not about lawyers. It is about people, and it is about State governments and attorney generals being able to pass laws in their own States to better protect their people. And it is ironic and it is almost kind of laughable that the majority, which has made it a point to argue on behalf of States right, is basically turning its back on what States have done to protect their people.

The previous speaker talked about making sure that the plaintiffs got what they deserved. Well, we are concerned about making sure that the plaintiffs get their day in court. And under this bill it makes it more difficult, especially for low-wage workers, for people who are battling discrimination to be able to have their day in court.

The system clearly can be improved. Nobody is arguing that. What I am saying here is that the bill before us does not provide the justice and the fairness that I think is appropriate. So I would urge my colleagues to oppose this bill.

NATIONAL CONFERENCE
OF STATE LEGISLATURES,
February 2, 2005.

U.S. SENATE,
Washington, DC.

DEAR SENATOR: On behalf of the National Conference of State Legislatures (NCSL), I am urging you to oppose passage of S. 5, the ''Class Action Fairness Act of 2005.'' This legislation will federalize class actions involving only state law claims. S. 5 undermines our system of federalism, disrespects our state court system, and clearly preempts carefully crafted state judicial processes which have been in place for decades regarding the treatment of class action lawsuits. The overall tenor of S. 5 sends a disturbing message to the American people that state court systems are somehow inferior or untrustworthy.

S. 5 amends the Federal Rules of Civil Procedure to grant federal district courts original diversity jurisdiction over any class action lawsuit where the amount in controversy exceeds $5,000,000 or where any plaintiff is a citizen of a different state than any defendant, or in other words, any class action lawsuit. The effect of S. 5 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 these cases. The impact of S. 5 is that state processes will be preempted by federal ones which aren't necessarily better.

NCSL opposes the passage of federal legislation, such as S. 5 which preempts established state authority. State courts have traditionally and correcdy been the repository for most class action lawsuits because state laws, not federal ones, are at issue. Congress should proceed cautiously before permitting the federal government to interfere with the authority of states to set their own laws and procedures in their own courts.

NCSL urges Congress to remember that state policy choices should not be overridden without a showing of compelling national need. We should await evidence demonstrating that states have broadly overreached or are unable to address the problems themselves. There must be evidence of harm to interests of national scope that require a federal response, and even with such evidence, federal preemption should be limited to remedying specific problems with tailored solutions, something that S. 5 does not do.

I urge you to oppose this legislation. Please contact Susan Parnas Frederick at the National Conference of State Legislatures at 202–624–3566 or *susan.frederick@ncsl.org* for further information.

Sincerely,

MICHAEL BLABONI,
New York State Senator; and Chair,
NCSL Law and Criminal Justice Committee.

Re environmental harm cases do not belong in class action bill.

FEBRUARY 7, 2005.

DEAR SENATOR: Our organizations are opposed to the sweepingly drawn and misleadingly named ''Class Action Fairness Act of 2005.'' This bill is patently unfair to citizens harmed by toxic spills, contaminated drinking water, polluted air and other environmental hazards involved in class action cases based on state environmental or public health laws. S. 5 would allow corporate defendants in many pollution class actions and ''mass tort'' environmental cases to remove these kinds of state environmental matters from state court to federal court, placing the cases in a forum that could be more costly, more time-consuming, and disadvantageous to your constituents harmed by toxic pollution. State law environmental harm cases do not belong in this legislation and we urge you to exclude such pollution cases from the class action bill.

Class actions protect the public's health and the environment by allowing people with similar injuries to join together for more efficient and cost-effective adjudication of their cases. All too often, hazardous spills, water pollution, or other toxic contamination from a single source affects large numbers of people, not all of whom may be citizens or residents of the same state as that of the defendants who caused the harm. In such cases, a class action lawsuit in state court based on state common law doctrines of negligence, nuisance or trespass, or upon rights and duties created by state statutes in the state where the injuries occur, is often the best way of fairly resolving these claims.

For example, thousands of families around the country are now suffering because of widespread groundwater contamination caused by the gasoline additive MTBE, which the U.S. government considers a potential human carcinogen. According to a May, 2002 GAO report, 35 states reported that they find MTBE in groundwater at least 20 percent of the time they sample for it, and 24 states said that they find it at least 60 percent of the time. Some communities and individuals have brought or soon will bring suits to recover damages for MTBE contamination and hold the polluters accountable, but under this bill, MTBE class actions or ''mass actions'' based on state law could be removed to federal court by the oil and gas companies in many of these cases.

This could not only make these cases more expensive, more time-consuming and more difficult for injured parties, but could also result in the dismissal of legitimate cases by federal judges who are unfamiliar with, or less respectful of, state-law claims. For example, in at least one MTBE class action, a federal court dismissed the case based on oil companies' claims that the action was barred by the federal Clean Air Act (even though that law contains no tort liability waiver for MTBE). Yet a California state court rejected a similar federal preemption argument and let the case go to a jury, which found oil refineries, fuel distributors, and others liable for damages. These cases highlight how a state court may be more willing to uphold legitimate state law claims. Other examples of state-law cases that would be weakened by this bill include lead contamination cases, mercury contamination, perchlorate pollution and other ''toxic tort'' cases.

In a letter to the Senate last year, the U.S. Judicial Conference expressed their continued opposition to such broadly written class action removal legislation. Notably, their letter states that, even if Congress determines that some ''significant multi-state class actions'' should be brought within the removal jurisdiction of the federal courts, Congress should include certain limitations and exceptions, including for class actions ''in which plaintiff class members suffered personal injury or personal property damage within the state, as in the case of a serious environmental disaster.'' The Judicial Conference's letter explains that this ''environmental harm'' exception should apply ''to all individuals who suffered personal injuries or losses to physical property, whether or not they were citizens of the state in question.''

We agree with the Judicial Conference that cases involving environmental harm are not even close to the type of cases that proponents of S. 5 cite when they call for reforms to the class action system. Including such cases in the bill penalizes injured parties in those cases for no reason other than to benefit the polluters. No rationale has been offered by the bill's supporters for including environmental cases in S. 5's provisions. We are unaware of any examples offered by bill supporters of environmental harm cases that represent alleged abuses of the state class actions.

More proof of the overreaching of this bill is that the so-called ''Class Action Fairness Act'' is not even limited to class action cases. The bill contains a provision that would allow defendants to remove to federal court all environmental ''mass action'' cases involving more than 100 people—even though these cases are not even filed as class actions. For example, the bill would apply to cases similar to the recently concluded state-court trial in Anniston, Alabama, where a jury awarded damages to be paid by Monsanto and Solutia for injuring more than 3,500 people that the jury found had been exposed over many years—with the companies' knowledge—to cancer-causing PCBs.

There is little doubt in the Anniston case that, had S. 5 been law, the defendants would have tried to remove the case from the state court that serves the community that suffered this devastating harm. Even in the best-case scenario, S. 5 would put plaintiffs like those in Anniston in the position of having to fight costly and time-consuming court battles in order to preserve their chosen forum for litigating their claims. In any case, it would reward the kind of reckless corporate misbehavior demonstrated by Monsanto and Solutia by giving defendants in such cases the right to remove state-law cases to federal court over the objections of those they have injured.

The so-called ''Class Action Fairness Act'' would allow corporate polluters who harm the public's health and welfare to exploit the availability of a federal forum whenever they perceive an advantage to doing so. It is nothing more than an attempt to take legitimate state-court claims by injured parties out of state court at the whim of those who have committed the injury.

Cases involving environmental harm and injury to the public from toxic exposure should not be subject to the bill's provisions; if these environmental harm cases are not excluded, we strongly urge you to vote against S. 5.

Sincerely,

S. Elizabeth Birnbaum, Vice President for Government Affairs, American Rivers.

Doug Kendall, Executive Director, Community Rights Counsel.

Mary Beth Beetham, Director of Legislative Affairs, Defenders of Wildlife.

Sara Zdeb, Legislative Director, Friends of the Earth.

Anne Georges, Acting Director of Public Policy, National Audubon Society.

Karen Wayland, Legislative Director, Natural Resources Defense Council.

Tom Z. Collina, Executive Director, 20/20 Vision.

Linda Lance, Vice President for Public Policy, The Wilderness Society.

Paul Schwartz, National Campaigns Director, Clean Water Action.

James Cox, Legislative Counsel, Earthjustice.

Ken Cook, Executive Director, Environmental Working Group.

Rick Hind, Legislative Director, Toxics Campaign, Greenpeace U.S.

Kevin S. Curtis, Vice President, National Environmental Trust.

Ed Hopkins, Director, Environmental Quality Programs, Sierra Club.

Julia Hathaway, Legislative Director, The Ocean Conservancy.

Anna Aurilio, Legislative Director, U.S. Public Interest Research Group.

Mr. MCGOVERN. Mr. Speaker, I yield back the balance of my time.

Mr. GINGREY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this is a fair rule for legislation that will help restore fairness and common sense to the current class action system.

Like H.R. 1115, which overwhelmingly passed the House last Congress, S. 5 expands Federal diversity jurisdiction over interstate class actions in a manner consistent with the framers' constitutional intent that Federal court preside over controversies between citizens of different States. S. 5 also protects consumers from these bogus coupon settlements that reward trial lawyers with millions in windfall fees while clients who never hired them get coupons in the mail.

Mr. Speaker, I want to call attention to this slide before me. This is from the Washington Post, November of 2002. The Washington Post is not exactly the most conservative newspaper in the country: ''The clients get token payments while the lawyers get enormous fees. This is not justice. It is an extortion racket that only Congress can fix.''

□ 1215

The Senate's overwhelming passage of S. 5 by a vote of 72 to 26 just last week reflects a strong bipartisan consensus in favor of reforming a class-action system that is prone to systematic abuse. Of those 26, 18 were Democrats, and each one of those provisions in that amendment in the nature of a substitute were offered in the Senate, and each one of them were voted down in a bipartisan fashion.

I think we all, in both the Senate and the House, and both Republicans and Democrats, we want to do the right thing here, and we want to make sure that, as the Washington Post says, that we eliminate this extortion racket and bring some fairness to this class-action system. After all, it is the injured person, it is the plaintiff that deserves a fair and just settlement, and it should not be just a lottery windfall for lawyers who venue shop, looking for places like, and we have heard it during this hour's discussion, Madison County, Illinois, the epicenter of this class-action lawsuit abuse. What happens in Madison County, Illinois, affects the whole country.

So I encourage my colleagues to vote for the rule, vote for S. 5 tomorrow.

Mr. Speaker, I yield back the remaining portion of my time.

The SPEAKER pro tempore (Mr. LATOURETTE). Without objection, the previous question is ordered.

There was no objection.

The SPEAKER pro tempore. The question is the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

BROADCAST DECENCY ENFORCEMENT ACT OF 2005

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the pending business is the vote on ordering the previous question on House Resolution 95, on which the yeas and nays were ordered

The Clerk read the title of the resolution.

The SPEAKER pro tempore. The question is on ordering the previous question.

Pursuant to clause 9 of rule XX, the Chair will reduce to 5 minutes the minimum time for electronic voting, if ordered, on the question of adoption of the resolution.

The vote was taken by electronic device, and there were—yeas 230, nays 198, not voting 5, as follows:

[Roll No. 34]

YEAS—230

Aderholt	Boehlert	Calvert
Akin	Boehner	Camp
Alexander	Bonilla	Cannon
Bachus	Bonner	Cantor
Baker	Bono	Capito
Barrett (SC)	Boozman	Carter
Bartlett (MD)	Boustany	Castle
Barton (TX)	Bradley (NH)	Chabot
Bass	Brady (TX)	Chocola
Beauprez	Brown (SC)	Coble
Biggert	Brown-Waite, Ginny	Cole (OK)
Bilirakis	Burgess	Conaway
Bishop (UT)	Burton (IN)	Cox
Blackburn	Buyer	Crenshaw
Blunt		Cubin

Culberson
Cunningham
Davis (KY)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dingell
Doolittle
Drake
Dreier
Duncan
Ehlers
Emerson
English (PA)
Everett
Feeney
Ferguson
Fitzpatrick (PA)
Flake
Foley
Forbes
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Goode
Goodlatte
Granger
Graves
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Hostettler
Hulshof
Hunter
Hyde
Inglis (SC)
Issa
Istook
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, Sam
Jones (NC)
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kuhl (NY)
LaHood
Latham
LaTourette
Leach
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas
Lungren, Daniel E.
Mack
Manzullo
Marchant
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McKeon
McMorris
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Otter
Paul
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Porter
Portman
Price (GA)
Pryce (OH)
Putnam
Radanovich
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schwarz (MI)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (NJ)
Smith (TX)
Sodrel
Souder
Stearns
Sullivan
Sweeney
Tancredo
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NAYS—198

Abercrombie
Ackerman
Allen
Andrews
Baca
Baird
Baldwin
Barrow
Bean
Becerra
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boren
Boswell
Boucher
Boyd
Brady (PA)
Brown (OH)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Case
Chandler
Clay
Cleaver
Clyburn
Conyers
Cooper
Costa
Costello
Cramer
Crowley
Cuellar
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Doggett
Doyle
Edwards
Emanuel
Engel
Etheridge
Evans
Farr
Fattah
Filner
Ford
Frank (MA)
Gonzalez
Gordon
Green, Al
Green, Gene
Grijalva
Gutierrez
Harman
Hastings (FL)
Herseth
Higgins
Hinchey
Hinojosa
Holden
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson, E. B.
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
Kucinich
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lipinski
Lofgren, Zoe
Lowey
Lynch
Maloney
Markey
Marshall
Matheson
McCarthy
McCollum (MN)
McDermott
McGovern
McIntyre
McKinney
McNulty
Meehan
Meek (FL)
Meeks (NY)
Melancon
Menendez
Michaud
Millender-McDonald
Miller (NC)
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Rangel
Reyes
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Schwartz (PA)
Scott (GA)
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Strickland
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu

NOT VOTING—5

Eshoo
Oxley
Reichert
Stupak
Wynn

□ 1242

Ms. VELÁZQUEZ and Mr. BOYD changed their vote from ''yea'' to ''nay.''

Mr. BURTON of Indiana changed his vote from ''nay'' to ''yea.''

So the previous question was ordered.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. LATOURETTE.) The question is on the resolution.

The resolution was agreed to.

A motion to reconsider was laid on the table.

Mr. BARTON of Texas. Mr. Speaker, pursuant to House Resolution 95, I call up the bill (H.R. 310) to increase the penalties for violations by television and radio broadcasters of the prohibitions against transmission of obscene, indecent, and profane material, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 95, the bill is considered read.

The text of H.R. 310 is as follows:

H.R. 310

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 ''Broadcast Decency Enforcement Act of 2005''.

SEC. 2. INCREASE IN PENALTIES FOR OBSCENE, INDECENT, AND PROFANE BROADCASTS.

Section 503(b)(2) of the Communications Act of 1934 (47 U.S.C. 503(b)(2)) is amended—

(1) by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), respectively;

(2) by inserting after subparagraph (B) the following new subparagraph:

''(C) Notwithstanding subparagraph (A), if the violator is (i) a broadcast station licensee or permittee, or (ii) an applicant for any broadcast license, permit, certificate, or other instrument or authorization issued by the Commission, and the violator is determined by the Commission under paragraph (1) to have broadcast obscene, indecent, or profane material, the amount of any forfeiture penalty determined under this section shall not exceed $500,000 for each violation.''; and

(3) in subparagraph (D), as redesignated by paragraph (1) of this subsection—

(A) by striking ''subparagraph (A) or (B)'' and inserting ''subparagraph (A), (B), or (C)''; and

(B) by adding at the end the following: ''Notwithstanding the preceding sentence, if the violator is determined by the Commission under paragraph (1) to have uttered obscene, indecent, or profane material (and the case is not covered by subparagraph (A), (B), or (C)), the amount of any forfeiture penalty determined under this section shall not exceed $500,000 for each violation.''.

SEC. 3. ADDITIONAL FACTORS IN INDECENCY PENALTIES; EXCEPTION.

Section 503(b)(2) of the Communications Act of 1934 (47 U.S.C. 503(b)(2)) is further amended by adding at the end (after subparagraph (E) as redesignated by section 2(1) of this Act) the following new subparagraphs:

''(F) In the case of a violation in which the violator is determined by the Commission under paragraph (1) to have uttered obscene, indecent, or profane material, the Commission shall take into account, in addition to the matters described in subparagraph (E), the following factors:

''(i) With respect to the degree of culpability of the violator, the following:

''(I) whether the material uttered by the violator was live or recorded, scripted or unscripted;

''(II) whether the violator had a reasonable opportunity to review recorded or scripted programming or had a reasonable basis to believe live or unscripted programming may contain obscene, indecent, or profane material;

''(III) if the violator originated live or unscripted programming, whether a time delay blocking mechanism was implemented for the programming;

''(IV) the size of the viewing or listening audience of the programming; and

''(V) whether the programming was part of a children's television program as described in the Commission's children's television programming policy (47 CFR 73.4050(c)).

''(ii) With respect to the violator's ability to pay, the following:

''(I) whether the violator is a company or individual; and

''(II) if the violator is a company, the size of the company and the size of the market served.

''(G) A broadcast station licensee or permittee that receives programming from a network organization, but that is not owned or controlled, or under common ownership or control with, such network organization, shall not be subject to a forfeiture penalty under this subsection for broadcasting obscene, indecent, or profane material, if—

''(i) such material was within live or recorded programming provided by the network organization to the licensee or permittee; and

''(ii)(I) the programming was recorded or scripted, and the licensee or permittee was not given a reasonable opportunity to review the programming in advance; or—

''(II) the programming was live or unscripted, and the licensee or permittee had no reasonable basis to believe the programming would contain obscene, indecent, or profane material.

The Commission shall by rule define the term 'network organization' for purposes of this subparagraph.''.

SEC. 4. INDECENCY PENALTIES FOR NON-LICENSEES.

Section 503(b)(5) of the Communications Act of 1934 (47 U.S.C. 503(b)(5)) is amended—

(1) by redesignating subparagraphs (A), (B), and (C) as clauses (i), (ii), and (iii), respectively;

(2) by inserting ''(A)'' after ''(5)'';

(3) by redesignating the second sentence as subparagraph (B);

(4) in such subparagraph (B) as redesignated—

(A) by striking ''The provisions of this paragraph shall not apply, however,'' and inserting ''The provisions of subparagraph (A) shall not apply (i)'';

(B) by striking ''operator, if the person'' and inserting ''operator, (ii) if the person'';

(C) by striking ''or in the case of'' and inserting ''(iii) in the case of''; and

(D) by inserting after ''that tower'' the following: '', or (iv) in the case of a determination that a person uttered obscene, indecent, or profane material that was broadcast by a broadcast station licensee or permittee, if the person is determined to have willfully or intentionally made the utterance''; and

(5) by redesignating the last sentence as subparagraph (C).

SEC. 5. DEADLINES FOR ACTION ON COMPLAINTS.

Section 503(b) of the Communications Act of 1934 (47 U.S.C. 503(b)) is amended by adding at the end thereof the following new paragraph:

''(7) In the case of an allegation concerning the utterance of obscene, indecent, or profane material that is broadcast by a station licensee or permittee—

''(A) within 180 days after the date of the receipt of such allegation, the Commission shall—

''(i) issue the required notice under paragraph (3) to such licensee or permittee or the person making such utterance;

''(ii) issue a notice of apparent liability to such licensee or permittee or person in accordance with paragraph (4); or

''(iii) notify such licensee, permittee, or person in writing, and any person submitting such allegation in writing or by general publication, that the Commission has determined not to issue either such notice; and

''(B) if the Commission issues such notice and such licensee, permittee, or person has not paid a penalty or entered into a settlement with the Commission, within 270 days after the date of the receipt of such allegation, the Commission shall—

''(i) issue an order imposing a forfeiture penalty; or

''(ii) notify such licensee, permittee, or person in writing, and any person submitting such allegation in writing or by general publication, that the Commission has determined not to issue either such order.''.

SEC. 6. ADDITIONAL REMEDIES FOR INDECENT BROADCAST.

Section 503 of the Communications Act of 1934 (47 U.S.C. 503) is further amended by adding at the end the following new subsection:

''(c) ADDITIONAL REMEDIES FOR INDECENT BROADCASTING.—In any proceeding under this section in which the Commission determines that any broadcast station licensee or permittee has broadcast obscene, indecent, or profane material, the Commission may, in addition to imposing a penalty under this section, require the licensee or permittee to broadcast public service announcements that serve the educational and informational needs of children. Such announcements may be required to reach an audience that is up to 5 times the size of the audience that is estimated to have been reached by the obscene, indecent, or profane material, as determined in accordance with regulations prescribed by the Commission.''.

SEC. 7. LICENSE DISQUALIFICATION FOR VIOLATIONS OF INDECENCY PROHIBITIONS.

Section 503 of the Communications Act of 1934 (47 U.S.C. 503) is further amended by adding at the end (after subsection (c) as added by section 6) the following new subsection:

''(d) CONSIDERATION OF LICENSE DISQUALIFICATION FOR VIOLATIONS OF INDECENCY PROHIBITIONS.—If the Commission issues a notice under paragraph (3) or (4) of subsection (b) to a broadcast station licensee or permittee looking toward the imposition of a forfeiture penalty under this Act based on an allegation that the licensee or permittee broadcast obscene, indecent, or profane material, and either—

''(1) such forfeiture penalty has been paid, or

''(2) a court of competent jurisdiction has ordered payment of such forfeiture penalty, and such order has become final,

then the Commission shall, in any subsequent proceeding under section 308(b) or 310(d), take into consideration whether the broadcast of such material demonstrates a lack of character or other qualifications required to operate a station.''.

SEC. 8. LICENSE RENEWAL CONSIDERATION OF VIOLATIONS OF INDECENCY PROHIBITIONS.

Section 309(k) of the Communications Act of 1934 (47 U.S.C. 309(k)) is amended by adding at the end the following new paragraph:

''(5) LICENSE RENEWAL CONSIDERATION OF VIOLATIONS OF INDECENCY PROHIBITIONS.—If the Commission has issued a notice under paragraph (3) or (4) of section 503(b) to a broadcast station licensee or permittee with respect to a broadcast station looking toward the imposition of a forfeiture penalty under this Act based on an allegation that such broadcast station broadcast obscene, indecent, or profane material, and—

''(A) such forfeiture penalty has been paid, or

''(B) a court of competent jurisdiction has ordered payment of such forfeiture penalty, and such order has become final,

then such violation shall be treated as a serious violation for purposes of paragraph (1)(B) of this subsection with respect to the renewal of the license or permit for such station.''.

SEC. 9. LICENSE REVOCATION FOR VIOLATIONS OF INDECENCY PROHIBITIONS.

Section 312 of the Communications Act of 1934 (47 U.S.C. 312) is amended by adding at the end the following new subsection:

''(h) LICENSE REVOCATION FOR VIOLATIONS OF INDECENCY PROHIBITIONS.—

''(1) CONSEQUENCES OF MULTIPLE VIOLATIONS.—If, in each of 3 or more proceedings during the term of any broadcast license, the Commission issues a notice under paragraph (3) or (4) of section 503(b) to a broadcast station licensee or permittee with respect to a broadcast station looking toward the imposition of a forfeiture penalty under this Act based on an allegation that such broadcast station broadcast obscene, indecent, or profane material, and in each such proceeding either—

''(A) such forfeiture penalty has been paid, or

''(B) a court of competent jurisdiction has ordered payment of such forfeiture penalty, and such order has become final,

then the Commission shall commence a proceeding under subsection (a) of this section to consider whether the Commission should revoke the station license or construction permit of that licensee or permittee for such station.

''(2) PRESERVATION OF AUTHORITY.—Nothing in this subsection shall be construed to limit the authority of the Commission to commence a proceeding under subsection (a).''.

SEC. 10. REQUIRED CONTENTS OF ANNUAL REPORTS OF THE COMMISSION.

Each calendar year beginning after the date of enactment of this Act, the Federal Communications Commission shall submit to the Congress an annual report that includes the following:

(1) The number of complaints received by the Commission during the year covered by the report alleging that a broadcast contained obscene, indecent, or profane material, and the number of programs to which such complaints relate.

(2) The number of those complaints that have been dismissed or denied by the Commission.

(3) The number of complaints that have remained pending at the end of the year covered by the annual report.

(4) The number of notices issued by the Commission under paragraph (3) or (4) of section 503(b) of the Communications Act of 1934 (47 U.S.C. 503(b)) during the year covered by the report to enforce the statutes, rules, and policies prohibiting the broadcasting of obscene, indecent, or profane material.

(5) For each such notice, a statement of—

(A) the amount of the proposed forfeiture;

(B) the program, station, and corporate parent to which the notice was issued;

(C) the length of time between the date on which the complaint was filed and the date on which the notice was issued; and

(D) the status of the proceeding.

(6) The number of forfeiture orders issued pursuant to section 503(b) of such Act during the year covered by the report to enforce the statutes, rules, and policies prohibiting the broadcasting of obscene, indecent, or profane material.

(7) For each such forfeiture order, a statement of—

(A) the amount assessed by the final forfeiture order;

(B) the program, station, and corporate parent to which it was issued;

(C) whether the licensee has paid the forfeiture order; and

(D) the amount paid by the licensee.

(8) In instances where the licensee has refused to pay, whether the Commission referred such order to the Department of Justice to collect the penalty.

(9) In cases where the Commission referred such order to the Department of Justice—

(A) the number of days from the date the Commission issued such order to the date the Commission referred such order to the Department;

(B) whether the Department has commenced an action to collect the penalty, and if such action was commenced, the number of days from the date the Commission referred such order to the Department to the date the action by the Department commenced; and

(C) whether the collection action resulted in a payment, and if such action resulted in a payment, the amount of such payment.

SEC. 11. GAO STUDY OF INDECENT BROADCASTING COMPLAINTS.

(a) INQUIRY AND REPORT REQUIRED.—The General Accounting Office shall conduct a study examining—

(1) the number of complaints concerning the broadcasting of obscene, indecent, and profane material to the Federal Communications Commission;

(2) the number of such complaints that result in final agency actions by the Commission;

(3) the length of time taken by the Commission in responding to such complaints;

(4) what mechanisms the Commission has established to receive, investigate, and respond to such complaints; and

(5) whether complainants to the Commission are adequately informed by the Commission of the responses to their complaints.

(b) SUBMISSION OF REPORT.—The General Accounting Office shall submit a report on the results of such study within one year after the date of enactment of this Act to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives.

SEC. 12. SENSE OF THE CONGRESS.

(a) REINSTATEMENT OF POLICY.—It is the sense of the Congress that the broadcast television station licensees should reinstitute a family viewing policy for broadcasters.

(b) DEFINITION.—For purposes of this section, a family viewing policy is a policy similar to the policy that existed in the United States from 1975 to 1983, as part of the National Association of Broadcaster's code of conduct for television, and that included the concept of a family viewing hour.

SEC. 13. IMPLEMENTATION.

(a) REGULATIONS.—The Commission shall prescribe regulations to implement the amendments made by this Act within 180 days after the date of enactment of this Act.

(b) PROSPECTIVE APPLICATION.—This Act and the amendments made by this Act shall not apply with respect to material broadcast before the date of enactment of this Act.

(c) SEPARABILITY.—Section 708 of the Communications Act of 1934 (47 U.S.C. 608) shall apply to this Act and the amendments made by this Act.

The SPEAKER pro tempore. After 1 hour of debate on the bill, it shall be in order to consider an amendment without demand for division of the question printed in House Report 109–6 if offered by the gentleman from Michigan (Mr. UPTON), or his designee, which shall be considered read, and shall be debatable for 20 minutes, equally divided and controlled by the proponent and an opponent.

The gentleman from Texas (Mr. BARTON) and the gentleman from Massachusetts (Mr. MARKEY) each will control 30 minutes of debate on the bill.

The Chair recognizes the gentleman from Texas (Mr. BARTON.)

GENERAL LEAVE

Mr. BARTON of Texas. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 310.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. BARTON of Texas. I yield myself such time as I may consume.

Mr. Speaker, today the Energy and Commerce Committee brings its first major bill of the 109th Congress to the floor, H.R. 310, the Broadcast Decency Enforcement Act of 2005.

This is a bill that we brought up in the last Congress and passed in the last Congress, but were not able to conference successfully with the Senate. We passed it in the last Congress with a vote of 391 to 22, so we are going to bring this up as our first major bill this year.

This legislation makes great strides in making it safe for families to come back again into their living rooms. After the year-before-last Super Bowl half-time show, an unprecedented 500,000 citizens filed complaints with the FCC, 500,000. The level of disgust in the use of our public airwaves was then at an all-time high. The 2004 Super Bowl crystallized the notion that something needs to be done. Today, we are going to answer those calls.

H.R. 310 gives the FCC all of the tools necessary to encourage broadcasters to take these fines seriously. For too long, broadcasters have pushed the envelope. In light of the paltry fines under current law, broadcasters have been willing to take the risk that programming may be deemed indecent. Currently, the most the FCC may fine a broadcaster is $32,500. It is a mere drop in the bucket, a slap on the wrist. This bill would raise the stakes by giving the FCC the ability to fine a maximum of $500,000 for an indecent broadcast infraction. A $500,000 penalty gets people's attention.

The bill also takes the additional step to address the performers who may exploit the airwaves to promote their own popularity. Under H.R. 310, if a performer, and I quote, ''willfully and intentionally makes an indecent statement or action that he or she knows will be broadcast, that performer can be held personally liable for up to $500,000.'' There is a clear need to hold a performer responsible for his or her own actions, and this bill does that in a reasonable manner.

The goal is not to bankrupt anyone, but rather make the penalties do what they are supposed to do, provide a disincentive to utter indecent material on broadcast television and radio.

Additionally, H.R. 310 would allow the FCC to use remedies other than fines. For instance, if a broadcaster is found liable for three separate indecency violations during an 8-year license term, the bill requires the FCC to hold a revocation hearing to consider revoking the broadcaster's license. It is not an automatic revocation, but the FCC would have to hold the hearing to consider revocation.

Today, the FCC has the power to hold a license revocation hearing only after one indecency offense, but rarely uses it. H.R. 310 would make it clear that after three such offenses, it is time to examine the license. Again, this is a penalty that will make the broadcasters sit up and take notice.

□ 1245

I would like to thank the gentleman from Michigan (Mr. UPTON), chairman of the Subcommittee on Telecommunications and the Internet; the gentleman from Michigan (Mr. DINGELL), the ranking member of the full committee; and the gentleman from Massachusetts (Mr. MARKEY), the ranking member of the subcommittee, for their hard work on this bill. It is a good bill. It is firm, it is fair, and it is reasonable. Most importantly and unfortunately, it is necessary. I am an original cosponsor of H.R. 310. I would strongly urge my colleagues to support the bill.

Mr. Speaker, I yield the balance of my time to the gentleman from Michigan (Mr. UPTON), and I ask unanimous consent for him to control the floor debate on the majority time on this bill.

The SPEAKER pro tempore (Mr. LATOURETTE). Is there objection to the request of the gentleman from Texas?

There was no objection.

Mr. MARKEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I want to commend the gentleman from Michigan (Mr. UPTON) for this legislation and commend as well the gentleman from Texas (Mr. BARTON), the gentleman from Michigan (Mr. DINGELL) and members of the committee on both the Democrat and Republican side who have crafted this bill. It has been handled in a bipartisan fashion. This bill is brought to the floor today in that spirit.

Mr. Speaker, this legislation is essentially identical to the bill which overwhelmingly passed the House in the last Congress. Simply put, this bill raises the cap on possible fines that the FCC can levy for violations of its broadcast indecency rules from $32,500 for licensees and $11,000 for nonlicensees to up to $500,000 in both categories.

I would like to emphasize that this legislation does not make indecent broadcasts illegal, nor does the bill define what is or is not indecent material.

Indecent content aired over broadcast TV and radio is already illegal between the hours of 6 a.m. and 10 p.m., 7 days a week. What speech constitutes indecent material will be left to the Federal Communications Commission and to the courts of the United States of America.

Again, this legislation simply updates the statute with regard to the amount of money that the FCC can levy as a fine for violations of its rules and establishes procedures for considering broadcast license awards, renewal or revocation when repeated violations are found.

Mr. Speaker, I reserve the balance of my time.

Mr. UPTON. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, I rise in support of this legislation. I want to particularly thank a number of Members. I want to thank the gentleman from Texas (Mr. BARTON). Without his dedicated effort, we would not have this bill through the fast track that we have it today, and his support means quite a bit. I also want to thank my friends on the other side of the aisle. I look at the gentleman from Massachusetts (Mr. MARKEY), my ranking member on the subcommittee; the gentleman from Michigan (Mr. DINGELL) who is on the floor, the ranking member of the full committee. This is a bipartisan effort.

I would remind my colleagues that last year this legislation passed 391–22. Out of our committee this last week, it passed 46–2. That is true bipartisan spirit and we are delighted that it is up on the floor as early as it is. A little bit more than a year ago, I introduced similar legislation that had all five FCC commissioners, Republican and Democrat, on board. Each of them had lamented in a very public way that the current level of fines was way too low, and with that we moved the legislation that we introduced a couple of weeks ago. We passed it, as I said, 391–22. The Senate passed similar legislation last year, 99–1. I would note that that one that voted against it wanted the bill to be tougher. In essence, unanimous support.

Currently, fines for indecency often go uncollected because the cost for the Department of Justice to collect the fines is often greater than the fines themselves. This is no longer going to be the case under H.R. 310. The current cap for fines is $32,500. To put that into perspective, a 30-second ad during the Super Bowl just a couple of weeks ago cost $80,000 a second, $2.4 million for 30 seconds.

What we are talking about today is about the public airwaves which are, of course, owned by the U.S. taxpayer. Using the public airwaves comes with the responsibility to follow the FCC decency standards that apply to programming that airs during the family hours from 6 in the morning until 10 at night, the likeliest time that kids might be tuned in.

When broadcasters sign on the dotted line to receive their licenses, they agree to follow those decency standards, and I would note that the courts, including the highest in the land, ruled in support of that standard. There has to be a level of expectation when a parent turns on the TV or the radio between those family hours that the content will be suitable for children. A parent should not have to think twice about the content on public airwaves. Unfortunately, the situation is far from reality.

I would note very strongly that we do not change the standard in this legislation. We raise the fines. I have asked for the FCC to look for the transcripts of what they have fined. I am not going to put this in the RECORD under unanimous consent or any other, but I will tell any Member that is here or watching on the floor, if you want to see what the FCC has fined, I have got the transcript here and it is awful, it is vulgar, it has no place on the public airwaves, and I would defy anyone to come over and look at the reading of these transcripts and say that should not be banned. It should be. And broadcasters who violate the standard ought to be fined and it ought to be more than a slap on the wrist, and that is exactly what this legislation does.

By significantly increasing the fines for indecency, the fines will be at a level where they no longer are going to be ignored and parents across the country can rest easy. With the passage of this legislation I am confident that broadcasters will think twice and, by the way, the talent themselves as well, the disk jockeys or anybody else, will think twice about pushing that envelope because they are going to be liable as well, and ultimately our kids are going to be better off for it.

Mr. Speaker, I rise in strong support of H.R. 310, the Broadcast Decency Enforcement Act of 2005. At the outset, I want to thank Chairman BARTON, Ranking Member DINGELL, and Mr. MARKEY for their tremendous bipartisan cooperation on this bill. I also want to thank those Members of the House who have cosponsored the bill.

I would tell my colleagues that H.R. 310 mirrors the bill which, last year, the House passed by a vote of 391–22.

For the record, we introduced this bill last year weeks before the infamous Super Bowl halftime show featuring Janet Jackson and Justin Timberlake. I was motivated to introduce this bill in large part because I read the transcripts of those broadcasts which the FCC found to contain indecent content. When I read some of those transcripts, I was absolutely sickened and shocked by the filth which had passed over the public's airwaves. Today, I have with me every broadcast indecency Notice of Apparent Liability and Forfeiture Order issued by the FCC since 2000. Each order contains a transcript of the offending content. If any Member is uncertain about the merit of what we are doing here today, I would urge them to read these transcripts. I am confident that you will be as sickened as I am.

This legislation would significantly enhance the Federal Communications Commission's broadcast decency enforcement authority. As stewards of the public's airwaves, radio and television broadcasters have an obligation to abide by the decency laws which have been on the books for decades and have been upheld in the courts. Most of our local broadcasters act responsibly, but there are still too many who continue to push the envelope of indecency during the hours of 6 a.m. to 10 p.m., when children are most likely to be in the audience. I would note that some broadcasters have taken to heart the seriousness of this debate and, on their own, have adopted internal policies to better control what goes over the public's airwaves over which they have stewardship. Clear Channel's ''zero tolerance'' policy as part of its ''Responsible Broadcast Initiative'' is one such example of this good corporate citizenship.

But for those broadcasters who continue to act irresponsibly, the FCC needs adequate authority to enforce the law, and this bill would deliver that.

Currently, the maximum fine which the FCC can impose for violations of the decency laws is $32,500 per violation, which, to some broadcasters, is merely the ''cost of doing business'' and, as such, is hardly a deterrent. H.R. 310 would increase the maximum fine to $500,000 per violation.

In addition, under current law, the FCC may hold a license revocation hearing for any broadcaster who is found liable for an indecency violation. However, the FCC has never held such a license revocation hearing. H.R. 310, among other things, would require the FCC to hold a license revocation hearing for any broadcaster who has been found liable for three indecency violations; this is the so-called ''three strikes'' provision. Importantly, in order for a ''strike'' to count toward the three strikes triggering a license revocation hearing under the bill, each finding of liability must have gone through an exhaustive legal process—all the way to final judgment. This is an important element to protect broadcasters' legitimate due process rights. Also, it is important to note that this provision does not require the FCC to revoke the license of a broadcaster after the third strike, it merely requires a hearing to consider the matter with no prejudice toward the outcome of such hearing. Of course, under current law, the FCC can hold a license revocation hearing after the first strike, second strike, or third strike, so all this provision does is require, at a minimum, that such a hearing is held after the third strike.

Other provisions in the bill would:

Ensure that the FCC, when setting penalties, takes into consideration the degree of culpability of the violator, whether the violator is a company or individual, and if it is a company, the size of the company and market served.

Permit the FCC to fine an individual on the first indecency offense.

Require the FCC to complete action on indecency complaints within 180 days.

Force the FCC to take indecency violations into account during license application, renewal and modifications, and

Compel the FCC to report to Congress annually regarding the agency's broadcast decency enforcement activities.

This bill significantly strengthens the FCC's enforcement authority, but does not change the underlying broadcast indecency standard which has withstood judicial scrutiny throughout the decades. Later in this debate, I, along with my colleague ED MARKEY, will be offering a bipartisan manager's amendment, which makes some non-controversial changes to the bill, in large part clarifying our intent in a number of areas. But for now, I will simply close by urging my colleagues to support the bill and the manager's amendment which will be offered to it.

Mr. Speaker, I include for printing in the CONGRESSIONAL RECORD the statement of administration policy from the administration in support of this legislation.

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,

Washington, DC, February 16, 2005.

STATEMENT OF ADMINISTRATION POLICY

H.R. 310—BROADCAST DECENCY ENFORCEMENT ACT OF 2005 (REP. UPTON (R) MICHIGAN AND 56 COSPONSORS)

The Administration strongly supports House passage of H.R. 310. This will make broadcast television and radio more suitable for family viewing by giving the Federal Communications Commission (FCC) the authority to impose stiffer penalties on broadcasters that air obscene or indecent material over the public airwaves. In particular, the Administration applauds the inclusion in the bill of its proposal to require that the FCC consider whether inappropriate material has been aired during children's television programming in determining the fine to be imposed for violations of the law. The Administration looks forward to continuing to work with the Congress to make appropriate adjustments to the language of the bill as it moves through the legislative process.

Mr. Speaker, I reserve the balance of my time.

Mr. MARKEY. Mr. Speaker, I yield 3 minutes to the gentlewoman from Illinois (Ms. SCHAKOWSKY), a member of the committee.

Ms. SCHAKOWSKY. Mr. Speaker, I thank the gentleman for yielding me this time.

I rise in opposition to H.R. 310, the Broadcast Decency Act. While I acknowledge and appreciate that this is a bipartisan effort in bringing this bill, I believe that this attempt to address the quality of broadcasting is both overreaching and off the mark and I urge my colleagues to vote against this bill.

There is already a law on the books that addresses indecency, and my view is that we need to get a grip and not embrace a solution that could cause more harm than good. I believe that H.R. 310 is one of those solutions.

H.R. 310 would essentially in my view put Big Brother in charge of deciding what is art and what is free speech. If enacted, especially with the increased fines against individual artists, we will see self- and actual censorship reach new and undesirable heights. Even the threat of this legislation has already led to that kind of censorship.

For instance, on Veterans Day of 2001 and 2002, ABC aired ''Saving Private Ryan,'' a movie about World War II, to honor those who served. In 2004, with the threat of almost identical legislation to the one we are considering hanging over their heads, 66 ABC affiliates refused to run the show. They were afraid that the award-winning salute to our veterans would be deemed indecent. They were concerned that it might trigger at least one incident, maybe three, of indecency because it is unclear whether saying one indecent word three times in the same broadcast might trigger license revocation proceedings.

As we can see, the threats to our Constitution and to artistic expression are all too real with H.R. 310. Do we not want to have sensational performances, sensational in the best sense of the word? Do we want a blanding down? Once we do this kind of censorship, can political speech be far behind?

I am concerned about the continual refusal to address what I believe is really behind the decline in broadcasting and that is the overconcentration of media ownership. Broadcasting content has been getting worse, not because of low fines and out-of-control talent, but because of the shift away from local control to ownership by media conglomerates that have no regard for the varying community standards.

Additionally, much of the furor over indecency has been explained by a desire to protect our children. And there are many programs on TV that I believe are inappropriate for my little grandchildren, particularly the many which depict graphic violence over and over and over again. But I do not want H.R. 310 or Big Brother making that decision for me or their parents.

If I could just say that I happen to be much more concerned about the first amendment than I am about my grandchildren seeing Janet Jackson's nipple. I would say, let us get a grip and we can do without this legislation. I urge a ''no'' vote.

Mr. UPTON. Mr. Speaker, I yield 2¼ minutes to the gentleman from Florida (Mr. STEARNS), a member of the subcommittee and a cosponsor of the legislation.

(Mr. STEARNS asked and was given permission to revise and extend his remarks.)

Mr. STEARNS. Mr. Speaker, I thank the distinguished chairman of the subcommittee for yielding me this time. I think it is appropriate that I speak after the gentlewoman from Illinois (Ms. SCHAKOWSKY) spoke in opposing the bill, because I support the bill. There is going to be opposition from a few people. They are going to complain that this bill is arbitrary; that the fine on individuals, which is $500,000, is too much, too expensive.

But I think the gentleman from Texas (Mr. BARTON) and the gentleman from Michigan (Mr. UPTON) have reached the right balance on this bill, so let us talk a little bit about it. It is not arbitrary. There is a lot of flexibility involved. It is not unfair or excessive.

We establish a separate standard for individuals above and beyond how we deal with licensees so that we can go that extra mile to protect their first amendment rights.

We should note that the penalty is up to $500,000. That means that the FCC has the discretion to fine much lower if it needs to. We all know that Janet Jackson is a person who can afford these fines, but if a local small-time entertainer violates our decency laws, the FCC can take into consideration that fact and that these individuals cannot afford $500,000. So maybe they will issue something like $5,000 or $10,000 or $25,000, still stiff enough to punish them for violating our laws and maybe enough to dissuade them from doing it again. In fact, the FCC has the discretion to fine them $1 if they see fit. So there is a lot of flexibility.

In order to be penalized under this legislation, the individual must have a willful and intentional profanity in order to be penalized. This means that individuals have to act deliberately and consciously knowing that their indecent comments will be broadcast. In other words, if an entertainer is unaware that they are on camera and that they are profane, they would not be held responsible for this.

The FCC can also check the list of aggravating factors that were established and then in turn determine the fine accordingly. The FCC will have to look at whether the comments were scripted or unscripted or live or recorded.

Mr. Speaker, this is a reasonably balanced bill that backs our decency standards, I think, with force. For too long, the penalties associated with our decency laws were considered just a cost of doing business. That is simply what they were. We will now have the potential to have individuals put their money where their mouth is. I urge my colleagues to support this language, support this bill and pass it.

Mr. MARKEY. Mr. Speaker, I yield 4 minutes to the gentleman from Vermont (Mr. SANDERS).

Mr. SANDERS. I thank the gentleman for yielding me this time.

Mr. Speaker, this is a bad bill. It is a dangerous bill. I get a little bit tired of people in Congress talking about freedom, freedom, freedom. But apparently they do not want to give the American people the freedom to make the decisions with regard to what radio and television programs they can watch or hear.

I am not a conservative, but let me quote from an honest conservative who does not want government regulating what the American people see and hear. This is a gentleman from the Cato Institute, Mr. Adam Thierer:

''Those of us who are parents understand that raising a child in today's modern media marketplace is a daunting task at times. But that should not serve as an excuse for inviting Uncle Sam in to play the role of surrogate parent for us and the rest of the public without children.

□ 1300

''Even if lawmakers have the best interest of children in mind, I take great offense at the notion that government officials must this job for me and every other American family.

''Censorship on an individual/parental level is a fundamental part of being a good parent. But censorship at a government level is an entirely different matter because it means a small handful of individuals get to decide what the whole Nation is permitted to see, hear, or think.'' Cato Institute. Honest conservatives.

Mr. Speaker, the specter of censorship is growing in America today, and we have got to stand firmly in opposition to it. What America is about is not my agreeing to what one says; it is my agreeing that they have the right to say it. That is what we fought for.

I am particularly outraged when I read in Reuters on December 13, ''Sixty-six ABC affiliates refused to air the uncut movie on Veterans Day last month'' of ''Saving Private Ryan,'' ''citing concerns they could face fines for profanity and graphic violence from the FCC.''

The men who fought in World War II against Hitler, who gave their lives on D-Day, we cannot see that film because ABC is afraid to show us, and that is under the old rules.

In addition to the self-censorship imposed by ABC on ''Saving Private Ryan,'' there is more. In January of 2004, CBS refused to air a political advertisement, paid political advertisement, during the Super Bowl by

MoveOn.org that was critical of President Bush's role in creating the Federal deficit. They could not pay to get an ad on because CBS was nervous. Last November, CBS and NBC refused to run a 30-second ad from the United Church of Christ because it suggested that gay couples were welcome into their church. They were afraid to run that. And just last month many PBS stations refused to air an episode of ''Postcards with Buster'' because they showed a lesbian couple.

In other words, this legislation cannot be taken out of context with the overall move towards censorship which is taking place in this country. And I would hope that my conservative friends who get up here every day talking about government regulators, get those government regulators off the backs of the people, I hope they will remember their rhetoric today. Let us not have a handful of government bureaucrats telling radio and TV stations and the American people what they can see and hear.

Mr. UPTON. Mr. Speaker, I yield myself 15 seconds.

I would just remind my friend in the well that the FCC specifically dismissed complaints against ''Saving Private Ryan,'' and with regards to the ad that was trying to be run by United Church of Christ, that was a first amendment right that the station made themselves. I do not think anyone thought that the FCC would fine them for the airing of that commercial.

Mr. Speaker, I reserve the balance of my time.

Mr. MARKEY. Mr. Speaker, I yield 30 seconds to the gentleman from Vermont (Mr. SANDERS).

Mr. SANDERS. Mr. Speaker, my friend from Michigan raises an important point about ABC, not a small company. They self-censored themselves. He is right. He is absolutely right. The FCC said that they would not fine them, and yet 66 affiliates said, We are still nervous. ABC, not a small station. In my State we have got small stations who are very nervous. The issue here, and the gentleman just really said it, is self-censorship.

Is he happy about the fact that affiliates are afraid of showing ''Saving Private Ryan''?

Mr. UPTON. Mr. Speaker, will the gentleman yield?

Mr. SANDERS. I yield to the gentleman from Michigan.

Mr. UPTON. Mr. Speaker, I would just say that the FCC said they were not going to fine them.

Mr. SANDERS. But they did not, Mr. Speaker. ABC affiliates took it off the air. Is the gentleman happy? Does he think that is good?

The SPEAKER pro tempore (Mr. LATOURETTE). The gentleman from Vermont's (Mr. SANDERS) time has expired.

Mr. UPTON. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania (Mr. PITTS), a member of the subcommittee, who is very active on this issue, a co-sponsor.

Mr. PITTS. Mr. Speaker, I thank the gentleman from Texas (Mr. BARTON) and the gentleman from Michigan (Mr. UPTON) for moving this important legislation so early in the session.

This is not a new issue. But parents have been pleading with us to take action on this for years.

Mr. Speaker, studies show that children are impacted by what they watch on television. A study last year released by Rand shows that children pick up sexual attitudes and behaviors from television programs, and we know that children are very impressionable; and to allow broadcasters to circumvent the role of parents in teaching their children right from wrong when it comes to sexuality, violence, and profanity is wrong; and not to act is to do just that.

Our decency laws are based on our view that society is partly responsible for making sure public airwaves are filled with safe material, and programs depicting profanity, sexuality, and violence influence how kids act and see the world; and that is why we have adopted decency standards that have withstood legal challenge and the test of time.

This bill updates the penalties for violating those standards. For too long government has allowed broadcasters to profit from the use of public airwaves with little or no public accountability. We have in effect abandoned American families in doing that. H.R. 310 sends a clear message to the entertainment industry that we are no longer going to idly stand by and force our parents to put up with this unacceptable programming. H.R. 310 reaffirms our commitment to ensure safe programming for children.

Mr. Speaker, families are tired of worrying about what their children may hear and see every time they turn on television. They are frustrated that the media industry has seemingly been able to broadcast any type of behavior or speech that they feel will bring in advertising dollars. Meanwhile, they feel that the Federal Government has sided with the media elites and turned a blind eye to the concerns of ordinary moms and dads. So finally Congress has heard. We are acting for American families. We are not going to stand idly by on this topic.

I urge support for the bill.

Mr. MARKEY. Mr. Speaker, I yield 3 minutes to the gentleman from California (Mr. WAXMAN).

Mr. WAXMAN. Mr. Speaker, I rise in opposition to this so-called Broadcast Decency Enforcement Act. It increases the power of government to censor programming that some might consider indecent and others might not. We are already seeing the corrosive effect of this legislation on free speech as broadcasters anticipate its enactment. Faced with the potentially ruinous fines and the loss of their licenses, broadcasters have begun to self-censor even permissible speech.

Last Veterans Day, 65 ABC affiliates declined to air ''Saving Private Ryan'' in response to an organization's campaign against it even though the movie had aired two previous years without any indecency complaints from the public. And the Federal Communications Commission has provided no constructive guidance to broadcasters. It is creating greater confusion by applying an already-vague indecency standard in an inconsistent and arbitrary manner.

No one knows when one person's creative work will become a violation of another person's definition of decency. Creative works that tackle challenging themes that are controversial but important are threatened by this legislation. Everything is objectionable to someone. A few years ago one of our colleagues took to the House floor to condemn the broadcast of the Oscar award-winning film ''Schindler's List.'' He was outraged that scenes portraying Holocaust victims contained some nudity. Legislation such as this can lead us to these kinds of absurd results. Let us trust parents to know better than government officials what material they want their children to be exposed to. And let us have adults be able to watch television programming that is not so watered down, that the only thing we will see on television is suitable for a 5-year-old whose parents are prudes.

I reject this legislation. I plan to vote against it, and I urge my colleagues to join me.

Mr. UPTON. Mr. Speaker, I yield 2 minutes to the gentleman from Illinois (Mr. SHIMKUS), again a cosponsor of the legislation, very active in pursuing its goal today.

Mr. SHIMKUS. Mr. Speaker, I am a parent of a 5-year-old and I am a prude; so I guess I meet the gentleman from California's (Mr. WAXMAN) definition.

Willfully and intentionally, the use of public airwaves for indecent material or conduct, that is what we are addressing today. And I want to congratulate the committee, the gentleman from Texas (Chairman BARTON); the gentleman from Michigan (Mr. DINGELL), ranking member; the gentleman from Massachusetts (Mr. MARKEY), ranking member; and the gentleman from Michigan (Mr. UPTON), for their good work. It is not easy, because we hear the debate, but it is very important.

The outcry of the Nation has been finally heard. This was the number one issue that my office was contacted on in the whole last Congress. Nothing raised the ire of the people in my district more than the indecent use of the public airwaves, and finally we are doing something about it.

But I do not want to lull the public into a false sense of security, because this is addressing only one venue, the public airwaves, the people of the broadcast communities free over-the-air TV, which is now a minority of the use of how people receive TV shows in their home. By far most people receive it through cable, direct satellite, we

are going to have cellular, it is over broadband. And do my colleagues know what this does to those venues? Nothing. Maybe it will exclude those broadcasters in their ability, but these other venues are still going to be held free, and I think that creates an unfair playing field, and I am concerned.

The local broadcasters in most of our districts do a fair and upright job. They understand the problem that the big broadcasters have imposed upon them. They are willing to accept these stringent standards and tighten their belts for the good of the public. But they are not going to be able to compete with billions of channels, with other types of broadcasters who are going to get away scot-free.

So I applaud the bill. I am excited about it. I lament the fact that it does not go far enough.

Mr. MARKEY. Mr. Speaker, I reserve the balance of my time.

Mr. UPTON. Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey (Mr. FERGUSON), a member of the subcommittee.

Mr. FERGUSON. Mr. Speaker, I appreciate the gentleman's leadership on this issue. I thank the gentleman from Massachusetts (Mr. MARKEY) for his work on this important legislation. It is a pleasure to serve on the subcommittee, and I look forward to continued work in this Congress.

As a father of four young children, I am glad to see that the Broadcast Decency Enforcement Act has once again come to the House floor and it is on its way to passage and signature by President Bush. While I ultimately believe that it is parents' responsibility to closely monitor what their children watch on television, it is difficult even for conscientious parents when programs that feature explicit language or other subject matter are shown during times when children are commonly watching television.

Often, parents are in the position of having to be reactive, hoping that children will not fall victim to offensive images and words on their TVs. Congress must act to ensure that the FCC has the tools that it needs to prevent offensive images in our living rooms, and I believe we have done so with this bill and this legislation.

It has been fueled by bipartisan desire to ensure that broadcasters take responsibility for what is transmitted over their airwaves. It is timely and it is completely appropriate considering what the American public and our families have witnessed recently over our airwaves. We have seen the public airwaves turned into a race to the bottom. Who can be more offensive? Who can be more vulgar? Who can push the envelope a little further than the next guy? Who can do whatever they can to create a stir and to draw increased ratings by creating a buzz in our society?

Do we not have something better to offer to American families and American children? It is difficult to argue that our society and our culture has not become more coarsened over the course of the last few decades. Let us try to stop the coarsening of our culture. Let us try to offer our families and our children something better, something more healthy, something more wholesome.

Can we not do better? I think we can. And I think it can begin by passing this legislation.

Mr. MARKEY. Mr. Speaker, I yield back the balance of my time.

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Mr. UPTON. Mr. Speaker, I just want to remind my colleagues we are not changing the standard; we are simply raising the fines on the existing standard. This is not about ''Saving Private Ryan.'' Those charges were dismissed some time ago. It has aired a number of times.

But it is about what some Members have looked at, the transcripts from broadcasts that have been fined, and I would dare to say that there is not a Member of this body who wants some of this filth to ever be said or broadcast again. That is what this legislation is intended to stop, so that when we are listening to the radio or watching TV, particularly with our kids, that they are not going to be exposed to stuff that has been on the books for decades and the courts have affirmed.

Mr. NEUGEBAUER. Mr. Speaker, I rise today to express my strong support for H.R. 310, the Broadcasting Decency Enforcement Act. While the House passed this bill last year by an overwhelming majority, unfortunately it did not become law. As a result, the House must reconsider this issue.

During my service in Congress, this is one of the top two issues my constituents have mentioned in their e-mails, phone calls and letters. My constituents are telling me that enough is enough. When broadcasters violate indecency rules and a complaint is filed, my constituents want it to be taken seriously by the Federal Communications Commission, FCC. They want meaningful penalties that will make broadcasters think twice before airing objectionable programs. They want broadcasters to be held accountable.

Above all, they want to be able to watch an entertainment program with their families without having them exposed to content unsuitable for children. When supposedly family-friendly programming such as the Super Bowl becomes a program many families don't want their children to see, we have a problem. As a grandfather, I worry about being able to turn on the TV and watch a program or sports event with my 3- and 5-year-old grandsons.

The bill before us today increases penalties for broadcasters and performers who violate decency standards over the airwaves. Raising the cap on fines to $500,000 for broadcasts that violate the rules helps show that Congress and the FCC are serious about punishing offenses. The current cap is only $27,000 per violation, a drop in the bucket for most broadcasters. When broadcasters know that indecency violations will be taken into consideration when they ask the FCC to renew their broadcast licenses, they are going to take additional precautions to prevent instances of indecency. If a broadcaster accumulates three violations, a hearing will be triggered to review revoking that station's license.

This legislation sends a strong signal that Congress is serious about enforcement of broadcast indecency regulations. If all Members, constituents care about this issue as much as mine do, then this should be an easy bill for us to support.

Mr. Speaker, in closing, I urge my colleagues to support this legislation.

Mr. HOLT. Mr. Speaker, I rise in support of the Broadcast Decency Enforcement Act (H.R. 310).

Like many Americans, I have been personally offended by the crudeness and licentiousness of some material that has made its way on the public airwaves. Television and radio networks that benefit from free use of the public airwaves have a responsibility to refrain from airing obscene material. Likewise, licensees must refrain from airing programming that is indecent or profane during normal family viewing hours. Parents should not be forced to dive for the remote control in order to protect their children from material that they are too young to see or hear.

Since 1978, the Federal Communications Commission has had the authority to ''impose sanctions on licensees who engage in obscene, indecent, or profane broadcasting.'' Under current law, the maximum amount that a network can be fined for airing such content is $27,500. For huge broadcasting companies that reap billions in advertising revenue each year, this sum is an insufficient deterrent from breaking the law.

I am happy to see that this legislation does not change existing law regarding the standards by which television or radio programming is judged to be indecent, profane, or obscene. I am wary of the Federal Government overstepping its boundaries by becoming a kind of moral police. This legislation merely bolsters the ability of the FCC to levy appropriate punitive actions against networks that flagrantly violate the law.

I am disappointed that Congress has declined to use this occasion to address an equally important issue in broadcasting—diversity of viewpoints. Until 1985, broadcasters benefiting from use of the public airwaves had a responsibility to demonstrate that their programming presented multiple viewpoints on issues of public interest. The repeal of the Fairness Doctrine by the Reagan administration has hurt the objectivity of the media and the breadth of opinions that the public gets to hear. Americans deserve better than propaganda masquerading as news journalism.

Though I intend to vote in favor of this legislation, the situation in which Congress finds itself is hardly ideal. Any time the Federal Government is forced by circumstances to strengthen limitations on the media, it must act with extreme caution at the risk of violating this country's most essential freedoms. It would be best if broadcasters would voluntarily adhere to high standards of decency with regard to the public airwaves. If broadcasters demonstrated the willingness and capacity to regulate themselves, this legislation would not be necessary. Unfortunately, some television and radio broadcasters have chosen to violate decency standards, judging that the ratings boon would be worth any fines that a violation would inevitably generate.

It is my hope that the FCC will not be forced to use the authority that this legislation grants.

I hope that passage of this legislation will provide an adequate deterrent to ensure that television and radio programming on public airwaves reflects public values. I support H.R. 310, imperfect though it may be.

Mrs. BONO. Mr. Speaker, it has been over a year since the infamous Super Bowl incident where a supposed ''wardrobe malfunction'' set this Nation spinning backwards wondering why our children were exposed to a misogynistic display of public nudity during a football game. The provocative dancing, and sexual lyrics were a far cry from an afternoon watching a football game. While I have the utmost respect for artists and their artistic expressions, I am also a mother of two children and last year the line between acceptable and unacceptable was crossed on national television.

Hollywood has long been about us pushing the borders of artistic expression and pushing the limits. I was married to an entertainer and I have a family, an extended family, who are still in this business and we know that this is about pushing the envelope. The American people have finally said ''enough'' you've pushed too far—and the truth is, corporate profit is increasingly becoming the bottom line. This is what this is about at the end of the day. Janet Jackson, as I understand, came out with a new album shortly after this tasteless stunt—surprise, surprise.

I have always supported artists, and want to protect their ability to express themselves and protect them against unfair legislation. Recently, I entered into a colloquy with Chairman BARTON and he assured me that artists have a means test where their intent and ability to pay a fine is taken into consideration under the current Communications Act. Also, the chairman assured me that the $500,000 fine is merely a cap and that there is discretion based upon certain factors so a violation is not automatically going to cost an artist that amount of money. Furthermore, an artist is not likely to be fined for a broadcaster placing their recorded performance on the air unless they had knowledge that it would be played or that they intended for that performance to be played on the public airwaves. Such an example demonstrates that an artist would have to be involved in the process with a broadcaster in order to be found in violation of this bill. Lastly, this bill implements the ability to pay test so that both licensees and nonlicensees ability to pay fines will be taken into consideration.

I would like to personally thank the Creative Coalition and the Grammy Foundation for their attention to these issues and bringing them to the forefront. I hope that their specific concerns with these provisions have been addressed and that they feel comfortable with the intentions of this bill. I look forward to working with both groups in the future and will continue to support artist's rights as they pertain to these issues. There is a difference between protecting artists and upholding laws and standards on our public airwaves and I believe this bill strikes the right balance.

While there has been an outcry from some members of the public suggesting that this was not a big deal, the vote on this bill last year tells a different story. This bill was voted out of the House of Representatives last year by a vote of 399–22. That type of bipartisan support demonstrates the outrage that each Member felt and what each Member heard from their constituents. Entertainers, producers and the corporate giants pushing profits have pushed the envelope too far and are seeing the backlash from Congress, public officials, and concerned parents and constituents. Something had to be done to scale back this type of behavior and this bill accomplishes that goal.

Mrs. CUBIN. Mr. Speaker, it's been about a year since we last debated broadcast indecency before the House. I was pleased to have supported the passage of the Broadcast Decency Enforcement Act then, and I look forward to its passage again this year.

Sometimes it takes a couple of swings of the bat before we can get a hit and enact a bill into law. That's why I want to recognize Chairman UPTON and Chairman BARTON for sticking to their guns on this bill and bringing it before the House so promptly this year. Hopefully this time, the other body will choose to debate and pass this bill, so it can become the law of the land.

Many have come to the floor to explain what the Broadcast Decency Enforcement Act will do. But, instead of rehashing the nuts and bolts of this bill, I would rather discuss how it will improve the airwaves. No one questions that there is an increasing coarseness in broadcast media. And by increasing fines so they will actually act as a deterrent, instead of a slap on the wrist, I am confident we will see real results. In fact, since this bill was first introduced in the last Congress, people have actually been more conscientious about what they send over the airwaves, and the FCC has been more active in penalizing those who have violated the standard. Passing this bill will lock that in, and serve as a benchmark in an improving broadcast medium.

I also want to urge passage of the manager's amendment that incorporates an amendment that I proposed to the bill. My amendment will ensure that the FCC regularly updates its Industry Guidance Regarding Broadcast Decency document, which was last updated April 6, 2001. This document helps illustrate precedents to FCC licensees, and I imagine it is required reading for anyone who is affected by the increase in indecency fines. Since we are increasing the fines in this bill, it only seems right to ensure there are clear guidelines.

My amendment will make certain these guidelines are contemporary, and I want to thank Chairman UPTON for working with me to incorporate the Cubin language into his amendment.

I urge passage of H.R. 310, and the manager's amendment.

Ms. GINNY BROWN-WAITE of Florida. Mr. Speaker, like many of my colleagues, last year, I received hundreds of calls from angered constituents after the obscene display at the Super Bowl.

What was most frustrating was that I had to explain that the FCC's hands were tied; the FCC wanted to punish the broadcasters who allowed this material to be displayed before our children during prime time, but they could not.

A $27,500 fine does nothing to deter networks that generate billions of dollars in revenue.

Today, however, I can tell my constituents that I voted in favor of the Broadcast Decency Act.

Introduced by my colleague, Representative UPTON, this bill increases the slap on the wrist in penalties to a fair punishment of $500,000 for broadcasters who break the rules.

Freedom of speech should be protected but not at the cost of our children who simply want to catch a football game.

I look forward to voting in favor of this bill and thank Representative UPTON for his efforts.

Mr. BACA. Mr. Speaker, I rise in full support of H.R. 310, a bill that would increase the fines the Federal Communications Commission can impose for the broadcast of obscene, indecent, or profane material.

The level of violent and sexual content in all forms of media has reached a point where Congress has no choice but to act.

The proliferation of indecent content in the media continues not only through television and movies but also through video games and the Internet—mediums that our children now have easier access to. A growing body of evidence suggests that these messages can be harmful to a child's development.

As Democrats and Republicans we must continue to work together to address these issues. That is the only way we will be able prevent our children from being needlessly exposed to violent and sexual content.

The failure of the FCC to adequately scrutinize Spanish-language radio broadcasts for indecent content has been particularly troubling. In the last decade alone, the number of Spanish-language outlets in television and radio nationwide has nearly doubled. With this growth comes an increasing necessity to improve the FCC's ability to enforce its decency standards in an increasingly diverse market place. The Spanish-speaking community is no less deserving of protection from blatant indecency than other audiences.

As the co-chair of the Congressional Sex and Violence in the Media Caucus with my friend and colleague, Congressman TOM OSBORNE, I believe that we must prevent violence by and against children through legislation, education, outreach and advocacy.

I hope that other Members of Congress and the public will continue to work to protect our children from obscene and inappropriate media.

I commend Congressman UPTON and Congressman MARKEY for their sponsorship of this bill and support its passage.

Mr. DINGELL. Mr. Speaker, I rise in support of H.R. 310, the Broadcast Decency Enforcement Act of 2005.

I commend my full committee and subcommittee chairmen, Representatives BARTON and UPTON, and Subcommittee Ranking Member MARKEY for their work and efforts to bring this ever-improving bill to the House floor so quickly. H.R. 310 is strong, bipartisan legislation worthy of support. This legislation is nearly identical to the bill passed by the House almost 1 year ago by a vote of 391 to 22. That bill failed to become law.

The need for this legislation, however, has not diminished in the past year. For too long, the Federal Communications Commission, FCC, has been asleep at the wheel when it came to incidents of public broadcast indecency and the ensuing complaints. Congress's attention to the issue of broadcast indecency last year awakened the commission from its years of slumber. We finally saw an FCC that more properly understood the need to enforce laws against indecency over the public airwaves.

Unfortunately, consumer complaints continue to receive haphazard treatment at the commission. Moreover, there continues to be a betrayal of the public trust. Some broadcasters persist in crossing the line, putting their own drive for ratings and profits ahead of their responsibilities to the public. This is regrettable behavior. Most broadcasters are decent and proper stewards of the public airwaves, but the poor judgment of a select few casts a dark shadow on the entire industry. Perhaps these wayward broadcasters mistakenly thought that the kickoff of a new Super Bowl would see this issue recede and lawmakers would ''let it be.'' Let me be clear, the need to enforce the indecency laws is greater than any one malfunction.

It is important for Congress to ensure that the FCC not only maintains its newfound alertness, but that it also has the right tools to ensure proper enforcement against indecency over the public airwaves.

H.R. 310 will ensure that the FCC has such tools. First, the bill responds to the overriding need to raise the maximum indecency fine to a level that will deter even the largest companies. Second, the bill compels the FCC to use the license renewal and revocation processes to examine more closely the fitness of certain licensees, particularly broadcasters that repeatedly violate the FCC's rules. Third, needed attention is also paid to the consumer complaint process by compelling the FCC to act on complaints within a specific time-frame. Fourth, this bill will make the FCC more accountable by requiring regular reports to Congress on its enforcement activities. This reporting requirement should encourage any new FCC chairman to carry on the moral virtue that came rather late to the outgoing chairman.

Our constituents have made it clear that they are fed up with the level of sex and violence on television and radio. They deserve to be able to turn on their television or radio at appropriate times without being bombarded by filth and smut. The increased oversight and penalties contained in H.R. 310 should provide the proper incentive to broadcasters to keep it clean. Accordingly, I urge my colleagues to support this sensible bill.

Mr. PAUL. Mr. Speaker, Americans are right to be outraged at much of the content of broadcast television and radio today. Too many television and radio programs regularly mock the values of millions of Americans and feature lewd, inappropriate conduct. It is totally legitimate and even praiseworthy for people to use market forces, such as boycotts of the sponsors of the offensive programs, to pressure networks to remove objectionable programming. However, it is not legitimate for Congress to censor broadcast programs.

The First Amendment says, ''Congress shall make no law . . . abridging the freedom of speech. . . .'' It does not make an expectation for broadcast television. Some argue that broadcast speech is different because broadcasters are using the ''people's airwaves.'' Of course, the people do not really control the airwaves any more than the people control the government in the People's Republic of China. Instead, the people's airwaves is a euphemism for government control of the airwaves. Of course, government exceeded its Constitutional authority when it nationalized the broadcast industry.

Furthermore, there was no economic justification for Congress determining who is, and is not, allowed to access the broadcast spectrum. Instead of nationalizing the spectrum, the Federal Government should have allowed private parties to homestead parts of the broadcast spectrum and settle disputes over ownership and use through market processes, contracts, and, if necessary, application of the common law of contracts and torts. Such a market-based solution would have provided a more efficient allocation of the broadcast spectrum than has government regulation.

Congress used its unconstitutional and unjustified power-grab over the allocation of broadcast spectrum to justify imposing Federal regulations on broadcasters. Thus, the Federal Government used one unconstitutional action to justify another seizing of regulatory control over the content of a means of communication in direct violation of the first amendment.

Congress should reject H.R. 310, the Broadcast Decency Enforcement Act, because, by increasing fines and making it easier for governments to revoke the licenses of broadcasters who violate Federal standards, H.R. 310 expands an unconstitutional exercise of Federal power. H.R. 310 also establishes new frontiers in censorship by levying fines on individual artists for violating FCC regulations.

Congress should also reject H.R. 310 because the new powers granted to the FCC may be abused by a future administration to crack down on political speech. The bill applies to speech the agency has determined is ''obscene'' or ''indecent.'' While this may not appear to include political speech, I would remind my colleagues that there is a serious political movement that believes that the expression of certain political opinions should be censored by the government because it is ''hate speech.'' Proponents of these views would not hesitate to redefine indecency to include hate speech. Ironically, many of the strongest proponents of H.R. 310 also hold views that would likely be classified as ''indecent hate speech.''

The new FCC powers contained in H.R. 310 could even be used to censor religious speech. Last year, a group filed a petition with the United States Department of Justice asking the agency to use Federal hate crimes laws against the directors, producers, and screenwriters of the popular movie, ''The Passion of the Christ.'' Can anyone doubt that, if H.R. 310 passes, any broadcaster who dares show ''The Passion'' or similar material will risk facing indecency charges? Our founders recognized the interdependence of free speech and religious liberty; this is why they are protected together in the first amendment. The more the Federal Government restricts free speech, the more our religious liberties are endangered.

The reason we are considering H.R. 310 is not unrelated to questions regarding state censorship of political speech. Many of this bill's supporters are motivated by the attacks on a Member of Congress, and other statements critical of the current administration and violating the standards of political correctness, by ''shock jock'' Howard Stern. I have heard descriptions of Stern's radio program that suggest this is a despicable program. However, I find even more troubling the idea that the Federal Government should censor anyone because of his comments about a Member of Congress. Such behavior is more suited for members of a Soviet politburo than members of a representative body in a constitutional republic.

The Nation's leading conservative radio broadcaster, Rush Limbaugh, has expressed opposition to a Federal crackdown on radio broadcast speech that offends politicians and bureaucrats:

> If the government is going to ''censor'' what they think is right and wrong. . . . what happens if a whole bunch of John Kerrys . . . start running this country. And decide conservative views are leading to violence?
>
> I am in the free speech business. It's one thing for a company to determine if they are going to be party to it. It's another thing for the government to do it.

Mr. Speaker, I am also concerned that the new powers H.R. 310 creates will be applied in a manner that gives an unfair advantage to large media conglomerates. While the FCC will occasionally go after one of the major media conglomerates when it does something especially outrageous, the agency will likely spend most of its energies going after smaller outlets such as college and independent radio stations. Because college and independent stations lack the political clout of the large media companies, the FCC can prosecute them without incurring the wrath of powerful politicians. In addition, because these stations often cater to a small, niche audience, FCC actions against them would not incur the public opposition it would if the agency tried to kick ''Desperate Housewives'' off the air. Most significantly, college and independent stations lack the financial and technical resources to absolutely guarantee that no violations of ambiguous FCC regulations occur and to defend themselves adequately if the FCC attempts to revoke their licenses. Thus, college and independent radio stations make tempting targets for the FCC. My colleagues who are concerned about media concentration should consider how giving the FCC extended power to revoke licenses might increase media concentration.

H.R. 310 should also be rejected because it is unnecessary. Major broadcasters' profits depend on their ability to please their audiences and thus attract advertisers. Advertisers are oftentimes ''risk adverse,'' that is, afraid to sponsor anything that might offend a substantial portion of the viewing audience, who they hope to turn into customers. Therefore, networks have a market incentive to avoid offending the audience. It was fear of alienating the audience, and thus losing advertising revenue, that led to CBS's quick attempt at ''damage control'' after the last year's Super Bowl. Shortly before the 2004 Super Bowl, we witnessed a remarkable demonstration of the power of private citizens when public pressure convinced CBS to change plans to air the movie ''The Reagans,'' which outraged conservatives concerned about its distortion of the life of Ronald Reagan.

Clearly, the American people do not need the government to protect them from ''indecent'' broadcasts. In fact, the unacknowledged root of the problem is that a large segment of the American people has chosen to watch material that fellow citizens find indecent. Once again, I sympathize with those who are offended by the choices of their fellow citizens. I do not watch or listen to the lewd material that predominates on the airwaves today, and I am puzzled that anyone could find that sort of thing entertaining. However, my colleagues should remember that government action cannot improve the people's morals; it can only reduce liberty.

Mr. Speaker, H.R. 310 is the latest in an increasing number of attacks on free speech. For years, those who wanted to regulate and restrict speech in the commercial marketplace relied on the commercial speech doctrine that provides a lower level of protection to speech designed to provide a profit to the speaker. However, this doctrine has no constitutional authority because the plain language of the first amendment does not make any exceptions for commercial speech.

Even the proponents of the commercial speech doctrine agreed that the Federal Government should never restrict political speech. Yet, this Congress, this administration, and this Supreme Court have restricted political speech with the campaign finance reform law. Meanwhile, the Department of Justice has indicated it will use the war against terrorism to monitor critics of the administration's foreign policy, thus chilling anti-war political speech. Of course, on many college campuses students have to watch what they say lest they run afoul of the rules of ''political correctness.'' Even telling a ''politically incorrect'' joke can bring a student up on charges before the thought police. Now, self-proclaimed opponents of political correctness want to use Federal power to punish colleges that allow the expression of views they consider ''unpatriotic'' and/or punish colleges when the composition of the facility does not meet their definition of diversity.

These assaults on speech show a trend away from allowing the free and open expression of all ideas and points of view toward censoring those ideas that may offend some politically powerful group or upset those currently holding government power. Since censorship of speech invariably leads to censorship of ideas, this trend does not bode well for the future of personal liberty in America.

In conclusion, Mr. Speaker, because H.R. 310 is the latest assault in a disturbing pattern of attacks on the first amendment, I must vote against it and urge my colleagues to do the same.

Mr. STARK. Mr. Speaker, I rise in opposition to H.R. 310, the so-called Broadcast Decency bill.

I am as concerned as any parent about the content on television. I do not want my young children or grandchildren exposed to programming that is unsuitable for them. Yet, nowhere in this bill is there a definition of indecent material. All this bill does is increase fines over tenfold for what the Bush administration deems to be indecent.

Our laws are only as good as the people enforcing them and I do not trust this administration to exercise the appropriate judgment without clear standards. I'm concerned they'll use this new enforcement authority as a Trojan horse to arbitrarily target programming they deem unacceptable.

I could not possibly give this administration more leeway to choke free speech. We have reached the point in this country where questioning our leaders is called unpatriotic and characterized as aiding the terrorists; columnists are paid our tax dollars by the Federal Government to spout the Bush administration's official propaganda; the very agency charged with maintaining a diversity of ideas on the airwaves wants to give free rein to a handful of corporations to control information; and where stations refuse to air the movie ''Saving Private Ryan'' lest the Chairman of the Federal Communications Commission might be ordered to find a sacrificial lamb to appease the religious right.

I do not support the rush to media conglomeration and I do not trust religious zealots to decide for every American what they can and can not watch. Since that is who this administration is serving, I vote ''no'' on giving them more authority to undermine freedom of speech.

Mr. UPTON. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. LATOURETTE). All time for debate on the bill has expired.

AMENDMENT OFFERED BY MR. UPTON

Mr. UPTON. Mr. Speaker, I offer an amendment.

The SPEAKER pro tempore. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. UPTON:

In section 503(b)(2)(F)(ii) of the Communications Act of 1934 as amended by section 3 of the bill, strike ''and'' at the end of subclause (I), strike the period at the end of subclause (II) and insert ''; and'', and after subclause (II) insert the following new subclause:

(III) if the violator is an individual, the financial impact of a forfeiture penalty on that individual.

In section 503(b)(5)(B)(iv) of the Communications Act of 1934 as amended by section 4(4)(D) of the bill, strike ''willfully or intentionally made the utterance'' and insert ''willfully and intentionally made the utterance, knowing or having reason to know that the utterance would be broadcast''.

In paragraphs (1), (3), (4), and (6) of section 10, strike ''year covered'' and insert ''years covered''.

In section 10, by strike ''Each calendar'' and insert the following:

(a) REQUIRED CONTENTS.—Each calendar

Add at the end of section 10 the following new subsection:

(b) YEARS COVERED.—For purposes of this section, the ''years covered'' by the report required under this section shall be the years beginning with calendar year 2000 through the calendar year preceding the year in which the report is submitted.

In section 11 of the bill, strike ''General Accounting Office'' each place it appears and insert ''Government Accountability Office''.

In section 11(a) of the bill, after ''study examining'' insert the following: '', with respect to calendar year 2000 through the calendar year preceding the year in which the report is submitted''.

After section 10, insert the following new section (and redesignate the succeeding sections accordingly):

SEC. 11. UPDATING GUIDANCE TO THE BROADCAST INDUSTRY REGARDING INDECENCY.

Within 9 months after the date of enactment of this Act, and at least once every 3 years thereafter, the Federal Communications Commission shall revise, on the basis of recent developments in the Commission indecency case law, the Commission's policy statement to provide industry guidance on the Commission's interpretation of, and enforcement policies regarding, the laws and regulations concerning broadcast indecency, as contained in the policy statement adopted March 14, 2001, and released April 6, 2001 (FCC 01–90).

The SPEAKER pro tempore. Pursuant to House Resolution 95, the gentleman from Michigan (Mr. UPTON) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from Michigan (Mr. UPTON).

Mr. UPTON. Mr. Speaker, I yield myself 4 minutes.

Mr. Speaker, I rise in support of this manager's amendment offered by me and the gentleman from Massachusetts (Mr. MARKEY). I want to again thank the gentleman from Massachusetts (Mr. MARKEY), the gentleman from Texas (Chairman BARTON), and the gentleman from Michigan (Mr. DINGELL) for their bipartisan cooperation on this amendment, as well as the entire legislation.

What this amendment does is it makes seven noncontroversial changes to the underlying bill.

First, the amendment clarifies that the liability standard for non-licensees is willful and intentional.

Second, the amendment clarifies that for individual non-licensees to be found liable, their indecent statements must have made knowing or having reason to know that the statements would be broadcast.

Third, the amendment requires the FCC to look at the impact of a forfeiture penalty on an individual.

I want to pay a special tribute to the gentlewoman from California (Mrs. BONO) for her work on these three issues during the committee consideration of this bill. These three changes simply clarify our intent to ensure that performers as non-licensees are treated fairly.

During the committee consideration, there were some concerns expressed that the individual-performer liability provisions in H.R. 310 could be used to fine artists that use offensive language when their recordings are played on the radio. The phrase ''willfully and intentionally'' in this amendment is meant to include those situations where an individual intentionally utters material consciously and deliberately which he or she knows or has reason to know will be broadcast. For instance, a live interview of a player at a basketball game or Janet Jackson's performance at the Super Bowl are clear examples where the performer intentionally said or did something knowing it would be broadcast.

Alternatively, when an artist records a song in a studio, he or she perhaps has a hope that the song will be broadcast, but does not sing the lyrics with the intent to broadcast at that moment or even knowing that it will be broadcast in the future.

Similarly, if an athlete or a coach in the heat of a sporting event, such a baseball player being hit by a pitch, reflexively yells out an obscene, indecent, profane utterance caught by a field microphone, the situation would also not be captured by the willful and intentional standard, as his or her actions were not intentionally done and knowing that they would be broadcast.

In addition, the manager's amendment underscores the FCC's requirement that when setting penalties for

individual performers, it must look at the ability of that individual to pay, as required by existing law, and the FCC must take into consideration the impact of the forfeiture penalties on that individual.

Clearly, not all individuals who may run afoul of the law have the same ability to pay. A pro athlete or a blockbuster recording artist may have significantly greater worth than a struggling artist or college athlete. That is why we require the FCC to factor this in when setting such penalties, and underscore that in this amendment.

Fourth, the amendment changes the General Accounting Office to its new name of Government Accountability Office.

Fifth, the amendment requires the FCC's annual indecency enforcement report to include data going back to 2000.

Sixth, it requires the GAO's indecency enforcement report to include data going back to 2000.

Lastly, the amendment requires the FCC to update its broadcast indecency enforcement guidelines at least every 3 years.

I want to thank the gentlewoman from Wyoming (Mrs. CUBIN) for her work on that issue, I want to thank the gentleman from Massachusetts (Mr. MARKEY) for his bipartisan cooperation and cosponsoring this amendment with me, and thank the Committee on Rules for making it in order. I would urge all of my colleagues to support it.

Mr. Speaker, I reserve the balance of my time.

Mr. MARKEY. Mr. Speaker, although not opposed to the amendment, I ask unanimous consent to claim the time in opposition.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Massachusetts?

There was no objection.

The SPEAKER pro tempore. The gentleman from Massachusetts (Mr. MARKEY) is recognized for 10 minutes.

Mr. MARKEY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I fully support this amendment, which incorporates a number of changes to the bill. We have worked together in a bipartisan fashion to develop this package of refinements to the legislation. These are noncontroversial changes, and I urge Members to support the amendment.

The first change further clarifies that we intend for the FCC when levying a fine on a non-licensee to take into account the financial impact of a particular fine on an individual when considering an individual's ability to pay.

The second change merely adjusts the standard for an utterance of an indecency so that it reads ''willfully and intentionally uttered,'' so that there is no confusion.

As the gentleman from Michigan has pointed out, it is not the intention of either the majority or the minority to have an act which is not intentional to be penalized by this legislation. The gentleman from Michigan did outline a good example of how such an occurrence could be wrongly interpreted unless the language ''intentionally'' was added to the legislation.

We thank the majority for accommodating the concern which the minority had on that issue. We think that it definitely strengthens the legislation, and it ensures that it will be used only for the purpose for which the legislation is intended and not to reach unintentional behavior which may have incidentally been uttered.

Thirdly, the GAO study in the bill will be limited to looking back and analyzing indecency issues at the FCC only to the year 2000.

Finally, the amendment includes a provision offered by our colleague, the gentlewoman from Wyoming (Mrs. CUBIN), which tasks the FCC with updating its guidance for broadcast licensees with regard to these issues.

Again, these are noncontroversial changes, and I thank the gentleman from Michigan (Chairman UPTON) for his assistance on these clarifications, and I urge Members to support the amendment. Again, I thank all of the Members for their cooperation in this legislative process.

Mr. Speaker, I yield 3 minutes to the gentleman from New York (Mr. NADLER).

Mr. NADLER. Mr. Speaker, I do not oppose this amendment, but I do oppose this bill. Like many Americans, I exercise my right not to view programming I find offensive by using that miracle of modern technology, the remote control. It lets you change the channel or even turn off the TV entirely. I recommend everyone buy one and learn how to use it. If you want to protect your children, there is the V-chip for that purpose. People ought to use that too.

But the Puritans of this House and elsewhere in government are not satisfied with free choice and the free market. Instead, they want the government to decide what is or is not appropriate for the public to watch or listen to.

Just recently, for example, the Secretary of Education on his second day on the job snapped into action and threatened public broadcasting funding if they dared air a show in which real live families with real live same-sex parents would appear. It was actually a show about making maple syrup, not an advocacy piece about family arrangements. But it was too much for the Secretary of Education.

''Many parents would not want their young children exposed to the lifestyles portrayed in this episode,'' Spellings wrote in her threatening letter to the CEO of PBS. Who asked her?

Then there was the strange case of SpongeBob Square Pants, a cartoon character who appeared in a video promoting tolerance entitled "We Are Family." Who were the purveyors of this objectionable material? Well, among others, the Anti-Defamation League's successful "World of Difference" program and Sesame Street's "Sesame Foundation." It seems some self-appointed guardians of our morals are fine with the idea of tolerance, unless it includes people they don't like. "We see the video as an insidious means by which the organization is manipulating and potentially brainwashing kids," Paul Batura, a spokesman for Focus on the Family, told the New York Times. "It is a classic bait and switch."

A former Member of this House condemned NBC for airing ''Schindler's List,'' saying that the Holocaust film took network television ''to an all time low, with full-frontal nudity, violence and profanity'' during family viewing time. He said that NBC's decision to air the movie on Sunday evening should outrage parents and decent-minded individuals everywhere.

Then-Senator Alfonse D'Amato properly replied that ''to equate the nudity of Holocaust victims in the concentration camps with any sexual connotation is outrageous and offensive.'' But with this bill, where would we be if that former Member of the House were a member of the FCC?

So what next? We are already seeing a great deal of self-censorship as the self-appointed guardians of public decency go after anything that offends them personally. We saw recently many affiliates of ABC refuse to show ''Saving Private Ryan'' because they were afraid of the fines that the FCC might, might, levy. So there is self-censorship because of the chilling effect.

Evidently, the Members of this House do not trust Americans to make up their own minds and the large corporations that own media conglomerates are not about to risk profits by running afoul of the people with power and their own agenda.

I would suggest that if my colleagues are looking for obscene and indecent material, they can turn off their televisions and log on to WWW.Congress.Gov. On the Committee on the Judiciary Web site you can find sexually graphic material, including graphic sexual accounts in the Starr Report of several years ago. Children doing their homework everywhere can read this.

In this last Congress, a Member of this House introduced legislation containing eight words that would probably draw half a million dollar fines under this legislation. Our Legislative Information System still has this up for anyone to read.

Mr. Speaker, Congress and the FCC have no business telling people what they can or cannot watch, what sorts of tolerance it will or will not tolerate, or what values parents may or may not desire to instill in their children. You do not have to love indecency to oppose this bill. You merely have to have faith in and respect for the judgment of the American people, and a distrust in the omnipotent judgment of government bureaucrats. I urge the defeat of this bill.

Mr. UPTON. Mr. Speaker, I yield 1 minute to the gentleman from Alabama (Mr. ADERHOLT).

Mr. ADERHOLT. Mr. Speaker, I rise today in strong support of H.R. 310. Passage of this bill will mark a very important step, in my opinion, toward protecting American children.

I especially do want to thank the committee for their work on this bill, and the gentleman from Texas (Chairman BARTON) and the gentleman from Michigan (Chairman Upton) for their work on this legislation.

The purpose, of course, of the legislation that we are discussing today is to return decent, family-friendly broadcast television and radio to families across America. I should note that this legislation in no way changes the FCC's current definition of obscenity, indecency, or profanity. Rather, it enables the agency to enforce the existing rules.

As has been stated here already on the floor today, it would allow the FCC to impose a fine of half a million dollars against broadcasters for every violation of obscene, indecent, and profane material. Of course, additionally the bill will allow the FCC to fine networks and entertainers for up to half a million dollars if they willfully or intentionally violate indecency standards by airing obscene, indecent, or profane material.

Mr. Speaker, I would urge the passage of H.R. 310 today and would urge my colleagues to wholeheartedly support this legislation.

Mr. MARKEY. Mr. Speaker, I have no further speakers, so I yield back the balance of my time, with thanks to the chairman of the committee for his great work.

Mr. UPTON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I just want to thank the staff, Kelly Cole, Will Nordwind and Howard Waltzman. They have been terrific working with staffs on both sides.

I remind my colleagues this passed overwhelmingly in not only the committee, but last year as well, and also in the Senate. I urge my colleagues to support it.

Mr. UPTON. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. Pursuant to House Resolution 95, the previous question is ordered on the bill and the amendment offered by the gentleman from Michigan (Mr. UPTON).

The question is on the amendment offered by the gentleman from Michigan (Mr. UPTON).

The amendment was agreed to.

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

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

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. UPTON. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 389, nays 38, not voting 6, as follows:

[Roll No. 35]

YEAS—389

Aderholt
Akin
Alexander
Allen
Andrews
Baca
Bachus
Baker
Baldwin
Barrett (SC)
Barrow
Bartlett (MD)
Barton (TX)
Bass
Bean
Beauprez
Becerra
Berkley
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boren
Boswell
Boucher
Boustany
Boyd
Bradley (NH)
Brady (PA)
Brady (TX)
Brown (OH)
Brown (SC)
Brown, Corrine
Brown-Waite, Ginny
Burgess
Burton (IN)
Butterfield
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Carter
Case
Castle
Chabot
Chandler
Chocola
Cleaver
Clyburn
Coble
Conaway
Cooper
Costa
Costello
Cox
Cramer
Crenshaw
Crowley
Cubin
Cuellar
Culberson
Cummings
Cunningham
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (KY)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeFazio
DeGette
DeLauro
DeLay
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Doggett
Doolittle
Doyle
Drake
Dreier
Duncan
Edwards
Ehlers
Emanuel
Emerson
Engel
English (PA)
Etheridge
Evans
Everett
Feeney
Ferguson
Filner
Fitzpatrick (PA)
Flake
Foley
Forbes
Ford
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Gonzalez
Goode
Goodlatte
Gordon
Granger
Graves
Green (WI)
Green, Al
Green, Gene
Gutierrez
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Higgins
Hinojosa
Hobson
Hoekstra
Holden
Holt
Hooley
Hostettler
Hoyer
Hulshof
Hunter
Hyde
Inglis (SC)
Inslee
Israel
Issa
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, E. B.
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Keller
Kelly
Kennedy (MN)
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kuhl (NY)
LaHood
Langevin
Lantos
Larsen (WA)
Larson (CT)
Latham
LaTourette
Leach
Levin
Lewis (CA)
Lewis (KY)
Linder
Lipinski
LoBiondo
Lowey
Lucas
Lungren, Daniel E.
Lynch
Mack
Maloney
Manzullo
Marchant
Markey
Marshall
Matheson
McCarthy
McCaul (TX)
McCollum (MN)
McCotter
McCrery
McGovern
McHenry
McHugh
McIntyre
McKeon
McKinney
McMorris
McNulty
Meehan
Meek (FL)
Meeks (NY)
Melancon
Menendez
Mica
Michaud
Millender-McDonald
Miller (FL)
Miller (MI)
Miller (NC)
Miller, Gary
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Napolitano
Neal (MA)
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Oberstar
Obey
Olver
Ortiz
Osborne
Otter
Oxley
Pallone
Pascrell
Pastor
Pearce
Pelosi
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Pomeroy
Porter
Portman
Price (GA)
Price (NC)
Pryce (OH)
Putnam
Radanovich
Rahall
Ramstad
Rangel
Regula
Rehberg
Renzi
Reyes
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Roybal-Allard
Royce
Ruppersberger
Rush
Ryan (OH)
Ryan (WI)
Ryun (KS)
Salazar
Sanchez, Loretta
Saxton
Schiff
Schwartz (PA)
Schwarz (MI)
Scott (GA)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Skelton
Slaughter
Smith (NJ)
Smith (TX)
Smith (WA)
Snyder
Sodrel
Solis
Souder
Spratt
Stearns
Strickland
Sullivan
Sweeney
Tancredo
Tanner
Tauscher
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Tierney
Towns
Turner
Udall (CO)
Udall (NM)
Upton
Van Hollen
Visclosky
Walden (OR)
Walsh
Wamp
Watt
Weiner
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Wexler
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Wu
Young (AK)
Young (FL)

NAYS—38

Abercrombie
Ackerman
Baird
Berman
Clay
Conyers
Delahunt
Farr
Fattah
Frank (MA)
Grijalva
Harman
Hastings (FL)
Hinchey
Honda
Kucinich
Lee
Lewis (GA)
Lofgren, Zoe
McDermott
Nadler
Owens
Paul
Payne
Sabo
Sánchez, Linda T.
Sanders
Schakowsky
Scott (VA)
Serrano
Sherman
Stark
Velázquez
Wasserman Schultz
Waters
Watson
Waxman
Woolsey

NOT VOTING—6

Cole (OK)
Eshoo
Kaptur
Reichert
Stupak
Wynn

□ 1400

Mr. HASTINGS of Florida changed his vote from ''yea'' to ''nay.''

Mr. ISRAEL and Ms. BERKLEY changed their vote from ''nay'' to ''yea.''

So the bill was passed.

The result of the vote was announced as above recorded.

The motion to reconsider is laid upon the table.

Stated for:

Mr. COLE of Oklahoma. Mr. Speaker, on Wednesday, February 16, 2005, I was unavoidably detained due to a prior obligation.

Had I been present and voting, I would have voted as follows: (1) Rollcall No. 35: ''Yes'' (Final Passage of H.R. 310).

RESIGNATION AS MEMBER OF COMMITTEE ON SCIENCE

The SPEAKER pro tempore laid before the House the following resignation as a member of the Committee on Science:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, February 15, 2005.

Hon. DENNIS HASTERT,
Speaker, U.S. House of Representatives, Washington, DC.

DEAR SPEAKER HASTERT: I respectfully request that you permit me to vacate my seat on the House Science Committee as soon as possible. I am hopeful that I would be able to retain my seniority position on this committee should I seek to return in a future Congress. I have greatly enjoyed my service on the House Science Committee.

Thank you for your kind consideration of this request.

Sincerely,

ZOE LOFGREN,
Member of Congress.

The SPEAKER pro tempore (Mr. LATOURETTE). Without objection, the resignation is accepted.

There was no objection.

ELECTION OF MEMBERS TO CERTAIN STANDING COMMITTEES OF THE HOUSE

Mr. MENENDEZ. Mr. Speaker, by direction of the Democratic Caucus, I offer a privileged resolution (H. Res. 111) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 111

Resolved, That the following named Members be and are hereby elected to the following standing committees of the House of Representatives:

(1) COMMITTEE ON HOUSE ADMINISTRATION.—Ms. Zoe Lofgren of California.

(2) COMMITTEE ON SMALL BUSINESS.—Ms. Moore of Wisconsin.

Mr. MENENDEZ (during the reading.) Mr. Speaker, I ask unanimous consent that the resolution be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from New Jersey?

There was no objection.

The resolution was agreed to.

A motion to reconsider was laid on the table.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to the provisions of clause 8 of rule XX, the Chair announces that he will postpone further proceedings today on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 6 of rule XX.

Such record votes, if postponed, will be taken on tomorrow.

RECOGNIZING THE COMMITMENT OF THE UNITED STATES TO THE RECOVERY AND ACCOUNTING FOR AMERICANS WHO ARE PRISONERS OF WAR OR MISSING

Mr. FRANKS of Arizona. Mr. Speaker, I move to suspend the rules and pass the joint resolution (H.J. Res. 18) recognizing the historic commitment of the United States to the recovery of and full accounting for Americans who are prisoners of war or in a missing status.

The Clerk read as follows:

H.J. RES. 18

Whereas the surrender during World War II on the Bataan Peninsula, in the Philippines, in April 1942 led to the capture of more than 75,000 American and Filipino military prisoners of war;

Whereas American, Filipino, and Allied prisoners of war endured the 65-mile Bataan Death March through the jungles of the Philippines and were subjected to brutal abuse from which many hundreds of Americans and many thousands of Filipinos died;

Whereas thousands more American and Filipino civilians were interned across the region;

Whereas General Douglas MacArthur, the Allied commander for the Southwest Pacific area, including the Philippine Islands, committed forces under his command to make every effort, as quickly as possible, to liberate prisoner of war camps and internment camps as Allied forces began retaking territory;

Whereas in the fulfillment of that commitment, United States Army units, together with various Filipino guerilla groups, successfully conducted several operations that liberated thousands of innocent civilians, prisoners of war, and Filipino citizens;

Whereas in February 1945, elements of the 11th Airborne Division, particularly the 511th Parachute Infantry Regiment of that division, and the 672nd Amphibious Tractor Battalion conducted a particularly brave and daring mission behind enemy lines to rescue over 2,000 people at Los Banos internment camp; and

Whereas the United States has an historic commitment to the recovery of and full accounting for Americans who are prisoners of war or in a missing status: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress—

(1) recognizes the rescue missions carried out by units of the United States Army, including the 11th Airborne Division, 60 years ago in the Philippines during World War II as sterling examples of that commitment; and

(2) recognizes the bravery and courage of the soldiers and the Filipino guerillas who participated in those rescue missions.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Arizona (Mr. FRANKS) and the gentleman from North Carolina (Mr. BUTTERFIELD) each will control 20 minutes.

The Chair recognizes the gentleman from Arizona (Mr. FRANKS).

□ 1400

GENERAL LEAVE

Mr. FRANKS of Arizona. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.J. Res. 18, the legislation under consideration.

The SPEAKER pro tempore (Mr. LATOURETTE). Is there objection to the request of the gentleman from Arizona?

There was no objection.

Mr. FRANKS of Arizona. Mr. Speaker, I yield myself such time as I may consume.

When the Philippines fell in April of 1942, more than 75,000 American and Filipino servicemen and countless civilians became prisoners of war. This number was decimated during the brutal Bataan Death March, which saw the death of over 16,000 POWs. Many soldiers survived the march, only to find themselves facing murderous treatment in prisoner-of-war camps scattered throughout the island.

When General MacArthur began his campaign to retake the Philippines in 1945, he made it a priority to liberate soldiers and civilians who were interned in these camps. This commitment was particularly important, since it was widely believed that captives would be killed by their retreating captors if measures were not undertaken to liberate them in advance of the main campaign.

General MacArthur's commitment to the civilian internees and prisoners of war on the island manifested itself in a particularly heroic way in the Allied raid on the prison camp at Los Banos. It was here that Filipino guerrilla forces and the men of the 511th parachute infantry regiment of the 11th Airborne division worked in concert to organize a multipronged assault with elements attacking from land, air and sea to liberate the prisoners of the camp.

The Allied forces took great risks to free their fellow soldiers and civilians who had fallen behind enemy lines. These truly heroic acts serve not only as examples of the humanitarian compassion of American servicemen and -women but also as an example of our Nation's longstanding commitment to leave no fellow soldier, living or dead, in enemy hands.

Mr. Speaker, as we have military personnel spread throughout the world today, many of whom are daily risking capture and torture at the hands of brutal terrorists, it is more important now than ever to recognize and honor the heroism and willing sacrifice of those soldiers who risked their own safety not to take a strategic objective, but simply to bring a comrade home.

Our soldiers, marines, airmen and sailors must be able to take a small measure of comfort that whatever happens to them in battle, that this Nation will always have the will and the resolve to find and repatriate all of those who were lost while on duty.

Mr. Speaker, evil has aggressively manifested itself in many forms throughout human history, and for the last 200 years, whether fighting totalitarian evil of monarchial, fascist or fanatical roots, American servicemen have made a habit of putting themselves squarely in evil's way. They have done so, secure in the knowledge that if they fall into the hands of the enemy, they will not be forgotten. Indeed, every effort possible will be undertaken to bring them home.

Mr. Speaker, this is the 60th anniversary of the liberation of over 2,000 prisoners from the camp at Los Banos, and

at a time when our military is deployed in harm's way around the globe, let us recognize those individuals who sacrificed to bring their brothers and sisters home, and let us honor the heroic actions of the past by officially reaffirming our Nation's commitment to leave no fighting man or woman in enemy hands at any time, now or in the future.

Mr. Speaker, I reserve the balance of my time.

Mr. BUTTERFIELD. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in support of H.J. Resolution 18, introduced by the gentleman from Arizona (Mr. FRANKS), my friend and colleague on the House Committee on Armed Services.

This resolution today recognizes our Nation's commitment to the recovery and full accounting of Americans who are prisoners of war or who are in a missing status from current and previous conflicts, and in particular, it recognizes the actions of the 11th Airborne division and the Filipino guerrillas who participated in the liberation of an internment camp in the Philippines during World War II.

Following the United States surrender on the Bataan Peninsula in April of 1942, thousands of Americans and Filipinos and Europeans, both military and civilian, were taken as prisoners of war by the Japanese. In the town of Los Banos, on the island of Luzon, over 2,000 civilians, including men, women and children, and 12 American Navy nurses, were held as captives. From May 14, 1943, until they were freed by Angels on February 3, 1945, they were held captive at the former agricultural school of the University of the Philippines.

The 11th Airborne division, also known as the Angels, arrived at Leyte Beach in the Philippines on November 19, 1944. Their first objective was to clear a mountain pass from Burauen to Ormoc. After nearly 3 months of bitter fighting, the 11th Airborne had killed almost 6,000 enemy soldiers and had driven the Japanese from the pass and surrounding areas. On January 6, 1945, the Angels landed on the island of Luzon. Their mission was to clear enemy opposition on the major highway leading to Manila.

As American forces successfully regained territory that was lost to the Japanese at the beginning of the war, General Douglas MacArthur became concerned that many of the prisoners would be killed before they could be rescued. The 11th Airborne division was given the responsibility of liberating the prisoners at Los Banos. The Angels worked with the Filipino guerrilla groups in the area to gain valuable information as to the layout of the camp, the schedules of the guards and other details that were essential for a successful mission.

It is said that the rescue of the detainees at Los Banos was one of the most successful missions ever conducted. Not one prisoner was killed or seriously injured in the assault, and not one paratrooper of the battalion that was directly involved was killed.

The historic rescue of Los Banos by the 11th Airborne and the Filipino guerrillas, and other efforts to recover prisoners of war and those missing in action are not forgotten. In fact, Mr. Speaker, they stand as testament to our Nation's strong commitment to ensure that no one will be left behind on the battlefield.

Today, the Department of Defense Prisoner of War/Missing in Action Office continues to coordinate recovery activities and investigate locations from past conflicts to ensure a full accounting, a full accounting of those who remain missing in action from past conflicts.

Mr. Speaker, I also wish to speak briefly in support of all POW/MIAs. Over the past 100 years, over 88,000 of our fighting men and women are still classified as missing in action, remains not recovered or remains unidentified. Every American who puts on the uniform of this Nation accepts the dangers that are entailed, and I am touched by the strong efforts to recover the remains of American servicemen and -women, and to find individuals who may still be alive. Every man or woman unaccounted for is a family who never knew the fate of a loved one, and it is fitting, Mr. Speaker, that our government never let a single American be left behind. It is important to the families of our fighting men and women, and it is the duty of this government to do so.

Mr. Speaker, I commend my colleague on this resolution.

Mr. Speaker, I reserve the balance of my time.

Mr. FRANKS of Arizona. Mr. Speaker, I yield 5 minutes to the gentleman from Texas (Mr. SAM JOHNSON), a true American hero.

Mr. SAM JOHNSON of Texas. Mr. Speaker, I appreciate that remark and I appreciate the gentleman's remarks that just spoke. God bless you.

I stand here before you as a former prisoner of war in Vietnam. Despite 7 years in captivity, with 42 months straight in solitary confinement, I am one of the lucky ones because I came home. Some of the men I served with in Vietnam did not, and guys, say, oh, we really had it rough. I tell my colleagues, the guys in that Bataan Death March are the guys who had it rough. Those are the guys that gave their lives for this Nation, and we can never repay them in my view.

I firmly believe we need to send a strong, clear signal that we must account for Americans who are prisoners or classified as missing, and while I was in captivity, I made it my duty to memorize the names of my fellow POWs, committing about 374 names to memory just from tapping on a wall, never seeing them. We were trying to memorize them in case anybody got out because every one of us thought we could escape. So we knew the names but we did not have any idea what they looked like.

Most of the time we never saw another American except occasionally through a crack in the door, but I knew they were there, and I know some did not come home, especially from Cambodia and Laos.

This just is not about Vietnam. It is about the Korean War, Desert Storm, Afghanistan, Iraq and World War II. I fought in Korea as well as Vietnam. I am on the U.S.-Russia Commission on POWs and MIAs. We have been looking for them, and we know some of them were taken to the Soviet Union. We are starting to hear about it in the press now. We know some of them are still alive, at least some are from the Korean War, and we know there may be some still alive today from Vietnam. We are still searching for them.

So help me, if they are alive and we do not get them out, we have not done our job. I truly appreciate what my colleagues are doing with this resolution. I think it is important that America know that we never leave anyone behind. We are Americans and we take care of our own.

I hope today's action is not just lip service but people continue to act, follow through on finding our fellow Americans. We owe it to our men and women in uniform and their families because, after all, we are the land of the free and the home of the brave.

God bless our military servicemen and the POWs and MIAs that are still out there. I salute each and every one of you.

Mr. BUTTERFIELD. Mr. Speaker, I yield 4 minutes to the gentleman from Hawaii (Mr. CASE).

(Mr. CASE asked and was given permission to revise and extend his remarks, and include extraneous material.)

Mr. CASE. Mr. Speaker, I appreciate my colleague yielding me time, and it humbles me to follow the previous speaker in light of his service.

I rise in full support of this resolution and wish to fully associate myself with the comments of my colleagues with respect to the heroic rescue missions carried out 60 years ago by units of the U.S. Army in the Philippines. It allows us to follow anew not only their efforts but also the heroic effort of many, many members of the Filipino citizenry, including the Filipino scouts who rose up and fought alongside U.S. Armed Forces in the Philippines during the Second World War and allied themselves very much with the Allied effort.

I also want to take the opportunity in this resolution to highlight, as the previous speaker said, the work undone, on a broader scale, which includes almost 2,000 of our own still unaccounted for in the Vietnam War. In that spirit, I want to highlight the great commitment shown by our Joint POW/MIA Command, JPAC, which is operated by the Defense POW missing personnel office.

JPAC is headquartered in Hickam Air Force Base, Hawaii. It was activated in October of 2003, and its mission is to achieve the fullest possible accounting of all Americans missing, worldwide, as a result of our Nation's previous conflicts.

Of course, the highest priority of JPAC is return of any living American that remains a prisoner of war, but equally important is bringing resolution to the families who still await news of their loved ones.

JPAC was created from the merger of the Central Identification Laboratory-Hawaii and the Joint Task Force Full Accounting and contains almost 425 personnel. One-quarter are Navy civilians and the rest handpicked soldiers, sailors, airmen and marines. Every individual attached to JPAC is chosen through the specialized skills necessary for the command's unique mission.

Some brief facts about JPAC and the Central Identification Lab-Hawaii. Even today, they are still identifying roughly two individuals each week formerly listed as missing.

They have identified remains from World War I, World War II, the Korean War, the Vietnam War and the Cold War, and in each of those cases where it is possible, repatriation ceremonies, with a full honor guard, are held nearly every month at Hickam Air Force Base in Hawaii. As the remains are brought off the plane in flag-draped caskets and moved to ground transportation, a multiservice honor guard salutes the remains while family members, veterans and members of the Armed Forces offer their respects.

It is also true that JPAC's work extends well into the realm of diplomacy because especially with the countries of Asia, where we had former enemies, JPAC and its efforts have often meant the initial unifying factor, the item on which we can all agree, and they have definitely led in many cases to rapproachment between previous enemies.

In addition to its primary mission of identifying, recovering and repatriating the remains of the POWs and MIAs, JPAC personnel also support nontraditional and humanitarian missions as well. For example, in the recent tsunami effort in southeast Asia, JPAC deployed their two teams of eight people, including a forensic anthropologist, forensic dentist and other specialists to assist the Government of Thailand to identify and recover the bodies of more than 3,500 individuals who died there.

I have here for inclusion with my remarks at this point an article that recently appeared in the Honolulu Star Bulletin entitled ''Joint POW–MIA Accounting Group Using DNA Expertise,'' which acutely describes some of these humanitarian efforts and which contains this very poignant remark: ''Everybody is given a name when you are born, and everybody should have a name when you die. That's what we do.''

[From the Honolulu Star-Bulletin, Jan. 21, 2005]

JOINT POW–MIA ACCOUNTING GROUP USING DNA EXPERTISE

(By Craig Gima)

PHUKET, THAILAND.—At the Tsunami Victims Assistance Center, unanswered questions hang in the air around the bulletin boards where family members have posted pictures of missing friends and relatives.

The photos—a haunting reminder of lives probably lost—mean there are lives in limbo, families holding on to hope, however faint, unwilling to accept death without proof.

The large crowds of family members that gathered here daily right after the tsunami are gone now. The people who show up are sometimes friends continuing the search or, as in the case of a visitor earlier in the day, a brother who believes his sister needs his help.

''If his sister is dead, he doesn't want to know now,'' said Verity Cattan-Poole, a volunteer at the center who speaks both Thai and English. ''He wants to find her. He thinks possibly that she's somewhere and lost her memory, and he wants to be there to help her.''

''In their heart of hearts, I think they know,'' Cattan-Poole said. But ''if you have a loved one who has died, you need closure.''

A little more than two hours north of the center, an international team of forensic scientists that includes members of the Hawaii-based Joint POW–MIA Accounting Command are trying to bring closure to families.

JPAC is best known for its work in recovering and identifying the remains of U.S. service members from Vietnam and other wars. But it has deployed teams before to disasters, including the Sept. 11, 2001, terrorist attack on the Pentagon, the Korean Air crash in Guam and the bombing of a Marine barracks in Beirut, Lebanon, in 1983.

Two teams of eight people, including a forensic anthropologist, a forensic dentist and mortuary affairs specialists, have been helping the Thai government identify and recover the bodies of more than 5,300 people who died in the tsunami.

Most of the work is done at Wat Yan Yao, a Buddhist temple about two hours north of Phuket. JPAC also helped coordinate the delivery of supplies and materials such as lights and tents from the U.S. military's relief effort and is helping to set up a temporary morgue, donated by Norway, near the Phuket airport.

On Wednesday, JPAC members joined thousands of Buddhist monks at a candlelight service at a stadium in Takua Pa, a city in the province north of Phuket where about 4,000 people died.

Organizers said the memorial service was multi-denominational, offering prayers to comfort survivors and to help those who died find happiness and peace in the afterlife.

Many of the team members are now returning to Hawaii. A smaller group will remain for an undetermined time.

At a briefing in Hawaii earlier this month, Gen. Montague Winfield, the commander of the unit, said his men and women were prepared to go when they saw the extent of the tsunami devastation.

Winfield said they had just finished a plan on how to deploy quickly in the event of mass casualties anywhere in the world.

Still, while the JPAC team members had planned what to take and to get their equipment there in the event of an emergency, ''nobody can adequately or fully prepare for something of this magnitude,'' said Dr. Robert Mann, deputy scientific director at JPAC.

''In this situation here, you're going to be dealing with a lot of children, and a lot of people here have kids,'' he said.

Mann, who was at the same briefing as the general, said the forensic scientists in Hawaii are experts at extracting and using DNA to identify remains. They are also bone and teeth experts.

Bone structure, Mann explained, can show whether a person is of Caucasian or Asian descent, a man or a woman. Dental records also can help with identification when fingerprints are not available.

''Everybody is given a name when you are born, and everybody should have a name when you die,'' Mann said. ''That's what we do.''

JPAC is a vital part of our Nation's ongoing commitment to its service members, and we in Hawaii are proud and humbled by their commitment to their mission. This mission on behalf of all of us must continue until every last unaccounted American citizen is accounted for.

□ 1415

Mr. FRANKS of Arizona. Mr. Speaker, I yield 4 minutes to the gentleman from California (Mr. ROHRABACHER).

Mr. ROHRABACHER. Mr. Speaker, I rise in strong support of H.J. Res. 18. Today, we recognize the heroism of America's POWs, and we recognize the heroism as well of those men and women of our military who rescued our POWs in various conflicts.

We are focusing mainly on the Philippines. And, of course, in the Philippines there were so many thousands of Americans that were captured by the Japanese and held and who were rescued by Filipino Americans, or Filipinos I should say, and by U.S. troops near the close of the war.

Let me note that the Filipinos who fought side by side with us, and there were many thousands of Filipinos who were also held as prisoners of war during the war with Japan. During those 4 years, those Filipinos who fought, those Filipinos as well as those Americans who fought with us to liberate the Philippines and rescued our POWs as the war ended, were shortchanged. Today, the Filipinos who fought alongside Americans, many of those were promised veterans status, and they never received the veterans status we promised them when they helped us liberate the Philippines. So they were shortchanged.

Our own POWs were shortchanged. Those Americans held in the Philippines have been prevented by our own government from suing the Japanese corporations that used them as slave labor during the war. This is a horrendous gift to give a POW, like the survivors of the Bataan Death March who then were used as slave labor by the Japanese. They cannot even be compensated by suing the Japanese.

And this is not something that happened just in history. American POWs from the last Iraq war, who were held prisoner and tortured by Iraq, are now being prevented by our government from suing the Iraqis who tortured them. We should be on the side, if nobody else, of our greatest heroes, America's POWs; but we have shortchanged them at every step.

And what do we say about those who fought in Vietnam, along with some of those Vietnamese, those Americans that were captured in Vietnam and were not returned after the war and that we abandoned? We know that is true. We know a number of them were taken to Russia. We do not even know their names. We have not even insisted on their names. As we expand our trade now and begin selling things in our stores, we are not even demanding that Vietnam please give us the full accounting we deserve.

They have not, for example, given us the records from the prisons in which our POWs were kept so we can check to see who was kept in those prisons. I have asked for that for 20 years and have never received it. Obviously, they are covering something up. But we are letting it slide. We are letting it slide.

We ended up turning against our POWs in the Bataan Death March and not letting them sue the Japanese, and we are turning against our POWs from the last Iraq war by not letting them sue their torturers. We need to start thinking about where our loyalties lie in this country of the American heroes. We have a lot to stand up for, because these men and these people, the men and women who sacrifice for us, including the Filipinos who fought with us in World War II, we owe them a debt of gratitude that can never be paid. At the very least, let us be faithful to them and give them the kind of recognition and honor they deserve.

Mr. BUTTERFIELD. Mr. Speaker, I yield 3 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, I thank the distinguished gentleman from North Carolina for yielding me this time, and for his words, as well as those of the sponsor of the bill, the gentleman from Arizona. Again, this is, I think, a singular moment when there is no voice of dissent.

Might I pay special tribute, of course, to my colleague, the gentleman from Texas (Mr. SAM JOHNSON), who has always reminded us in this House, as have many others, but in particular, as he hails from my State of Texas, the debt of gratitude and the debt of commitment that we still continue to owe to those who are missing in action.

This resolution I want to acknowledge because of a very precise statement that it contains, which is very key to what we are doing here today. It states we are celebrating the historic commitment of the United States ''to the recovery of and full accounting for Americans who are prisoners of war or in a missing status.''

I think more than celebrate, I hope with the passage of this legislation that the American people will understand that no brave young man or woman, no brave person who has submitted themselves to the oath of office to fight for this country on foreign shores, will ever become just a footnote in our minds and hearts, but that we will continue to press the envelope, we will continue to use all the resources, we will continue to wave the flags, we will continue to teach our children that they have given the ultimate sacrifice, maybe, but that their names still have not been described as having passed in battle and, therefore, it is our obligation to continue to search for them until we determine their status.

It gave me great pride to share with former council member Ben Reyes the first raising of a POW–MIA flag in front of the city hall in the City of Houston. We did that some many years ago. How proud we were to stand with veterans from Houston as they watched that flag recognizing and commemorating, in just the City of Houston in this Nation, on behalf of its children, on behalf of its soldiers that we would never stop searching or at least pushing for our MIAs.

Let me also appreciate the recognition of the 11th Airborne Division, particularly the 511th Parachute Infantry Regiment of that division, that were particularly brave as they went behind enemy lines to rescue over 2,000 people in an internment camp.

Let me also acknowledge my constituents who marched on that death march some many, many years ago, where they saw some lose their lives and some be carried off, not knowing where they might go. Let me acknowledge them as well, as this resolution does.

My final words this afternoon are simply to say that as we celebrate, let us make a personal commitment both in terms of resources, a large component of defense authorization and appropriations, that there should continue to be funding and focus on our POWs and, of course, our MIAs. We owe that to the families. We owe it to the American people.

Mr. Speaker, I support this resolution enthusiastically.

Mr. FRANKS of Arizona. Mr. Speaker, I yield 3 minutes to the gentleman from Ohio (Mr. PORTMAN).

Mr. PORTMAN. Mr. Speaker, I thank the gentleman from Arizona (Mr. FRANKS), and I thank the Members who have been out here this afternoon talking about this critical issue and recognizing this resolution.

I represent the Maupin family in Clermont County, Ohio. Their son, Keith Matthew ''Matt'' Maupin, Army Specialist, was captured in Iraq in April of last year. We are approaching, therefore, the 1-year anniversary. I rise today to pay special honor to Matt Maupin and to all our brave servicemen and women who are putting their lives on the line for us again on the sands of Iraq and Afghanistan and elsewhere.

Specialist Maupin has been missing, as I said, since April 9, 2004. His convoy came under attack. He was taken captive. He is still missing. He went to Iraq because he believed in the fight. He went to Iraq for the freedom of the Iraqi people and to make America and our world a safer place. He is truly an American hero.

In our part of southern Ohio, there has been an outpouring of support for Matt; prayers, but also yellow ribbons have cropped up everywhere: on cars, on highway overpasses, and at places of business. His father is a veteran, Keith Maupin; his brother, Lance Corporal Micah Maupin, is a Marine stationed in Miramar, California, currently. Specialist Maupin comes from a family that strongly supports the military and strongly supports our military families.

In fact, Matt's family has taken it upon themselves to establish a Yellow Ribbon Support Network to support families throughout our part of Ohio and, indeed, throughout our country who have their sons and daughters in harm's way.

I again want to thank those who have brought this resolution to the floor today, the gentleman from Arizona (Mr. FRANKS) and others, for their strong support and those of our brave men and women who are missing in action. In the case of Matt Maupin, we remember the Army's ''Soldier's Creed,'' which states: ''. . . I always place the mission first. I will never accept defeat. I will never quit. I am a guardian of freedom and the American way of life. . . . I am an American soldier.'' This is Specialist Matt Maupin.

We take care of our soldiers. We leave no soldier behind.

Mr. BUTTERFIELD. Mr. Speaker, I yield myself such time as I may consume to thank once again the gentleman from Arizona for bringing forth this resolution today calling for a full accounting for Americans who are prisoners of war or for those who are missing in action. Our speakers, today, on both sides of the aisle, have spoken so eloquently, and I thank them so much for their comments. They are great Americans.

Mr. Speaker, I yield back the balance of my time.

Mr. FRANKS of Arizona. Mr. Speaker, I yield myself such time as I may consume to simply say that I think all of us hold the commitment in our hearts and the understanding in our hearts that no greater love hath any man than this, than a man who lays down his life for his friends.

There are so many men and women who have laid down their lives for American causes and for the cause of human freedom. This is our day to recognize that, and I pray that we never forget them.

Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. LATOURETTE). The question is on the motion offered by the gentleman from Arizona (Mr. FRANKS) that the House suspend the rules and agree to the joint resolution, H.J. Res. 18.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the joint resolution was agreed to.

A motion to reconsider was laid on the table.

HONORING THE LIFE AND LEGACY OF FORMER LEBANESE PRIME MINISTER RAFIK HARIRI

Mr. ISSA. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 91) honoring the life and legacy of former Lebanese Prime Minister Rafik Hariri, as amended.

The Clerk read as follows:

H. RES. 91

Whereas on February 14, 2005, a bomb exploded in Beirut, Lebanon, killing at least 15 people, including Rafik Hariri, former Prime Minister of Lebanon, and wounding at least 100 people;

Whereas Rafik Hariri, a leader and public servant, was believed to be the target of the attack;

Whereas on June 14, 2003, the Future TV studio in Lebanon, which is owned by Rafik Hariri, was targeted by a rocket attack;

Whereas Rafik Hariri, born into a humble family in Sidon, Lebanon, on November 1, 1944, became a successful businessman and politician who served the people of Lebanon in numerous roles;

Whereas Rafik Hariri contributed to the mediation between Lebanese militias during the Lebanese civil war and was a primary architect of the 1989 Taif Accords, which put an end to the Lebanese civil war;

Whereas Rafik Hariri contributed to the economic development and post-war reconstruction of Lebanon, attracting foreign investments from throughout the world;

Whereas Rafik Hariri founded several philanthropic, humanitarian, and educational foundations to provide assistance to needy individuals;

Whereas Rafik Hariri was respected by the international community, as exemplified by the international community's support for the Paris II conference on relieving Lebanon's debt in November 2002;

Whereas the assassination of Rafik Hariri should not be allowed to discourage participation and open debate in Lebanon's upcoming parliamentary elections, which the United States expects to take place in the spring of 2005 as scheduled and be credible, democratic, and free of foreign interference;

Whereas in response to the terrorist bombing attack, President George W. Bush stated: ''Mr. Hariri was a fervent supporter of Lebanese independence, and worked tirelessly to rebuild a free, independent, and prosperous Lebanon following its brutal civil war and despite its continued foreign occupation. His murder is an attempt to stifle these efforts to build an independent, sovereign Lebanon free of foreign domination.''; and

Whereas President Bush further stated: ''The people of Lebanon deserve the freedom to choose their leaders free of intimidation, terror, and foreign occupation, in accordance with UN Security Council Resolution 1559. The United States will consult with other governments in the region and on the Security Council today about measures that can be taken to punish those responsible for this terrorist attack, to end the use of violence and intimidation against the Lebanese people, and to restore Lebanon's independence, sovereignty, and democracy by freeing it from foreign occupation.'': Now, therefore, be it

Resolved, That the House of Representatives—

(1) condemns, in the strongest possible terms, the terrorist bombing attack that occurred on February 14, 2005, in Beirut, Lebanon, that killed former Lebanese Prime Minister Rafik Hariri and killed and wounded others;

(2) extends its deepest sympathy and condolences to the families of all the victims in this terrorist attack and to the people of Lebanon in this moment of tragedy;

(3) recognizes the significant contributions made by Rafik Hariri during his lifetime;

(4) reaffirms the right of the people of Lebanon to choose their leaders in a manner that is free of intimidation, terror, and foreign occupation in accordance with United Nations Security Council Resolution 1559 (2004); and

(5) urges all members of the international community to facilitate any investigation into this terrorist attack and help bring the perpetrators to justice.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. ISSA) and the gentleman from California (Mr. LANTOS) each will control 20 minutes.

The Chair recognizes the gentleman from California (Mr. ISSA).

GENERAL LEAVE

Mr. ISSA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous materials on H. Res. 91, the resolution under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. ISSA. Mr. Speaker, I yield myself such time as I may consume.

□ 1430

Mr. Speaker, today I rise in support of House Resolution 91, introduced by the gentleman from West Virginia (Mr. RAHALL) on February 14, 2005, that condemns the terrorist bombing attack that occurred in Beirut, Lebanon, which killed former Lebanese Prime Minister Rafik Hariri and killed and wounded over 100 others. I and my cosponsors had a hard time writing this resolution with the gentleman from West Virginia, not because there was not an abundance of material, not because the attack was not heinous, but because it is so hard to summarize in a few words on the House floor the devastating effect that his assassination has already had on the people of Lebanon and on this troubled region. As we speak, day after day, the people of Lebanon march in the streets and they chant, ''Syria out. Syria out. Syria, who's next?''

There is no proof that Syria is directly responsible for this assassination, but there is no doubt that Syria has remained in Lebanon far longer either than their mandate or than the agreements under the Taif Accords of 1989. Syria has claimed to be the responsible party in Lebanon for security. Yet even after warnings of the possibility of an attack on these and other leaders who have voiced their opposition to the continued presence of Syria in Lebanon, this heinous attack was allowed to occur.

This resolution calls on all foreign forces in Lebanon to leave the country. This resolution calls on many things. But for today, I would like all of us to remember it calls on a remembrance of the life of a man who had great personal wealth, who had great success, who had been granted even the citizenship of another country in which he had worked but returned to Lebanon, and, at his own expense and at his own peril, campaigned tirelessly for Lebanese citizenship, Lebanese nationality, Lebanon for the Lebanese.

There is little more that we can say. I would hope that all of us would not forget today, and that day after day and month after month we would return to this body and deal with his legacy until his dreams become a reality.

Mr. Speaker, I reserve the balance of my time.

Mr. LANTOS. Mr. Speaker, I yield myself such time as I may consume.

I rise in support of H. Res. 91, condemning the monstrous terrorist bombing in Beirut, Lebanon that killed the late Prime Minister of Lebanon, Rafik Hariri, and killed and wounded many others. I want to commend the gentleman from Illinois (Mr. HYDE) for bringing this matter to the floor in such a timely fashion, and I want to thank the gentleman from West Virginia (Mr. RAHALL) and all other colleagues who have worked on this resolution.

Mr. Speaker, I met the late Prime Minister Hariri on many occasions. Although I did not always agree with him, I held him in the highest regard because I recognized in him a man who was a true patriot, single-mindedly devoted to healing his nation after 15 years of a bloody civil war. He was a man not only of charm and drive but of vision. He worked a minor miracle in reviving downtown Beirut, and it was characteristically cynical that the murderers chose that particular area of the city as the site for their cruel crime.

I knew that part of Beirut very well. I first visited it in 1956 and it was one of the gems of the Middle East. The late Prime Minister Hariri returned that portion of Beirut to its former outstanding aesthetic qualities. Given his immense wealth, he could be alive right now, living the good life somewhere on the French Riviera with a mansion and a private beach. Instead, he threw himself into the treacherous world of Lebanese politics, Lebanese politics played out under a menacing Syrian shadow, and like so many before him, he paid the ultimate price.

Among Mr. Hariri's most impressive attributes was his capacity for growth. Over time, he evolved from a Lebanese leader who was close to the Syrians, into one who was wary of them, and finally, in his last days, into one who outright opposed them. Of course it is a near certainty that it was that evolution, particularly the final stage, that led to his demise. A long time ago in a private talk with the President of Egypt, Hosni Mubarak, he taught me a lesson. He said, ''Every country has its

exports and Syria exports trouble.'' No wiser words were ever said in connection with this latest tragedy.

Mr. Speaker, as I stand here, I do not know for certain who murdered Rafik Hariri. I only know that this thuggish action bears all the hallmarks of infamous Syrian-inspired assassinations in Lebanon's past, going back to the then-shocking killing of Druze leader Kamal Jumblatt in 1977. I also know that Syria makes little effort to hide the fact that these assassinations are intended to intimidate other potential opponents.

Bashar al-Assad was supposed to represent a new, more humane Syria, but that unfortunately has not been the case at all, and certainly not in Lebanon. Just this past fall, a pro-Hariri cabinet minister who resigned his post over Syrian manipulation of Lebanese politics was the victim of a shooting widely believed to be inspired by Syria.

Mr. Speaker, Lebanese politics is highly complex, but I do know that when Rafik Hariri turned decisively against Syria, he cast his lot with the opposition in recent months. Damascus had plenty of reasons to be concerned. With international respect and domestic popularity, and with Lebanese parliamentary elections on the horizon for this spring, Hariri was just the sort of opponent who could make life very uncomfortable for the Syrian occupying overlords.

So is Syria guilty of the murder of Rafik Hariri? None of us is certain at this moment, Mr. Speaker, but I share the sentiments of the late Mr. Hariri's son, Saad Eddeen, who when asked why his father was killed replied simply, ''It's obvious, isn't it?'' I believe it is obvious, Mr. Speaker.

We do not yet know for certain who is responsible for the brutal assassination of former Prime Minister Hariri, but that brutal act is all too reminiscent of similar murders of Lebanese political leaders by Syrian henchmen over the past three decades, and we cannot ignore the similarities.

Our Department of State, Mr. Speaker, took exactly the right step yesterday in recalling our Ambassador from Damascus. And I find myself in the rare position of agreeing with the French, who said that there should be an international investigation of this crime, because I am certain that we cannot trust the Syrian-dominated Lebanese Government to conduct a thorough and impartial inquiry.

Whether through international investigation or through other means, Mr. Speaker, the culprits of this heinous crime and their sponsors and their masters must be found and brought to justice and the Lebanese people must now act decisively to truly take their future into their own hands.

Mr. Speaker, Syria has an international legal obligation to remove its troops and its security forces from Lebanon. When I met with the Syrian President some time ago, I reminded him of this obligation. So did former Secretary of State Colin Powell. Removing the boot of Syria from the neck of Lebanon would unleash the talents and resources of this beautiful and potentially rich country which has suffered unspeakably under the Syrian yoke.

Mr. Speaker, I strongly support this resolution and I call on all my colleagues to support it as well.

Mr. Speaker, I reserve the balance of my time.

Mr. ISSA. Mr. Speaker, it is an honor to yield 5 minutes to the gentleman from Illinois (Mr. LAHOOD), someone whose ancestry is from Lebanon, someone who has been a student of Lebanon, and someone who was in periodic communication directly and indirectly with the former Prime Minister.

Mr. LAHOOD. Mr. Speaker, I thank the gentleman from California for yielding me this time. I thank him for the resolution. I thank my friend from West Virginia who called me on Monday to talk with me about the terrible events that took place and the idea of quickly introducing a resolution so that we could honor the Prime Minister. I thank the gentleman from California (Mr. LANTOS) for his good words.

A few hours ago, the people of Lebanon laid to rest their former Prime Minister. They laid him to rest in a place in Lebanon that he rebuilt. Ten years ago I had the privilege of going to Lebanon for the first time and over the last 10 years I have been to Lebanon at least once a year. Every time I have been there I have been warmly welcomed by the Prime Minister.

Ten years ago when I visited Lebanon, it was a war-torn country and Beirut was a war-torn city, a lot of burned-out buildings, a lot of areas where you could see the remnants of a war that took place. Today it is a beautiful city. Today it has been rebuilt thanks almost in large part to the efforts of former Prime Minister Hariri. It was rebuilt with his own resources, rebuilt with his own ingenuity, rebuilt by his ability to bring people together.

Today he was laid to rest there in an area called Solidaire which he designed and built as the business center for Beirut, a magnificent area. The Prime Minister was able to make Beirut what it was once known as, the Paris of the Middle East. If you go there today, you will recognize that immediately.

When he would come to the United States and visit with our Presidents or our Secretaries of State or the Speaker of the House or the minority leader or Members of Congress, he would always talk about how do we get more people to come to Lebanon, how do we get more people from this country to go there and understand the complexities of the country?

He was a man who brought people together, whether it be in his own country or in our country. He was a uniter, not a divider. He certainly did not deserve what he got and what was delivered to him a few days ago when he was assassinated. He did not deserve that. I hope that we are able to find those that perpetrated this terrible, terrible event against him that took his life and those of others that were in his entourage.

Rafik Hariri is a world leader. He was a peacemaker. He was one that was able to really bring people together. He was responsible for the Taif Agreement. He was the one that kept speaking out for people to really come together in his own country. He provided over 2,000 scholarships to students not only in Lebanon, but around the world, so they could go to school because he knew the importance of education.

He contributed so much to so many ordinary Lebanese citizens, contributed so much to rebuilding the country. I considered him a very, very dear friend. I had many opportunities to visit with him when he was in this country, to get to know his family, his children, his two sons, and they hopefully will be able to continue some of the work that he began a long time ago.

□ 1445

I am not going to take the time to try to lay blame. I think we should be here to honor this great man, this great leader, the great peacemaker, the uniter of people, the one that has brought people together around the idea that Lebanon is a country that deserves attention, a country that has not always gotten the attention that it deserved.

And so in urging Members to vote for this resolution, we say, job well done, good work, we thank those who have made this resolution possible today, and God speed to Rafik Hariri for his efforts to try to unite the Middle East to bring our fellow Lebanese people together as he has visited this country and to rebuild the beautiful city of Beirut. We have lost a great leader. We will remember him.

As Members vote for this resolution, I hope they will also remember him and his family in their thoughts and prayers.

Mr. LANTOS. Mr. Speaker, I yield such time as he may consume to the gentleman from West Virginia (Mr. RAHALL), the principal author of this resolution we are considering.

Mr. RAHALL. Mr. Speaker, I thank the gentleman from California for yielding me this time, and I thank him for his help on this resolution.

I thank as well the gentleman from Illinois (Mr. HYDE), the chairman of the full committee; the gentlewoman from Florida (Ms. ROS-LEHTINEN), subcommittee chairwoman; and especially the gentleman from California (Mr. ISSA) for his invaluable help in drafting this resolution. I thank the gentleman from Illinois (Mr. LAHOOD), the gentleman from Michigan (Mr. DINGELL), the gentleman from Louisiana (Mr. BOUSTANY), my initial co-sponsors, for their quick action as well following the events of Monday morning this week.

Mr. Speaker, both of my grandfathers were born in Lebanon. It is a heritage

of which I am proud. I am proud as well about the relationship between our two countries. I am proud of the Lebanese people. I am proud of the contributions that the Lebanese society has given to not only America but to the world and vice versa. We can look across all sectors of American life, cultural, educational, medical, and see examples of where our two people have worked closely for the betterment of humankind. And that relationship is strong. It has been strong over decades and decades, and it will continue to be strong.

I have traveled Beirut a number of times. I was there at the height of the Israeli bombardment in July/August of 1982. I have been in Lebanon at the height of the fighting, at the height of the hostage taking. I have been in Lebanon in peaceful times. Recently, I have seen the reconstruction and the beauty that has returned and the safety and security that has returned to that city and most all of the country. And that has made me proud of the land of my grandfathers. It has made me proud of the Lebanese people, the dedication they have.

They have been through a lot, there is no doubt about it. The civil war took its toll on the country. During that time, we saw Lebanon serve as the chessboard for many outside foreign forces to play their power games upon the land of Lebanon. The government was weak then. They could not control their borders. They could not control the outside forces that came into Lebanon to play their deadly, deadly games.

But in 1990 that civil war came to an end. It came to an end with the tremendous help of the former Lebanese prime minister, he was not prime minister at that time, Rafik Hariri. He was born in Lebanon but raised and made most of his fortune in Saudi Arabia. He represented that country as well as Lebanon in bringing the various militias together to end the civil war in the early 1990s time frame. He also used his personal wealth to rebuild that country, as has already been stated on the floor today.

Solidaire, the reconstruction company that rebuilt downtown Beirut, did it in a fashion that much of ancient history was preserved at the same time that Beirut looked forward to the future. And it was done in a way that had to reconcile many factions within Beirut itself. So Rafik Hariri spent not only his personal fortune in this rebuilding, but he put his life on the line for his native country of Lebanon.

The fate that he suffered this past Monday morning is a fate that no human being on the face of the Earth should suffer. It was a criminal act; it was a heinous act of terrorism from those who do not have the courage to work through the political systems or differences. I do not know who is to blame. Certainly there are enough outside forces in the region that once again are looking at Lebanon to play their ugly, deadly games. It is well known Rafik Hariri's background with the Saudi royal family. They have enemies in the region. Certainly we know that al Qaeda would use every chance to strike at the Saudi royal family.

Much has been said about the Syrian influence. Syria is a neighborly Arab country, a brotherly country to Lebanon; and it certainly has its interest in that country, as two neighbors always will have.

But that is beside the point today. As the gentleman from Illinois (Mr. LAHOOD) said today, we honor the legacy and the presence of a man who was huge in Lebanon, but huge in the world as well. He was a friend to many in this country, including the current occupant of the White House. When Rafik Hariri would come to Washington, D.C., he was received with respect, and he was received with hospitality by many of my colleagues and by many around this country.

So today to his widow, to his sisters and brothers, to his children, we extend our deepest sympathy; and we know that his presence is big in Lebanon and around this world and is big in this Congress of the United States because he had many friends here, and we pay our respects to him today.

Mr. ISSA. Mr. Speaker, I yield 5 minutes to the gentleman from California (Mr. COX).

Mr. COX. Mr. Speaker, I thank the gentleman from California for yielding me this time. And I want to thank the gentleman from West Virginia (Mr. RAHALL) for bringing this resolution to the floor today.

The former prime minister of Lebanon, who died so tragically, was a visionary for his country, for the region, for the world. He was an entrepreneur who understood the importance of markets and a free economy to the future of Lebanon and the future of the Middle East. He was a philanthropist, who, from his personal fortune, personally paid for so many to be educated both in this country and around the world, with only one condition, that they come back to Lebanon and help build a free democratic society there.

His murder on Tuesday in Beirut was a loss for Lebanon to be sure, for the Middle East as well, but also for the international community, for everyone in the world who loves freedom and democracy. We are gathered today to honor his memory and to call for the swift pursuit and punishment of those responsible. More importantly, we are here to do justice to Mr. Hariri's dreams of a free, independent, and sovereign Lebanon.

I first met Rafik Hariri during a visit to Lebanon 12 years ago. He was impressive because, as someone from the private sector, he dedicated himself, at great risk in the midst of civil war, to bringing warring factions together. He was, as has been stated here, a principal architect of the Taif Accords. As prime minister, he put in place the kinds of initiatives that would make Jack Kemp proud, recognizing the power of incentives, recognizing that if people could be given reason to share the Lebanese hope that reconstruction was possible to invest their money not just from Lebanon but from around the world, that even in those horrible ashes of war, we could see spring up new entrepreneurship, new hope, and new opportunity.

His tireless work on behalf of peace in a country that was wracked by a vicious civil war and his diligent pursuit of freedom and independence for his countrymen, all at great risk to himself and to his family, was always inspiring. His broader work to open the Middle East to enterprise and economic prosperity should serve as an example to people throughout the Middle East and around the world that the path to prosperity requires free minds and free markets. It is time that we help bring his dreams to fruition.

I had the opportunity to meet more recently, in December of 2003, with President Basheer Assad of Syria; and I shared with him our concerns, our American concerns, about the continued military occupation in Lebanon which Rafik Hariri worked diligently to bring to an end.

Mr. Hariri's funeral in part turned into a protest against the continued Syrian occupation. The 200,000 people participating in the procession make it clear to the rest of us around the world that those in Lebanon, just as we here in America and in nations around the world, deserve the right to self-determination. For 25 years Lebanon and its people have been denied this freedom.

This resolution honors a great leader of Lebanon whose principles are, first of all, fundamentally consonant with Lebanon and the Lebanese spirit and culture, but, second and equally importantly, completely consonant with what we every day in this United States Congress fight for for our fellow Americans and for people around the world.

I urge my colleagues to support this resolution to honor Mr. Hariri and to support the people of Lebanon.

Mr. LANTOS. Mr. Speaker, I yield 3½ minutes to the gentleman from New York (Mr. ENGEL), the distinguished senior member of the Committee on International Relations.

Mr. ENGEL. Mr. Speaker, I thank my very distinguished friend from California for yielding me this time.

Mr. Speaker, I rise in strong support of the resolution. I think that it is very important that we state that we will not tolerate this kind of violence and that the United States Congress is going to come out squarely in opposition to this kind of violence.

Mr. Speaker, I am the author of the Syria Accountability Act; and I think that it is clear to me, and all the evidence is being gathered, but I suspect that this assassination has some ties to Damascus, to the regime in Damascus. There have been all kinds of allegations, and one thing I know for sure is

that the Syrians have allowed Lebanon to destabilize, and this is part and parcel of the result.

Prime Minister Hariri in recent months had grown more and more critical of the Syrian occupation, and I say occupation because it is, of Lebanon. And in the past months, he objected to Syrian interference in the running of Lebanon's affairs. The bottom line here is that Lebanon needs to be free and independent and make its own decisions and not be held under the yoke of Syria. Syria needs to get out of Lebanon. I have many, many Lebanese American friends with whom I am very close, work with me, the Syria Accountability Act, and all feel strongly that they want their country, their former country and the country to which they have ties, to be free.

Syria now has 15,000 troops in Lebanon. I was pleased to see the United States and France collaborate on Security Council Resolution 1559, which pointedly calls for all foreign troops to leave Lebanon and which clearly says that the Lebanese ought to run their own show. Syria has allowed various terrorist militias to run free. Hezbollah, the southern border of Lebanon, northern border of Israel wreaks havoc with Damascus's blessing.

So at this time, when we pay tribute to Prime Minister Hariri, I also want to call on words of a former prime minister, General Michel Aoun, who came right here to Washington just a year ago, and said, ''You know, in Lebanon Syria likes to play the game they are the arsonist and the fireman.

□ 1500

They start the fire and then they want accolades and credit for putting it out.'' Because General Aoun came here to Washington and testified before Congress, he was indicted in Lebanon and it is virtually impossible for him to go back to his country. This is what we are dealing with.

So in certifying and supporting this resolution today, we recall the life of Prime Minister Hariri, and nothing could be a more fitting tribute to Prime Minister Hariri than having the Syrians leave Lebanon. I will double my efforts to do all I can under the Syria Accountability Act, talking to the President and seeing what we in Congress can continue to do to put pressure on Syria to leave Lebanon.

Mr. LANTOS. Mr. Speaker, I urge all of my colleagues to join me in voting for this resolution, and I yield back the balance of my time.

Mr. ISSA. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, many people today have spoken and many more will insert into the RECORD their comments on the devastation to the Lebanese people of this assassination. I suspect all of us can only sit by in horror and imagine the effect if one of our heads of state running to regain, in this case equivalency of the Presidency in many ways, were to be assassinated by parties unknown who opposed his politics, what a chilling effect that would have on elections.

Mr. Speaker, this spring there will be elections in Lebanon. If I may speak for a moment as best I can, as though I were Rafik Hariri, what would he say here today in order to protect the country he loved so well? I suspect that he would say, ''To the people of the world, to the people of this country, make those elections this spring free and fair. Empower the Lebanese people and their candidates not to be chilled by this terrible event.'' And as the prime mover of the Tai'f Accord, a man who came as a Sunni Muslim to a troubled region and said it does not matter if you are Sunni, Shia, Kurd, Orthodox or Maronite, we must come together, we must put behind us the many sins of the past.

I believe that Prime Minister Hariri would not say ''Do not find out who killed me,'' not for a moment. But I think what he would say is, ''The best memory that you can have, the best way to eulogize me, is to make my country free. Have all foreign forces leave my country, including their secret police. Allow my country to be what it once was and would be again, given the opportunity to be free of foreign influence.''

Mr. Speaker, I believe very strongly that those words, and more, would be from this great man, who cared more about freedom for his people and about peace than he cared about vengeance.

So as Americans we must demand to know who killed this great leader, this selfless servant of the people. But in his name we must also make sure that those elections go forward in a way that presently they will not. We must take the steps to make sure that we do that. I look forward to working on a bipartisan basis to craft such legislation or to urge the administration to bring such sanctions and such force to bear that will cause that to happen.

Mr. Speaker, I yield 3 minutes to the gentlewoman from Ohio (Ms. KAPTUR).

Ms. KAPTUR. Mr. Speaker, I thank the gentleman from California for yielding me time, and rise with my colleagues to support this resolution recognizing the life of Prime Minister Rafik Hariri. We condemn in the strongest possible terms the terrorist bombing attack that occurred February 14, 2005, in Beirut, which took his life, killed so many others and wounded dozens and dozens of people.

Let me just say that Prime Minister Hariri, when he first took office in the early 1990s himself pledged to lead his country in what he called a quantum leap forward to resurrect it from the civil war that it had endured, a tragedy of over a decade. He said ''I want to go down in the history books as the man who resurrected Beirut.'' And as a Member of this Congress who traveled to see part of that resurrection in Solidaire and the rebuilding of that war-torn country, it goes to show how one person's vision can literally transform a corner of the world.

When I think about our conversations with him, I would have to say he was a man who was very measured. He was someone who actually did not have to be doing what he was doing in the political realm because he was so financially wealthy. He did not need any of this. He did not have to give his life for the country he so deeply loved.

He founded the Hariri Foundation. Through that foundation he helped to support so many young people for their education, for their future, for health care, indeed all of the charitable works for which the Hariri Foundation has been responsible to pull the people of Lebanon forward.

The son of a grocer, someone with humble roots, he had an incredible career as a construction magnate in the Middle East. Really his power in the current Parliament in Lebanon was sufficient that he could have blocked actions by other leaders in that country, but he chose not to do so. He believed very much in peaceful evolution. He was the architect really of the rebirth of modern Lebanon.

I feel so sorry that this has happened, because truly he is someone who would not want to incite more violence in that very troubled part of our world. I understand that the gentleman from Illinois (Mr. LAHOOD) was down here a little bit earlier talking about the letter we signed to the Bush administration. It urges that in order to help to try to keep the calm in that region, to use our commodity programs through the U.S. Department of Agriculture more effectively, especially at this time, throughout that region, in order to turn food into development assistance. We should aim to keep the calm in a very tender and difficult moment in history.

I truly extend deepest sympathy and condolences to the family and to all the victims of this terrorist attack. I shall miss his counsel and his measured strength, as he came here to advise not just about Lebanon, but about many topics of concern to fair-minded people of the world.

I would hope that the world community would not be too quick to judge who is responsible for this murder. In fact there should be teams set up to actually investigate and to try to ascertain who might have been involved. Let us not be too quick to point fingers at who might have done this, because in fact Mr. Hariri himself would never have done that. He would have gotten to the bottom of any situation.

Again, I thank the gentleman for rising in support of this very important resolution to honor the life of former Prime Minister of Lebanon, Mr. Rafik Hariri.

Mr. DINGELL. Mr. Speaker, I rise today in strong support of H. Res. 91 honoring the life and legacy of former Lebanese Prime Minister Rafiq Hariri. Extremely well thought of by the international community, Mr. Hariri's tragic and untimely death is a great loss to us all.

Mr. Hariri was born in Southern Lebanon in 1944 to a family that was neither political nor

powerful. Mr. Hariri attended the Beirut Arab University where he was trained as a teacher. After leaving the University, however, Mr. Hariri went abroad to seek his fortune. He found that fortune in Saudi Arabia, where he established his own construction firm. Mr. Hariri became the personal contractor to Prince Fahd, who later became king of Saudi Arabia. Mr. Hariri's company, Oger, became one of the region's largest and most profitable construction companies. Mr. Hariri amassed a fortune that propelled him into Forbes richest 100 people in the world, with an estimated net worth of $4 billion.

While Mr. Hariri's rags to riches story is noteworthy, it is not what he will be most remembered for. Mr. Speaker, Rafiq Hariri loved Lebanon. He genuinely wanted to give something back and to serve his country. During the civil war he mediated between rival militia groups. And in 1989, Mr. Hariri was a primary architect of the Taif Accords, which finally put an end to that war. In 1992, Mr. Hariri returned to Lebanon to serve as a Member of Parliament, and was appointed Prime Minister. The first order of business for Prime Minister Hariri was to restore the Lebanese economy and rebuild the country after the 15 year civil war. Mr. Hariri left office in 1998 and returned as Prime Minister again in 2000. During his tenure, he was successful in attracting foreign investment, rebuilding Beirut and reviving Lebanon's tourism industry.

I would be remiss, Mr. Speaker, if I did not mention Rafiq Hariri's humanitarian work. Over the course of his life he found several philanthropic, humanitarian and educational foundations which aided poor Lebanese with schools, healthcare and college tuition. In the midst of the civil war, during cease-fires, he sent Oger trucks into Beirut's streets to clear away the rubble.

Mr. Speaker, the death of Rafiq Hariri leaves a void in Lebanon, a void that will not be easily filled.

I would like to take this opportunity to urge the international community to fully investigate this act of terror. In addition, I advise the United States to offer forensic assistance to Lebanon. We have vast experience with bomb investigations, and I feel confident that our expertise could be used to help identify those responsible for this assassination, and bring them to justice.

I urge my colleagues to join me in celebrating the life and legacy of Rafiq Hariri, extending our deepest sorrow to the Lebanese people, both in Lebanon and around the world on their loss, and in condemning the heinous act that cut short this still promising life. I would also ask that my colleagues join me in offering our deepest condolences to the families of all those killed and our prayers for the swift recovery of the wounded.

Mr. BOUSTANY. Mr. Speaker, I rise today in order to extend my deepest sympathy for the untimely death of former Prime Minister Rafik Hariri. Mr. Hariri's death is a tremendous loss not only to Lebanon, but to the global community as well. His efforts to restore peace and prosperity to his homeland after emerging from brutal civil war have earned him the great esteem of both myself and many of my House colleagues.

Mr. Hariri began his career as a civil servant at a time when his country was in desperate need of rehabilitation. In 1990 Lebanon had just emerged from a 15-year civil war an exhausted nation with an uncertain future. As Prime Minister, Mr. Hariri worked tirelessly to restore the nation's economic and political health. By establishing stable loan programs with various foreign powers, Mr. Hariri secured much needed reconstruction funds with which he rebuilt Lebanon's infrastructure. He oversaw the higher education of tens of thousands of Lebanese students and put forth a sizeable proportion of his own fortune toward social, education, and transportation projects. Mr. Hariri worked for a unified Lebanon, free from the social divisions of war and restored to its former state of health and stability.

As a descendent of Lebanese immigrants, I retain a deep personal interest in the welfare of my ancestral country. I followed Mr. Hariri's struggles as Prime Minister to put Lebanon back on firm footing and admired his determination. Now that Mr. Hariri has passed away, I can only hope that his cause will continue to be carried out by those who must now fill his place.

Mr. ISSA. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore (Mr. REHBERG). The question is on the motion offered by the gentleman from California (Mr. ISSA) that the House suspend the rules and agree to the resolution, H. Res. 91, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. ISSA. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Ms. Wanda Evans, one of his secretaries.

PROVIDING FOR AN ADJOURNMENT OR RECESS OF THE TWO HOUSES

Mr. POE. Mr. Speaker, I offer a privileged concurrent resolution (H. Con. Res. 66) and ask for its immediate consideration.

The Clerk read the concurrent resolution, as follows:

H. CON. RES. 66

Resolved by the House of Representatives (the Senate concurring), That when the House adjourns on the legislative day of Thursday, February 17, 2005, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand adjourned until 2 p.m. on Tuesday, March 1, 2005, or until the time of any reassembly pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the Senate recesses or adjourns on Thursday, February 17, 2005, or Friday, February 18, 2005, on a motion offered pursuant to this concurrent resolution by its Majority Leader or his designee, it stand recessed or adjourned until noon on Monday, February 28, 2005, or at such other time on that day as may be specified by its Majority Leader or his designee in the motion to recess or adjourn, or until the time of any reassembly pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Speaker of the House and the Majority Leader of the Senate, or their respective designees, acting jointly after consultation with the Minority Leader of the House and the Minority Leader of the Senate, shall notify the Members of the House and the Senate, respectively, to reassemble at such place and time as they may designate whenever, in their opinion, the public interest shall warrant it.

The concurrent resolution was agreed to.

A motion to reconsider was laid on the table.

ELECTION OF MEMBER TO COMMITTEE ON RESOURCES

Mr. POE. Mr. Speaker, I offer a resolution (H. Res. 112) and ask unanimous consent for its immediate consideration in the House.

The SPEAKER pro tempore. The Clerk will report the resolution.

The Clerk read as follows:

H. RES. 112

Resolved, That the following Member be and is hereby elected to the following standing committee of the House of Representatives:

Committee on Resources: Mrs. Musgrave.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

The resolution was agreed to.

A motion to reconsider was laid on the table.

CLARIFICATION OF CERTAIN EXECUTIVE ORDERS BLOCKING PROPERTY AND PROHIBITING CERTAIN TRANSACTIONS—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 109–10)

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on International Relations and ordered to be printed:

To the Congress of the United States:

Pursuant to, inter alia, section 203(a) of the International Emergency Economic Powers Act (50 U.S.C. 1702(a)) (IEEPA) and section 201(a) of the National Emergencies Act (50 U.S.C. 1621(a)) (NEA), I exercised my statutory authority to declare national

emergencies in Executive Orders 13224 of September 23, 2001, as amended, and 12947 of January 23, 1995, as amended. I have issued a new Executive Order that clarifies certain measures taken to address those national emergencies. This new Executive Order relates to powers conferred to me by section 203(b)(2) of IEEPA and clarifies that the Executive Orders at issue prohibit a blocked United States person from making humanitarian donations.

The amendments made to those Executive Orders by the new Executive Order take effect as of the date of the new order, and specific licenses issued pursuant to the prior Executive Orders continue in effect, unless revoked or amended by the Secretary of the Treasury. General licenses, regulations, orders, and directives issued pursuant to the prior Executive Orders continue in effect, except to the extent inconsistent with this order or otherwise revoked or modified by the Secretary of the Treasury.

GEORGE W. BUSH.

THE WHITE HOUSE, *February 16, 2005.*

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Without objection, the Chair will recognize Members for Special Order speeches without prejudice to possible resumption of legislative business.

SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 2005, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Indiana (Mr. BURTON) is recognized for 5 minutes.

(Mr. BURTON of Indiana addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from California (Ms. LEE) is recognized for 5 minutes.

(Ms. LEE addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

□ 1515

SMART SECURITY AND $82 BILLION IRAQ SUPPLEMENTAL, PART 2

The SPEAKER pro tempore (Mr. REHBERG). Under a previous order of the House, the gentlewoman from California (Ms. WOOLSEY) is recognized for 5 minutes.

Ms. WOOLSEY. Mr. Speaker, when it comes to our Nation's spending priorities, President Bush and his administration do not know which way is up. Already the President has given Congress a 2006 budget that is all but certain to explode in the year 2009; a ticking time bomb set to detonate after President Bush leaves office. In a move that should surprise no one, this budget conspicuously omits funding for any and all military operations and reconstruction efforts in Iraq, leaving the funding to a supplemental spending bill that does not count against the President's deficit estimates.

These funds are not insignificant. To date Congress has funded a $154 billion military operations and reconstruction budget in Iraq, and the Democratic staff on the House Committee on the Budget has estimated that the war in Iraq could cost the United States as much as $650 billion by the year 2015. Adjusted for inflation, this amount rivals the combined costs of the Korean War, the Vietnam War, and the first Gulf War; the combined costs.

Let me be clear that my opposition to the President's reckless fiscal policies is not a condemnation of the service men and women who so bravely serve our country. I want everyone to know that I oppose the war, not the warriors. Hundred of thousands of selfless troops were uprooted from their families and their everyday lives to answer the call of duty for their country, and we owe them our absolute gratitude. Sadly, so far, 1,500 of these brave men and women will not return home alive. Another 11,000 will return home forever wounded as a result of injuries sustained in battle. These are the casualties of this ill-conceived war.

A lot of people talk about supporting our troops, but the call to support our troops is yet another reason to oppose President Bush's latest supplemental spending request. If the Bush administration really cared about our troops, they would take all measures to get them out of harm's way and bring them home as soon as possible. But the latest supplemental assumes that 150,000 American soldiers will stay in Iraq as sitting ducks for years to come. And this bill does not bring them home. It is wholly irresponsible for the Bush administration to fund an unending military operation without devising an exit strategy and without even considering the possibility that the military option is not working.

The supplemental spending bill that President Bush sent to Congress also fails to include any type of reporting mechanism, which means that these funds can be spent by military commanders without any accounting of how or where that money was spent. This is a woefully irresponsible way to spend American taxpayers' money.

This, on top of $9 billion in reconstruction funds that cannot be accounted for by the Coalition Provisional Authority, the American governing body that was in charge of overseeing Iraq until 2004. This, on top of $3 billion in reconstruction funds that had to be reprogrammed for military operations because the Bush administration failed to account for an angry Iraqi insurgency.

What did the President think would happen when he invaded a country that never posed a threat to the United States and never wanted us there in the first place?

Instead of continuing down our current path, I believe we must pursue a national security strategy that I call SMART security, which is a sensible, multilateral American response to terrorism for the 21st century. I have also introduced legislation, H. Con. Res. 35, that would help us pursue a smarter strategy for rebuilding Iraq. Twenty-seven of my House colleagues have joined me in offering this important legislation.

Instead of financing billions of more dollars to continue a failed military occupation, under my plan, the United States would help secure Iraq by rebuilding schools so that children can learn, constructing new water processing plants so that this desert country does not face water shortages, and building new roads so that citizens can travel from one city to another.

Our assistance should not end there. If we want to be truly smart about how we rebuild Iraq, we also need to bring NGOs and humanitarian agencies into the country to help create a robust civil society and ensure that Iraq's economic infrastructure becomes fully viable.

It is time for us to support the Iraqi people by giving them the resources they need, and it is time to support our own troops by bringing them home.

HONORING LANCE CORPORAL FRED LEE MACIEL

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas (Mr. POE) is recognized for 5 minutes.

Mr. POE. Mr. Speaker, I rise today in honor of a young American marine from my Southeast Texas district, Marine Lance Corporal Fred Lee Maciel who died valiantly serving our Nation in Iraq. He was assigned to the Third Marine Division. Lance Corporal Maciel in his 20 years had already exhibited a lifetime of sacrifice and selflessness. In the deadliest event for American forces in Iraq since the start of the operations in March of 2003, he and 30 other servicemen were killed in combat when the helicopter in which they were traveling crashed in Al Anbar Province in Iraq.

Lance Corporal Maciel and all his brethren aboard this helicopter, including 6 other U.S. marines from Texas, were on their way to begin security preparations for the ultimately successful and historic Iraqi elections that I personally had the honor to witness several days later. Lance Corporal Maciel died so that freedom could live in the birth of this new democracy that we call Iraq.

This Lance Corporal was a native of Spring, Texas. He graduated from

Spring High School in 2003 and joined the United States Marine Corps that September. He is remembered as an athlete, a leader in the school's Naval Junior ROTC, and a role model for other students. Gloria Marshall, the principal of Spring High School, recalls Fred's participation in basketball and football as well as his rise through the ranks of the ROTC program to become a leader and an officer. She said, ''Fred is greatly mourned at our school. The teachers and the students all mourn him. He was truly a fine, fine young man.'' Lance Corporal Maciel was scheduled to return home following the January 30 elections in Iraq and had plans to marry his fiancee, Jamie Hommel.

Last week when I spoke to Fred's mother, Mrs. Patsy Maciel, she told me that her son went to Iraq to protect Texans and Americans from terrorists. Under extremely grueling circumstances, Lance Corporal Maciel contributed to that very cause. He inspired his follow marines with his courage, commitment, his character.

Fred's father, Fred Copenhaver, told me that his son had marveled at the thought of becoming a State trooper upon his eventual discharge from the United States Marine Corps. Now Fred pays tribute to his son with a free-standing wall proudly featuring photographs, notes and ribbons in honor of his son.

To date in support of Operation Iraqi Freedom, our United States Marine Corps alone has lost 48 Texans, 3 from the Houston area in combat-related casualties.

And while our military cannot replace individuals of unique character like Lance Corporal Fred Maciel, I believe that his service will provide a stirring example for the men and women who carry forward his unbendable fight against tyranny, terror, and treachery.

Country western singer Billy Ray Cyrus sang, following the first Gulf War, about America's valiant youth who readily insert themselves between us and international villains. He said, ''All gave some and some gave all. And some stood tall for the red, white and blue, and some had to fall.''

At his memorial service, Pastor Robert Hogan reminded Fred's family and friends and the hundreds of other people at the funeral that he had paid the price for freedom and thus had not died in vain. Pointing to the fruitful elections in Iraq that Sunday, Pastor Hogan said Fred was so loving and willing to give his life for his country and for causes he believed in.

Lance Corporal Maciel died in helping establish democracy in a land far, far away. You know, some causes are worth dying for. And liberty is one of those causes. Fred's brother Carlos echoed his brother's life was not wasted when he said he died for what he believed in.

We live in a culture sometimes where people do not believe in anything. And so I believe that if today we could hear from Lance Corporal Maciel himself, a member of the once and always United States Marine Corps, as a member of the few and the proud, he would resonate the remainder of the refrain from Billy Ray Cyrus's Some Gave All: ''And if you ever think of me, think of all your liberties and recall, yes recall some gave all.''

Lance Corporal Maciel we will remember, we will forever remember your fight against these international outlaws.

Mr. Speaker, as we extend our prayers and our condolences to his parents, his relatives, his fellow students at Spring High School in Texas and his fiance, may this American hero's devotion to his country continue to kindle our dreams and ambitions of a free people.

So Semper Fi, Lance Corporal Maciel, Semper Fi.

ORDER OF BUSINESS

Ms. BEAN. Mr. Speaker, I ask unanimous consent to speak out of order.

The SPEAKER pro tempore (Mr. REHBERG). Is there objection to the request of the gentlewoman from Illinois?

There was no objection.

PAYING TRIBUTE TO OUR TROOPS

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Illinois (Ms. BEAN) is recognized for 5 minutes.

Ms. BEAN. Mr. Speaker, I rise today to pay tribute to our brave men and women in uniform serving around the world and here at home. Our Active-Duty personnel, Guard members and reservists constitute the best-trained and most dedicated fighting force the world has ever known.

They are our family members, our close friends and our neighbors, our teachers, physicians and small business owners. They have pledged to us their valued time, their honor, and their lives. Let us now take a moment to recognize them and remember their loss.

Mr. Speaker, since 2001, more than 36,000 of my fellow Illinoisans have served in Afghanistan and Iraq. Here in Washington, it is our job to make sure that they have not only the necessary training and equipment to complete their mission, but also fair pay, comprehensive benefits, and the best medical care available.

As we in Congress work to ensure that the men and women of our Armed Forces are properly equipped and trained, we must never forget the costly commitments made by so many of them to protect and defend the United States and our most valued ideals.

Finally, Mr. Speaker, I want to pay tribute to two service members from my district who have paid the ultimate price in service to their country. Marine Lance Corporal Sean Maher and Army Staff Sergeant Donald Bernard Farmer were both recently killed in action in the Iraq theatre.

I ask my colleagues to join with me today in remembering Lance Corporal Maher and Staff Sergeant Farmer and all Americans who have stood and have fallen for our great Nation.

While the loss to their families is immeasurable, I can only hope that they take some comfort in knowing the thoughts and prayers of a grateful Nation are with them.

Today I can ask my colleagues to never forget the commitments we have asked of our service members and their unwavering dedication to America. Through the actions of this body, let us always strive to honor those who serve and sacrifice in the name of this great Nation.

PUBLICATION OF THE RULES OF THE COMMITTEE ON HOMELAND SECURITY, 109TH CONGRESS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. COX) is recognized for 5 minutes.

Mr. COX. Mr. Speaker, in accordance with Clause 2 of Rule XI of the Rules of the House, I submit the Rules of Procedure for the Committee on Homeland Security for printing in the CONGRESSIONAL RECORD. On February 9, 2005, the Committee adopted these rules by a voice vote, with a quorum present.

COMMITTEE ON HOMELAND SECURITY

COMMITTEE RULES

I. GENERAL PROVISIONS

A. Applicability of the Rules of the U.S. House of Representatives.—The Rules of the U.S. House of Representatives (the ''House'') are the rules of the Committee on Homeland Security (the ''Committee'') and its subcommittees insofar as applicable.

B. Applicability to Subcommittees.—Except where the terms ''full Committee'' and ''subcommittee'' are specifically referred to, the following rules shall apply to the Committee's subcommittees and their respective Chairmen and Ranking Minority Members to the same extent as they apply to the full Committee and its Chairman and Ranking Minority Member.

C. Appointments by the Chairman.—The Chairman of the Committee (''the Chairman'') shall appoint a Member of the majority party to serve as Vice Chairman of the Committee. The Chairman shall appoint other Members of the majority party to serve as Chairmen of each of the subcommittees.

D. Referral of Bills by Chairman.—Except for bills or measures retained by the Chairman for full Committee consideration or discharged by the Chairman, every bill or other measure referred to the Committee shall be referred by the Chairman to the appropriate subcommittee within two weeks of receipt by the Committee for consideration in accordance with its jurisdiction. Where the subject matter of the referral involves the jurisdiction of more than one subcommittee or does not fall within any previously assigned jurisdiction, the Chairman will refer the matter as he or she deems advisable. Bills, resolutions, and other matters referred to subcommittees may be reassigned or discharged by the Chairman when, in his or her sole judgment, the subcommittee is not able to complete its work or cannot reach agreement on the matter in a timely manner.

E. Recommendation of Conferees.—Whenever the Speaker of the House is to appoint a conference committee on a matter within the jurisdiction of the Committee, the Chairman shall recommend to the Speaker of the House conferees from the Committee. In making recommendations of minority Members as conferees, the Chairman shall do so with the concurrence of the Ranking Minority Member of the Committee.

F. Motions to Disagree.—The Chairman is directed to offer a motion under clause 1 of rule XXII of the Rules of the House whenever the Chairman considers it appropriate.

II. MEETINGS AND HEARINGS

A. Regular Meeting Date.—The regular meeting date and time for the transaction of business of the Committee shall be at 10:00 a.m. on the first Wednesday that the House is in Session each month, unless otherwise directed by the Chairman.

B. Additional Meetings.—The Chairman may call and convene, as he or she considers necessary, additional meetings of the Committee for the consideration of any bill or resolution pending before the Committee or for the conduct of other Committee business. The Committee shall meet for such purposes pursuant to the call of the Chairman.

C. Consideration.—Except in the case of a special meeting held under Clause 2(c)(2) of House Rule XI, the determination of the business to be considered at each meeting of the Committee shall be made by the Chairman.

D. Notice.—

1. Hearings.—The date, time, place and subject matter of any hearing of the Committee shall, except as provided in the Committee rules, be announced by notice at least one week in advance of the commencement of such hearing. The names of all witnesses scheduled to appear at such hearing shall be provided to Members no later than 48 hours prior to the commencement of such hearing. These notice requirements may be abridged or waived in extraordinary circumstances, as determined by the Chairman with the concurrence of the Ranking Minority Member.

2. Meetings.—The date, time, place and subject matter of any meeting, other than a hearing or a regularly scheduled meeting, shall be announced at least 36 hours in advance for a meeting taking place on a day the House is in session, and 72 hours in advance of a meeting taking place on a day the House is not in session, except in the case of a special meeting called under Clause 2(c)(2) of House Rule XI. These notice requirements may be abridged or waived in extraordinary circumstances, as determined by the Chairman in consultation with the Ranking Minority Member.

3. Publication.—The meeting announcement shall be published in the Daily Digest portion of the Congressional Record.

E. Open Meetings.—All meetings of the Committee shall be open to the public except when the Committee, in open session and with a majority present, determines by recorded vote that all or part of the remainder of that hearing on that day shall be closed to the public because disclosure of testimony, evidence, or other matters to be considered would endanger the national security or would violate any law or rule of the House, in accordance with Clause 2(g) or 2(k) of House Rule XI.

F. Quorum Requirements.—Two Members shall constitute a quorum for the purposes of receiving testimony and evidence at a duly noticed hearing or meeting. One-third of the Members of the Committee shall constitute a quorum for the transaction of business, except that a majority of the Committee shall constitute a quorum for ordering a report, entering executive session, releasing executive session material, issuing a subpoena, immunizing a witness, reporting contempt, or where otherwise required under the rules of the House.

G. Opening Statements.—At any meeting of the full Committee, the Chairman and Ranking Minority Member shall be entitled to present oral opening statements of five minutes each. Other Members may submit written opening statements for the record. In the case of a meeting of any subcommittee, the Chairmen and Ranking Minority Members of the subcommittee and the full Committee shall be entitled to present oral opening statements of five minutes each, and other Members may submit written opening statements for the record. At any hearing of the full Committee, the Chairman of the full Committee, and at any hearing of a subcommittee, the Chairman of that subcommittee, in his or her discretion and with the concurrence of the Ranking Minority Member of the full Committee or of that subcommittee, respectively, may permit additional opening statements by other Members of the full Committee or of that subcommittee at the hearing in question.

H. Questioning of Witnesses.—Committee questioning of witnesses shall be conducted by any Member of the Committee, as well as by such Committee staff as may be authorized by the Chairman or presiding Member to question such witnesses. Committee Members or authorized staff may question witnesses only when recognized by the Chairman for that purpose.

1. Time Limitation.—In the course of any hearing, Members shall be limited to five minutes on the initial round of questioning. No Member shall be recognized for a second opportunity to question a witness until each Member of the Committee who is present has been recognized for that purpose.

2. Order of Recognition.—In questioning witnesses, the Chairman and the Ranking Minority Member shall be recognized first, after which Members who are in attendance when the Chairman gavels the hearing to order will be recognized in the order of their seniority on the Committee, alternating between majority and minority Members. Members arriving after the commencement of a hearing shall be recognized after all Members present at the beginning of the hearing have been recognized, in the order of their appearance, alternating between majority and minority Members.

3. Alternative Questioning Procedure.—The Chairman, or the Committee by motion, may permit an equal number of majority and minority Members to question a witness for a specified, total period that is equal for each side and not longer than 30 minutes for each side. The Chairman, or the Committee by motion, may permit Committee staff of the majority and minority to question a witness for a specified, total period that is equal for each side and not longer than 30 minutes for each side.

I. Oath or Affirmation.—Whenever the full Committee or the Subcommittee on Management, Integration, and Oversight holds a hearing or meeting that the Chairman has designated as an investigatory hearing or meeting in order to take testimony or consider other evidence, the testimony of any person before such Committee or Subcommittee shall be given under oath or affirmation administered by the Chairman or his designee.

J. Statements by Witnesses—

1. Witnesses shall submit a prepared or written statement for the record of the proceedings (including, where practicable an electronic copy) with the Clerk of the Committee, and insofar as practicable and consistent with the notice given, shall do so no less than 48 hours in advance of the witness' appearance before the Committee, unless such requirement is waived or otherwise modified by the Chairman in consultation with the Ranking Minority Member.

2. To the greatest extent practicable, the written testimony of each witness appearing in a non-governmental capacity shall include a curriculum vitae and a disclosure of the amount and source (by agency and program) of any federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two preceding fiscal years by the witness or by an entity represented by the witness.

K. Objections and Ruling.—Except as otherwise provided by the rules of the House, any objection raised by a witness shall be ruled upon by the Chairman or other presiding Member, and such ruling shall be the ruling of the Committee unless a Member of the Committee appeals the ruling of the chair and a majority of the Committee present fails to sustain the ruling of the chair.

L. Transcripts.—A transcript shall be made of the testimony of each witness appearing before the Committee during a Committee hearing. All hearings of the Committee which are open to the public shall be printed and made available.

M. Minority Witnesses.—Whenever a hearing is conducted by the Committee upon any measure or matter, the minority party Members on the Committee shall be entitled, upon request to the Chairman by a majority of those minority Members before the completion of such hearing, to call witnesses selected by the minority to testify with respect to that measure or matter during at least one day of hearing thereon.

N. Contempt Procedures.—No recommendation that a person be cited for contempt of Congress shall be forwarded to the House unless and until the Committee has, upon notice to all its Members, met and considered the alleged contempt. The person to be cited for contempt shall be afforded, upon notice of at least 72 hours, an opportunity to state why he or she should not be held in contempt, prior to a vote of all the Committee, a quorum being present, on the question whether to forward such recommendation to the House. Such statement shall be, in the discretion of the Chairman, either in writing or in person before the Committee.

O. The Five-Minute Rule.—The time any one Member may address the Committee on any bill, motion, or other matter under consideration by the Committee shall not exceed five minutes, and then only when the Member has been recognized by the Chairman, except that this time limit may be exceeded when permitted by unanimous consent.

P. Postponement of Vote.—The Chairman may postpone further proceedings when a record vote is ordered on the question of approving any measure or matter or adopting an amendment. The Chairman may resume proceedings on a postponed vote at any time, provided that all reasonable steps have been taken to notify Members of the resumption of such proceedings. When proceedings resume on a postponed question, notwithstanding any intervening order for the previous question, an underlying proposition shall remain subject to further debate or amendment to the same extent as when the question was postponed.

Q. Breaches of Decorum.—The Chairman may punish breaches of order and decorum, by censure and exclusion from the hearing; and the Committee may cite the offender to the House for contempt.

R. Access to Dais.—Access to the dais during and before a hearing, mark-up or other meeting of the Committee shall be limited to Members and staff of the Committee, and staff of Members of the Committee.

S. Cellular Telephones.—The ringing or conversational use of cellular telephones is prohibited on the Committee dais or in the Committee hearing room during a hearing, mark-up, or other meeting of the Committee.

T. Broadcasting.—Whenever any hearing or meeting conducted by the Committee is open to the public, the Committee shall permit that hearing or meeting to be covered by television broadcast, internet broadcast, print media, and still photography, or by any of such methods of coverage, subject to the provisions of the Legislative Reorganization Act of 1970 (Section 116(b)) and House Rule XI. Priority shall be given by the Committee to members of the Press Galleries.

III. SUBPOENAS

A. Authorization.—The Committee, or any subcommittee, may authorize and issue a subpoena under clause 2(m)(2)(A) of Rule XI of the House, if authorized by a majority of the members of the Committee or subcommittee (as the case may be) voting, a quorum being present. The power to authorize and issue subpoenas is also delegated to the Chairman of the full Committee, in consultation with the Ranking Minority Member, as provided for under clause 2(m)(3)(A)(i) of Rule XI of the House of Representatives. Subpoenas shall be issued under the seal of the House and attested by the Clerk of the House, and may be served by any person designated by the Chairman. Subpoenas shall be issued under the Chairman's signature or that of a Member designated by the Committee.

B. Disclosure.—Provisions may be included in a subpoena, by concurrence of the Chairman and Ranking Minority Member, or by the Committee, to prevent the disclosure of Committee demands for information when deemed necessary for the security of information or the progress of an investigation, including but not limited to prohibiting the revelation by witnesses and their counsel of Committee inquiries.

C. Subpoena duces tecum.—A subpoena duces tecum may be issued whose return shall occur at a time and place other than that of a regularly scheduled meeting.

D. Requests for Investigations.—Requests for investigations, reports, and other assistance from any agency of the executive, legislative, and judicial branches of the federal government shall be made by the Chairman, upon consultation with the Ranking Minority Member, or by the Committee.

E. Affidavits and Depositions.—The Chairman, in consultation with the Ranking Member, or the Committee may authorize the taking of an affidavit or deposition with respect to any person who is subpoenaed under these rules but who is unable to appear in person to testify as a witness at any hearing or meeting.

IV. SUBCOMMITTEES

A. Generally.—The Committee shall be organized to consist of five standing subcommittees with the following jurisdiction:

1. Subcommittee on Prevention of Nuclear and Biological Attack: Prevention of terrorist attacks on the United States involving nuclear and biological weapons, including the Department of Homeland Security's role in nuclear and biological counter-proliferation and detection of fissile materials, biological weapons, precursors, and production equipment; the Department of Homeland Security's role in detecting and interdicting commerce in and transit of nuclear and biological weapons, components, precursors, delivery systems, and production equipment; development and deployment of sensors to detect nuclear and biological weapons, components, precursors, and production equipment; inspections conducted domestically and abroad to detect and interdict nuclear and biological weapons, components, precursors, delivery systems, and production equipment; nuclear and biological threat certification and characterization; preventative use of technology, including forensic analytic techniques, to attribute nuclear and biological weapons-related samples to their sources; border, port, and transportation security designed to prevent nuclear and biological attacks on the United States; integration of federal, state, and local efforts to prevent nuclear and biological attacks, including coordination of border security initiatives for this purpose; conducting relevant oversight; and other matters referred to the Subcommittee by the Chairman.

2. Subcommittee on Intelligence, Information Sharing, and Terrorism Risk Assessment: Intelligence and information sharing for the purpose of preventing, preparing for, and responding to potential terrorist attacks on the United States; the responsibility of the Department of Homeland Security for comprehensive, nationwide, terrorism-related threat, vulnerability, and risk analyses; the integration, analysis, and dissemination of homeland security information, including the Department of Homeland Security's participation in, and interaction with, other public and private sector entities for any of those purposes; communications of terrorism-related information by the federal government to State, local, and private sector entities; issuance of terrorism threat advisories and warnings (including administration of the Homeland Security Advisory System); liaison of the Department of Homeland Security with U.S. intelligence and law enforcement agencies; information gathering, analysis, and sharing by Department of Homeland Security entities; the role of intelligence in terrorism threat prioritization; conducting relevant oversight; and other matters referred to the Subcommittee by the Chairman.

3. Subcommittee on Economic Security, Infrastructure Protection, and Cybersecurity: Development of strategies to protect against terrorist attack against the United States; prioritizing risks through analytical tools and cost/benefit analyses; prioritizing investment in critical infrastructure protection across all sectors, including transportation (air, land, sea, and intermodal, both domestic and international); defeating terrorist efforts to inflict economic costs through threats and violence; mitigation of potential consequences of terrorist attacks on critical infrastructure, and related target hardening strategies; border, port, and transportation security; in the wake of an attack on one sector, ensuring the continuity of other sectors including critical government, business, health, financial, commercial, and social service functions; security of computer, telecommunications, information technology, industrial control systems, electronic infrastructure, and data systems; protecting government and private networks and computer systems from domestic and foreign attack; preventing potential injury to civilian populations and physical infrastructure resulting, directly or indirectly, from cyber attacks; with respect to each of the foregoing, assessing the impact of potential protective measures on the free flow of commerce and the promotion of economic growth; conducting relevant oversight; and other matters referred to the Subcommittee by the Chairman.

4. Subcommittee on Management, Integration, and Oversight: Oversight of Department of Homeland Security progress in implementing the management and organizational directives of the Homeland Security Act and other homeland security-related mandates; Department of Homeland Security offices responsible for the provision of department-wide services, including the Under Secretary for Management, the Chief Information Officer, and the Chief Financial Officer; cross-directorate, Department-wide standardization and programmatic initiatives; investigations and reports by the Inspector General of the Department of Homeland Security; standardization and security of Department of Homeland Security communications systems and information technology infrastructure; harmonization and effectiveness of Department of Homeland Security budgeting, acquisition, procurement, personnel, and financial management systems; incentives and barriers to hiring that affect Department components; Department of Homeland Security-initiated internal reorganizations; conducting relevant oversight; and other matters referred to the Subcommittee by the Chairman.

5. Subcommittee on Emergency Preparedness, Science, and Technology: Preparedness for and collective response to terrorism, including federal support to first responders; terrorism-related incident management and response; consequence mitigation; Department of Homeland Security-administered homeland security grants to first responders; conduct and coordination of exercises and training relating to mitigating the effects of and responding to terrorist attacks (including nuclear, biological, radiological, and chemical attacks on civilian populations); federal government coordination of terrorism-related emergency preparedness and response with and among state and local governments, the private sector, and the public; research, development and deployment of technology for combating terrorism; adaptation of existing technologies to homeland security prevention priorities; coordination and enhancement of Department of Homeland Security interaction on science and technology matters with the private sector, federally funded research and development centers, educational institutions, the National Laboratories, and other scientific resources; Department of Homeland Security-based science and technology entities and initiatives; conducting relevant oversight; and other matters referred to the Subcommittee by the Chairman.

B. Powers and Duties of Subcommittees.—Except as otherwise directed by the Chairman of the full Committee, each subcommittee is authorized to meet, hold hearings, receive testimony, mark up legislation, and report to the Committee on all matters within its jurisdiction. Subcommittee chairmen shall set hearing and meeting dates only with the approval of the Chairman of the Committee.

C. Selection and Ratio of Subcommittee Members.—The Chairman and Ranking Member shall select their respective Members of each Subcommittee. The ratio of majority to minority Members shall be comparable to the ratio of majority to minority Members on the full Committee, except that each subcommittee shall have at least two more majority Members than minority Members.

D. Ex Officio Members.—The Chairman and the Ranking Minority Member of the Committee shall be ex officio members of all subcommittees, with full rights as a member of each subcommittee. They are authorized to vote on all matters that arise before any subcommittee, and may be counted for purposes of establishing a quorum in such subcommittees.

E. Special Voting Provision.—If a tie vote occurs in a subcommittee on the question of reporting any measure to the full Committee, the measure shall be placed on the agenda for full Committee consideration as

if it had been ordered reported by the subcommittee without recommendation.

V. COMMITTEE STAFF

A. Generally.—Members of the Committee staff shall work collegially, with discretion, and always with the best interests of the Nation's security foremost in mind. Committee business shall, whenever possible, take precedence over other official and personal business. For the purpose of these rules, Committee staff means the employees of the Committee, consultants engaged by the Committee, and any other person engaged by contract, or otherwise, to perform services for, or at the request of, the Committee, including detailees and fellows. All such persons shall be subject to the same requirements as employees of the Committee under this rule. To be employed or otherwise engaged by the Committee, an individual must be eligible to be considered for routine (nonlimited) access to classified information.

B. Staff Assignments.—All Committee staff shall be staff of, and engaged by, the full Committee. Committee staff shall be either majority, minority, or joint. Majority staff shall be designated by and assigned to the Chairman. Minority staff shall be designated by and assigned to the Ranking Minority Member. Joint Committee staff shall be designated by the Chairman, in consultation with the Ranking Minority Member, and assigned to service of the full Committee. The Chairman shall certify Committee staff appointments, including appointments by the Ranking Minority Member and joint staff appointments, to the Clerk of the House in writing.

C. Joint Committee Staff.—The Chairman and Ranking Minority Member may agree to employ joint Committee staff, with duties as mutually agreed. Such joint Committee staff works for the Committee as a whole, under the supervision and direction of the Staff Director of the Committee.

D. Notification of Testimony.—No member of the Committee staff shall be employed by the Committee unless and until such person agrees in writing, as a condition of employment, to notify the Committee of any request for testimony, either while a member of the Committee staff or at any time thereafter, with respect to classified information which came into the staff member's possession by virtue of his or her position as a member of the Committee staff. Such classified information shall not be disclosed in response to such requests except as authorized by the Committee.

E. Divulgence of Information.—Prior to the public acknowledgement by the Chairman or the Committee of a decision to initiate an investigation of a particular person, entity, or subject, no member of the Committee staff shall divulge to any person any information, including non-classified information, which comes into his or her possession by virtue of his or her status as a member of the Committee staff, if such information may alert the subject of a Committee investigation to the existence, nature, or substance of such investigation, unless authorized to do so by the Chairman or the Committee.

VI. MEMBER AND STAFF TRAVEL

A. Approval of Travel.—Consistent with the primary expense resolution and such additional expense resolutions as may have been approved, travel to be reimbursed from funds set aside for the Committee for any Member or any Committee staff shall be paid only upon the prior authorization of the Chairman. Travel may be authorized by the Chairman for any Member and any Committee staff only in connection with official Committee business, such as the attendance of hearings conducted by the Committee and meetings, conferences, site visits, and investigations that involve activities or subject matter under the general jurisdiction of the Committee.

1. Proposed Travel by Majority Party Members and Staff.—In the case of proposed travel by majority party Members or Committee staff, before such authorization is given, there shall be submitted to the Chairman in writing the following: (a) the purpose of the travel; (b) the dates during which the travel is to be made and the date or dates of the event for which the travel is being made; (c) the location of the event for which the travel is to be made; and (d) the names of Members and staff seeking authorization. On the basis of that information, the Chairman shall determine whether the proposed travel is for official Committee business, concerns subject matter within the jurisdiction of the Committee, and is not excessively costly in view of the Committee business proposed to be conducted.

2. Proposed Travel by Minority Party Members and Staff.—In the case of proposed travel by minority party Members or Committee staff, the Ranking Minority Member shall provide to the Chairman a written representation setting forth the information specified in items (a), (b), (c), and (d) of subparagraph (1) and his or her determination that such travel complies with the other requirements of subparagraph (1).

3. Foreign Travel.—All Committee Member and staff requests for Committee-funded foreign travel must be submitted to the Chairman, through the Chief Financial Officer of the Committee, not less than seven business days prior to the start of the travel. Within 60 days of the conclusion of any such foreign travel authorized under this rule, there shall be submitted to the Chairman a written report summarizing the information gained as a result of the travel in question, or other Committee objectives served by such travel.

VII. COMMITTEE RECORDS

A. Legislative Calendar.—The Clerk of the Committee shall maintain a printed calendar for the information of each Committee Member showing any procedural or legislative measures considered or scheduled to be considered by the Committee, and the status of such measures and such other matters as the Committee determines shall be included. The calendar shall be revised from time to time to show pertinent changes. A copy of such revisions shall be made available to each Member of the Committee upon request.

B. Members Right To Access.—Members of the Committee and of the House shall have access to all official Committee records. Access to Committee files shall be limited to examination within the Committee offices at reasonable times. Access to Committee records that contain classified information shall be provided in a manner consistent with section VIII of these rules.

C. Removal of Records.—Files and records of the Committee are not to be removed from the Committee offices. No Committee files or records that are not made publicly available shall be photocopied by any Member.

D. Executive Session Records.—Evidence or testimony received by the Committee in executive session shall not be released or made available to the public unless agreed to by the Committee. Members may examine the Committee's executive session records, but may not make copies of, or take personal notes from, such records.

E. Public Inspection.—The Committee shall keep a complete record of all Committee action including recorded votes. Information so available for public inspection shall include a description of each amendment, motion, order or other proposition and the name of each Member voting for and each Member voting against each such amendment, motion, order, or proposition, as well as the names of those Members present but not voting. Such record shall be made available to the public at reasonable times within the Committee offices.

F. Separate and Distinct.—All Committee records and files must be kept separate and distinct from the office records of the Members serving as Chairman and Ranking Minority Member. Records and files of Members' personal offices shall not be considered records or files of the Committee.

G. Disposition of Committee Records.—At the conclusion of the 109th Congress, the records of the Committee shall be delivered to the Archivist of the United States in accordance with Rule VII of the Rules of the House.

H. Archived Records.—The records of the Committee at the National Archives and Records Administration shall be made available for public use in accordance with Rule VII of the Rules of the House. The Chairman shall notify the Ranking Minority Member of any decision, pursuant to clause 3 (b)(3) or clause 4 (b) of the Rule, to withhold a record otherwise available, and the matter shall be presented to the Committee for a determination on the written request of any member of the Committee. The Chairman shall consult with the Ranking Minority Member on any communication from the Archivist of the United States or the Clerk of the House concerning the disposition of noncurrent records pursuant to clause 3(b) of the Rule.

VIII. CLASSIFIED AND OTHER CONFIDENTIAL INFORMATION

A. Security Precautions.—Committee staff offices, including majority and minority offices, shall operate under strict security precautions administered by the Security Officer of the Committee. A security officer shall be on duty at all times during normal office hours. Sensitive or classified documents may be examined only in an appropriately secure manner. Removal from the secure area of the Committee's offices of such documents and other materials is prohibited except with leave of the Chairman for use in furtherance of Committee business, in accordance with applicable security procedures.

B. Temporary Custody of Executive Branch Material.—Executive branch documents or other materials containing classified information in any form that were not made part of the record of a Committee hearing, did not originate in the Committee or the House, and are not otherwise records of the Committee shall, while in the custody of the Committee, be segregated and maintained by the Committee in the same manner as Committee records that are classified. Such documents and other materials shall be returned to the Executive branch agency from which they were obtained at the earliest practicable time.

C. Access by Committee Staff.—Access to classified information supplied to the Committee shall be limited to Committee staff members with appropriate security clearance and a need-to-know, as determined by the Committee, and under the Committee's direction, the Majority and Minority Staff Directors.

D. Maintaining Confidentiality.—No Member of the Committee or Committee staff shall disclose, in whole or in part or by way of summary, to any person who is not a Member of the Committee or an authorized member of Committee staff for any purpose or in connection with any proceeding, judicial or otherwise, any testimony given before the Committee in executive session. Classified information shall be handled in accordance with all applicable provisions of law

and consistent with the provisions of these rules.

E. Oath.—Before a Member or Committee staff member may have access to classified information, the following oath (or affirmation) shall be executed: ''I do solemnly swear (or affirm) that I will not disclose any classified information received in the course of my service on the Committee on Homeland Security, except as authorized by the Committee or the House of Representatives or in accordance with the Rules of such Committee or the Rules of the House.''

Copies of the executed oath (or affirmation) shall be retained by the Clerk as part of the records of the Committee.

F. Disciplinary Action.—The Chairman shall immediately consider disciplinary action in the event any member of the Committee staff fails to conform to the provisions of these rules governing the disclosure of classified or unclassified information. Such disciplinary action may include, but shall not be limited to, immediate dismissal from the Committee staff, criminal referral to the Justice Department, and notification of the Speaker of the House. With respect to minority party staff, the Chairman shall consider such disciplinary action in consultation with the Ranking Minority Member.

IX. CHANGES TO COMMITTEE RULES

These rules may be modified, amended, or repealed by the Committee provided that a notice in writing of the proposed change has been given to each Member at least 48 hours prior to the meeting at which action thereon is to be taken.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Jersey (Mr. PALLONE) is recognized for 5 minutes.

(Mr. PALLONE addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Arizona (Mr. FLAKE) is recognized for 5 minutes.

(Mr. FLAKE addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. DAVIS) is recognized for 5 minutes.

(Mr. DAVIS of Illinois addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

BLUE DOG'S 12-STEP PLAN TO COMMON SENSE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. CARDOZA) is recognized for 5 minutes.

Mr. CARDOZA. Mr. Speaker, I rise this evening to address our Nation's fiscal crisis. The Blue Dog Coalition, of which I am a proud member, has been a leading voice in Congress on fiscal responsibility for over a decade now.

We are dedicated to fighting our Nation's ballooning national debt with every last breath we take, and we will continue to lead the fight for fiscal sanity until the Members of Congress from both sides of the aisle and the White House realize that we cannot continue to run our Nation deeper and deeper into the deficit hole.

What comes as common sense to American families and the business owners across this country does not come that easily to Members of this Congress and especially to members of the administration.

The Blue Dog Coalition 12-step budget reform plan that we introduce today injects just a little bit of common sense into the way that Congress and the White House does business. Our 12-step plan is the most comprehensive reform program to date and makes the attempted reforms in the President's budget look like child's play.

Here is our plan: Number 1. Require a balanced budget. The Blue Dogs believe a balanced budget amendment is the only way to ensure fiscal discipline in Congress.

□ 1530

Number two, do not let Congress buy on credit. The Blue Dogs want to restore the budget rules that Congress once lived by, including pay-as-you-go budgeting. Restoring PAYGO will put our Nation back on track to fiscal responsibility. We did it once before; we can do it again.

Number three, put a lid on spending. The Blue Dogs want strict spending caps to slow the growth of runaway government programs.

Number four, require agencies to put their fiscal houses in order. Sixteen of 23 major Federal agencies cannot complete a simple audit of their books. These agencies should be doing a better job of tracking the taxpayer dollars. The Blue Dogs propose a budget freeze for any agency who cannot balance its own books like Americans do their checkbooks.

Number five, make Congress tell taxpayers how they are spending the money. Many spending bills slide through Congress on a voice vote with no debate. The Blue Dogs propose that any bill calling for $50 million in new spending must be put to a roll call vote right here on the floor of the House of Representatives.

Number six, set aside a rainy-day fund. Forty-five States already do this. If the Federal Government had done it when we had surpluses as the Blue Dogs suggested then, we would be a lot better off right now.

Number seven, do not hide votes to raise the debt limit. The current House rules allow for automatic increases in the debt limit. The Blue Dogs believe that increases in the public debt limit should not be hidden from public view. We want to make every increase in the debt limit subject to a rollcall vote.

Number eight, justify the spending for pork barrel projects. Since 1991 Congress has spent $185 billion on pet projects for Members. While many of these projects are worthy of taxpayer support, some are not. The Blue Dogs propose that Members of Congress provide written justifications for any earmarked spending for their pet projects.

Number nine, ensure that Congress reads bills that are voted on. What a novel concept. Over the past few years, some of the largest spending bills in history have been voted on only after a few hours of consideration. The Blue Dogs propose that Members of Congress be given 3 full days minimum to have the final text of legislation before there is a vote.

Number 10, require honest cost estimates for every bill that Congress comes to vote on. There are no requirements that the bills come with an honest estimate of their fiscal impact. The Blue Dogs propose that every bill that comes to the floor of the House be accompanied by a cost estimate from the nonpartisan Congressional Budget Office.

Number 11, make sure new bills fit the budget. The new legislation needs to live within the rules agreed upon by the annual budget resolution. The Blue Dogs propose that the Committee on the Budget strengthen its oversight rule by preparing budget-compliant statements for every bill that is considered by the full House.

Finally, number 12, make Congress do a better job of keeping tabs on government programs. Blue Dogs believe that Congress needs to carry out its oversight responsibilities. We propose that each committee submit at least two reports a year that provide an update on how each committee is fulfilling its oversight duties.

Our 12 steps are commonsense ideas that should transcend partisan differences. I hope that this Congress will adopt these measures as we attempt to restore fiscal responsibility for our Nation.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio (Mr. BROWN) is recognized for 5 minutes.

(Mr. BROWN of Ohio addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

PUBLICATION OF THE RULES OF THE COMMITTEE ON APPROPRIATIONS 109TH CONGRESS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. LEWIS) is recognized for 5 minutes.

Mr. LEWIS of California. Mr. Speaker, pursuant to clause 2 of rule XI I submit for printing in the RECORD the Rules and Practices of the Committee on Appropriations as follows:

Practices:

COMMITTEE ON APPROPRIATIONS

COMMITTEE RULES

EFFECTIVE FOR ONE HUNDRED NINTH CONGRESS

APPROVED FEBRUARY 15, 2005

Resolved, That the rules and practices of the Committee on Appropriations, House of Representatives, in the One Hundred Eighth Congress, except as otherwise provided hereinafter, shall be and are hereby adopted as the rules and practices of the Committee on Appropriations in the One Hundred Ninth Congress.

The foregoing resolution adopts the following rules:

Sec. 1: Power to Sit and Act

For the purpose of carrying out any of its functions and duties under Rules X and XI of the Rules of the House of Representatives, the Committee or any of its subcommittees is authorized:

(a) To sit and act at such times and places within the United States whether the House is in session, has recessed, or has adjourned, and to hold such hearings; and

(b) To require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, reports, correspondence, memorandums, papers, and documents as it deems necessary. The Chairman, or any Member designated by the Chairman, may administer oaths to any witness.

(c) A subpoena may be authorized and issued by the Committee or its subcommittees under subsection 1(b) in the conduct of any investigation or activity or series of investigations or activities, only when authorized by a majority of the Members of the Committee voting, a majority being present. The power to authorize and issue subpoenas under subsection 1(b) may be delegated to the Chairman pursuant to such rules and under such limitations as the Committee may prescribe. Authorized subpoenas shall be signed by the Chairman or by any Member designated by the Committee.

(d) Compliance with any subpoena issued by the Committee or its subcommittees may be enforced only as authorized or directed by the House.

Sec. 2: Subcommittees

(a) The Majority Caucus of the Committee shall establish the number of subcommittees and shall determine the jurisdiction of each subcommittee.

(b) Each subcommittee is authorized to meet, hold hearings, receive evidence, and report to the Committee all matters referred to it.

(c) All legislation and other matters referred to the Committee shall be referred to the subcommittee of appropriate jurisdiction within two weeks unless, by majority vote of the Majority Members of the full Committee, consideration is to be by the full Committee.

(d) The Majority Caucus of the Committee shall determine an appropriate ratio of Majority to Minority Members for each subcommittee. The Chairman is authorized to negotiate that ratio with the Minority; Provided, however, That party representation in each subcommittee, including ex-officio members, shall be no less favorable to the Majority than the ratio for the full Committee.

(e) The Chairman and Ranking Minority Member of the full Committee are authorized to sit as a member of all subcommittees and to participate, including voting, in all its work.

Sec. 3: Staffing

(a) Committee Staff—The Chairman is authorized to appoint the staff of the Committee, and make adjustments in the job titles and compensation thereof subject to the maximum rates and conditions established in Clause 9(c) of Rule X of the Rules of the House of Representatives. In addition, he is authorized, in his discretion, to arrange for their specialized training. The Chairman is also authorized to employ additional personnel as necessary.

(b) Assistants to Members—Each of the top twenty-one senior majority and minority Members of the full Committee may select and designate one staff member who shall serve at the pleasure of that Member. Such staff members shall be compensated at a rate, determined by the Member, not to exceed 75 per centum of the maximum established in Clause 9(c) of Rule X of the Rules of the House of Representatives; Provided, That Members designating staff members under this subsection must specifically certify by letter to the Chairman that the employees are needed and will be utilized for Committee work.

Sec. 4: Committee Meetings

(a) Regular Meeting Day—The regular meeting day of the Committee shall be the first Wednesday of each month while the House is in session, unless the Committee has met within the past 30 days or the Chairman considers a specific meeting unnecessary in the light of the requirements of the Committee business schedule.

(b) Additional and Special Meetings:

(1) The Chairman may call and convene, as he considers necessary, additional meetings of the Committee for the consideration of any bill or resolution pending before the Committee or for the conduct of other Committee business. The Committee shall meet for such purpose pursuant to that call of the Chairman.

(2) If at least three Committee Members desire that a special meeting of the Committee be called by the Chairman, those Members may file in the Committee Offices a written request to the Chairman for that special meeting. Such request shall specify the measure or matter to be considered. Upon the filing of the request, the Committee Clerk shall notify the Chairman.

(3) If within three calendar days after the filing of the request, the Chairman does not call the requested special meeting to be held within seven calendar days after the filing of the request, a majority of the Committee Members may file in the Committee Offices their written notice that a special meeting will be held, specifying the date and hour of such meeting, and the measure or matter to be considered. The Committee shall meet on that date and hour.

(4) Immediately upon the filing of the notice, the Committee Clerk shall notify all Committee Members that such special meeting will be held and inform them of its date and hour and the measure or matter to be considered. Only the measure or matter specified in that notice may be considered at the special meeting.

(c) Vice Chairman To Preside in Absence of Chairman—A member of the majority party on the Committee or subcommittee thereof designated by the Chairman of the full Committee shall be vice chairman of the Committee or subcommittee, as the case may be, and shall preside at any meeting during the temporary absence of the chairman. If the chairman and vice chairman of the Committee or subcommittee are not present at any meeting of the Committee or subcommittee, the ranking member of the majority party who is present shall preside at that meeting.

(d) Business Meetings:

(1) Each meeting for the transaction of business, including the markup of legislation, of the Committee and its subcommittees shall be open to the public except when the Committee or its subcommittees, in open session and with a majority present, determines by roll call vote that all or part of the remainder of the meeting on that day shall be closed.

(2) No person other than Committee Members and such congressional staff and departmental representatives as they may authorize shall be present at any business or markup session which has been closed.

(e) Committee Records:

(1) The Committee shall keep a complete record of all Committee action, including a record of the votes on any question on which a roll call is demanded. The result of each roll call vote shall be available for inspection by the public during regular business hours in the Committee Offices. The information made available for public inspection shall include a description of the amendment, motion, or other proposition, and the name of each Member voting for and each Member voting against, and the names of those Members present but not voting.

(2) All hearings, records, data, charts, and files of the Committee shall be kept separate and distinct from the congressional office records of the Chairman of the Committee. Such records shall be the property of the House, and all Members of the House shall have access thereto.

(3) The records of the Committee at the National Archives and Records Administration shall be made available in accordance with Rule VII of the Rules of the House, except that the Committee authorizes use of any record to which Clause 3(b)(4) of Rule VII of the Rules of the House would otherwise apply after such record has been in existence for 20 years. The Chairman shall notify the Ranking Minority Member of any decision, pursuant to Clause 3(b)(3) or Clause 4(b) of Rule VII of the Rules of the House, to withhold a record otherwise available, and the matter shall be presented to the Committee for a determination upon the written request of any Member of the Committee.

Sec. 5: Committee and Subcommittee Hearings

(a) Overall Budget Hearings—Overall budget hearings by the Committee, including the hearing required by Section 242(c) of the Legislative Reorganization Act of 1970 and Clause 4(a)(1) of Rule X of the Rules of the House of Representatives shall be conducted in open session except when the Committee in open session and with a majority present, determines by roll call vote that the testimony to be taken at that hearing on that day may be related to a matter of national security; except that the Committee may by the same procedure close one subsequent day of hearing. A transcript of all such hearings shall be printed and a copy furnished to each Member, Delegate, and the Resident Commissioner from Puerto Rico.

(b) Other Hearings:

(1) All other hearings conducted by the Committee or its subcommittees shall be open to the public except when the Committee or subcommittee in open session and with a majority present determines by roll call vote that all or part of the remainder of that hearing on that day shall be closed to the public because disclosure of testimony, evidence, or other matters to be considered would endanger the national security or would violate any law or Rule of the House of Representatives. Notwithstanding the requirements of the preceding sentence, a majority of those present at a hearing conducted by the Committee or any of its subcommittees, there being in attendance the number required under Section 5(c) of these Rules to be present for the purpose of taking testimony, (1) may vote to close the hearing for the sole purpose of discussing whether testimony or evidence to be received would

endanger the national security or violate Clause 2(k)(5) of Rule XI of the Rules of the House of Representatives or (2) may vote to close the hearing, as provided in Clause 2(k)(5) of such Rule. No Member of the House of Representatives may be excluded from nonparticipatory attendance at any hearing of the Committee or its subcommittees unless the House of Representatives shall by majority vote authorize the Committee or any of its subcommittees, for purposes of a particular series of hearings on a particular article of legislation or on a particular subject of investigation, to close its hearings to Members by the same procedures designated in this subsection for closing hearings to the public; Provided, however, That the Committee or its subcommittees may by the same procedure vote to close five subsequent days of hearings.

(2) Subcommittee chairmen shall coordinate the development of schedules for meetings or hearings after consultation with the Chairman and other subcommittee chairmen with a view toward avoiding simultaneous scheduling of Committee and subcommittee meetings or hearings.

(3) Each witness who is to appear before the Committee or any of its subcommittees as the case may be, insofar as is practicable, shall file in advance of such appearance, a written statement of the proposed testimony and shall limit the oral presentation at such appearance to a brief summary, except that this provision shall not apply to any witness appearing before the Committee in the overall budget hearings.

(4) Each witness appearing in a nongovernmental capacity before the Committee, or any of its subcommittees as the case may be, shall to the greatest extent practicable, submit a written statement including a curriculum vitae and a disclosure of the amount and source (by agency and program) of any Federal grant (or subgrant thereof) or contract (or subcontract thereof) received during the current fiscal year or either of the two previous fiscal years by the witness or by an entity represented by the witness.

(c) Quorum for Taking Testimony—The number of Members of the Committee which shall constitute a quorum for taking testimony and receiving evidence in any hearing of the Committee shall be two.

(d) Calling and Interrogation of Witnesses:

(1) The Minority Members of the Committee or its subcommittees shall be entitled, upon request to the Chairman or subcommittee chairman, by a majority of them before completion of any hearing, to call witnesses selected by the Minority to testify with respect to the matter under consideration during at least one day of hearings thereon.

(2) The Committee and its subcommittees shall observe the five-minute rule during the interrogation of witnesses until such time as each Member of the Committee or subcommittee who so desires has had an opportunity to question the witness.

(e) Broadcasting and Photographing of Committee Meetings and Hearings—Whenever a hearing or meeting conducted by the full Committee or any of its subcommittees is open to the public, those proceedings shall be open to coverage by television, radio, and still photography, as provided in Clause (4)(f) of Rule XI of the Rules of the House of Representatives. Neither the full Committee Chairman or Subcommittee Chairman shall limit the number of television or still cameras to fewer than two representatives from each medium.

(f) Subcommittee Meetings—No subcommittee shall sit while the House is reading an appropriation measure for amendment under the five-minute rule or while the Committee is in session.

(g) Public Notice of Committee Hearings—The Chairman of the Committee shall make public announcement of the date, place, and subject matter of any Committee or subcommittee hearing at least one week before the commencement of the hearing. If the Chairman of the Committee or subcommittee, with the concurrence of the ranking minority member of the Committee or respective subcommittee, determines there is good cause to begin the hearing sooner, or if the Committee or subcommittee so determines by majority vote, a quorum being present for the transaction of business, the Chairman or subcommittee chairman shall make the announcement at the earliest possible date. Any announcement made under this subparagraph shall be promptly published in the Daily Digest and promptly entered into the Committee scheduling service of the House Information Systems.

Sec. 6: Procedures for Reporting Bills and Resolutions

(a) Prompt Reporting Requirement:

(1) It shall be the duty of the Chairman to report, or cause to be reported promptly to the House any bill or resolution approved by the Committee and to take or cause to be taken necessary steps to bring the matter to a vote.

(2) In any event, a report on a bill or resolution which the Committee has approved shall be filed within seven calendar days (exclusive of days in which the House is not in session) after the day on which there has been filed with the Committee Clerk a written request, signed by a majority of Committee Members, for the reporting of such bill or resolution. Upon the filing of any such request, the Committee Clerk shall notify the Chairman immediately of the filing of the request. This subsection does not apply to the reporting of a regular appropriation bill or to the reporting of a resolution of inquiry addressed to the head of an executive department.

(b) Presence of Committee Majority—No measure or recommendation shall be reported from the Committee unless a majority of the Committee was actually present.

(c) Rollcall Votes—With respect to each rollcall vote on a motion to report any measure or matter of a public character, and on any amendment offered to the measure of matter, the total number of votes cast for and against, and the names of those Members voting for and against, shall be included in the Committee report on the measure or matter.

(d) Compliance With Congressional Budget Act—A Committee report on a bill or resolution which has been approved by the Committee shall include the statement required by section 308(a) of the Congressional Budget Act of 1974, separately set out and clearly identified, if the bill or resolution provides new budget authority.

(e) Constitutional Authority Statement—Each report of the committee on a bill or joint resolution of a public character shall include a statement citing the specific powers granted to the Congress in the Constitution to enact the law proposed by the bill or joint resolution.

(f) Changes in Existing Law—Each Committee report on a general appropriation bill shall contain a concise statement describing fully the effect of any provision of the bill which directly or indirectly changes the application of existing law.

(g) Rescissions and Transfers—Each bill or resolution reported by the Committee shall include separate headings for rescissions and transfers of unexpended balances with all proposed rescissions and transfers listed therein. The report of the Committee accompanying such a bill or resolution shall include a separate section with respect to such rescissions or transfers.

(h) Listing of Unauthorized Appropriations—Each Committee report on a general appropriations bill shall contain a list of all appropriations contained in the bill for any expenditure not previously authorized by law (except for classified intelligence or national security programs, projects, or activities) along with a statement of the last year for which such expenditures were authorized, the level of expenditures authorized for that year, the actual level of expenditures for that year, and the level of appropriations in the bill for such expenditures.

(i) Supplemental or Minority Views:

(1) If, at the time the Committee approves any measure or matter, any Committee Member gives notice of intention to file supplemental, minority, or additional views, the Member shall be entitled to not less than two additional calendar days after the day of such notice (excluding Saturdays, Sundays, and legal holidays) in which to file such views in writing and signed by the Member, with the Clerk of the Committee. All such views so filed shall be included in and shall be a part of the report filed by the Committee with respect to that measure or matter.

(2) The Committee report on that measure or matter shall be printed in a single volume which—

(i) shall include all supplemental, minority, or additional views which have been submitted by the time of the filing of the report, and

(ii) shall have on its cover a recital that any such supplemental, minority, or additional views are included as part of the report.

(3) Subsection (i)(1) of this section, above, does not preclude—

(i) the immediate filing or printing of a Committee report unless timely request for the opportunity to file supplemental, minority, or additional views has been made as provided by such subsection; or

(ii) the filing by the Committee of a supplemental report on a measure or matter which may be required for correction of any technical error in a previous report made by the Committee on that measure or matter.

(4) If, at the time a subcommittee approves any measure or matter for recommendation to the full Committee, any Member of that subcommittee who gives notice of intention to offer supplemental, minority, or additional views shall be entitled, insofar as is practicable and in accordance with the printing requirements as determined by the subcommittee, to include such views in the Committee Print with respect to that measure or matter.

(j) Availability of Reports—A copy of each bill, resolution, or report shall be made available to each Member of the Committee at least three calendar days (excluding Saturdays, Sundays, and legal holidays) in advance of the date on which the Committee is to consider each bill, resolution, or report; *Provided,* That this subsection may be waived by agreement between the Chairman and the Ranking Minority Member of the full Committee.

(k) Performance Goals and Objectives—Each Committee report shall contain a statement of general performance goals and objectives, including outcome-related goals and objectives, for which the measure authorizes funding.

(l) The Chairman is directed to offer a motion under clause 1 of rule XXII of the Rules of the House whenever the Chairman considers it appropriate.

Sec. 7: Voting

(a) No vote by any Member of the Committee or any of its subcommittees with respect to any measure or matter may be cast by proxy.

(b) The vote on any question before the Committee shall be taken by the yeas and nays on the demand of one-fifth of the Members present.

(c) The Chairman of the Committee and any of its subcommittees may—

(1) postpone further proceedings when a record vote is ordered on the question of approving a measure or matter or on adopting an amendment;

(2) resume proceedings on a postponed question at any time after reasonable notice.

When proceedings resume on a postponed question, notwithstanding any intervening order for the previous question, an underlying proposition shall remain subject to further debate or amendment to the same extent as when the question was postponed.

Sec. 8: Studies and Examinations

The following procedure shall be applicable with respect to the conduct of studies and examinations of the organization and operation of Executive Agencies under authority contained in Section 202(b) of the Legislative Reorganization Act of 1946 and in Clause (3)(a) of Rule X of the Rules of the House of Representatives:

(a) The Chairman is authorized to appoint such staff and, in his discretion, arrange for the procurement of temporary services of consultants, as from time to time may be required.

(b) Studies and examinations will be initiated upon the written request of a subcommittee which shall be reasonably specific and definite in character, and shall be initiated only by a majority vote of the subcommittee, with the chairman of the subcommittee and the ranking minority member thereof participating as part of such majority vote. When so initiated such request shall be filed with the Clerk of the Committee for submission to the Chairman and the Ranking Minority Member and their approval shall be required to make the same effective. Notwithstanding any action taken on such request by the chairman and ranking minority member of the subcommittee, a request may be approved by a majority of the Committee.

(c) Any request approved as provided under subsection (b) shall be immediately turned over to the staff appointed for action.

(d) Any information obtained by such staff shall be reported to the chairman of the subcommittee requesting such study and examination and to the Chairman and Ranking Minority Member, shall be made available to the members of the subcommittee concerned, and shall not be released for publication until the subcommittee so determines.

(e) Any hearings or investigations which may be desired, aside from the regular hearings on appropriation items, when approved by the Committee, shall be conducted by the subcommittee having jurisdiction over the matter.

Sec. 9: Official Travel

(a) The chairman of a subcommittee shall approve requests for travel by subcommittee members and staff for official business within the jurisdiction of that subcommittee. The ranking minority member of a subcommittee shall concur in such travel requests by minority members of that subcommittee and the Ranking Minority Member shall concur in such travel requests for Minority Members of the Committee. Requests in writing covering the purpose, itinerary, and dates of proposed travel shall be submitted for final approval to the Chairman. Specific approval shall be required for each and every trip.

(b) The Chairman is authorized during the recess of the Congress to approve travel authorizations for Committee Members and staff, including travel outside the United States.

(c) As soon as practicable, the Chairman shall direct the head of each Government agency concerned not to honor requests of subcommittees, individual Members, or staff for travel, the direct or indirect expenses of which are to be defrayed from an executive appropriation, except upon request from the Chairman.

(d) In accordance with Clause 8 of Rule X of the Rules of the House of Representatives and section 502(b) of the Mutual Security Act of 1954, as amended, local currencies owned by the United States shall be available to Committee Members and staff engaged in carrying out their official duties outside the United States, its territories, or possessions. No Committee Member or staff member shall receive or expend local currencies for subsistence in any country at a rate in excess of the maximum per diem rate set forth in applicable Federal law.

(e) Travel Reports:

(1) Members or staff shall make a report to the Chairman on their travel, covering the purpose, results, itinerary, expenses, and other pertinent comments.

(2) With respect to travel outside the United States or its territories or possessions, the report shall include: (1) An itemized list showing the dates each country was visited, the amount of per diem furnished, the cost of transportation furnished, and any funds expended for any other official purpose; and (2) a summary in these categories of the total foreign currencies and/or appropriated funds expended. All such individual reports on foreign travel shall be filed with the Chairman no later than sixty days following completion of the travel for use in complying with reporting requirements in applicable Federal law, and shall be open for public inspection.

(3) Each Member or employee performing such travel shall be solely responsible for supporting the amounts reported by the Member or employee.

(4) No report or statement as to any trip shall be publicized making any recommendations in behalf of the Committee without the authorization of a majority of the Committee.

(f) Members and staff of the Committee performing authorized travel on official business pertaining to the jurisdiction of the Committee shall be governed by applicable laws or regulations of the House and of the Committee on House Administration pertaining to such travel, and as promulgated from time to time by the Chairman.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Oregon (Mr. DEFAZIO) is recognized for 5 minutes.

(Mr. DEFAZIO addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

PUBLICATION OF THE RULES OF THE COMMITTEE ON SMALL BUSINESS, 109TH CONGRESS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. MANZULLO) is recognized for 5 minutes.

Mr. MANZULLO. Mr. Speaker, pursuant to Clause 2a of House Rule XI, I submit our attached Rules for the 109th Congress into the CONGRESSIONAL RECORD for publication.

RULES AND PROCEDURES OF THE COMMITTEE ON SMALL BUSINESS

1. GENERAL PROVISIONS

The Rules of the House of Representatives, and in particular the committee rules enumerated in rule XI, are the rules of the Committee on Small Business to the extent applicable and by this reference are incorporated. Each subcommittee of the Committee on Small Business (hereinafter referred to as the ''committee'') is a part of the committee and is subject to the authority and direction of the committee, and to its rules to the extent applicable.

2. REFERRAL OF BILLS BY CHAIRMAN

Unless retained for consideration by the full committee, all legislation and other matters referred to the committee shall be referred by the Chairman to the subcommittee of appropriate jurisdiction within 2 weeks. Where the subject matter of the referral involves the jurisdiction of more than one subcommittee or does not fall within any previously assigned jurisdictions, the Chairman shall refer the matter, as he may deem advisable.

3. DATE OF MEETING

The regular meeting date of the committee shall be the second Thursday of every month when the House is in session. A regular meeting of the committee may be dispensed with if, in the judgment of the Chairman, there is no need for the meeting. Additional meetings may be called by the Chairman as he may deem necessary or at the request of a majority of the members of the committee in accordance with clause 2(c) of rule XI of the House.

At least 3 days notice of such an additional meeting shall be given unless the Chairman determines that there is good cause to call the meeting on less notice.

The determination of the business to be considered at each meeting shall be made by the Chairman subject to clause 2(c) of rule XI of the House.

A regularly scheduled meeting need not be held if there is no business to be considered or, upon at least 3 days notice, it may be set for a different date.

4. ANNOUNCEMENT OF HEARINGS

Unless the Chairman, with the concurrence of the ranking minority member, or the committee by majority vote, determines that there is good cause to begin a hearing at an earlier date, public announcement shall be made of the date, place and subject matter of any hearing to be conducted by the committee at least 1 week before the commencement of that hearing.

After announcement of a hearing, the committee shall make available as soon as practicable to all Members of the Committee a tentative witness list and to the extent practicable a memorandum explaining the subject matter of the hearing (including relevant legislative reports and other necessary material). In addition, the Chairman shall make available as soon as practicable to the Members of the Committee any official reports from departments and agencies on the subject matter as they are received.

5. MEETINGS AND HEARINGS OPEN TO THE PUBLIC

(A) Meetings

Each meeting of the committee or its subcommittees for the transaction of business, including the markup of legislation, shall be open to the public, including to radio, television and still photography coverage, except as provided by clause 4 of rule XI of the House, except when the committee or subcommittee, in open session and with a majority present, determines by record vote that all or part of the remainder of the meeting on that day shall be closed to the public because disclosure of matters to be considered would endanger national security, would compromise sensitive law enforcement information, or would tend to defame, degrade or incriminate any person or otherwise

would violate any law or rule of the House; Provided, however, that no person other than members of the committee, and such congressional staff and such executive branch representatives as they may authorize, shall be present in any business meeting or markup session which has been closed to the public.

(B) Hearings

Each hearing conducted by the committee or its subcommittees shall be open to the public, including radio, television and still photography coverage, except when the committee or subcommittee, in open session and with a majority present, determines by record vote that all or part of the remainder of the hearing on that day shall be closed to the public because disclosure of testimony, evidence or other matters to be considered would endanger the national security, would compromise sensitive law enforcement information, or would violate any law or rule of the House; Provided, however, that the committee or subcommittee may by the same procedure vote to close one subsequent day of hearings. Notwithstanding the requirements of the preceding sentence, a majority of those present, there being in attendance the requisite number required under the rules of the committee to be present for the purpose of taking testimony, (i) may vote to close the hearing for the sole purpose of discussing whether testimony or evidence to be received would endanger the national security, would compromise sensitive law enforcement information, or violate clause 2(k)(5) of rule XI of the House; or (ii) may vote to close the hearing, as provided in clause 2(k)(5) of rule XI of the House.

No member of the House may be excluded from non-participatory attendance at any hearing of the committee or any subcommittee, unless the House of Representatives shall by majority vote authorize the committee or subcommittee, for purposes of a particular series of hearings on a particular article of legislation or on a particular subject of investigation, to close its hearing to members by the same procedures designated for closing hearings to the public.

6. WITNESSES

(A) Statement of witnesses

Each witness who is to appear before the committee or subcommittee shall file with the committee at least two business days before the day of his or her appearance, 100 copies of his or her written statement of proposed testimony. At least one copy of the statement of each witness shall be furnished directly to the ranking minority member. In addition, all witnesses shall be required to submit with their testimony a resume or other statement describing their education, employment, professional affiliations and other background information pertinent to their testimony unless waived by the Chairman.

Each witness shall also submit to the committee a copy of his or her final prepared statement in an electronic format no later than the day of the hearing unless waived by the Chairman.

The committee will provide public access to its printed materials, including the proposed testimony of witnesses, in electronic form.

(B) Interrogation of witnesses

Whenever any hearing is conducted by the committee or any subcommittee upon any measure or matter, the minority party members on the committee shall be entitled, upon request to the Chairman by a majority of those minority members, to call one witness selected by the minority to testify with respect to that measure or matter. The witness requested by the minority shall furnish at least one copy of his or her statement and any supplementary materials directly to the Chairman within two business days before the day of his or her appearance unless waived by the Chairman.

Except when the committee adopts a motion pursuant to subdivisions (B) and (C) of clause 2(j)(2) of rule XI of the rules of the House, committee members may question witnesses only when they have been recognized by the Chairman for that purpose, and only for a 5-minute period until all members present have had an opportunity to question a witness. The 5-minute period for questioning a witness by any one member can be extended only with the unanimous consent of all members present. The Chairman, followed by the ranking minority member and all other members alternating between the majority and minority, shall initiate the questioning of witnesses in both the full and subcommittee hearings.

In recognizing members to question witnesses, the Chairman may take into consideration the ratio of majority and minority members present in such a manner as not to disadvantage the Members of either party. The Chairman, in consultation with the ranking minority member, may decrease the 5-minute time period in order to accommodate the needs of all the Members present and the schedule of the witnesses.

7. SUBPOENAS

A subpoena may be authorized and issued by the Chairman of the committee in the conduct of any investigation or series of investigations or activities to require the attendance and testimony of such witness and the production of such books, records, correspondence, memoranda, papers and documents, as he deems necessary. The ranking minority member shall be promptly notified of the issuance of such a subpoena.

Such a subpoena may be authorized and issued by the chairman of a subcommittee with the approval of a majority of the members of the subcommittee and the approval of the Chairman of the committee.

8. QUORUM

No measure or recommendation shall be reported unless a majority of the committee was actually present. For purposes of taking testimony or receiving evidence, two members shall constitute a quorum. For all other purposes, one-third of the members (or 11 Members) shall constitute a quorum.

9. AMENDMENTS DURING MARK-UP

Any amendment offered to any pending legislation before the committee must be made available in written form when requested by any member of the committee. If such amendment is not available in written form when requested, the Chairman shall allow an appropriate period for the provision thereof.

10. PROXIES

No vote by any member of the committee or any of its subcommittees with respect to any measure or matter may be cast by proxy.

11. POSTPONEMENT OF PROCEEDINGS

The Chairman in consultation with the Ranking Minority Member may postpone further proceedings when a record vote is ordered on the question of approving any measure or matter or adopting an amendment. The Chairman may resume proceedings on a postponed request at any time. In exercising postponement authority, the Chairman shall take all reasonable steps necessary to notify members on the resumption of proceedings on any postponed recorded vote. When proceedings resume on a postponed question, notwithstanding any intervening order for the previous question, an underlying proposition shall remain subject to further debate or amendment to the same extent as when the question was postponed.

12. NUMBER AND JURISDICTION OF SUBCOMMITTEES

There will be four subcommittees as follows:

Workforce, Empowerment and Government Programs (seven Republicans and six Democrats).

Regulatory Reform and Oversight (seven Republicans and six Democrats).

Rural Enterprises, Agriculture and Technology (six Republicans and five Democrats).

Tax, Finance and Exports (eight Republicans and seven Democrats).

During the 109th Congress, the Chairman and ranking minority member shall be ex officio members of all subcommittees, without vote, and the full committee shall have the authority to conduct oversight of all areas of the committee's jurisdiction.

In addition to conducting oversight in the area of their respective jurisdiction, each subcommittee shall have the following jurisdiction:

WORKFORCE, EMPOWERMENT AND GOVERNMENT PROGRAMS

Oversight and investigative authority over problems faced by small businesses in attracting and retaining a high quality workforce, including but not limited to wages and benefits such as health care.

Promotion of business growth and opportunities in economically depressed areas.

Oversight and investigative authority over regulations and other government policies that impact small businesses located in high risk communities.

Opportunities for minority, women, veteran and disabled-owned small businesses, including the SBA's 8(a) program.

General oversight of programs targeted toward urban relief.

Small Business Act, Small Business Investment Act, and related legislation.

Federal Government programs that are designed to assist small business generally.

Participation of small business in Federal procurement and Government contracts.

REGULATORY REFORM AND OVERSIGHT

Oversight and investigative authority over the regulatory and paperwork policies of all Federal departments and agencies.

Regulatory Flexibility Act.

Paperwork Reduction Act.

Competition policy generally.

Oversight and investigative authority generally, including novel issues of special concern to small business.

RURAL ENTERPRISES, AGRICULTURE AND TECHNOLOGY

Promotion of business growth and opportunities in rural areas.

Oversight and investigative authority over agricultural issues that impact small businesses.

General oversight of programs targeted toward farm relief.

Oversight and investigative authority for small business technology issues.

TAX, FINANCE AND EXPORTS

Tax policy and its impact on small business.

Access to capital and finance issues generally.

Export opportunities and oversight over Federal trade policy and promotion programs.

13. COMMITTEE STAFF

(A) Majority staff

The employees of the committee, except those assigned to the minority as provided below, shall be appointed and assigned, and

may be removed by the Chairman. The Chairman shall fix their remuneration, and they shall be under the general supervision and direction of the Chairman.

(B) Minority staff

The employees of the committee assigned to the minority shall be appointed and assigned, and their remuneration determined, as the ranking minority member of the committee shall determine.

(C) Subcommittee staff

The Chairman and ranking minority member of the full committee shall endeavor to ensure that sufficient staff is made available to each subcommittee to carry out its responsibilities under the rules ofthe committee.

14. POWERS AND DUTIES OF SUBCOMMITTEES

Each subcommittee is authorized to meet, hold hearings, receive evidence, and report to the full committee on all matters referred to it. Subcommittee chairmen shall set meeting and hearing dates after consultation with the Chairman of the full committee. Meetings and hearings of subcommittees shall not be scheduled to occur simultaneously with meetings or hearings of the full committee.

15. SUBCOMMITTEE REPORTS

(A) Investigative hearings

The report of any subcommittee on a matter which was the topic of a study or investigation shall include a statement concerning the subject of the study or investigation, the findings and conclusions, and recommendations for corrective action, if any, together with such other material as the subcommittee deems appropriate.

Such proposed reports shall first be approved by a majority of the subcommittee members. After such approval has been secured, the proposed report shall be sent to each member of the full committee for his or her supplemental, minority, or additional views.

Any such views shall be in writing and signed by the member and filed with the clerk of the full committee within 5 calendar days (excluding Saturdays, Sundays, and legal holidays) from the date of the transmittal of the proposed report to the members. Transmittal of the proposed report to members shall be by hand delivery to the members' offices.

After the expiration of such 5 calendar days, the report may be filed as a House report.

(B) End of Congress

Each subcommittee shall submit to the full committee, not later than November 15 of each even-numbered year, a report on the activities of the subcommittee during the Congress.

16. RECORDS

The committee shall keep a complete record of all actions, which shall include a record of the votes on any question on which a record vote is demanded. The result of each subcommittee record vote, together with a description of the matter voted upon, shall promptly be made available to the full committee. A record of such votes shall be made available for inspection by the public at reasonable times in the offices of the committee.

The committee shall keep a complete record of all committee and subcommittee activity which, in the case of any meeting or hearing transcript, shall include a substantially verbatim account of remarks actually made during the proceedings, subject only to technical, grammatical, and typographical corrections authorized by the person making the remarks involved.

The records of the committee at the National Archives and Records Administration shall be made available in accordance with rule VII of the Rules ofthe House. The Chairman of the full committee shall notify the ranking minority member of the full committee of any decision, pursuant to clause 3(b)(3) or clause 4(b) of rule VII of the House, to withhold a record otherwise available, and the matter shall be presented to the committee for a determination of the written request of any member of the committee.

17. ACCESS TO CLASSIFIED OR SENSITIVE INFORMATION

Access to classified or sensitive information supplied to the committee and attendance at closed sessions of the committee or its subcommittees shall be limited to members and necessary committee staff and stenographic reporters who have appropriate security clearance when the Chairman determines that such access or attendance is essential to the functioning of the committee.

The procedures to be followed in granting access to those hearings, records, data, charts, and files of the committee which involve classified information or information deemed to be sensitive shall be as follows:

(a) Only Members of the House of Representatives and specifically designated committee staff of the Committee on Small Business may have access to such information.

(b) Members who desire to read materials that are in the possession of the committee should notify the clerk of the committee.

(c) The clerk will maintain an accurate access log, which identifies the circumstances surrounding access to the information, without revealing the material examined.

(d) If the material desired to be reviewed is material which the committee or subcommittee deems to be sensitive enough to require special handling, before receiving access to such information, individuals will be required to sign an access information sheet acknowledging such access and that the individual has read and understands the procedures under which access is being granted.

(e) Material provided for review under this rule shall not be removed from a specified room within the committee offices.

(f) Individuals reviewing materials under this rule shall make certain that the materials are returned to the proper custodian.

(g) No reproductions or recordings may be made of any portion of such materials.

(h) The contents of such information shall not be divulged to any person in any way, form, shape, or manner, and shall not be discussed with any person who has not received the information in an authorized manner.

(i) When not being examined in the manner described herein, such information will be kept in secure safes or locked file cabinets in the committee offices.

(j) These procedures only address access to information the committee or a subcommittee deems to be sensitive enough to require special treatment.

(k) If a member of the House of Representatives believes that certain sensitive information should not be restricted as to dissemination or use, the member may petition the committee or subcommittee to so rule. With respect to information and materials provided to the committee by the executive branch, the classification of information and materials as determined by the executive branch shall prevail unless affirmatively changed by the committee or the subcommittee involved, after consultation with the appropriate executive agencies.

(l) Other materials in the possession of the committee are to be handled in accordance with the normal practices and traditions of the committee.

18. OTHER PROCEDURES

The Chairman of the full committee may establish such other procedures and take such actions as may be necessary to carry out the foregoing rules or to facilitate the effective operation of the committee.

The committee may not be committed to any expense whatever without the prior approval of the Chairman of the full committee.

19. AMENDMENTS TO COMMITTEE RULES

The rules of the committee may be modified, amended or repealed by a majority of the members, at a meeting specifically called for such purpose, but only if written notice of the proposed change has been provided to each such member at least 3 days before the time of the meeting.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Illinois (Mr. EMANUEL) is recognized for 5 minutes.

(Mr. EMANUEL addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Tennessee (Mr. COOPER) is recognized for 5 minutes.

(Mr. COOPER addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Tennessee (Mr. DAVIS) is recognized for 5 minutes.

(Mr. DAVIS of Tennessee addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Hawaii (Mr. CASE) is recognized for 5 minutes.

(Mr. CASE addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. COSTA) is recognized for 5 minutes.

(Mr. COSTA addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Maryland (Mr. CUMMINGS) is recognized for 5 minutes.

(Mr. CUMMINGS addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Vermont (Mr. SANDERS) is recognized for 5 minutes.

(Mr. SANDERS addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Oregon (Mr. BLUMENAUER) is recognized for 5 minutes.

(Mr. BLUMENAUER addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

CLASS ACTION FAIRNESS ACT

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 2005, the gentleman from Virginia (Mr. GOODLATTE) is recognized for 60 minutes as the designee of the majority leader.

Mr. GOODLATTE. Mr. Speaker, with the leave of the Speaker, we have the opportunity for the next hour to talk about major and historic legislation that will come before the Congress tomorrow.

The Senate has already passed legislation reforming class action lawsuit abuses, and now the House of Representatives will take it up and pass it and send it to the President of the United States.

Why is this such a historic occasion? Because abuses in class actions have been going on for many years. In fact, this House has worked for over 6 years to reform this difficulty and get to the point where we are today.

This legislation has passed the House of Representatives in each of the last three Congresses, but each time it was stymied in the United States Senate. The fact of the matter is that as the legislation progressed through the House, it got more and more votes, more and more bipartisan support, but never could get the threshold needed to pass in the other body. That has now changed. The Senate has passed legislation. It is a little different from what the House has passed in the past, but it holds the same core principle of reforming the abuses that are taking place today all across the country with class action lawsuits.

Some of these abuses are absolutely startling. In a nationwide class action lawsuit filed in Alabama against the Bank of Boston over mortgage escrow accounts, the class members won the case, but actually lost money. Under the settlement agreement, the 700,000 class members received small payments of just a couple of dollars or no money at all. About a year later they found out that anywhere from $90 to $140 had been deducted from their escrow accounts to pay their lawyers' legal feels of $8.5 million. In other words, they had to pay more than they have received in settlement in order to satisfy multi-million dollar attorneys' fees.

When some of those class members sued their class action lawyers for malpractice, the lawyers countersued them for $25 million saying their former clients were trying to harass them.

In another classic case, in the settlement of a class action lawsuit in Madison County, Illinois, against Thompson Consumer Electronics over alleged faulty television sets, consumers were eligible for rebates on future purchases ranging in value from $25 to $50 if you spent more than $100 on a Thompson Electronics product. So in other words, your settlements was a coupon to buy more of what was alleged to being defective in the first place.

How did the attorneys do? Well, the attorneys pocketed $22 million in attorneys' fees. Some consumers reportedly walked away from the settlement altogether because the form was so complicated and the attorneys' fees were so high.

Recently, President Bush had down at the Commerce Department a forum to discuss these abuses, and one of these plaintiffs in this Thompson Electronics case was there. And after explaining what she had been through and the frustration of having a television set that did not work and being represented in a class action that did not work and winding up with a coupon to buy something she did not want to buy and seeing the attorneys get $22 million in attorneys' fees, she said, Where is the justice in that?

The fact of the matter is there is no justice in our current class action system and it is, in effect, a racket.

How did we get to this point? Well, it has to do with a problem with our Federal laws. When our Founding Fathers wrote our Constitution, they very wisely provided for a Federal judiciary, a judiciary that could hear cases from different people in different States so that if in the founding of our country and ever since people felt that they might not be treated as fairly in a foreign jurisdiction in a court across the country somewhere far from where they have lived, they could have the opportunity to remove it to the Federal courts where they would in theory get more impartial treatment. This has persisted for the entire history of our country.

However, our Founding Fathers never heard of class action lawsuits. They are a 20th-century development and they are not without their merit. Class actions afford efficiencies to our courts because if people have an identical claim against one or more defendants, they can be consolidated into a class and brought before the court in an efficient manner and sometimes these cases involve hundreds of thousands or even millions of plaintiffs.

This legislation does nothing to affect the right of people to bring their class action lawsuits in State courts or Federal courts. But under the original establishment of our Federal courts, this diversity jurisdiction of the courts where you had parties from different States disputing each other, had to set a minimum amount before you could bring the case into courts; and over the years that number has risen to $75,000 per plaintiff.

So in other words, if a person who lives in my State of Virginia has an injury in the State of Maryland across the Potomac River and they bring a lawsuit in the State court, if that case involves more than $75,000 in damages, the case can be removed to the Federal courts. However, when you apply that rule to class actions, it is the same. It is $75,000, but it is per plaintiff. So if you have a million plaintiffs in a case, you have to multiply by one million times $75,000 or show a $75 billion case in order to get into Federal court. That is wrong, that a $75,000 simple case that can easily be handled in the State courts would be entitled to the Federal courts and a $75 billion case or say a $70 billion case, less than the $75 billion threshold there, cannot get into the Federal courts. It is wrong. It should be corrected, and this legislation does it in a very simple fashion.

Instead of $75,000 per plaintiff, it is $5 million, but 5 million for the entire class, all the claims added together. And this will mean that no longer will you have what is called ''forum shopping'' taking place where the plaintiffs' attorneys can choose the jurisdiction they want to bring the case in and keep it there.

Why is that significant? Because we have over 4,000 jurisdictions across the country, 4,000 different State jurisdictions, sometimes simple county governments, sometimes a collection of counties within a State, but 4,000 different places where you can bring a lawsuit. The plaintiffs attorneys, and there are only a small number of plaintiffs attorneys who handle these big class action lawsuits, the plaintiffs attorneys know which of those 4,000 jurisdictions, maybe a dozen, maybe two dozen of them, are overwhelmingly biased and favorable to the plaintiffs in a class action.

There was one State court county in Alabama a few years ago where more nationwide class action lawsuits were considered in that one county than the entire Federal judiciary of more than 600 district court judges combined. That is an abuse. Today the same thing takes place in other jurisdictions around the country, and this legislation would correct that. More importantly, it would treat all the parties fairly because not only could the defendants remove a case to Federal courts, but any or all of the plaintiffs in the case would also have the right to remove that case to Federal court under appropriate circumstances. The judge would have discretion, if the case looked like it really did principally involve people in one State, it would be kept in that State. But if it clearly is a nationwide class action lawsuit, it can be moved to Federal court where it will get more even-handed treatment and a more standard application of the law then these select jurisdictions that are getting all the class action cases today. That is what the problem is.

In addition to changing the jurisdictional requirements, there are also other things that will make it easier for plaintiffs to be treated fairly and defendants to be treated fairly as well. The Washington Post is one of more

than 100 newspapers around the country that have endorsed this legislation. And they said it so wisely a few years ago. They have been supporting this for a long time. We do not often on our side of the aisle cite The Washington Post, but this gives you an idea of how serious this problem is and how widespread the support for this problem is: ''The clients get token payments while the lawyers get enormous fees. This is not justice. It is an extortion racket that only Congress can fix.''

I say to my fellow Members of Congress, tomorrow we are going to do just that, and send a bill identical to the bill with the Senate to the President of the United States for signing into law to once and for all change this abusive extortion racket.

At this time it is my pleasure to recognize some other Members who have come down to speak on this issue. The first one is a new Member of the Congress who campaigned for election on legal reforms and who has identified this legislation as something that has great merit and we thank him for his early support, that is, the gentleman from the State of Kentucky (Mr. DAVIS).

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Mr. DAVIS of Kentucky. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, I rise today in support of the Class Action Fairness Act, and I speak as a former small business owner who has watched industry damage, jobs lost and costs increased across the entire spectrum of our economy here in the United States.

This legislation will put an end to trial attorneys' forum shopping to find a friendly court where settlement awards will line their pockets while hitting victims and consumers in their pocketbooks. For too long, we have watched State courts try to manage a crush of cases that have been increasing year by year and that should have never entered the courtroom. These frivolous lawsuits frankly are merchandising the process of justice, making a profit for the few for the expense of freedom, liberty, and justice for the majority of people in this country.

Overall, class-action filings in the United States have increased 1,000 percent in the last 10 years, yet there has been no increase in capacity in our courtrooms, and the net result of that is to assure that our courts are slowed. There is a tremendous backlog of legitimate cases that need to be heard, and we are doing our citizens a disservice, again while a few make a tremendous amount of money, and the alleged victims in these cases collect nothing in damages of any substance.

In some jurisdictions, class-action filings have increased 4,000 percent, virtually bringing the legal system to a halt in those areas. Let me repeat that because it is such a significant number. Class-action filings in some jurisdictions have increased 4,000 percent. Mr. Speaker, this has become a money game, indeed a monopoly; ironically, very similar to the game of Monopoly.

If we look at the chart to my right, we can see how that game is played. Those who are profiteering in this business come up with an idea for a lawsuit. The next thing they do is find a plaintiff to play that off and then finally make allegations. In fact, legitimate rules of evidence need not apply here to simply get a forum to create press and public opinion. And finally, they are free from rule 23 to begin shopping these cases.

I have seen it in a variety of industries. I have seen it hurt our veterans in many ways while lining the pockets of just a few plaintiff attorneys in just a few States, and at the end of the day, business is impeded, jobs are going to be lost, and are lost in a wide variety of sectors.

Let us look at an example of a variety of these claims. Blockbuster, the video rental company, had a claim against it. $9.25 million were paid to the attorneys who were bringing forth that case. What was the benefit of it to the alleged victims in that case? Free movie coupons. This is an injustice. It is a misuse of our legal system, and frankly, I believe that that money was unethically acquired by those attorneys utilizing the judicial system in an inappropriate way.

The Bank of Boston case, $8.5 million were paid to attorneys, and indeed, some of the plaintiffs at the end of the settlement had to pay legal fees to cover the damages.

What happens to us? Our employers are hit. Our health insurance and liability policies in small business go up. Ultimately, plaintiffs' attorneys win and the consumer loses. Every Member of this body loses. The American citizen loses.

Unfortunately, the result of this class-action process, what it has become is it makes many of these settlements pass on to consumers considerable hikes in goods and services. It limits our access to markets, and frankly, it limits our ability to compete in the global economy for us, right now. This is bad for us as consumers and in business and for citizens.

The Class Action Fairness Act offers solutions to judicial loopholes that are abused by a minority of trial attorneys. It does not impede the filing of any legitimate claim nor does it prohibit legitimate claimants from seeking redress from a company that has harmed them. Let me make it clear. We are not preventing anybody from having a right to redress for legitimate damages. We are simply preventing a scourge that is hurting our Nation and our economy now.

The Class Action Fairness Act allows Federal courts to hear cases that involve true interstate issues while preserving the State courts for true local issues, which is as the founders built it into the Constitution.

This is a good bill. Mr. Speaker, I am proud to support it.

Mr. GOODLATTE. Mr. Speaker, I thank the gentleman. We are also joined by another leader for legal reforms, the gentleman from Florida (Mr. KELLER), who has been very supportive of this class-action legislation for several years now, and we thank him for his leadership on the issue and I am pleased to yield to him.

Mr. KELLER. Mr. Speaker, I thank the gentleman from Virginia for yielding. Our colleagues in Congress owe the gentleman from Virginia (Mr. GOODLATTE) a great debt of gratitude for successfully and persistently pursuing this legislation for a great number of years, and tomorrow he will finally put the ball in the end zone, and he is to be congratulated.

Mr. Speaker, I rise today in strong support of this class-action reform legislation.

The bottom line is that class-action reform is badly needed. Currently, crafty lawyers are able to game the system by filing large, nationwide class-action suits in certain preferred State courts like Madison County, Illinois, where judges are quick to certify class actions and quick to approve settlements which reward attorneys with millions of dollars but give their clients worthless coupons.

Speaking of Madison County, let us look at this chart here, and as we can see, Madison County, Illinois, which by the way has been called the number one judicial hellhole in the United States, there were 77 class-action lawsuits filed in 2002 and 106 class-action lawsuits filed in 2003. Now, the movie ''Bridges of Madison County'' was a love story. The ''Judges of Madison County'' would be a horror flick.

Unfortunately, all too often it is the lawyers who drive these cases and not the individuals who are allegedly injured. For example, in a suit against Blockbuster for late fees, the attorneys received $9.25 million for themselves while their clients got a coupon for a $1 discount on their next video rental.

Similarly, in a lawsuit against the company who makes Cheerios, the attorneys received $2 million for themselves, while the plaintiffs received a coupon for a free box of Cheerios.

In a nutshell, these out of control class-action lawsuits are killing jobs, hurting small business people who cannot afford to defend themselves and hurting consumers who have to pay a larger amount for goods and services.

This legislation provides much-needed reform in two key areas. First, it eliminates much of the forum shopping by requiring that most of these nationwide class-action claims be filed in Federal court.

Second, it cracks down on these coupon-based, class-action settlements by requiring that attorney-fee awards be based either on the value of the coupons actually redeemed or by the hours actually billed by the attorney in prosecuting the case.

Mr. Speaker, this legislation should comfortably pass the U.S. House of

Representatives tomorrow. Last week, this exact bill received 72 votes, broad bipartisan support, in the U.S. Senate, and last year we passed a very similar class-action reform bill in the U.S. House with 253 votes.

I urge my colleagues to vote yes on this class-action reform legislation. It is about justice. It is about common sense and it is about time.

Mr. GOODLATTE. Mr. Speaker, I thank the gentleman.

One of the issues that the critics of this legislation argue is that it would undermine federalism principles by removing to Federal courts cases that should be decided by the State courts. Well, that is exactly the opposite of what is going on here. These critics are wrong.

The Class Action Fairness Act restores, rather than undermines, federalism principles. Why is that? Because, as I noted earlier, the fact of the matter is that these cases involve plaintiffs from often all 50 jurisdictions, and when the case is brought in one State court, in one county in that State, and that judge then makes a decision, that judge is deciding the law, not just for the State of Illinois, if you happen to be in Madison County, but he or she is deciding that case for all 50 States, and that is something that our Constitution intends be available to people to have decided not in one particular State court jurisdiction but in our Federal courts. That is one of the principal reasons why our Federal courts were established, and it is in those courts that these types of cases should be heard, but under the current rules they cannot be.

So what happens in Madison County, Illinois, as this chart shows, affects the whole country. The overwhelming majority of class actions filed in Madison County are nationwide lawsuits in which 99 percent of the class members live outside of the county. As a result, decisions reached in Madison County's courts affect consumers all over the country, and the county's elected judges effectively set national policies on important commercial issues.

So, in terms of restoring States rights, that is exactly what this legislation does. It makes sure that the rights of all 50 States are protected in the judicial proceedings related to class-action lawsuits and that one State does not have the opportunity to establish policy that directly affects other States.

Let me give my colleagues another example of that. Several years ago, State Farm Insurance Company was sued because they were requiring their adjusters in automobile cases to calculate the adjustments using what are called after-market parts. After-market parts are not used parts. They are new parts, but made by companies other than the original manufacturer of the automobile. There is nothing wrong with the quality of the parts, but they are often less expensive because they are manufactured in a competitive environment where anybody can make these parts. Therefore, the price is generally lower. And the reason why State Farm was doing that was in part because it is good policy to save money for your insureds and keep your insureds premiums low, but also because many of the insurance commissioners of the 50 States also encouraged or, as in the case of Massachusetts, even required the use of after-market parts wherever possible.

Well, this suit was brought, alleging that that was wrong, and State Farm was put in a position of being in a court in Illinois in which they were going to have the decisions of the 50 State insurance commissioners, none of whom had any problem with this policy, overturned by one court judge who was not even experienced in terms of handling insurance policies like the insurance commissioners are that do it day in and day out every day, but one judge could overturn the policies of the other 50 States. So that, indeed, is a reason for concern.

What happened? State Farm decided to go to court, to go to trial in that case and they lost. That jury and that judge found a $1.3 billion liability for something that 50 State insurance commissioners said was a perfectly legitimate thing to do, that was actually saving consumers money, but now, because they could not remove the case to Federal court, they got stuck with a $1.3 billion judgment.

Can my colleagues imagine the effect that has on the company's ability to borrow money on the value of the stock of the shareholders of a company? It has a devastating impact. That case is still under appeal.

Other companies see that and they know that when they get into these particular hand-picked jurisdictions where the judges and juries are known to be biased in favor of the plaintiff, in virtually every instance they know that when you get brought into those courts and you cannot remove the case to Federal court, where they will get fairer treatment, they better settle up. That is why we get some of these abusive cases like this one I want to bring to my colleagues' attention.

□ 1600

This one involved Chase Manhattan Bank. Chase Manhattan Bank was sued, and they settled the case rather than go to court and risk that. Well, what do you suppose the plaintiffs got in that settlement? This is an actual copy of one of those settlements. Thirty cents. That is what each plaintiff got in the case. What did the plaintiffs' attorneys get? They got $4 million in attorneys' fees. But the people they represented got 33 cents each.

There was a catch, though. That was back when postage cost 34 cents and you had to use a 34 cent postage stamp to mail in your acceptance of the 33 cent settlement, for a net loss of one cent. How ridiculous can you get.

It has an impact on other insurance companies, too. A few years ago, I found I had been made a plaintiff in a case brought in Santa Fe, New Mexico, against Massachusetts Mutual Life Insurance Company. What was it alleged Massachusetts Mutual had done wrong? Well, when you get your premium, your bill, from Massachusetts Mutual, you can pay it on a monthly, quarterly, or annual basis. If you pay it on a monthly basis, you pay a little more than on a quarterly basis, and that is a little bit more than on an annual basis. Why? Because if you pay on an annual basis, it costs them a lot less money to send out one bill than to send out 12 bills a year, and they have the opportunity to get that money sooner invested. So it is a little less expensive to them, and they pass that savings along to the consumer.

The plaintiff in this case and their attorney said they should have to spell out exactly what the difference in savings is rather than simply look at the bill and see that these payments are 12 times what there is and that that is a little more. They said they had to make a disclosure under laws that are not even supposed to apply to insurance companies.

Well, they went ahead and settled that case. Why? I asked them. They said because they did not want to get in the same situation that State Farm Insurance Company found itself in with a $1.3 million lawsuit. What was the agreed-upon settlement they sent to the judge in that Santa Fe, New Mexico, court? Well, it provided for $13 million in attorneys' fees, $5 million up front, $5 million over a period of time, and a nice $3 million universal life insurance policy for the plaintiffs' attorneys. Is that not nice?

Now, what did the plaintiffs get? The plaintiffs, all the plaintiffs got a promise that Massachusetts Mutual would not do this again. Now there is a new settlement proposed because that one actually was withdrawn when they realized how embarrassing it was for the plaintiffs' attorneys to get $13 million in fees and the plaintiffs would simply get a promise for nothing. Now they have changed it so the plaintiffs might get as much as $50 off on their policy. The plaintiffs' attorneys would still get the massive 8-digit settlement amount in the multimillions of dollars.

That is wrong. And it is just one more clear example of evidence why this is an extortion racket. Here are some more of what we call the class action wheel of fortune.

If you are a company, or if you work for a company that gets caught up in the class action wheel of fortune, watch out, because it can affect your job, it can affect the success of your company and get you tied up in these multimillion dollar cases where there really is little or no damage; or, even if there is, like there was in the Thompson Electronics case, where the television sets were not working, the attorneys got $22 million and the plaintiffs got a coupon, a $50 coupon or a $25 coupon to buy more of the same thing

they were not happy about in the first place.

Now, let us look at the class action wheel of fortune. Kay Bee Toys. The lawyers spin the wheel and get $1 million. The consumers get 30 percent off on selected products for 1 week. One week to go to the store and use your coupon to buy certain selected products. Maybe if you are unhappy with Kay Bee Toys in the first place you do not want to go back to settle with them. But that is okay, that is what you get, and the lawyers get a million.

Poland Spring Water, $1.35 million for the lawyers, and the consumers got a coupon for more water.

Ameritech, $16 million for the lawyers. The consumers? A $5 phone card.

Premier Cruise Lines, the lawyers got $887,000. The consumers, $30 to $40 cruise coupons. If you were not happy with your cruise and were part of this lawsuit, the lawyers got almost $1 million and you got a $30 to $40 coupon for future use on a cruise.

How about computer monitor litigation involving several companies. The lawyers got $6 million and the consumers got a $13 rebate on future product purchases.

Register.com, the lawyers got $642,500 and the consumers $5 coupons.

This kind of abuse is what this legislation is designed to correct. It is time to end the class action wheel of fortune and benefit all consumers in America who do not seek companies treated in this fashion and lawyers lining their pockets with excessive attorneys' fees because they have an extortion situation or the defendant in the case knows that if they do not pay those big attorneys' fees and get away with giving a coupon or something to the plaintiffs themselves, they could go to court and wind up with a much larger judgment because they are in an unfair, hostile court, just like State Farm found itself in.

We are going to change that so that people, when they see this situation, both the plaintiffs who find themselves made a party to a case and the defendants, can remove that case to Federal court. They will still have a right to bring the class action, but it will be examined and dealt with under more standard rules and in a fairer and more impartial judiciary.

We have more examples. This is the apple juice example. As this chart shows, in the settlement of a class action lawsuit alleging that Coca Cola improperly added sweeteners to apple juice, it was the lawyers who got a sweet deal: $1.5 million in fees and costs. Unfortunately, class members came up empty again, receiving 50-cent coupons but no cash.

Crayola Crayons. Another favorite American brand. In the settlement of a class action lawsuit over alleged improper manufacturing of Crayola Crayons, consumers received 75-cent coupons to buy more of the crayons, while their lawyers pocketed $600,000 in attorneys' fees.

Then we have the famous golf ball case. In the settlement of a class action lawsuit over the terms of a promotion for Pinnacle golf balls, the manufacturer paid $100,000 in attorneys' fees and no cash to class members, who received three free golf balls.

Well, thankfully, people are beginning to recognize this abuse. Newspapers all across the country, newspapers whose editorial boards reflect widely different ideological viewpoints on many issues have found common ground on the need to adopt the Class Action Fairness Act. More than 100 editorials so far support the legislation.

I earlier cited The Washington Post. They also had this to say about it: ''No area of U.S. civil justice cries out more urgently for reform than the high-stakes extortion racket of class actions, in which truly crazy rules permit trial lawyers to cash in at the expense of businesses. Passing this bill would be an important start to rationalizing a system that is out of control.''

The Chicago Tribune said that the Class Action Fairness Act would ''substantially end the practice of forum shopping, stop seeking a home in State courts that are deemed most likely to produce juicy settlements. This would go a long way to halt the worst class action abuses. It should be the law.'' And very soon after tomorrow, it will be the law.

News Day, a Long Island newspaper, said: ''In a deal that should cement class action lawsuit reform, three Democratic Senators have now signaled support for a bill. The tweaks they won made a good bill better. Class action lawsuits are ripe for reform. The Senate bill would curtail abuses by moving the largest nationwide class actions into Federal courts and toughening judicial scrutiny of settlements. The changes Democrats won will help ensure that largely local cases remain in State courts. Congress should enact this needed reform.''

The Orlando Sentinel said: ''The Senate's proposal is worthy of becoming law.''

The Providence Journal, from Rhode Island: ''The Senate should pass a long overdue reform to curb abuses in class action lawsuits. Class action suits involving interstate commerce, which is implied by having plaintiffs in more than one State, clearly belong in Federal court. The consumers should no longer have to bear the onerous costs of the practice of venue shopping.''

Spokesman Review, from Washington State: ''The Class Action Fairness Act would restore common sense to a valid and needed legal procedure.''

The Hartford Courant: ''After 5 years of trying, Congress appears ready to curtail the worst abuses. Legislators have debated the issue long enough. There is no good reason to wait another year to adopt this important reform.''

They said that last August. They had to wait another year. Let us hope they do not have to wait any longer than tomorrow when we will have a big bipartisan vote in support of this reform.

Earlier, I think one of my colleagues mentioned the Blockbuster case. That is the deal where in the settlement of a class action lawsuit filed in Texas against Blockbuster Video over late fees, currently on appeal to the Texas Supreme Court, the plaintiffs' lawyers will receive $9.25 million in fees and expenses and the class members will receive two coupons for movie rentals and a $1-off coupon.

While the lawyers made enough money to produce their own movie, Blockbuster customers could not even use their coupons to buy a bag of popcorn, because their coupons only covered nonfood items. The settlement allows Blockbuster to continue its practice of charging customers for a new rental period when they return a tape late. Blockbuster later changed that policy, but they should not be put in a position of being in a hostile court where attorneys get a $9.25 million settlement, and all they do is antagonize their consumers by giving them coupons.

In State court class actions, the lawyers take the money. The Bank of Boston case. The lawyers, $8.5 million. The plaintiffs actually lost money. The Blockbuster case. The lawyers, $9.25 million. The plaintiffs, $1 off the next movie. The Coca Cola case. The lawyers, $1.5 million and the plaintiffs, 50-cent coupons.

And how about Cheerios? A honey of a deal if you are an attorney. As part of a settlement of a class action lawsuit in Cook County, Illinois, against the manufacturer of Cheerios, the company put coupons for a free box of cereal in the newspapers, but it was the plaintiffs' lawyers who got the prize at the bottom of the cereal box. They milked the company for $2 million in fees, an estimated $1,200 per hour for their legal services. For these class action attorneys, Cheerios truly proved to be a ''honey of an O.''

In the case involving a lawsuit filed in California, more than 50 well-known computer manufacturers and distributors were accused of misrepresenting the screen size of their computer monitors. The nationwide class of an estimated 40 million consumers received an offer of a $13 rebate on new computers. That is great. You have a computer screen that probably does not bother most people that the size of the computer screen was a little different than was represented to them, but if they want to go out and buy a whole new computer, get a new screen, the size they might want, they get a $13 rebate. How do you suppose the attorneys did? Well, they got $6 million in legal fees.

In a recent class action lawsuit in Cane County, Illinois, against Poland Spring, the class members claimed that the company's bottled water was not pure and was not from a spring. Under the settlement, the consumers received coupons for a discount. On

what? More Poland Spring water. Poland Spring admitted no wrongdoing, and it is not changing anything about the way it bottles or markets its waters. So what was that worth to all those plaintiffs, who were represented by the attorneys in that case, who got the opportunity to get a coupon for more water? Well, those lawyers who did that good work, they got $1.3 million in attorneys' fees.

How about this one, where the lawyers sail away with fees and the consumers get coupons. In a class action lawsuit filed in Florida against Premier Cruise Lines, consumers allege they were charged for port charges higher than Premier actually paid. Under the settlement, the class members received coupons for a $30 to $40 discount on another cruise line, because Premier had since gone out of business.

Imagine that. A many-thousands-of-dollars cruise, and you can get a $30 or $40 discount if you use this coupon. What do you suppose the lawyers got? They got nearly $900,000 in attorneys' fees. While the lawyers made off with all the money, another cruise line gained a promotional opportunity.

The lawyers receive $1 million and sell out their class in the Cook County, Illinois, case against Kay Bee Toys over alleged deceptive pricing practices. The toy company paid attorneys and fees costing $1 million, but no cash to the class members. As part of the settlement, the store held a 1-week, unadvertised 30-percent-off sale on selected products.

My colleagues, this is indeed an abuse.

In addition, we want to mention something that helps these consumers in these cases. These coupon settlements will get much closer scrutiny after this law takes effect.

□ 1615

The bill provides a number of new protections for plaintiff class members, what you might call a consumer bill of rights, including greater judicial scrutiny for settlements that provide class members only coupons as relief for their injuries. The bill also bars the approval of settlements in which class members suffer a net loss. In addition, the bill includes provisions that protect consumers from being disadvantaged by living far away from the courthouse.

These additional consumer protections will ensure that class-action lawsuits benefit the consumers they are intended to compensate. This legislation does not limit the ability of anyone to file a class-action lawsuit. It does not change anyone's right to recovery. It simply closes the loophole allowing Federal courts to hear big lawsuits involving truly interstate cases, while ensuring that purely local controversies remain in State courts.

This is exactly what the framers of the Constitution had in mind when they established Federal diversity jurisdiction. It has taken us more than 200 years but it is now time to make clear that these devices that the framers of the Constitution did not know about, but, certainly if they did, would be very concerned about, now would be entitled to be heard in the court best suited to decide these complicated, multistate, multiplaintiff, sometimes millions of plaintiff cases, sometimes many defendants in the case.

Mr. Speaker, there are more abuses of class-action lawsuits. I think we have covered a great many of them. I think we have made plain that this is a situation deserving of repair by the Congress. In fact, I have been working on this legislation for over 6 years and it is long overdue. These abuses keep piling up. Each time we bring the legislation up, we have more and more of these examples.

It is long overdue that we finally have the opportunity to correct this problem. It is one that has a very simple correction. End the abusive forum shopping by a handful of lawyers who specialize in these cases and know the handful of jurisdictions where they are going to get this kind of spectacular treatment on one side and unfair treatment on the other side, and let us go to what our judicial system is supposed to be all about; and that is fair treatment, equal application of the laws and standards that are imposed to make sure that these kinds of abusive cases are heard in fair courts, so that businesses do not feel like they are forced to deal with a situation where they have to settle the case because they know they are in a jurisdiction that is going to be unfair to them and do not want to wind up in the same situation that State Farm Insurance Company found itself in several years ago, and is still in, because of the slow time it takes to handle an appeal through the courts.

In recent years State courts have been flooded with class actions. As a result of the adoption of different class-action certification standards in the various States, the same class might be certifiable in one State and not another, or certifiable in State court but not in Federal court. This creates the potential for abuse of the class-action device, particularly when the case involves parties from multiple States or requires the application of the laws of many States.

For example, some State courts routinely certify classes before the defendant is even served with a complaint and given a chance to defend itself. Other State courts employ very lax class-action treatment certification criteria, rendering virtually any controversy subject to class-action treatment.

There are instances where a State court in order to certify a class has determined that the law of that State applies to all claims, including those of purported class members who live in other States. This has the effect of making the law of that State applicable nationwide. Where is the State's rights in that? Where are the principles of federalism in that, where one State court judge can tell the other 49 States what the law should be in their States? That is not what is intended and that is why our Founding Fathers intended to have Federal courts handle cases just like these.

The existence of State courts that broadly apply class certification rules encourages plaintiffs to forum shop for the court that is most likely to certify a purported class. Believe me, they do just that. Because most State courts are going to do a good job handling class actions, but because the system is designed the way it is, those attorneys will bring those cases to just a handful, a dozen or two dozen jurisdictions around the country, and that is what creates the unfairness and that is why the Federal courts need to be available as a forum to decide these cases if any of the parties choose to seek to remove the case to those courts.

In addition to forum shopping, parties frequently exploit major loopholes in Federal jurisdiction statutes to block the removal of class actions that belong in Federal court. For example, plaintiffs' counsel may name parties that are not really relevant to the class claims in an effort to destroy diversity. How fair is that? Somebody gets sued and added to a lawsuit not because they have done anything wrong, but because by adding them into the case they can prevent the case from being removed to Federal court. That abuse is also corrected.

In other cases, counsel may waive Federal law claims. In other words, not fully represent their clients, the plaintiffs, in some of the measures that may be available to them under Federal laws, simply ignore those rights, ignore those laws, and bring the case in State court so that it cannot be removed to the Federal court. It will remain in the State court.

Another problem created by the ability of State courts to certify class actions which adjudicate the rights of citizens of many States is that oftentimes more than one case involving the same class is certified at the same time; in other words, in two different States or in two different counties of the same State. Under the Federal rules, that problem is solved.

In the Federal court system, those cases involving common questions of fact may be transferred to one district for coordinated or consolidated pretrial proceedings. When these class actions are pending in State courts, however, there is no corresponding mechanism for consolidating the competing suits. It is inefficient, it is wasteful, and it results in unfair and differing results when you have two different State courts deciding the same thing for the same nationwide group of plaintiffs. There is no corresponding mechanism for consolidating the competing suits in State courts. Instead, a settlement or judgment in any of the cases makes

the other class actions moot. This creates an incentive for each class counsel to obtain a quick settlement of the case, to be the first one to settle, and an opportunity for the defendant to play the various class counsels against each other and drive the settlement value down.

The loser in this system is always the class members, the plaintiffs, the people who are getting these coupons and so on, while they watch their attorneys get multimillion-dollar settlements. The loser in the system is the class member whose claim is extinguished by the settlement at the expense of counsel seeking to be the one entitled to recovery of fees.

This bill is designed to prevent these abuses by allowing large interstate class-action cases to be heard in Federal court. It would expand the statutory diversity jurisdiction of the Federal courts to allow class-action cases to be brought in or removed to Federal court.

Mr. Speaker, I yield to the gentleman from Georgia (Mr. GINGREY), another Member of the House who has been a major contributor to our effort to reform class-action lawsuit abuse, someone who has championed legal reform and has done an outstanding job representing his constituents.

Mr. GINGREY. I thank the gentleman from Virginia (Mr. GOODLATTE) for allowing me to participate in this hour to discuss something of such tremendous import to the people of this country and to the small business men and women who are suffering so much because of class action and lawsuit abuse.

The President was so clear in his recent State of the Union address in talking about the need to reform the civil justice system. He talked about it being kind of a three-legged stool. And class action is an extremely important part of that reform; asbestos litigation and how we deal with a trust fund for people that have been possibly exposed to, and more serious, if they actually have health problems related to asbestos. We need to make sure that that is done in a fair way so that those who are truly hurt are the ones that benefit from any awards that are given or, in the case of asbestos, from a trust fund that is set up.

Class-action reform is something that we have been trying to do in this Congress for a long time. Our friends on the other side of the aisle like to say that this is a bill that has not been marked up, that we just bring this before the House and it does not go through the committee and it does not go through the hearings and the markup of that sort of thing.

Senate bill 5, which we are dealing with now, which we will have an opportunity to debate tomorrow and pass in this Chamber, is almost the exact same bill, I think it is H.R. 1115, that passed this body in the 108th Congress and passed with really strong bipartisan support.

So these arguments from the other side suggesting that we are rushing something through, nothing could be further from the truth. In fact, in the Rules Committee, of which I am a member, we agreed to make in order a rule, an amendment in the nature of a substitute from our friends on the other side of the aisle. In that amendment essentially is every amendment, maybe except for one, but almost every amendment that was offered to this bill, Senate bill 5, in the other body that was thoroughly discussed and debated and defeated in a bipartisan fashion.

We are going to give those on the other side of the aisle an opportunity for one more bite at the apple tomorrow in the abundance of fairness, to give them an opportunity to argue those points once again. I think that it is time. Over 10 years we have been working on this bill, long before I got to the Congress.

Let me just, if I might, go through a little bit of chronology in regard to this bill. The 105th Congress, that is four Congresses ago, 8 years ago, almost 10 years ago, the Senate had a bill, 2083, Class Action Fairness Act. The Senate hearing held, reported by the Senate subcommittee. H.R. 3789, Class Action Jurisdiction Act of 1998, committee hearing, markup held, reported from the House Judiciary Committee, 17–12.

106th Congress, H.R. 1875, Interstate Class Action Jurisdiction Act of 1999. Committee hearing, markup held. Passed the floor of this body 222–207.

107th Congress, H.R. 2341, Class Action Fairness Act, committee hearing, markup held, passed floor 233–190. And on and on and on. So those who would suggest, Mr. Speaker, that this has not had a fair hearing, nothing could be further from the truth.

I want to ask my colleagues to look at this slide here to my left and the title of the slide, ''Who Wins?'' This is pretty clear. This would be a typical class-action abuse case. Maybe it was in Madison County, Illinois, where so many of these cases are filed in State court. I do not know if this particular one was there but we know lots of cases have been filed there in Madison County. Class members. Coupons for crayons, a video rental, apple juice, popcorn, golf balls. And what do the plaintiffs' attorneys get? $11.45 million. That is the problem.

Let me just give you an example of another case, this one from Texas, Jefferson County State Court. Shields et al. v. Bridgestone. The suit involves customers who had Firestone tires that were among those that the National Highway Traffic Safety Administration investigated or recalled, but who did not suffer any personal injury or property damage. After a Federal appeals court rejected class certification, the plaintiffs' counsel and Firestone negotiated a settlement which has now been approved by the Texas State court. Under the settlement, the company has agreed to redesign certain tires, in fact, a move that already was underway irrespective of this lawsuit, and also to develop a 3-year consumer education and awareness campaign. But the members of the class received nada. Nothing. The lawyers? They got $19 million.

This, Mr. Speaker, is why I am here and grateful to the chairman for letting me participate in this Special Order to make sure that we all understand that when people are injured, when people need a redress of their grievances, they do not need to be getting coupons that are worthless unless they take the trouble of redeeming them, and then they are worth very little and all the money goes to plaintiffs' attorneys. This is just about leveling the playing field.

□ 1630

We will be talking about the other two legs of the stool. I mentioned asbestos and, of course, civil justice reform in regard to medical liability, the Health Act of 2003, so-called tort reform. That is the other leg of the stool that we need to address, because the unintended consequences of not doing anything is if you put small businessmen and -women totally out of business because of the cost of defending these frivolous cases in the health care field, people do not have access to health care in a timely fashion.

Then doctors who practice in a high-risk specialty, such as emergency room care or obstetrics or neurosurgery, hang up their stethoscopes and white coats and pick up a fishing rod or a set of golf clubs at the prime of their career.

So that is why we are here. There is why this is so important. I thank the gentleman for yielding.

Mr. GOODLATTE. I thank the gentleman for his support of this legislation and his very cogent reasoning about why it is needed.

I have one last chart I want to show before we close, and that is this poll taken in USA Today about the opinions of the public on class action lawsuits.

As I said at the outset, this bill does not take away the right of anybody to bring a class action lawsuit, and class action lawsuits have their place in our legal system.

But the American public knows what is going on. When they were asked who benefits most from class action lawsuits? Lawyers for the plaintiffs, by far the number one answer. Forty-seven percent.

The second answer, lawyers for the companies. They get paid too, 20 percent. The companies being sued 7 percent. Remember they get to give out those products promoting their products. They get out of what could be a worse situation. And the buyers of the products, 5 percent. And the plaintiffs 9 percent.

The overwhelming majority of the public, more than 70 percent, know

that class action lawsuits are not serving the people that they are supposed to serve. The lawyers get the cash, the plaintiffs get the coupons, the consumers pay higher prices for goods and services, and it is an abuse.

Tomorrow we have the opportunity to correct it once and for all, to pass a bill that will be identical to the bill passed by the Senate and send it to the President of the United States for his signature. He has been a champion on this issue. He has indicated his willingness to sign that legislation.

I urge my colleagues to get the job done, to pass this legislation and reform the abuses in our class action lawsuit industry that have taken place, and let us return it to class action justice for plaintiffs who deserve it.

APPOINTMENT AS MEMBER TO COMMISSION ON CIVIL RIGHTS

The SPEAKER pro tempore (Mr. JINDAL). Pursuant to section 2 of the Civil Rights Commission Amendments Act of 1994 (42 U.S.C. 1975 Note), the order of the House of January 4, 2005, and upon the recommendation of the minority leader, the Chair announces the Speaker's appointment of the following member on the part of the House to the Commission on Civil Rights to fill the remainder of the term expiring on May 3, 2005:

Mr. Michael Yaki, San Francisco, California.

ORDER OF BUSINESS

Ms. KAPTUR. Mr. Speaker, I ask unanimous consent to reclaim my 5 minutes.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Ohio?

There was no objection.

LET US KEEP SECURITY IN SOCIAL SECURITY

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Ohio (Ms. KAPTUR) is recognized for 5 minutes.

Ms. KAPTUR. Mr. Speaker, Social Security, our Nation's largest retirement insurance program, is supposed to be one leg of a three-legged stool of retirement security for all Americans.

The other two legs are private savings, private savings like certificates of deposit, for example, and private pensions like IRAs and 401(k)s, or defined benefit and contribution plans. However, in an age when personal savings are virtually nonexistent, and company pensions are being scaled back or often stripped away, Social Security has become the basic retirement insurance plan for most Americans, and surely for women.

That is one reason why we have to protect it from those who would harm it. Unfortunately, President Bush wants to dismantle the one guaranteed element of retirement income that Americans have, by privatizing Social Security, by making retirement security a gamble.

In fact, he is borrowing down the Social Security trust fund to mask huge shortfalls in other places in his budget. So he is creating the real problem in the Social Security trust fund, because it will not be able to meet future obligations.

I ask, how can the President defend his plan in the face of the statistics regarding the diminishment of personal savings by most Americans and numerous recent news reports regarding the collapse of pension plans?

Over the past 3½ decades, personal savings, as a percentage of disposable income, has trended downward in our country. During the 1970s, the average rate of savings was about 10 percent. Then it kept going down, downward to the last first three quarters of last year; it was less than 1 percent per family.

Meanwhile, consumer credit card debt is going through the roof and has up-trended from an average of $41.8 billion in 1955 to $2 trillion in November of 2003.

Even as the savings rate has plummeted, pension plans too are becoming less reliable. In Southern California, Abbott Labs recently spun off a division and cut the retirement benefits for employees of the so-called new company.

Shortly after the spin-off, employees were told that Hospira would be freezing their accrual of pension benefits and eliminating retiree health care for many of them. Several of those employees are now suing the companies in an attempt to get back their promised benefits, accusing the companies of plotting the spin-off specifically to deprive the oldest workers of their benefits.

In my own district, Owens-Illinois, one of the world's leading producers of glass and plastics packaging, recently announced that it would be cutting prescription drug coverage for its retirees in favor of forcing the retirees to participate in the Medicare prescription drug plan. The company will cover the $35 premium for this plan, but will not guarantee that the dollar amount will increase should the plan premium change.

Another local company, Doehler-Jarvis, was a manufacturer of aluminum die cast automotive parts that had two plants in Toledo. The company went through many takeovers such as Harvard Industries, which then filed for reorganizational bankruptcy. At that time, the company canceled retirees' health benefits, but did not tell them. They just stopped paying claims over the weekend. Finally, they filed liquidation bankruptcy and were unable to continue paying pension benefits, so the Pension Benefit Guaranty Corporation, the Federal insurer of the Nation's private defined benefit pension plans, had to step in.

While this helped the situation somewhat, it was by no means perfect. Only actual retirees get benefits under the PBGC, not their survivors; and those who chose early retirement options previously offered by the company were unable to collect benefits at all until their regular retirement ages under the reorganization.

In addition, given the flood of recent companies that have experienced pension problems or breakdowns, the Pension Benefit Guaranty Corporation is no longer failsafe as it once was. In fact, the General Accounting Office recently placed it on the watch list of high-risk Federal agencies for the second year in a row. In fact, the Pension Benefit Guaranty Corporation went from having an $11 billion surplus in fiscal year 2002 to a record deficit in 2003 of $11 billion and a $23 billion deficit in 2004.

Unfortunately, the President's fiscal year 2006 Federal budget will only put more pressure on already-struggling pension plans under the PBGC. Buried under the fine print of his budget is a multi-billion dollar premium hike for the Nation's underfunded defined pension plans. The weakest pension plans will be forced to pay almost $2 billion in new premiums next year and $3.3 billion for fiscal year 2007.

The premium hike is in addition to billions more in make-up payments that companies with weaker pension plans must pay to become adequately funded.

Yet through all of these turbulent times with private pension plans, retirees have known that they had one guaranteed source of income that they earned as insurance against old age, one monthly check that would be coming into them called Social Security.

We must continue to ensure that the fundamental security of Social Security remains in this vital and successful program. There should be no gamble with the Social Security guarantee, no roulette of our retirement earned benefits. Let us keep security in Social Security. Our people have earned it.

THE FEDERAL DEFICIT

The SPEAKER pro tempore (Mr. JINDAL). Under the Speaker's announced policy of January 4, 2005, the gentleman from South Carolina (Mr. SPRATT) is recognized for 60 minutes as the designee of the minority leader.

Mr. SPRATT. Mr. Speaker, we received last week the budget of the United States, as requested by President Bush, for fiscal year 2006. And having looked at it to some extent, I have to say we regret that it continues the same bad choices that have led to huge deficits and mounting debt during the last 4 years.

For the third year in a row, the Bush administration's budget sets a record level deficit, $415 billion, and offers no plan to put the budget back in the black again.

Unfazed by these deficits, the Bush administration proposes tax cuts on

top of them which can only go to the bottom line and make the budget's bottom line worse. To offset a small portion of these plans, the Bush administration calls for cuts in services to students and veterans, small business and law enforcement, environmental protection and urban and rural development. And although most of these cuts are significant to those who will be taking the hit, they barely make a dent in the bottom line of the budget.

Let us start and look at where we have been in order to appreciate where we are today. Just to show the Members that the budget can be balanced, this chart shows that in the year 1992, the United States had a deficit of $290 billion. This was the deficit inherited by President Clinton when he came to office January 20, 1993. By February 17 he had on the doorstep of Congress a plan to cut that deficit by more than half over the next 5 years. That plan was ridiculed here on the House floor, only passed by one vote here, only passed by the Vice President's vote in the Senate, but look at the results. Just to show that it can be done, the budget can be balanced, under the administration of President Clinton over 8 years, the bottom line of the budget got better year after year after year.

Starting with a deficit the year before of $290 billion, the President lowered that to $255 billion; $164 billion a couple of years later; then $22 billion; and, finally, in the year 2000, due to the Clinton budget passed in 1993 and the Balanced Budget Act of 1997, the budget was in surplus by $236 billion, 5 short years ago. The year before President Bush came to office, the budget was in surplus by $236 billion.

President Bush came to office committed to substantial tax cuts. We warned him at the time to be careful about assuming that these surpluses would continue indefinitely and keep rising. He nevertheless pushed through his substantial tax cuts and his other spending policies, and we can see what has happened every year since. The bottom line of the budget has gotten worse and worse to the point where 3 years ago, it was $378 billion in deficit, a record amount. That was 2003. In 2004 it was $412 billion in deficit, another record level. And this year the Office of Management and Budget, the President's budget shop, tells us recently that they expect a deficit this year of $427 billion. A dubious record, but that will be the third year in a row that the bottom line of the budget has registered a worse deficit than the year before, $427 billion.

□ 1645

Now, the President set a goal last year looking at these dismal results for improving the bottom line of the budget. He said over 5 years we are going to cut that deficit in half. In my book, 5 years is not good enough. Nevertheless, that was the goal he set for himself, and he claims that the budget he submitted this year will achieve that result. But in truth, the budget he submitted this year is more notable for what it omits, excludes, than for what it includes.

The President has not included in his budget for 2006 sent up last week any reasonable allocation of likely expense for the deployment of our troops in Iraq and Afghanistan in 2006. I would like to think they would not be there, but we have to be realistic. We know from 3 years' experience approximately what it has cost to maintain those deployments. They should be recognized in the budget, but they are not.

The President proposes to privatize or partially privatize Social Security and he gives us a likely cost for the first few years of implementation of those privatization plans between 2009 and 2015. His cost, OMB's cost for that time period, is $749 billion. That is nowhere to be found in these numbers. Even though it falls within the 10-year time frame of the budget, it is not included in the numbering.

The President asks for additional tax cuts. He asks for the tax cuts that he passed in 2001, 2002, and 2003 that expire for the most part on December 31, 2010, to be renewed and made permanent. Even though we now know that given the bottom line of the budget, the red condition, the fact it is a historic deficit, $427 billion, the bottom line can only get worse if those tax cuts are extended and made permanent. The President says, ''I want to do that.'' In addition, there is another $383 billion of expiring tax cuts that will have to be handled as well.

But there is one big item called the Alternative Minimum Tax. Over the next several years, this tax will affect more and more tax filers. Last year, to buy us a little time so we could repair that particular formula of the Tax Code so that it does not hit middle-income taxpayers, for whom it was never intended but is hitting now because it is not indexed to inflation, we built a little patch in last year's budget to at least leave the effect of it in constant status for 1 year.

Mr. KIND. Mr. Speaker, if the gentleman will yield, I thank the gentleman for highlighting the huge budget shortfalls we are facing, but one other item that seems to be masked in the budget numbers on the previous chart, does that include the amount of money that is currently being borrowed from the Social Security and Medicare trust funds? Is that amount also reflected in those figures showing deficits?

Mr. SPRATT. Mr. Speaker, reclaiming my time, the deficit is worse, and the gentleman makes an excellent point. When the surplus, and Social Security is running a surplus next year and this of $150 billion to $160 billion, that amount is actually offset against the gross deficit in the regular budget of the United States. So if you remove that offset, the surplus in Social Security, which is netted out against the deficit, that number becomes $687 billion instead of $427 billion.

Mr. KIND. If the gentleman will yield further, the current raid on both the Social Security and Medicare trust funds makes those budget deficit numbers much worse?

Mr. SPRATT. That is correct. I had another chart up which the gentleman is familiar with which shows you on the back of an envelope in a simple form the net effect of the three Bush budgets sent up in 2002, 2003, and 2004.

When the President sold his tax cuts to the Congress, his Treasury Secretary and his Director of OMB both said, We will not need to come back to you until 2008 to ask for the debt ceiling of the United States to be increased. They were back the next year, 2002. They said, We have incurred so much debt, despite our intentions, that we need to raise the legal ceiling on the debt of the United States by $450 billion.

The next year, 2003, they were back again. The tax cuts were beginning to be fully implemented, taking a toll on the bottom line, with other effects like a recession, like increased military expenses. But all of this added up to a need to increase the debt ceiling by $984 billion.

Let me put that in context. The entire national debt of the United States before Ronald Reagan took office was less than $984 billion accumulated since the beginning of the Republic. Then last November, before we could adjourn, Treasury was back, the administration was back, and they said, Before you can leave here, unless the government is going to shut down, the ceiling on the debt of the United States has to be raised again by $800 billion.

That means that this $984 billion increase made on May 26, 2003, lasted only 16 months. We are in effect adding $1 trillion to our national debt every 18 months. Nobody in his right mind thinks that that course can be continued.

This is the net total by which Congress had to raise, Republicans for the most part voting for it, had to raise the debt ceiling of the United States in order to accommodate Mr. Bush's budgets for the first 4 years, $2.234 trillion. That was the amount we had to raise the debt ceiling over 3 years in order to accommodate his budget.

Let me go back to the things that were left out of the President's budget, because, as I said, it is more notable for what it excludes than what it includes. As I said, there was nothing in the calculation of the taxes that he wanted to make permanent to fix the AMT, though all know this is a looming problem that politically has to be addressed in the next several years. There was not even money to patch it over for another year to study how to fix it.

Secondly, there was not a dime for Social Security privatization. Ten years of budget, not a dime for Social Security privatization, even though the President has made it his number one agenda initiative.

Thirdly, there was nothing for the cost of the war in Afghanistan, the insurgency there, nothing for the cost of our deployment in Afghanistan or Iraq or enhanced security in North America. The Congressional Budget Office, recognizing that that is a number that is there and has to be somehow or another estimated and included in the budget, captured, in order to have the budget be a complete and full account of what we are likely to spend, did a model.

They said, assume we can reduce our forces beginning in 2006, between 2006 and 2010, down to 40,000 troops in the theater, the CENTCOM theater, not necessarily Iraq, but in the CENTCOM theater, with 18,000 troops remaining in Afghanistan. What is the cost over the 10-year period of this budget? The cost to do that is $384 billion. Let us hope we do not have to incur that, but some significant number has to be included in this budget to make it a realistic budget.

Finally, when you add those three items, then we have less surplus. When you have less surplus, you have a bigger deficit, you have more debt service, because you borrowed more principal on which you have to pay interest. You add all of those items together, you get a $2 trillion adjustment to the budget.

This, therefore, is what we see, adjusting for the four items that I have just outlined, the budget path that the Bush budget will take over the next 10 years. $427 billion, third year in a row, it sets a record level, a deficit of $427 billion for the year 2005. It goes up the next year and levels off in the range of $400 billion, and then comes out at the end of 10 years at $566 billion.

We are not reaching to make this point; we are simply putting back in the budget costs we think are realistic and need to be captured in order to have a truthful portrayal of what the budget looks like.

This is the course that the Bush administration is plotting for us in the budget they have just submitted, and most people think that this is not a sustainable course.

I yield to the gentleman from Virginia (Mr. SCOTT).

Mr. SCOTT of Virginia. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, on this chart the gentleman shows the blue line as to the President's promise to cut the deficit in half within 5 years. Cutting the deficit in half within 5 years is certainly a modest goal.

Is it not true that the projected surpluses that we started off this administration with would have created $5 trillion in surplus? Yet according to the first chart you had, we are very much in debt, and we come up with a promise to cut the deficit in half in 5 years. What kind of goal is that? Why are we not talking about returning to surplus, where we were, and not having all of these deficits? Is cutting the deficit in half not somewhat of a bizarre goal?

Mr. SPRATT. Mr. Speaker, reclaiming my time, first of all, the gentleman is absolutely correct. When the President came to office, he had an advantage that no President in recent times had enjoyed, a surplus projected to be $5.6 trillion between 2002 and 2011, over a 10-year period of time; $5.6 trillion. That surplus is now gone, vanished. In its place there is a deficit over the same time period of $3 trillion to $4 trillion. This shows you how the $3 trillion to $4 trillion accumulates over that period of time.

We have had a swing of $8.5 trillion to $9 trillion in the budget over a 4- to 5-year period of time, a swing in the wrong direction of $8 trillion to $9 trillion.

Mr. SCOTT of Virginia. Mr. Speaker, I would say to the gentleman that one of the things when you run up all this deficit, you have to pay interest on the national debt every year. The interest on the national debt, you have a chart that shows what we spent in 2004, what we are going to have to spend.

Mr. SPRATT. The big red bar is the amount of interest, or debt service, that we pay, first in 2004, and then to its right, 2010.

Mr. SCOTT of Virginia. Mr. Speaker, if the gentleman will yield further, interestingly enough, I remember when President Clinton left office that we expected to pay off the national debt held by the public by 2008, in which case we would be paying zero interest on the national debt. Here you show in 2010 a $300 billion interest expense.

Is it not true that with $300 billion at $30,000 each, you could hire 10 million Americans? That is even more than the number of people unemployed today.

Mr. SPRATT. The gentleman is correct. When the President came to office, we had before us in Congress a novel idea, which would have been truly a conservative fiscal proposal, namely, that we would take the surplus in Social Security alone and instead of buying up new debt and funding new spending, we would use that surplus to buy old debt, retire that debt. We would add that money, $3 trillion-plus, to net national savings, bringing down the cost of capital, boosting the growth of our economy; and then in 2020, when the Social Security beneficiaries, the baby boomers, begin to press their claims for benefits, Treasury would be more solvent than ever to meet those obligations.

That would have been the first long step we could have taken toward Social Security solvency. There was support for it on both sides of the aisle. The President rejected that in preference for his own budget, which has led us to the deficit which appears there now.

Mr. SCOTT of Virginia. Mr. Speaker, if the gentleman will yield further, when we have all that interest on the national debt, that means that NASA will not have any money. NASA-Langley in my district is suffering cutbacks, laying off people. Shipbuilding, we would not be able to build the number of Navy ships, we are particularly trying to cut back on aircraft carriers. Pell grants are not going up with inflation. We are cutting back veterans health care. We are not keeping up with inflation to maintain present services and veterans health care in the middle of the war.

Is that not the kind of thing that happens?

Mr. SPRATT. Mr. Speaker, reclaiming my time, the gentleman is right on the mark. When you have an enormous increase in debt service like this, what it does is crowd off, trade off, other things that would normally be purchased, defense and non-defense goods and services.

Instead, the one thing that is truly obligatory in the budget is interest on the national debt. We cannot fail to pay it, or the credit of the United States collapses. So it takes precedence over everything else. You can see it has become the big boy on the block. It eclipses other non-defense spending priorities. From education to health care to veterans health care, you name it, interest on the national debts will be crowding out these other priorities, and the American people will pay substantial taxes to service this debt and wonder why they get nothing in return.

□ 1700

Mr. SCOTT of Virginia. Mr. Speaker, I had just one other question. On the first chart that the gentleman had up there, on the other side, the first chart the gentleman had, I remember we had something called pay-go during the Clinton years.

Can the gentleman explain how that helped us keep the trend up, and then what happened?

Mr. SPRATT. Mr. Speaker, we had two rules in the 1990s that applied from 1990 through the year 2000, really until 2002, and those rules effectively said, number one, the pay-go rule, if you want to increase an entitlement, liberalize the benefits of an entitlement program, you have to pay for them with an identified new source of revenues, or you have to cut some other entitlement somewhere else of the same amount.

Secondly, if you want to cut taxes, you have to have another tax to offset the revenue loss, or you have to cut entitlements enough so the bottom-line effect is neutral. Those two rules, with a discretionary spending cap, those rules that helped us put the budget in surplus for the first time in 30 years to a $236 billion surplus, what the Bush administration did was let those rules lapse, expire.

Mr. SCOTT of Virginia. So during those years, we had fiscal responsibility. We could not spend money unless we paid for it; we could not cut taxes unless we cut spending; and maintaining that fiscal responsibility kept that line going up. And, at the top of that line, we stopped pay-go and we passed tax cuts without spending cuts, and we passed spending increases without paying for them; is that right?

Mr. SPRATT. That is correct.

Mr. SCOTT of Virginia. And that graph shows what happens.

Mr. KIND. Mr. Speaker, if the gentleman will yield for a question, this is a little bit before my time, but correct me if I'm wrong; it was really a Democratic Congress, working with the first Bush administration, the current President's father, that first instituted the pay-as-you-go rules back in the 1992 budget; is that correct?

Mr. SPRATT. That is correct. The Budget Enforcement Act of January 1991, President Bush.

Mr. KIND. It was President Clinton in his first budget that he submitted during his first administration that asked for maintaining and continuing the pay-as-you-go rules that Democrats had to pass without one single Republican vote in the House of Representatives; is that right?

Mr. SPRATT. That is correct; and in the Senate.

Mr. KIND. And, Mr. Speaker, not one Republican back then had supported the pay-as-you-go rules that required tough political decision-making, tradeoffs, in essence, with the budget, which is something that the Democrats in Congress today are advocating in the alternative budget resolutions that were submitted, because it worked so well in the 1990s, the pay-as-you-go rules, which are very simple. If you are proposing a pay increase or a tax cut in one area, you have to find an offset in the budget to pay for it in order to maintain balance.

And it led to the 4 years of budget surpluses, as the gentleman pointed out, 2 years of which the Social Security-Medicaid trust fund was not even being raided but, instead, we could use that money for important debt reduction, starting to pay off the national debt.

I was here during that first Bush tax-cut debate we had a few years ago where the big concern, on the Republican side at least, was that we were going to pay off the national debt too fast, if you could believe those days, which never materialized. But now today, we are back into chronic budget deficits, and one of the fastest growing areas in the budget today is interest on the national debt.

I see two major problems with the huge budget deficits today that are unprecedented and we did not face before. One is, who is owning that debt? Who is paying for our deficit financing? Right now, Japan is the number one purchaser of our government debt, soon to be surpassed by China. I do not believe it is in our country's long-term economic interests to be so dependent on foreign entities, let alone China, to be the number one purchaser of our debt in financing these deficits.

The other big difference we have today is ever since those long-ago years when the pound sterling was a viable currency, we have never had a rival currency up against the dollar in the international marketplace. That is changing today with the strength of the euro in the European Union and in the common marketplace.

Now, if these countries that are currently investing in buying our bonds decide to take their investment somewhere else, such as in the euro, which is gaining in strength, and the dollar, which is declining in value, we are going to get caught holding the bag in trying to finance these deficits, and that could be the perfect financial storm being created.

So again, I think it is a reason why we need to work together in a bipartisan fashion and, at the very least, reach agreement in reinstituting something that worked in the 1990s, the pay-as-you-go rules.

I commend the gentleman from South Carolina (Mr. SPRATT), our Ranking Member on the Committee on the Budget, for the leadership and the honesty that he has shown in presenting the figures so that we can, at the very least, agree on the facts and the challenges that we are facing, and then coming up with some commonsense solutions that have a proven history of working in the past. I am going to continue to work with the gentleman and the rest of my colleagues here in trying to put together an honest and reasonable budget in order to get us back on that glidepath of fiscal discipline and fiscal responsibility again.

Mr. SPRATT. Mr. Speaker, let me turn to the gentleman from Virginia, but if I could briefly demonstrate, before I yield. This chart right here shows something else that is left out of the budget for 2006. The President, acknowledging that he has a deficit in 2005 of $427 billion, and it is likely to be at least that large in 2006, nevertheless asked for renewal and making permanent tax cuts that total 1 trillion, 7 billion dollars.

As for the effect of these tax cuts, this chart right here is pretty simple, but pretty instructive. This blue line at the top indicates the level that the administration told us projected the individual income tax revenues would follow if their tax cuts were passed. As my colleagues can see, it projected that revenues for last year would be 1 trillion, 118 billion dollars from the individual income tax. In truth, they were $804 billion. That is more than $300 billion short of what was projected. Do it on the back of an envelope. It is simplistic accounting.

But we cannot avoid the conclusion: that is three-fourths of the deficit in the year 2004. This is the effect, undeniable effect that tax cuts have had on the bad bottom line that we are looking at now.

Mr. MORAN of Virginia. Mr. Speaker, I would like to ask the gentleman if the revenue numbers also include the surplus that is coming in from FICA taxes, from Social Security. Because what this administration has been doing is really masking the seriousness of the deficit that they have created, because they have been taking the Social Security surpluses and offsetting it against the actual deficit to make the deficit appear much smaller.

Mr. SPRATT. Mr. Speaker, we discussed this a bit earlier, and the gentleman is absolutely right. The numbers we are talking about are the unified deficit numbers. That is to say, we consolidate all of the accounts of the budget. Social Security is actually in surplus now and will be for some years to come, so the surplus of about $160 billion in Social Security is offset against the deficit and the rest of the budget, making that deficit appear smaller than it truly is.

Mr. MORAN of Virginia. Mr. Speaker, what I am getting at is, I remember, as the gentleman does, when the Clinton administration acquired a substantial surplus and was projecting at the end of the year 2000 about $5.5 trillion of surplus. To meet the Social Security obligations for the next 75 years, what they were going to do is to take the Social Security surplus and put it back into the Social Security trust funds, so we would not have this issue with regard to supposedly bankrupting Social Security. All of that could have been avoided if we had followed through on those policies. Unfortunately, what this administration did was to promptly pay out that money in tax cuts.

We have been talking about these high numbers, trillions and billions; in fact, I wish the people, if there is anyone watching at home, they might write down what $1.7 trillion represents. It is 1 comma 7, and then 11 zeroes.

Mr. Speaker, $1 trillion is a thousand billion; a billion is a thousand million. This is an enormous amount of money that we have reduced our revenue by as a result of tax cuts, most of which went to the people who needed it the least.

Now, what is most troubling, I think to many people that we represent, is the cuts that are going to occur in the lives of people dependent upon programs. I want the gentleman to conclude his points, but when we talk about cutting $60 billion out of Medicaid nursing home costs and health costs for children and eliminating vocational education, all of it relates back to this policy, and it seems almost as though it is an excuse to cut domestic social programs that represent only 16 percent of the deficit, and yet almost 100 percent of the cuts are coming out of these domestic social programs.

But I would like to address that, and I would like to elaborate on that in a bit. I know the gentleman wants to conclude his comments and hear from our friend, the gentleman from Maine, as well.

Mr. ALLEN. Mr. Speaker, I thought I would say a few words about an event I did not so long ago, just before the election, or right after the election in my district in Maine. I went to Windham High School, which is not so

far outside of Portland, and talked to a group of students, civics students and their teacher, Bruce Bowers. They had asked me to come and talk to them about the Federal deficit, the Federal debt, the growing national debt, and what it means to them, because I had said on numerous occasions during the course of the campaign that the Republican budgets which have been passed here are immoral. We are passing on our current expenses, our current choices, to our children and grandchildren.

Well, they had studied the issue. They knew more than people in this House did, in many cases, I think, and they held up these signs. They had these signs in back of where I was speaking, and believe me, I got a grilling. But here were some of the signs: ''Pay as you go.'' ''No taxation without representation.'' ''Fiscal mismanagement should not tax our future.''

These kids understood what is not immediately obvious; that they were going to pay the bills for tax cuts that had been passed today or in the last 4 years, and for the war in Iraq, because essentially we are borrowing money to do those things. And they know that 20 years from now, when they want to be sending their kids to college, they will be paying taxes to the Federal Government, and there will be less of that money to pay for education, there will be less of that money to help them get job training, there will be less of that money to help their kids find the assistance they need to go to college, there will be less of that money to pay for their own national defense, because they will be paying exorbitant interest, levels of interest on the national debt; much more of what our tax dollars pay for 20 and 30 years from now will be just interest, interest on today's obligations.

Let us talk just about a couple of those. We are spending $1 billion a week in Iraq. Remember Paul Wolfowitz, the Assistant Secretary of Defense, who came before the committee and said, this is a case where Iraq can pay for the cost of its reconstruction, and reasonably quickly at that. Wrong. Not just wrong about weapons of mass destruction, not just wrong about the connection to al Qaeda, but wrong about what we would be paying. We are paying over and over again, and we are borrowing that money and our kids will pay the bill, eventually.

But it is also true that in 2005, $89 billion would go to people in tax cuts, $89 billion would go to people for tax cuts from households earning $350,000 a year or more; $89 billion. And those kids in Windham understand. They know that that is going straight to add to the annual deficit, the overall Federal debt that they are going to pay interest on that bill for years to come. Not just the $89 billion in 2005 that go to tax cuts for the rich, but probably $100 billion in 2006 and on and on and on.

The Republicans in the House and the Bush administration are bankrupting this country. They are imposing a burden on our children and grandchildren that is unconscionable, and they will sit and tell us, oh, well, we will grow our way out of this. These revenues will simply vanish. And the truth is, now, after all they have done to hurt the American middle class in the last 4 years, they have now come up with these cockamamie private accounts in Social Security idea that will, by itself, double the national debt in 20 years.

Mr. SPRATT. Mr. Speaker, I have just put up a chart to show exactly what the gentleman was just saying. Privatization means that tax funds that are now put in a public trust fund will instead go into private accounts that will cause the government to borrow more and more and more over time. The Bush administration acknowledges that between 2009 and 2015, when it first implements this particular proposal, that the cost will be $754 billion. We have obtained, using the Social Security actuary numbers, the true impact for the first 10 years of implementation and for the second 10 years of implementation, fully implemented. The cost right there, that little blue bar chart, bar on the graph there, the plan that the President is proposing adds $4.9 trillion to the unified deficit of the United States by 2028.

But we are only halfway up the slope at this point. The borrowing in the trillions goes on and on and on until the year 2055 to the mid-2050s, an enormous increase in the national debt.

□ 1715

So we even if the budget were to be cut in half, the deficit were to be cut in half by 2009, which it will not, the numbers simply will not support that outcome, there is a huge change in the budget deficit looming on the horizon at that point in time which means that the deficit will not be balanced again or anywhere close to it in our lifetime when this debt is added to it.

Mr. CASE. Mr. Speaker, I want to be clear that I understand exactly what the gentleman is saying.

I appreciate very much the opportunity to have this opportunity to learn from the gentleman. I want to go back to the context that we are talking about for just a second because I did take the opportunity to read the budget that came out of this administration.

More specifically, I took the opportunity to read the historical tables because I think it is important for us to see what has been before we can talk about what is coming up in the future. And we have talked already quite a bit about the total debt, and I am very happy that the gentleman is focusing on debt because we can talk about deficits, annual deficits every single year, but it is not as if annual deficits are static. If you have got deficits every year, you are borrowing it from somewhere; that means that debt goes up. If you have a deficit of $300 billion this year, that is borrowed money. Another deficit the next year, $600 billion.

Mr. SPRATT. Your debt service goes up, too.

Mr. CASE. Yes, that is absolutely right. The gentleman has an excellent chart that demonstrated that earlier, that under this President's own budget the interest on the national debt will double or more in the next 5 years while every other program is remaining basically at the same level of funding.

So the question that I have got, I am looking here at the President's own budget, noting that in 2004 we had a total national debt of $7.3 trillion. That was just a year ago and that was up, as the gentleman pointed out earlier, by $2 trillion just over a few years. So we are going up pretty darn fast.

I am looking here at the President's budget. This is the President talking; this is not us talking. It shows here in 2010, just 5 short years from now, we will have, according to this President's budget, a national total debt of $11.1 trillion. So $7.3 trillion last year. Under this budget, we are going to $11.1 trillion and, of course, that is the aggregate, is it not?

Mr. SPRATT. In 4 years.

Mr. CASE. Absolutely, in 4 years. And the point that the gentleman is making now, and by the way, that is a 60 percent increase in the total national debt in just a few short years, so obviously something is out of whack.

Now what the gentleman is pointing out in the chart that he is pointing us to right now is that essentially when we talk about this national debt, we are not talking, we are not including some very key aspects here. We are not talking about the cost of the privatization plan, right?

Mr. SPRATT. No, it is not included. And what I am saying here is this additional debt will be stacked on top of what is already monumental statutory debt of the United States growing every year because of the deficit in our regular budget, growing every year.

Mr. CASE. In the same spirit, we are not talking in this budget about any fix to the Alternative Minimum Tax, right?

Mr. SPRATT. No.

Mr. CASE. Nor are we talking about the costs of the war which are now projected to be astronomical if we project out over a reasonable period of time. That is additional debt.

Mr. SPRATT. When those adjustments are made, the numbers the gentleman just gave will only get worse.

Mr. CASE. We are not talking about additional debt service on the additional debt that will be incurred as a result of the first three. Those do not enter into the additional interest payment.

So what we are really talking about, I guess the point I am trying to make and trying to get clarity from the gentleman, is that when we are talking

even under the President's own budget of an increase of 60 percent in the national debt, assuming we agree to this budget straight out, we will assume if the President gets his way on privatization and on the Alternative Minimum Tax which we all want to do on the reasonable costs of the war, on other initiatives, not to mention further cuts in any taxes or continuation of any tax reductions, we are talking about trillions of dollars of additional debt during that same period.

Mr. SPRATT. No question about it. When you add this on top of it, it becomes almost irreversible. I do not see how you can add this and ever expect to see the budget close to balance again.

Mr. CASE. Let me conclude by making one other point that came out of our Committee on the Budget hearings just a week ago when I asked Office of Management and the Budget Director Bolton, hey, I have not heard much about debt. I have heard plenty about deficits, but I have not heard much about debt. Of course, frankly, I speculate that the reason is it is a lot easier to talk about reducing the deficit in half. But if we only reduce the deficit in half every year, we are still talking about compounded total debt because that is borrowed every single year. So it is not good enough to talk about reducing the deficit in half. It is a matter of balancing our books.

Mr. SPRATT. Absolutely correct.

Mr. CASE. I thank the gentleman for his good work, and I am happy to learn at his feet.

Mr. SPRATT. The gentlewoman from Pennsylvania (Ms. SCHWARTZ).

Ms. SCHWARTZ of Pennsylvania. I would like to make a few comments, and I ask for some of the gentleman's comments on some of my observations as a new member of the Committee on the Budget. I really sought to get on the Committee on the Budget. It is something I wanted to do because I know that my constituents sent me here to speak up for them, to look out for them and really to be an advocate for fiscal discipline, fiscal responsibility and for wise Federal spending.

As a former State legislator, as a State senator for 14 years, I know how important Federal Government investments are, that they do allow our State and local governments to meet their obligations without assuming the costs and responsibility for Federal shortfalls. They allow for shared responsibility of new initiatives aimed at promoting economic growth, quality education, access to health care, protecting the environment, and providing for a safe and secure homeland.

To do this, I want to mention three principles; and I would appreciate comments on it. I believe that we have to first recognize our obligations. The gentleman has talked about this, a good bit about our obligations that we already have. We have to work within our budgetary limits to meet them, and we have to make smart investments focused on the Nation's current and future fiscal well-being.

Unfortunately, as the gentleman has been pointing out with his charts, the President's budget does not meet any of these three simple rules.

Similar to his previous budgets, the President's fiscal year 2006 blueprint prioritizes the tax cuts for wealthiest Americans over meeting our obligations to all Americans, failing to adequately invest in keeping and creating new jobs, failing to expand affordable health insurance, failing to meet the health care needs of our veterans, and some of the other speakers talked about that, and failing to protect those who were working on our front lines to keep our Nation safe from terrorism.

As the gentleman's chart points out, one of the greatest failings of this President's proposal is his intention to change our commitment to older Americans.

Just last week, the President visited my district. He came to Montgomery County to promote his plan to change Social Security. Now, my constituents listened pretty carefully. Quite a few of them turned out. And they were anxious to know some of the details, some of the things the gentleman has on the charts, and what it would mean to them and to their families.

I am going to just mention a few, and maybe the gentleman can help us with some of the answers.

They wanted to know exactly what the term ''private account'' means. They wanted to know how private accounts would affect the value of their guaranteed benefit. They wanted to know whether it would provide more or less security for their retirement. They wanted to know how much they would really be able to control these accounts.

And they wanted to know how the proposal would impact disability and survivor benefits. They wanted to know how this proposal could possibly strengthen Social Security for the long term. And, moreover, they wanted to know how we as a Nation could afford to pay that $4.9 trillion that it would cost to create these private accounts out of Social Security.

I ask the gentleman to comment on some of these questions because before we can begin to talk at all about some of the long-term fiscal health of Social Security, we have to give the American people some of the answers the President has not given.

What we do know, and I think the gentleman has some charts on this, is that the President's proposal will do two things. It will dramatically reduce guaranteed benefits, and it will significantly add to the Nation's growing debt. So I ask the gentleman to confirm these, and I will say one third thing that I know it does, and that is that it does nothing to promote the long-term solvency of Social Security.

Mr. SPRATT. The gentlewoman has touched upon major impacts. One of our problems is the President's budget is lacking in detail as to all of the program, project and activity cuts that they would actually propose in the years after 2006. It is hard to tell. We have a chart here that shows what we know about the reduction in what is called nondefense domestic discretionary spending. And we can see here that we expect a reduction below purchasing power of about $180 billion over a 5-year period of time. That is education. That is veterans health care. That is highways. That is the government as we know it. Everything that people tend to identify the government with is included in these accounts. They have only come all together to $350 billion.

So you can, of course, out of $350 billion achieve some cost reduction, but there is only so much that can be achieved there. And keep in mind, this is not the source of the problem. These accounts have not increased in the last 3 years, but this is where the administration is going to squeeze as much as they possibly can, but there will never be enough in these accounts to eradicate a deficit of $427 billion next year.

Nevertheless, there will be deep pits, student loans, Pell grants, all of these things that matter to American families, kitchen-table issues.

Ms. SCHWARTZ of Pennsylvania. I have heard from many of my constituents, just some of the initiatives and some of the deep cuts that the President is talking about, even though they are not going to affect the savings that we need to provide these private accounts. It does not equate. I have nurses asking me about loan forgiveness programs, teachers asking me about education.

Mr. SPRATT. This is before the private accounts. When the private accounts are layered on top of this, they add so much to the deficit it is hard to predict what will be left of the accounts and items and projects that were just referenced.

Ms. SCHWARTZ of Pennsylvania. It is true the private accounts really do not have the details from the President about how they would work, what they would really mean; and it is true that they do not strengthen the fiscal viability of Social Security unless what we are really talking about is deeply cutting benefits. Is that right?

Mr. SPRATT. Exactly.

Ms. SCHWARTZ of Pennsylvania. Mr. Speaker, I can say as someone new to the Committee on the Budget, I appreciate the gentleman's wisdom on this. If we are going to meet some of our obligations to families and communities and to local governments, we have to be able to correct this budget, work together. I think the President has suggested that. I know that the gentleman has always worked closely with Republican counterparts.

As a new member of the Committee on the Budget, I know that we as Democrats and Republicans want to be honest with the American people, tell them the real consequences of what we

are doing, and come to a budget resolution that will meet the obligations of the American people.

I thank the gentleman very much for his detailed information. I look forward to working with him to accomplish that goal.

Mr. SPRATT. Mr. Speaker, I yield to the gentleman from Texas (Mr. CUELLAR).

Mr. CUELLAR. Mr. Speaker, I appreciate the leadership the gentleman has shown in the Committee on the Budget.

I want to focus on one part of the administration budget and that deals with education. When I looked at this 3,000-page budget proposal the other day, I was quickly struck by the fact that out of the 150 programs that are slated for elimination, 48 of them, that is one out of three, were in education.

Education has the power to break the cycle of poverty. Education has the power to change lives. As millions of Americans have proven, education has the power to change the future. It has changed mine.

I think the gentleman will agree with me that if we would call, or any Member would call, any economic development foundation in their district and ask them about the importance of a broad-based comprehensive education system, I think they would get the answer, an answer that we all know, that is, there is no greater resource today in our great Nation to attract better jobs with better wages to our communities than a strong education program that we have.

Mr. SPRATT. There is no other individual in the Congress I could point to who is a better testament to that principle than the gentleman from Texas (Mr. CUELLAR), who I believe has four degrees. Am I correct?

Mr. CUELLAR. I thank the gentleman very much.

I think the gentleman agrees with me that educational programs alone are no guarantee. These programs are successful only with the inspiration of our parents, the support of our community, and the hard work of our students. Many educational programs are threatened by this budget which includes the Upward Bound Program, the Talent Search, the GEAR UP among other programs. But I think today, if the gentleman would allow me just a few minutes to talk about one program, and that program exemplifies what it means to offer opportunity to an individual, what it means to offer opportunity to a family, a community and a country.

I think the gentleman is familiar with this program called Even Start. The budget calls for a $225 million cut from the Even Start program. That is a cut that would basically eliminate this program. In my own State, there are 90 Even Start programs in the State of Texas serving more than 5,500 families. In my part of the district, Seguin, Texas, there are 60 families that depend on this.

This is a very remarkable program that allows the parents to learn along with the children, where they are able to get their GED, where they are able to pull themselves up and not only educate their children but also to get trained, educated so they can get a job. It provides a sense of pride that makes them better parents, and that is what we are trying to do through our educational system.

□ 1730

I think the gentleman from South Carolina (Mr. SPRATT) would agree that if we have these budget cuts in education, as is proposed, this will not make our families stronger, this education will not make our Nation stronger, and I believe these cuts in education will make it very hard on thousands of families that are working hard, playing by the rules to make this transition from poverty to prosperity.

You know, now as we are talking about providing the tools to break this cycle of poverty and provide more home and opportunity for the children, I think we need to talk about something you have been talking about, Mr. SPRATT, and I would ask you this particular question. We agree that we need to have budget discipline. And, yes, we need to preserve educational programs like the Even Start program. So how do we do both?

And I think, just like you have said before, in order for us to do this, just do it just like we do the budget at home, we set priorities. We set priorities. We need to decide in Congress what are those priorities? Is it spending $280 million to study the icy moons of Jupiter, or do we educate our children? Is it spending $480 million to support the states of the former Soviet Union, or are we going to save America's farms?

I think, like you have been saying, Mr. SPRATT, it is a time to set priorities for our Nation, and now it is the time to make sure that we set those priorities, not only for our Nation, but for our own individual districts. And I ask you to continue the efforts and the endeavor to make sure that the American public understands that we can have a budget, balance the budget, but at the same time, the way we lower the deficit is to set the priorities, the priorities in education and health care, and economic development.

Mr. SPRATT. We can balance the budget and also balance our priorities. In 1997 when we did the Balanced Budget Agreement of 1997, we had the biggest plus-up in education in 15 or 20 years. We will have a budget resolution, a Democratic budget resolution on the floor, and it will adequately fund education. That will be the last thing that we will cut. Certainly we will not have 38 educational programs eliminated in our budget.

Now, in the time remaining let me recognize the gentlewoman from Georgia.

Ms. MCKINNEY. Mr. Speaker, to continue the discussion about the budget, let me just say that the purpose of a budget, the budget is the most important legislative document that the Congress will produce; and in fact, all legislative bodies produce a budget, be it the school board, city council, county commission, the legislature, and of course us here in Washington, D.C., in the Congress.

And the budget is our statement of values. It is a statement of values, because we look at the definition of politics, and it is the authoritative allocation of values in a society; and how are those values authoritatively allocated? They are reflected in the decisions that we make with respect to how we are going to spend our money.

And so when the President sends his budget to the Congress, the budget of the President then reflects the values of the President. And so this President has talked about an American prosperity, an America of prosperity and opportunity. But the America that the President seems to value is a very narrow America indeed.

In other words, our mantra ought to be leave no American behind in our quest for opportunity and prosperity for all. But, sadly, many Americans have indeed been left behind. And the situation is not getting better, it is getting worse.

A very few Americans are doing extremely well. But many of us are being left behind, and, in fact, too many of us are being left behind. For the latest statistics available, it takes 100 million Americans at the bottom to equal the share of national income received by the top 2.7 million Americans.

And this budget does not even begin to address the widening income gulf in our country. In fact, it exacerbates it. The employment and income picture has gotten worse for people of color, in particular, since 2000, eroding the tremendous progress that was made during the decade of the 1990s.

And in fact, since 2000 more than one-third of the progress made in reducing poverty among African American families has been completely, totally, absolutely 100 percent erased, as 300,000 African American families fell below the poverty line just from the year 2000 to the year 2003.

I would like to bring your attention to the product of an organization, a product that I have become dependent on as I try and travel around the country and educate folks about the true conditions faced by people in this country.

It is the State of the Dream from United for a Fair Economy. And every year they produce a report, ''The State of the Dream 2004,'' ''The State of the Dream 2005,'' about the inequalities, the disparities that exist in our country along the racial divide.

Now, I have got a couple of charts here that I would just like to show. Now, on the index of income, can you imagine that from 1968 to 2001, the average black income was 55 cents compared to that for white income, and 57 cents in 2001?

What United For a Fair Economy has found is that since the murder of Dr. Martin Luther King, Junior, on some of those most important indices, the situation has gotten worse, not better, for people in our country.

And here over the span of 33 years, we have only increased the well-being by 2 cents. And at the current rate, it would take 581 years to even out the black-white gap in income.

Or we can look at poverty. Overall poverty to close the gap, 150 years to close the gap, the poverty gap as experienced by black Americans and white Americans.

Or we can look at child poverty. The President says he wants to leave no child behind, but sadly, if we look at the numbers, and these numbers represent real children, it will take us 210 years to close the child poverty gap.

The President talked about housing, and we all know that homeownership is the cornerstone for the beginning of the accumulation of wealth, and look here at homeownership. It will take us 1,664 years to close the homeownership gap. Is that not incredible?

What does that tell us about our country's values and priorities? Our President talks about making this an opportunity, making this a prosperity society for all Americans, but if the President's budget does not deal with these very real differences in the way real Americans live, then the President has talked to us but he has not really backed his words with a policy statement that will change the way the bulk of Americans live in this country. The President cannot create an ownership society without addressing these disparities, and sadly, his budget proposal falls short of even his stated goals.

I look forward to actually being able to call the gentleman from South Carolina (Mr. SPRATT) Mr. Chairman and have folks on the other side of the aisle call him Mr. Chairman, too.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I rise today to vehemently state my disappointment, frustration, and objection to the FY 2006 budget submitted by President Bush.

When President Bush submitted his 2006 budget to Congress recently, he said, ''The taxpayers of America don't want us spending our money into something that's not achieving results.'' I couldn't agree more.

The President's 2006 budget cuts money from America's veterans, America's first responders, students, small businesses, health, urban and rural development, and environmental protection.

Is the President saying our veterans, first responders, students, and small businesses are not achieving results?

The unnecessary tax cuts for the rich and an optional war with Iraq are not producing results.

The President's budget does not contain a single dime of money for war effort in Iraq or his proposed reforms to privatize Social Security.

How is this possible? How can the budget for the country omit the two most important issues mentioned during the President's address to the Nation on the State of the Union?

Instead, those costs are hidden from the American people in the form of an $80 billion emergency supplemental request to Congress. A request that was not mentioned during prime time coverage on national television.

This budget continues the same bad choices of this administration and will lead to the same bad results—huge deficits and increasing debt.

This President and this administration has squandered an inheritance of a 10-year surplus of $5.6 trillion and has replaced it with deficits that our children may have as their responsibility.

This budget will severely impact Texas citizens negatively as well as other American citizens. They deserve better.

Never before has America faced such an array of issues that demand creative, competent leadership.

But the Bush administration has pursued solutions that serve only to escalate the problems we are facing.

We should be making progress, but in too many areas we are either backsliding or simply holding the line.

Programs and policies that not only provide assistance for the poor but for a large portion of the American people who need help to keep their heads above water are under attack.

To cut the Medicaid program for the poor of $60 billion over 10 years, to cut the Small Business Administration's technical assistance program to small businesses by 37.9 percent, and to cut community policing programs up to 95.6 percent is not only immoral but irresponsible.

Eight million Americans are unemployed. But Republicans passed a new set of tax breaks that reward corporations who send jobs overseas.

About 45 million Americans have no health insurance. But Republicans have proposed Health Savings Accounts that benefit a wealthy few, encourage employers to drop insurance coverage and will increase the number of uninsured by 350,000.

Over 8 million children nationwide are struggliing to meet new national education standards. But Republicans refused to provide promised help to our schools, leaving millions of children without the help they need in reading and math.

America needs a budget that reflects the morals of this country, a budget the American people can trust and support, one that supports the national security policy that is as strong and brave and as decent as the heroes who serve to protect us.

America needs a budget that includes all its citizens and a budget that is fair and balanced.

The President needs to do for all of America what he is asking the rest of the world to do—to treat all its people with decency and respect.

Mr. BISHOP of New York. Mr. Speaker, I rise today to express my opposition to the President's FY06 budget—a budget that I believe goes against our values as a society. If the proposed budget passes, it would be a disaster for constituents in my home district on Long Island and districts nationwide, forcing working families to make up for many of the cuts in the form of higher State and local taxes.

The American people deserve honesty, and this budget is dishonest by omission, and dishonest in how it portrays the overall budget projections. The President claims that the steep budget cuts he advocates are necessary to cut the deficit in half in 5 years. This is simply not true, and the budget the President proposes fails to accomplish his stated goal.

First, the budget is dishonest by omission. Nowhere in the FY06 budget does the President account for significant costs, including:

Fails to account for the enormous costs of privatizing Social Security as proposed by the President; a whopping $6 trillion over the next 20 years; $754 billion over the period from 2009–2015;

Fails to account for the continuing presence of our troops in Iraq—the administration knows we are going to approve an Iraq supplemental upward of $80 billion for the first part of this year alone—and an estimated $384 billion over 10 years—yet still omits it in the budget;

Fails to account for growth in interest costs;

Fails to reform the Alternative Minimum Tax that is disproportionately burdening middle income families in my district on Long Island.

As troubling as the glaring budget omissions is the knowledge that the deficit is largely a self-inflicted wound. The President inherited a record annual surplus of $236 billion—which now, 4 years later, has tanked into a deficit in excess of $400 billion. Any attempt at honest accounting suggests that we are looking at a decade or more of similar deficits.

The reason we are faced with an unethical budget is because the President refuses to acknowledge the fiscal irresponsibility of his choices, and will not entertain even the most moderate suggestions, such as repealing only the portion of the tax cuts that benefit the top 1 percent of taxpayers.

Unfortunately this budget builds on a disturbing trend. This administration and the leadership in Congress appear to be intent on valuing wealth over work, thereby placing working families at a distinct disadvantage. The tax policies the President advocates disproportionately advantage the wealthiest to the detriment of working Americans, and working families will continue to bear the brunt of the rising inflation spurred by the rising interest rates.

The Bill Gates' of the world pocketed their tax cut at the insistence of the President. However, this President sees no problem eliminating funding for Perkins Loans in his budget, even though the cost of tuition is rising and will continue to rise as the administration's policies force inflation. As a result of the decision to eliminate Perkins, this year more than 670,000 student borrowers could lose out on loan forgiveness if they become teachers, law enforcement officers or if they serve in the military. This is just one of many examples of valuing wealth over work.

In my district, the budget scales back and eliminates several long-term shore protection projects important to the safety and economic security of Long Island.

The President has no problem zeroing out the Fire Island to Montauk Point Study, just as it nears completion.

The President eliminates funding to dredge the Patchogue River, even though this creates a huge safety hazard for boaters.

The President does not hesitate to slash funding for the Long Island Sound Study Office from $7 million to less than $500,000, even though this is vital to the livelihoods and economy of the east end of Long Island.

The President falls far short of his promise under the No Child Left Behind bill, even though this means that taxpayers will have to foot the bill at the local level to pay for education.

Finally, the President does not seem to mind taxing veterans' health care at $250 per year, and doubling copayments for veterans' prescription drugs, at a time when we should be saluting our veterans.

Our values as a society are not reflected in this budget. We must ban together in Congress to force an honest accounting, and insist upon the restoration of long-term fiscal responsibility to our Nation. It's not enough to talk about compassion—it is high time that we refocus our priorities and show some compassion.

GENERAL LEAVE

Mr. SPRATT. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the subject of my Special Order today.

The SPEAKER pro tempore (Mr. CONAWAY). Is there objection to the request of the gentleman from South Carolina?

There was no objection.

SETTING THE RECORD STRAIGHT ON THE COST OF THE MEDICARE PRESCRIPTION DRUG BILL

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Connecticut (Mrs. JOHNSON) is recognized for 5 minutes.

Mrs. JOHNSON of Connecticut. Mr. Speaker, the landmark Medicare Prescription Drug and Modernization Act that this body passed in 2003 was the subject of heated rhetoric and partisan attacks at that time. Most recently, we have heard the claim that the costs of this wonderful Medicare prescription drug benefit have skyrocketed far above the estimates relied upon when we passed the bill in 2003. Allow me to set the record straight.

The cost of the Medicare prescription drug benefit that will guarantee every senior in America affordable prescription drug coverage has not changed. In November of 2003, the Congressional Budget Office estimated that the costs of the drug benefit from 2004 to 2013 would be $408 billion. Today, they estimated it at $410 billion.

In December of 2003, the Centers for Medicaid and Medicare Services, using different assumptions, estimated that the cost of the bill over the same 10-year period would be $511 billion. Today, they are saying it will cost $518 billion. So, whatever estimates we use, whichever set of assumptions we wish to rely on, CBO's or CMS', the answer is the cost estimates have not changed. They varied about plus or minus 1 percent.

So what is the issue? What is the big uproar over? The answer is simple. New estimates just released by the administration are for a 10-year period that begin in 2006, not 2004. These estimates cite a cost of $724 billion. That is because they drop 2 years when there was no drug program and add 2 years when millions more Medicare beneficiaries are going to enjoy the benefits of our Medicare Modernization and Prescription Drug Act. It is just that simple. The 10-year estimating period changed. So, of course, the estimates went up.

But it is easy for the estimators to count the new number of people who benefit from the program in the 2 additional years and drop the 2 years when there was no program. It is more difficult for them, and so they do not do it, estimate the saving that the Medicare modernization and prescription drug bill will enable Medicare to enjoy while at the same time improving the quality of care we will be able to deliver to our seniors.

The Medicare Modernization Act fundamentally changed the way Medicare delivers care to our seniors. By offering welcome to Medicare physicals and disease management programs, we have transformed Medicare from simply an illness treatment program to a wellness and preventative health program.

Medicare has always been good at treating our seniors once they got sick, but did nothing to prevent them from getting sick. Worse, Medicare did nothing to help seniors with chronic illnesses to prevent that chronic illness from worsening.

America's seniors deserve the changes we made in the Medicare Modernization Act. That act modernized the delivery system of care to enable Medicare to deliver the most recent medical advances to our seniors, particularly to those with chronic diseases.

□ 1745

By moving from an illness model to a preventive care model, we can keep seniors out of high-cost care settings, like hospitals and emergency rooms. If you are looking for a sensible way to control costs, this is the way to do it. Disease management programs, like the ones the Medicare Modernization Act have introduced into Medicare, have proven they save health care dollars and they improve health care quality.

PacifiCare has already saved $244 million through existing disease management programs to their 720,000 Medicare beneficiaries. They have saved $75 million through medication management for patients with congestive heart failure and reduced hospitalizations by 50 percent. They have saved $185 million by improving blood sugar and cholesterol levels in diabetics. They have saved $72 annually through their congestive heart failure program, which has served 15,000 patients.

McKesson, which will bring Medicare seniors into the Medicare Modernization Chronic Care Improvement Program this year, currently saves $3,089 per patient each year in their disease management programs. They have reduced emergency department visits by 61 percent. They have reduced hospitalizations by 66 percent.

XLHealth, which operates a Medicare Chronic Care Improvement Program, has reduced medical costs in 2,500 Medicare patients since 2000. Their disease management program has reduced hospitalizations by 25 percent, amputations by more than 50 percent, and heart bypass surgery by 65 percent.

The bottom line: disease management programs save money and improve health care quality. And thanks to the Medicare Modernization Act, these programs will create a better quality of life for seniors with congestive heart failure, diabetes, chronic obstructive disease, and other chronic illnesses and bend the curve of Medicare's cost growth.

These recent estimates we have been hearing so much about simply do not include any consideration of the power of disease management programs to reduce the cost of chronic disease and to improve the quality of care in Medicare. Twenty percent of our seniors have five or more chronic conditions and account for two-thirds of Medicare spending. Twenty percent. Of course disease management will reduce the cost of Medicare.

MMA also initiated another new, though related, development in Medicare that will create significant savings while improving quality, but isn't reflected in cost estimates drawing attention today. For the first time, electronic prescribing will become routine in the Medicare program, with electronic medical trends coming along thereafter.

Electronic prescribing technology will save lives and money by eliminating adverse drug interactions, eliminating handwriting errors, and by notifying physicians when a lower cost generic alternative is available. As we all know, generic drugs often far cheaper than brand name drugs. Electronic prescribing will save money, and while this technology called for in the MMA, the cost savings are not reflected in the cost estimates.

Repealing the MMA would be the wrong medicine for America's seniors. Doing so would deprive them of prescription drugs and the high level of coordinated and preventive care that will keep our seniors healthier and control Medicare spending by improving the quality of our health delivery system.

CODEL TO PAKISTAN AND AFGHANISTAN

The SPEAKER pro tempore (Mr. CONAWAY). Under the Speaker's announced policy of January 4, 2005, the gentleman from Indiana (Mr. PENCE) is recognized for 60 minutes.

Mr. PENCE. Mr. Speaker, I am glad to have the opportunity this evening to address you on a subject that is both a meaningful memory for me, as the elected representative of the people of eastern Indiana's Sixth Congressional District, but also, as I believe we will hear not only from my recollection but

from colleagues who will join us, and a very rare opportunity to have a contemporary conversation about the critical importance and the extraordinary success of the United States of America in Afghanistan.

I had the privilege, as a Member of the House Committee on International Relations, to lead a congressional delegation both to Pakistan and Afghanistan this past December. Between the dates of 7 December and 14 December, I had the opportunity of traveling through Pakistan. We landed in Islamabad. We drove by ground transportation to the border of the tribal areas, the city of Peshawar, but also the areas both north and south, Wazirastan, where many may recognize the areas most often associated with theories about the hiding place of one Osama bin Laden.

While I and the Members of our delegation were in the city of Peshawar, we actually sat down for a meal with tribal leaders from that central area of south Wazirastan, which is in effect in the western area of Pakistan, and it probably is analogous to the Wild West in American history and folklore. As we met with the Prime Minister of Pakistan and the Governor of the Peshawar Province, they referred to this area of Pakistan as the ungoverned areas of their country.

So they really are dominated, Mr. Speaker, by tribal leaders who are, in effect, military and familial leaders of communities ranging from 20,000 to 100,000 persons that dot the mountainous landscape of western Pakistan.

Now, while we stopped in Pakistan and evaluated the progress of the war on terror in that country, the primary purpose for our trip was to visit Afghanistan, where Operation Enduring Freedom has been an extraordinary success since the months immediately following the devastating attack on our country on September 11, 2001. It was my happy privilege to lead what came to be known as CODEL Pence, but the happier part of that was to be joined by colleagues and senior staff personnel of the House Committee on International Relations, who made this trip that much more meaningful and informative for the four policymakers that were alongside for the journey.

My colleagues, some of whom will join me here tonight to share their reflections on Afghanistan and the experience that they had, both in Kabul as well as at provisional reconstruction sites around the country, but my colleagues who joined me included the gentleman from Arizona (Mr. FLAKE), the gentleman from Tennessee (Mr. DAVIS), and my good friend and colleague, the gentleman from Indiana (Mr. CHOCOLA).

There were also noteworthy senior staff personnel from the House Committee on International Relations who joined us, as well as members of the media, all of whom, I might add, demonstrated an extraordinary degree of compassion toward the soldiers that we met and an extraordinary degree of compassion toward the regular Afghani adults and children that we encountered.

And I might also add that while at no time was our delegation in any physical peril, I do want to commend all those who traveled with us for the willingness to go into a combat environment and to carry the encouragement of the people that we serve to these soldiers in what was the holiday season, when they found themselves so far away from home.

From that dinner in Peshawar with the tribal leaders, we embarked by a C–130 and traveled for our first day into Afghanistan. We arrived in Kabul, Afghanistan, in the belly of a C–130 cargo plane, and we made our way through Kabul. By way of my first recollection, it was an extraordinarily war-torn city.

Our victory in Operation Enduring Freedom was so overwhelming and so quick against the Taliban and the al Qaeda that they harbored that I do not know that I did not really expect to see a metropolitan capital relatively unmolested by war. But that is only because I was not thinking. I was not thinking that it was not the military engagement of the United States of America in Kabul that has wreaked havoc on that, the largest city in Afghanistan. Rather it was years and decades of warfare in that country.

More on that later. More on how that has affected the attitudes of the Afghans both toward the American military commitment and presence in the region and how it bears on our relationship going forward.

But this city had been torn asunder by the military barbarism of the Taliban and, of course, by a decades-long struggle with the former Soviet Union that used barbaric military force again and again and again to attempt to defeat and subjugate the Afghan people and the Afghan military, ultimately to their defeat and ultimately to their national demise.

During our trip, we had a number of great privileges. We met while we were in Kabul with President Karzai. We had the privilege, Mr. Speaker, of being the very first congressional delegation to meet with President Hamid Karzai after his inauguration as the first elected President of Afghanistan. It was an extraordinary privilege for us to be there on December 13, 2004, sitting in the presidential palace and sitting in the office with President Karzai.

By way of reporting to this Chamber a few personal reflections on Hamid Karzai, he is a man who I truly believe is the George Washington of this generation of the Afghan people. He is, as General Washington, whose portrait hangs in this very Chamber, he is in every sense the indispensable man of the transition from the brutalities of Soviet Communism to the brutalities of Taliban extremism to the free era of an Islamic democratic republic in Afghanistan.

I started to get a sense, as we sat in his office in the palace, about why this man has been so successful. He is, first and foremost, a man whose personal biography is deeply compelling. Hamid Karzai comes from the region of Afghanistan down along the border. We were headed to his hometown, which if memory serves, is Kandahar.

His father had been, in effect, a tribal leader in Kandahar during the rise of the Taliban regime in Afghanistan; and as history records, Hamid Karzai's father had been initially very supportive of the Taliban, but very soon saw their twist into totalitarianism and brutality, and Hamid Karzai's father spoke out against the Taliban. And as often happens in brutal dictatorships, Hamid Karzai's father was assassinated, at which point he was spirited across the border into Pakistan. And during much of the reign of the Taliban, he essentially hid out in parts of Pakistan, which of course is very familiar to Hamid Karzai because he had been educated in the country of Pakistan. And to this day he bears both the Pakistani's facile ability with the English language as well as a deep understanding of history and academic thought.

It is that Hamid Karzai who, first with his biography was from a family that had suffered under the Taliban, that then he is able to come back and be the first elected president.

□ 1800

But I think also, and maybe my colleague from Indiana (Mr. CHOCOLA) can reflect on our meeting with Hamid Karzai as well, I found him to be an extraordinarily compelling personality as well. The one message, and I will yield to my colleague for reflections on that meeting and maybe invite my colleague, Mr. Speaker, to a bit of a give-and-take as we tell the story of our journey through Afghanistan. I found him to be an individual who was deeply humble, who had a profound understanding of history, particularly the history of democracy, and who said to us again and again, I will not steal the gentleman from Indiana's thunder because he really asked a profound question of Hamid Karzai that I hope he recites and refers to, but I had a sense again and again that President Karzai understood that we were probably hearing back home that his people may not want the United States to stay around in Afghanistan. He looked at us again and again, Mr. Speaker, and said, When you go home, tell the people that you serve that we will never in Afghanistan fail to be grateful for what you have done and that we love the American soldier, we are grateful for their sacrifices and we love the American people.

To hear that from the elected President of a country that within a matter of years ago was not only one of the great enemies of our country in the world but harbored the al Qaeda, it was

just an extraordinary miracle of history and a great testament to this President's leadership.

With that, Mr. Speaker, and I hope he will stick around for much of our conversation as we tell the story of journeying through this area, is the gentleman from Indiana (Mr. CHOCOLA) who is beginning his second term in Congress, a member of the Committee on Ways and Means. We are proud of his leadership in Indiana. I was especially grateful that his family was willing to spare him to travel through a pretty difficult part of the world to gain a greater understanding as a policy leader. I yield to the gentleman for any reflections on our trip, but most especially would press him for an anecdote about our meeting with President Karzai.

Mr. CHOCOLA. I thank the gentleman for yielding. I want to thank my colleague from Indiana for his leadership in putting this trip together. It was an extraordinary trip full of extraordinary lessons. I only wish that all of the American people could have joined us on that trip and learned what we learned and saw what we saw, to see really the birth of democracy in a country, being the first delegation to meet with President Karzai after his inauguration in free elections, that went off very successfully. The terrorists were unable to stand in the way of people pursuing freedom. It is a wonderful thing to see.

I do recall our meeting with President Karzai and I think he is an extraordinary individual, the right man at the right time, and a great partner for the United States. I do not know if I asked him any profound questions; but one of the questions I asked him was, What would you say to the American people or what would you say if you could go to a town hall meeting in the Second District of Indiana? I invited him to come, as you may recall. He was a little busy and could not join us. But what he said, I do think, was interesting. You would expect him to say thank you. You would expect him to thank the American people for our support for democracy in Afghanistan and giving really the people of Afghanistan the opportunity to rebuild their country and their lives. But, instead, he said congratulations to the American people. He said, I could say thank you, but I would rather say congratulations, because what we have achieved together is an extraordinary thing.

It is extraordinary to think that just a couple of years ago that Afghanistan was under Taliban rule, was harboring the terrorists that attacked us on September 11, and today we could sit in his office and after having driven through the streets of Kabul and seen economic freedom flourishing, entrepreneurship in the streets, in partnership with Afghans and Americans working side by side, he said, it is an extraordinary thing that we have accomplished and an extraordinary thing that we will continue to accomplish together. So congratulations to the American people in having such a wonderful partnership with the Afghans.

I also remember what he said: I would also point out that the strength of Afghanistan is not our buildings, it is not our economy, it is not the Afghan national army, it is the people of Afghanistan. That is the greatest strength that will continue to build hope and opportunity in this country.

I think he sounded a little bit like our Founding Fathers and, in fact, he sounded a little bit like Ronald Reagan whom I consider one of the best Presidents in our Nation's history when he said, I think his exact words were, ''The government that governs the least governs the best.'' I think we have heard that before somewhere.

But he understands that it is the government that creates an environment for success, that the Afghan government is not going to create success for the Afghan people, but they are fully capable of doing that on their own; and if the Afghan government can help create an environment where people can achieve their own success, really enjoy the fruits of their own success and encourage them to share that with others and grow their economy and help their neighbor, that Afghanistan is well on its way to a free and democratic and successful country.

I would love to stay here with my colleague and discuss other great opportunities and lessons we had. Again, thank you for your leadership and thank you for your creativity in helping to share that story with some people here in the United States by having some media with us that did tell the story. I just wish we could have the whole country hear the story loud and clear, because it is a true success story.

Mr. PENCE. I am grateful for the gentleman's remarks, Mr. Speaker.

This is an area, and I hope anyone that might be looking in to this august Chamber tonight might hear what my colleague from Indiana just said about the gratitude that came out of President Hamid Karzai. I had literally forgotten until you recited the story that that is precisely how he answered the gentleman's question, was to say our success is the success of the American people.

It has been an incredible success. Afghanistan, as the station chief where we overnighted at the American embassy in Kabul told us, and I will never forget it as we met for a briefing there on the embassy compound. He said, Afghanistan is a place where American power and American generosity are working. Let me say it again for the benefit of any here: Afghanistan is a place where American power and American generosity are working.

We have our challenges in Iraq and with this strong Commander in Chief that we have, we will see our way through this and we will see those good people with their ink-stained fingers through to the freedom they so richly deserve. But Afghanistan is a place we do not read about as much in the news. I think that animated my colleague from Indiana and my desire to go there and tell the story of the success that we had seen.

One of the things that we saw there was to travel in Kabul to the northern outskirts of the city to what has come to be known as Camp Phoenix, a large military installation and principally where, as near as this non-veteran could appreciate, where a great deal of the supplies are managed on a regular basis for Operation Enduring Freedom. And also, I might add, it is also a place where, if we can brag for just a moment and go to a different poster, 15 percent of the Army National Guard in Afghanistan are stationed and every single one of them is a Hoosier. For anyone looking in who does not know the vernacular, that means from Indiana.

This, of course, is a photograph that my colleague actually should be in this picture because the gentleman from Indiana actually brought this Indiana flag, but all of these soldiers, this photograph taken at the provisional reconstruction team site in Jalalabad are of some 1,500 members of the Indiana Army National Guard, away from their families, away from their husbands and their spouses and their wives and their children and their grandchildren, and doing the kind of work day in and day out that is the building of schools, the establishing of fresh water, the establishing of basic services through these provisional reconstruction teams.

We took a memorable helicopter ride on, I think it was a CH–53, a Hercules helicopter, very much like Luke Skywalker through the mountains of Jalalabad, hugging the mountainsides, and landed softly at this provisional reconstruction site. And these folks who, when they are not in uniform, are insurance salesmen and small business owners and pastors and business people and blue-collar workers, but here they are American soldiers and they are impacting the lives every day of regular, ordinary Afghanis. They are a source of enormous pride to this Hoosier for the sacrifices that they are making.

As we think about the role, particularly of General Moorhead who commands the Hoosiers at Camp Phoenix, who are literally fanned out all across Afghanistan, I am reminded as I prepare to yield to my colleague for any memories of that part of our trip and the Hoosiers that we met, the night before we left, many of us, my colleague included, and our spouses were able to be with the President and the First Lady at the White House for a holiday celebration. In the few minutes I had with the President, I told him I was leaving for Afghanistan the next day and he thanked me for that, as the Commander in Chief would, and asked me to thank my delegation for going. And then I said to the President, you know, 15 percent of your Army National Guard over there are Hoosiers. And without missing a beat, the President of the United States said, ''That's

why it's going so well, Mike.'' I told that to every single one of the Hoosiers that we met. I thought the President was just being nice, but when we went over there and saw the professionalism and the commitment and the compassion with which these Hoosiers are bringing, in many ways, civilization, stability and democracy to the people of Afghanistan, I became convinced that the President's generous comment was actually pretty close to right. I yield to the gentleman.

Mr. CHOCOLA. I thank the gentleman for yielding. That is a great picture. If you will recall, just behind the group, I guess on their right, behind them is a school. We toured the school. The students there and the headmaster were so thankful to the soldiers that had helped rebuild the school and helped provide school supplies that the children previously really did not have. On the other side, you can see a little bit of it, there is an orchard.

I think the one thing that we have to recognize is that our soldiers are really soldiers of mercy, that we can kill bad guys all day long and we need to kill the enemy, but for the most part what our soldiers are doing there is helping to build a future for the children and the families of Afghanistan. Right there in Jalalabad, helping to build a school, helping to cultivate an orchard and teaching the lessons of how to grow an economy. I think one of the most important lessons that I learned on our trip was that the two most effective tools in weapons in the war on terror is education and economic growth.

One of the most stunning statistics that I learned during our trip was that 40 percent of the Afghan population is under 14 years of age, many of them in the picture you have there. If we do not help the Afghan children, the leaders of tomorrow, have a good education and have an opportunity for a good job in a growing economy, then they will choose a path that is destructive. They will choose a path of terrorism and crime. If they have an education and they have an opportunity for economic growth and a good job, they will be our partners in peace and democracy.

Mr. PENCE. If I may interrupt the gentleman on that point, before the gentleman arrived, I was reflecting on our experience in Pakistan and in Islamabad; and I might, Mr. Speaker, with your permission, encourage the gentleman to speak about precisely that point, which is a profound point which he made both on national television appearances related to this trip, that economic development and education, I think his phrase was, are the principal means to combat terrorism long term.

I am wondering, Mr. Speaker, if the gentleman might reflect on what we saw in the advances at what are known as madrassas or traditionally religious education facilities. We were one of the few American delegations to be permitted to visit a traditional Islamic madrassa in Islamabad, Pakistan. Mr. Speaker, I would ask the gentleman to reflect on that and how that bears on his keen insight about the need to encourage greater, more expansive education in this difficult part of the world.

Mr. CHOCOLA. I thank the gentleman. Certainly a very important part of our trip was our stop in Pakistan. Again, I appreciate the gentleman's leadership in helping to arrange a visit to a madrassa.

When I heard we were going to a madrassa, I was a little concerned, a little skeptical, that here we were going to visit a facility that basically educated religious fanatics, that hated America, hated western values and basically everything we stood for. I was pleased to find out that it was a moderate facility. The thing I was probably most encouraged to learn from the Pakistan government about education in madrassas is that the Pakistan government's strategy is to build secular schools right next to the extreme madrassas in their country.

□ 1815

Because when parents are given the opportunity to send their child to a school that provides education, boarding, and food when the average income is a few hundred dollars a year, certainly they will do that.

But when the school only provides a religious education that provides no marketable skills in the economy, their child does not necessarily have a bright future, and their options are limited when they graduate, and they are susceptible to some of the radical teachings.

But if their child is given the opportunity to go to a school next door that provides a secular education, that teaches them reading, math, and life skills to be able to be constructive, contributing members to a country and an economy, the parents are going to make the same choice every single time. They are going to make sure their child has a bright future, has every opportunity possible to them that they can gain through that education.

So the Pakistan government is doing some very good things in support of combating terrorism, by going right to the root by addressing the hope and the opportunity of the youth of that part of the world so that they choose a positive path in life rather than terrorism and crime and a very destructive path in life.

I thank the gentleman for yielding to me.

Mr. PENCE. Mr. Speaker, reclaiming my time, I thank the gentleman for that memory and, more importantly, the observation about the critical importance of education.

This photograph is just so meaningful to me, and I think I could live to be a lot older and have just a little bit more gray hair and not cherish any photograph more. And I hope anyone peeking in would examine this or even go to my Web site and take a careful look at it.

As the gentleman will remember, we were walking down this road outside of the provisional reconstruction team's compound in Jalalabad. We were surrounded by soldiers carrying very large weapons and wearing body armor; and we were walking along what we can see is a small village, which, like most villages in that area, was walled with a rustic door. But what struck me and what strikes me about this photograph, it speaks to the gentleman's point about education and it speaks to the gentleman's point about whether it be in Afghanistan or Pakistan or other parts of the world that if we can win the hearts of the children for freedom and to understand the heart and the intent of the good people of the United States of America, we will have gone a long way toward defeating terrorism in the 21st century.

What I love about this photograph is that, and the gentleman will recall, as we came down this street again in an intimidating environment, we were surrounded by big men carrying big guns and wearing body armor, but these children came streaming out of this door running up to the soldiers as long-lost friends. Every one of the soldiers, after checking the perimeter carefully, took a knee. Many of them began to speak in the native tongue with the children. The gentleman from Indiana (Mr. CHOCOLA), the gentleman from Arizona (Mr. FLAKE), and the gentleman from Tennessee (Mr. DAVIS), all of us kind of fanned out and started learning names and chatting with children and posing for pictures; and the most striking thing to me about this photograph, and these are all children, and I am sure we were told but I cannot imagine what their families live on per year but it has to be pennies a day in our currency, and yet every child in this photograph is smiling. Every child in this photograph looks healthy and well fed.

And I know the only reason that is true is because of the United States of America and because of the American soldier; that Jalalabad was an area that was destitute, impoverished, lacking in fundamental basic services, lacking in schools because, as we met with regular Afghans, they told us, We have never had little girls be able to come to school. The Taliban would never allow it, and we never had buildings to come to school in until the United States of America.

So what this picture represents to me with almost an Old Testament-looking wall and door behind it, which if one goes through Afghanistan, it is pretty Old Testament. I mean, it literally looks like a scene out of an Easter pageant. The whole country does, with mud walls and mud streets and ox-drawn carts, and yet to see these children and to see the looks on their faces that is evident in this photograph just

moved me and blessed my heart at a level that said what these soldiers have done, what their families who have sacrificed their time and in some cases they have said good-bye forever to their sons who have fallen in Operation Enduring Freedom, is in some way recompensed by these smiles and by the affection.

I do not know if the gentleman remembers that or the times that we went into classrooms in Jalalabad. The reaction that we got from children was just extraordinary to me to see the way these children were responding to American soldiers and to American personnel and to know they knew we were from America and that America was doing all of these things in Jalalabad and in Kabul and all over Afghanistan for their people. It just was deeply moving to me.

Mr. CHOCOLA. Mr. Speaker, will the gentleman yield?

Mr. PENCE. I yield to the gentleman from Indiana.

Mr. CHOCOLA. Mr. Speaker, I thank the gentleman for yielding to me.

I share his recollection and impact from those moments. They say a picture is worth a thousand words, and that one is worth several million, I think.

I have always argued that the United States has been the greatest force for good in the history of the world. And we talk about the Greatest Generation, and we generally refer to those who served in World War II as that generation; and I think that is a very fitting description. But I think we are very fortunate that the reality is that every generation of Americans has been truly great, and most of those generations have been defined by those who volunteered to serve in this Nation's uniform.

And as the President said before, we sacrifice for the liberty of strangers. And we were with some strangers who have just witnessed the first democratic election in their nation's history, and it is something that they will remember the rest of their lives, and they will grow up to be our friends and our allies and our partners in a better and safer world.

We saw in this Chamber, during the President's State of the Union speech, one of the most moving moments I have ever witnessed when the mother of a fallen Marine embraced a young woman who had recently voted and been the advocate for human rights. In fact, that advocacy cost her father his life when he was assassinated by Saddam Hussein. So this is just a small representation that every American, I think, should be very proud of. The fact that children come streaming out behind a wall of a village with American soldiers in full uniform and full gear with smiles on their faces, and they run towards them, not away from them, and that we have the opportunity to sit there and talk to them and get to know them a little bit, and we only get to do that because of the greatness of this Nation and the greatness of those serving in uniform.

Mr. PENCE. Mr. Speaker, reclaiming my time, that is especially well said, and it is fitting because in some of the time that we have remaining, I wanted to reflect on the American soldier and the opportunity that we had both at Camp Phoenix in Kabul, in Jalalabad, and then Bagram Air Force Base and probably for me as well being able to visit injured soldiers at Landstuhl Regional Medical Center on the way back.

But one of the things that was a great privilege for me was, Mr. Speaker, along with the gentleman from Indiana, thinking of the 1,500 Hoosier National Guard who were in Afghanistan and thinking, Mr. Speaker, of the holiday season that was upon us, the gentleman from Indiana (Mr. CHOCOLA) and I developed what we came to call Operation Holiday Greeting. And it resulted in our inviting our constituents, three quarters of a million people in north central Indiana and three quarters of a million people in eastern Indiana, to send in holiday greeting cards to soldiers. We announced the initiative on November 11; and within 10 days we received, Mr. Speaker, more than 25,000 lovingly handmade holiday greeting cards that we were able to take with us to Operation Enduring Freedom.

This photograph captures just one of literally dozens and dozens of scenes where the gentleman from Indiana (Mr. CHOCOLA), the gentleman from Arizona (Mr. FLAKE), and the gentleman from Tennessee (Mr. DAVIS) and I were handing out greeting cards to the delight of soldiers who read them. One soldier in the foreground of this photograph has completely forgotten about us and is into what we can clearly see from the American flag was a hand-crafted card very likely by some grade schooler in South Bend or a grade schooler in Muncie, Indiana.

And this was such an extraordinary blessing to be able to be a part of it because it does strike me, and then I will yield to the gentleman for his memories of this particular part of our trip, that having some politician walk up to someone on a far-flung theater of operation and deployment and say, Hey, the folks back home are praying for you, appreciate what you are doing, and have got you in their hearts, it is a whole other thing for that politician, who by and large we do not trust anyway, to hand to the soldier a fist full of lovingly crafted holiday greeting cards that say we are praying for them, we are thinking of them, we would love a note from them to say how things are going.

I saw some of the biggest, toughest most grizzled soldiers at Bagram Air Force Base in that cafeteria where we wandered, when we walked up to them and they kind of had that lockjawed look and they do not know who we are and they do not know if they like us; and when we tell them we are Congressmen from Indiana, they think, well, that is okay, thanks for coming over and we appreciate it.

But then when I would hand them the cards, these big guys would melt. Just one after another I saw more than one guy start to wipe tears from his eyes. And as the song goes, ''It Ain't Funny When a Soldier Cries,'' but I saw more than a few well up with tears, not because of anything I did or I would say anything that the gentleman from South Bend did, but these cards and the fact that in 10 short days Hoosiers of all ages, senior citizens, grade school kids, people at churches and synagogues, took time to sit down and express their prayers and their good wishes and their greetings to these soldiers.

And the gentleman from Indiana (Mr. CHOCOLA) and I, I must say, Mr. Speaker, we lugged a lot of boxes, and I want to commend the gentleman from Indiana (Mr. CHOCOLA) for his tireless effort in passing these cards out.

Mr. Speaker, I yield to the gentleman from Indiana for any memories of Operation Holiday Greeting.

Mr. CHOCOLA. Mr. Speaker, the memories are obviously wonderful and rewarding. And as the gentleman recalls, we got to Camp Phoenix about midday and went to the mess hall where there were several soldiers in there enjoying lunch. It was a delicious lunch, as I recall. And having the opportunity during the holiday season to walk in there and hand a little piece of home to a Hoosier soldier unexpectedly is something that certainly I think we got more out of it than anyone else. And I have to thank our constituents for responding in such a generous way. It is an amazing response in a very short period of time for people to go to the effort to thank our men and women in uniform for their service, for being away from home at a very difficult time of year to be away from home.

And the gentleman is right. We would hand them a pile of cards, and they would kind of forget we were there. They would start looking through those cards and reading the messages. There were a lot of unique approaches in the messages, and so it was a great thrill that certainly I will always remember. And I remember one soldier in particular whose name was Oliver Jackson, and I walked up to him, and he said, Hey, I know you. He said, I am from South Bend, Indiana.

And I said, I know where that is and thank you for your service. So we sat down and talked for a while, and he said he was going to be home on leave in a couple weeks. And I said, When you come home, call me. And I gave him my contact information. And he did. He came home a few weeks later, and he did not stop by just to say hi. He stopped by. As the gentleman will recall, we gave a couple of flags to the soldiers at Camp Phoenix. We gave them an American flag and an Indiana flag. Then a constituent of mine has designed a battle flag that really commemorates and honors all the major battles that our Armed Forces have been in since the founding of our country.

□ 1830

I left two of those flags there. In the spirit of our soldiers giving more than we could ever give them, and I will have to give you a copy of this, all of the Hoosier members of that unit signed that flag and sent it back. Oliver Jackson brought that flag back. It will be hanging in my office very proudly as one of the most memorable things that I will ever receive; which is we tried to do a nice thing for them, our constituents did, and I think they one-upped us, not only by serving our Nation so valiantly and bravely and effectively, but thinking about us at a time when they are away from home and saying ''thank you'' in an extraordinary way.

Mr. PENCE. Mr. Speaker, reclaiming my time, I thank the gentleman for yielding, and I am jealous to learn about the signed battle flag, but it is to the gentleman's credit, because it was the gentleman from Indiana (Mr. CHOCOLA) who remembered to bring those flags from home, and I want to commend him again for his thoughtfulness in remembering to bring that for our soldiers, but also to have them return, to have them show their appreciation.

I guess I just appreciate, Mr. Speaker, the gentleman's reflection on the character of the soldiers that we saw in Operation Enduring Freedom. There is a toughness there. I think, candidly, we were there at a very tough time of the year.

I have had the privilege in my 45 years of never not being home for a little bit of Christmas. I have always been able to be home for part of Christmas. It is a grievous thing to not be home, and yet beyond what on the surface you could tell was not an easy time for many of them, was a seriousness and a professionalism and an understanding of the importance of what we are doing in Afghanistan, which is still a dangerous place.

I guess that is where I would like to close our reflections tonight as we have talked about President Karzai and our meetings in Kabul, as we have talked about the children that we saw, the provisional reconstruction team, but is to say it is my hope that anyone looking in, Mr. Speaker, would understand that Afghanistan is not succeeding because there are no bad guys there. Afghanistan is not succeeding because it is an easier place to build a democracy than Iraq. Afghanistan is succeeding because American generosity and American power, in partnership with the good people of Afghanistan, is causing that success, day in and day out.

As we approach, I believe, the parliamentary elections this coming April, where the legislative body of that government will be elected, that is all being made possible because the people of Afghanistan, who, as I suggested earlier in this conversation, it strikes me that from our conversations with regular Afghanis as well as President Karzai, is the one thing you hear from folks, is this: They are bone weary of war in Afghanistan, the war that was pressed down on them by the Soviet communists, the war that was pressed down on them through tribal in-fighting, the war that was pressed down on them by the Taliban and al Qaeda under its patronage. And when the American military came in and the generosity of the American people was unleashed, the people of Afghanistan have opened their arms and said, ''Yes, come, stay, help us build stability, help us create a country that is no longer dependent on the narcotics trade. Help us transition to an agricultural economy.''

But it is all working. I guess my real burden in trying to take up an hour of the people's time tonight, Mr. Speaker, and I will yield to the gentleman for any closing thoughts, is just to make sure that as we go into a debate over additional funding for Afghanistan, as we go into a debate for additional counternarcotics funding, and there will be those of us that would argue that those things should happen in the regular budget as opposed to the supplemental, but beyond all of those arguments, it is my hope that the American people would understand that we are succeeding in Afghanistan because of American generosity and American power and the Afghan people are making it happen.

It is not happening automatically. It is not the absence of conflict or the absence of danger that is resulting in this success. It is in spite of those things that we are succeeding. And even though no news rarely makes it in the newspaper, the truth is if things are not blowing up on a daily basis, things slip out of the news, and Afghanistan has slipped out of the news and the American people tend to, and I think I am as guilty as the next person; before we went, I tended to think it is not that tough over there. It is tough. It is hard. It is commitment and focus every single day.

But it is working, and it is my hope that we really celebrate that. As we have a debate over additional funding for Afghanistan, at every level, that we will understand that the good people of Afghanistan have embraced the American people with gratitude, they have embraced the American soldier, as the gentleman from Indiana (Mr. CHOCOLA) just recited, as the Iraqi woman embraced the mother of the fallen soldier just yards away from where we are standing now, and to understand that we must keep that commitment to bring these good people of Afghanistan the freedom they so richly deserve.

I yield for closing remarks to the gentleman.

Mr. CHOCOLA. Mr. Speaker, just once again I want to thank my colleague, the gentleman from Indiana (Mr. PENCE), for leading the trip and leading tonight's discussion.

I think it is important for the American people to understand how much success they have helped provide in Afghanistan. It never ceases to amaze me, the deafening silence that we fail to see in the national media about the successes that are being achieved in Afghanistan on a daily basis. And although the silence is deafening, the success is undeniable.

I will never forget the opportunity to meet with General Petraeus when I was in Iraq, in Mosul, in the summer of 2003. General Petraeus pointed out that we have to make sure we understand that the money that we invest in places like Afghanistan and Iraq, it is important that we buy guns and bullets, but you cannot distinguish between military aid and humanitarian aid. It gets back to the most effective weapons on the war on terror, I think, are education and economic growth.

If we can maintain our resolve, if we can prioritize those investments, I think we will look back at this period of history and say it was extraordinary in the growth of democracy around the world.

I think it is unfortunate that the elections in Afghanistan were not celebrated here in the United States like I think they should have been. It was the defeat of the Taliban. The Taliban had said that they were going to disrupt the registration process. Over 10 million Afghans registered to vote. They said they would disrupt the elections. I think it was close to an 80 percent turnout, much higher than we have here in the United States. So the Taliban has been rendered relatively ineffective because of the investment we have made with the Afghan people, both in military action and force, as well as humanitarian aid.

I was surprised that we met members from the United States Department of Agriculture, we met USAID members, we met State Department members, that are all over there in a relatively dangerous environment, that are risking their life to do the right thing because they understand that this is the right thing for a more safe and secure world, because the more jobs and the more education there is in Afghanistan, the safer we are here in the United States.

So I think that the American people should be very proud of their investment, they should be very proud of their effort, they should certainly be very proud of the men and women in uniform that have done the heavy lifting. If we can maintain that focus and that resolve and commitment, I know this will be a safer world.

Afghanistan and the 14-year-olds that are 40 percent of the country and younger will have hope and opportunity rather than oppression and a dead-end street for their future days. They will continue to be our partners, they will continue to run out of the front doors of their home and embrace us, and not run away from us and try to do to us harm.

I hope we have been able to share just a little bit tonight with the American people about the hope and opportunity that is really taking place every

single day. And I would encourage the American people, when they turn on the 6 o'clock news or any 24-hour news channel and they do not hear about what is going on in Afghanistan, that means it is one more day of success.

So I yield back, and again thank the gentleman for all of his efforts.

Mr. PENCE. Mr. Speaker, I do want to express my profound gratitude to the gentleman from Indiana (Mr. CHOCOLA) for being willing to leave family and his constituents behind and travel, as we described tonight, through Islamabad, Pakistan; through Parachinar, where we met with tribal leaders; into Kabul, where we went to Camp Phoenix; through the mountains of Jalalabad to Bagram Air Base, and then out of the country.

It was a great, great privilege to travel with the gentleman from Indiana (Mr. CHOCOLA), the gentleman from Tennessee (Mr. DAVIS), and the gentleman from Arizona (Mr. FLAKE), all of whom I think exemplified the very best of a servant's attitude about public service.

I told many soldiers as we traveled that there was not hardly a person that I served in all of eastern Indiana who would not rather be standing right there in front of them thanking them for their service, assuring them of their prayers, and expressing the gratitude that the gentleman from Indiana (Mr. CHOCOLA) just described, that the American people feel for the success that the American soldier has wrought and is continuing to provide to the good people of Afghanistan.

I close by just reminding, Mr. Speaker, anyone that might be looking in, what the gentleman from Indiana (Mr. CHOCOLA) heard from President Karzai. As I have said again and again tonight, Afghanistan is a place where American power and American generosity of work are working. But when the gentleman from Indiana (Mr. CHOCOLA) asked President Karzai at the presidential palace, ''What would you have us tell our constituents if you were there,'' and he said, ''Tell the American people our success is their success, and that the President of Afghanistan said congratulations, America, on being a part of freedom and stability and opportunity coming to the good people of this historic land.''

So, Mr. Speaker, with a grateful heart for the opportunity to have led CODEL Pence through Pakistan and Afghanistan, I yield back the balance of my time.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mr. WYNN (at the request of Ms. PELOSI) for today on account of personal business.

Mr. REICHERT (at the request of Mr. DELAY) for today and the balance of the week on account of attending a funeral.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Ms. WOOLSEY) to revise and extend their remarks and include extraneous material:)

Ms. LEE, for 5 minutes, today.
Ms. WOOLSEY, for 5 minutes, today.
Mr. PALLONE, for 5 minutes, today.
Mr. DAVIS of Illinois, for 5 minutes, today.
Mr. BROWN of Ohio, for 5 minutes, today.
Mr. DEFAZIO, for 5 minutes, today.
Mr. EMANUEL, for 5 minutes, today.
Mr. CARDOZA, for 5 minutes, today.
Mr. COOPER, for 5 minutes, today.
Mr. DAVIS of Tennessee, for 5 minutes, today.
Mr. CASE, for 5 minutes, today.
Mr. COSTA, for 5 minutes, today.
Mr. CUMMINGS, for 5 minutes, today.
Ms. BEAN, for 5 minutes, today.
Mr. SANDERS, for 5 minutes, today.
Mr. BLUMENAUER, for 5 minutes, today.
Ms. KAPTUR, for 5 minutes, today.

(The following Members (at the request of Mr. POE) to revise and extend their remarks and include extraneous material:)

Mr. COX, for 5 minutes, today.
Mr. POE, for 5 minutes, February 17.
Mr. FLAKE, for 5 minutes, today.
Mrs. JOHNSON of Connecticut, for 5 minutes, today.
Mr. LEWIS of California, for 5 minutes, today.
Mr. MANZULLO, for 5 minutes, today.
Mr. GOODLATTE, for 5 minutes, February 17.

ADJOURNMENT

Mr. PENCE. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 6 o'clock and 43 minutes p.m.), the House adjourned until tomorrow, Thursday, February 17, 2005, at 10 a.m.

NOTICE OF PROPOSED RULEMAKING

U.S. CONGRESS,
OFFICE OF COMPLIANCE,
Washington, DC, February 15, 2005.

Hon. J. DENNIS HASTERT,
Speaker, House of Representatives, The Capitol, Washington, DC.

DEAR MR. SPEAKER: Section 304(b)(1) of the Congressional Accountability Act of 1995 (CAA), 2 U.S.C. 1384(b)(1), requires that, with regard to the initial proposal of substantive regulations under the CAA, the Board ''shall publish a general notice of proposed rulemaking'' and ''shall transmit such notice to the Speaker of the House of Representatives and the President pro tempore of the Senate for publication in the Congressional Record on the first day on which both Houses are in session following such transmittal.''

The Board of Directors of the Office of Compliance is transmitting herewith the enclosed Notice of Proposed Rulemaking which accompanies this transmittal letter. The Board requests that the accompanying Notice be published in both the House and Senate versions of the Congressional Record on the first day on which both Houses are in session following receipt of this transmittal.

Any inquiries regarding the accompanying Notice should be addressed to William W. Thompson II, Executive Director of the Office of Compliance, 110 2nd Street, SE., Room LA–200, Washington, DC 20540; 202–724–9250, TDD 202–426–1912.

Sincerely,

SUSAN S. ROBFOGEL,
Chair of the Board of Directors.

FROM THE BOARD OF DIRECTORS OF THE OFFICE OF COMPLIANCE

Notice of Proposed Rulemaking, and Request for Comments From Interested Parties

NEW PROPOSED REGULATIONS IMPLEMENTING CERTAIN SUBSTANTIVE EMPLOYMENT RIGHTS AND PROTECTIONS FOR VETERANS, AS REQUIRED BY 2 U.S.C. 1316a, THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995, AS AMENDED (CAA).

Background

The purpose of this Notice is to issue proposed substantive regulations which will implement the 1998 amendment to the CAA which applies certain veterans' employment rights and protections to employing offices and employees covered by the CAA.

What is the authority under the CAA for these proposed substantive regulations? In 1998, the CAA was amended through addition of 2 U.S.C. 1316a, a provision of the Veterans' Employment Opportunities Act of 1998 (VEOA), which states in relevant part: ''The rights and protections established under section 2108, sections 3309 through 3312, and subchapter I of chapter 35 of Title 5, shall apply to covered employees.'' As will be described in greater detail below, these sections of Title 5 accord certain hiring and retention rights to veterans of the uniformed services. Section 1316a(4)(B) states that ''The regulations issued . . . shall be the same as the most relevant substantive regulations (applicable with respect to the Executive Branch) promulgated to implement the statutory provisions . . . except insofar as the Board may determine for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.''

Will these regulations, if approved, apply to all employees otherwise covered by the CAA? No. Subsection (5) of 2 U.S.C. 1316a, states that, for the purpose of application of these veterans' employment rights, the term ''covered employee'' shall not apply to any employee of an employing office: (A) whose appointment is made by the President with the advice and consent of the Senate; (B) whose appointment is made by a Member of Congress or by a committee or subcommittee of either House of Congress; or (C) who is appointed to a position, the duties of which are equivalent to those of a Senior Executive Service position. . . .'' These regulations would apply to all other covered employees.

Do other veterans' employment rights apply via the CAA to Legislative Branch employing offices and covered employees? Yes. Another statutory scheme regarding veterans' and armed forces members' employment rights is incorporated in part through section 206 of the Congressional Accountability Act of 1995 (CAA). Section 206 of the CAA, 2 U.S.C. 1316, applies certain provisions of Title 38 of the U.S. Code regarding ''Employment and Reemployment Rights of Members of the Uniformed Services.'' Section 206 of the CAA also requires the Board of Directors to issue substantive regulations patterned upon the regulations promulgated by the Secretary of Labor to implement the Title 38 rights of

members of the uniformed services. As of this date, the Secretary of Labor has not finally promulgated any such regulations. Therefore, regulations implementing CAA section 206 rights will not be proposed by the Board until the Labor Department regulations have been promulgated. The proposed regulations in this Notice are not based on section 206 of the CAA, but solely on the other veterans' rights referenced in 2 U.S.C. 1316a.

What are the veterans' employment rights applied to covered employees and employing offices in 2 U.S.C. 1316a? In recognition of their duty to country, sacrifice, and exceptional capabilities and skills, the United States government has accorded veterans a preference in federal employment through a series of statutes and Executive Orders, beginning as the Civil War drew to a close. While interpreting regulations have been modified over time, many of the current core statutory protections have remained largely unchanged since they were first codified in the historic Veterans' Preference Act of 1944, Act of June 27, 1944, ch. 287, 58 Stat. 387, amended and codified in various provisions of Title 5, U.S.C. In 1998, Congress passed the Veterans Employment Opportunities Act (''VEOA''), Pub. L. 105–339, 112 Stat. 3186 (October 31, 1998), which ''strengthen[s] and broadens''(Sen. Rept. 105–340, 105 Cong., 2d Sess. at 19 (Sept. 21, 1998)) the rights and remedies available to military veterans who are entitled to preferred consideration in hiring and in retention during reductions in force (''RIFs''). Among other provisions of the VEOA, Congress clearly stated, in the law itself, that henceforth the ''rights and protections'' of certain veterans' preference law provisions, originally drafted to cover certain Executive Branch employees, ''shall apply'' to certain ''covered employees'' in the Legislative Branch. VEOA §§4(c)(1) and (5) (emphasis added).

The selected statutory sections which Congress determined ''shall apply'' to covered employees in the Legislative Branch include, first, a definitional section describing the categories of military veterans who are entitled to preference (''preference eligibles''). 5 U.S.C. §2108. Generally, a veteran must be disabled or have served on active duty in the Armed Forces during certain specified time periods or in specified military campaigns to be entitled to preference. In addition, certain family members (mainly spouses, widow[er]s, and mothers) of preference eligible veterans are entitled to the same rights and protections.

The VEOA also makes applicable to the Legislative Branch certain statutory preferences in hiring. In the hiring process, a preference eligible individual who is tested or otherwise numerically evaluated for a position is entitled to have either 5 or 10 points added to his/her score, depending on his/her military service, or disabling condition. 5 U.S.C. §3309. Where experience is a qualifying element for a job, a preference eligible individual is entitled to credit for having relevant experience in the military or in various civil activities. 5 U.S.C. §3311. Where physical requirements (age, height, weight) are a qualifying element for a position, preference eligible individuals (including those who are disabled) may obtain a waiver of such requirements in certain circumstances. 5 U.S.C. §3512.

For certain positions (guards, elevator operators, messengers, custodians), only preference eligible individuals may be considered for hiring so long as such individuals are available. 5 U.S.C. §3310. (These statutory provisions on hiring in the Executive Branch apply specifically to the competitive service; this point will be discussed further below.)

Finally, in prescribing retention rights during Reductions In Force for Executive Branch positions (in both the competitive and in the excepted service), the sections in subchapter I of chapter 35 of Title 5, U.S.C., with a slightly modified definition of ''preference eligible,'' require that employing agencies retain an employee with retention preference in preference to other competing employees, provided that the employee's performance has not been rated unacceptable. 5 U.S.C. §3502(c) (emphasis added).

Along with this explicit command to retain qualifying employees with retention preference, agencies are to follow regulations governing the release of competing employees, giving ''due effect'' to the following factors: (a) employment tenure (i.e., type of appointment); (b) veterans' preference; (c) length of service; and, (d) performance ratings. 5 U.S.C. §3502(a). 5 U.S.C. §3502 also requires certain notification procedures, providing, inter alia, that an employing agency must provide an employee with 60 days written notice (the period may be reduced in certain circumstances) prior to being released during a RIF. 5 U.S.C. §3502(d)(1). Certain protections also apply in connection with a transfer of agency functions from one agency to another. 5 U.S.C. §3503. In addition, where physical requirements (age, height, weight) are a qualifying element for retention, preference eligible individuals (including those with disabilities) may obtain a waiver of such requirements in certain circumstances. 5 U.S.C. §3504.

Are there veterans' employment regulations already in force under the CAA? No.

Procedurals Summary

How are substantive regulations proposed and approved under the CAA? Pursuant to section 304 of the CAA, 2 U.S.C. 1384, the procedure for promulgating such substantive regulations requires that: (1) the Board of Directors adopt proposed substantive regulations and publish a general notice of proposed rulemaking in the *Congressional Record*; (2) there be a comment period of at least 30 days after the date of publication of the general notice of proposed rulemaking; (3) after consideration of comments by the Board of Directors, that the Board adopt regulations and transmit notice of such action together with the regulations and a recommendation regarding the method for Congressional approval of the regulations to the Speaker of the House and President pro tempore of the Senate for publication in the *Congressional Record*; (4) committee referral and action on the proposed regulations by resolution in each House, concurrent resolution, or by joint resolution; and (5) final publication of the approved regulations in the *Congressional Record*, with an effective date prescribed in the final publication. For more detail, please reference the text of 2 U.S.C. 1384. This Notice of Proposed Rulemaking is step (1) of the outline set forth above.

Are these proposed regulations also recommended by the Office of Compliance's Executive Director, the Deputy Executive Director for the House of Representatives, and the Deputy Executive Director for the Senate? As required by section 304(b)(1) of the CAA, 2 U.S.C. 1384(b)(1), the substance of these regulations is also recommended by the Executive Director, the Deputy Executive Director for the House of Representatives and the Acting Deputy Executive Director for the Senate.

Has the Board of Directors previously proposed substantive regulations implementing these veterans' employment rights and benefits pursuant to 2 U.S.C. 1316a? Yes. On February 28, 2000, and March 9, 2000, the Office published an Advanced Notice of Proposed Rulemaking (''ANPR'') in the *Congressional Record* (144 Cong. Rec. S862 (daily ed., Feb. 28, 2000), H916 (daily ed., March 9, 2000)). On December 6, 2001, upon consideration of the comments to the ANPR, the Office published a Notice of Proposed Rulemaking (''NPR'') in the *Congressional Record* (147 Cong. Rec. S12539 (daily ed. Dec. 6, 2001), H9065 (daily ed. Dec. 6, 2001)). The Board has not acted further on those earlier Notices, and has decided to issue this Notice as the first step in a new effort to promulgate implementing regulations.

As noted above, 2 U.S.C. 1316a mandates application to the Legislative Branch of certain statutory provisions originally drafted for the Executive Branch. In its initial proposed rules, the Board noted that this statutory command raised the quandary of determining which Legislative Branch employees should be covered by which statutory provisions. There are longstanding and significant differences between the personnel policies and practices within these two branches. For instance, the Executive Branch distinguishes between employees in the ''competitive service'' and the ''excepted service,'' often with differing personnel rules applying to these two services. The Legislative Branch has no such dichotomy.

When Congress directed in the VEOA that certain veterans' employment rights and protections currently applicable to Executive Branch employees shall be made applicable to Legislative Branch employees, the Board took note of a central distinction made in the underlying statute: certain veterans' preference protections (regarding hiring) applied only to Executive Branch employees in the ''competitive'' service, while others (governing reductions in force and transfers) applied both to the ''competitive'' and ''excepted'' service.

The Board's initial approach in 2000 was to maintain this distinction by attempting to discern which Legislative Branch employees should be considered as working in positions equivalent to the ''competitive'' service, and which should be considered equivalent to the ''excepted'' service. At that point, the Board concluded that all Legislative Branch employees, with certain possible exceptions (such as those of the Office of the Architect of the Capitol) should be considered excepted service employees. The Board therefore issued regulations, closely following Office of Personnel Management (''OPM'') regulations for the various statutory provisions, with the caveat that the regulations governing hiring would apply only to those employees whom the Board currently deemed working at jobs equivalent to the competitive service (e.g. the Office of the Architect of the Capitol). The NPR acknowledged: ''The Board recognizes that the adoption of these definitions (e.g., competitive and excepted services], consistent with the mandate of section 225 [of the CAA], yields an unusual result in that no ''covered employee'' in the Legislative Branch currently satisfies the definition of ''competitive service.'' Moreover, as the substantive protections of veterans'' preference in Legislative Branch appointment apply only to ''competitive service' positions, the regulations which the Board proposes regarding preference in appointment would with one noted exception [employees appointed under the Architect of the Capitol Human Resources Act], currently apply to no one. . . .'' This left the Board in the position of drafting intricate regulations that may have applied to only a minority of ''covered employees,'' or perhaps even to no ''covered employees'' at all—a result in obvious tension with the VEOA's statutory mandate that these veterans' protections ''shall apply'' to ''covered employees'' in the Legislative Branch.

The Board received Comments to its initial proposed regulations from the Office of the Architect of the Capitol, the Office of House Employment Counsel, and the Office of the Senate Chief Counsel for Employment, all finding fault with the initial approach. The Comments generally included the following observations. First, commenting offices noted that the Board's approach of drafting intricate regulations that may not apply to any covered employees creates more problems than it solves. This approach was seen as ''impracticable,'' ''obfuscating'' the true sense of the VEOA and what requirements in fact must apply to employing offices; it was seen, in effect, as an attempt to ''place a square peg in a round hole.'' Others charged that the adoption of such regulations went beyond the Board's statutory authorization, and would require, without basis in law, the employing offices to adopt complicated procedures, some governing employment decisions that affected only non-veteran applicants or employees. A commenting office also complained about the application of terms ''foreign and inapplicable'' to its personnel system. Employing offices also submitted that statutes drafted for the Executive Branch competitive service should not apply at all to any Legislative Branch employee.

Furthermore, one employing office commented that such modification of OPM regulations does not constitute an adoption of the ''most relevant regulations,'' as regulations that apply to no covered employees can not possibly be the most relevant regulations applicable. As another commenting office aptly put it, ''Unfortunately, the unintended result could very well be that the underlying principles of the veterans' preference laws would lie fallow while the affected legislative branch entities struggle with the task of adopting civil-service type personnel management systems.'' Comments of the Office of House Employment Counsel, Feb. 6, 2002 at 9. Additionally, all three employing offices argued that the Board should issue three individual sets of regulations (to pertain to the Senate, House, and covered Congressional instrumentalities), rather than one set. Finally, the Office of the Architect of the Capitol also argued that the Architect of the Capitol Human Resources Act did not create a competitive service in the sense of the veterans' preference laws.

How are the regulations being proposed in this Notice different from those regulations which the Board previously proposed? In the period since the initial proposed regulations were issued by the Board of Directors and commented upon by various stakeholders, the Office of Compliance has engaged in extensive informal discussions with various stakeholders across Congress and the Legislative Branch, in an effort to ascertain how best to effect the basic purposes of veterans' employment rights in the Legislative Branch.

After careful consultation and deliberation, the Board is issuing new proposed regulations which differ in many respects from the initial proposed regulations. The new approach is responsive to the clear statutory mandate contained in the VEOA, and to various Comments regarding the initial proposed regulations. This approach also applies insights gained from the informal discussions with stakeholders.

The Board has decided to apply the plain language of the statutory provisions to all covered employees in the Legislative Branch. By doing so, the Board avoids what commenting employing offices styled as the ''anomaly'' of complicated regulations which would practically apply to no employees, an anomaly which not only poorly served the clear Congressional intent that protections ''shall apply to covered employees,'' but which also created confusion for the employing offices.

Not only is application of these rights to all covered employees compelled by the plain language of the statute, the legislative history of the VEOA also clearly indicates that the principles of veterans' preference protections must be applied in the Legislative Branch. The authoritative report of the Senate Committee on Veterans' Affairs (Senate Report 105–340, pages 15 & 17), recognized that the competitive service did not exist in the Legislative Branch, and that 2 U.S.C. 1316a did not require the establishment of such a competitive service. Nonetheless, the Committee noted that veterans' preference principles should be incorporated into the Legislative Branch personnel systems.

For these reasons, the Board is persuaded that Congress, in enacting the VEOA's extension of veterans' employment rights to the Legislative Branch, intended a broad application to all CAA covered employees, except for the staff of those employing offices in the House of Representatives and the Senate which Congress specifically excluded from coverage in section 206a(5) of the CAA (2 U.S.C. §1316a(5)).This result is faithful to the statutory language. Furthermore, the Board has concluded, for the reasons stated above, that the most relevant substantive Executive Branch OPM regulations are at times inapposite to a meaningful implementation of the VEOA in the Legislative Branch, such that a modification of the regulations is necessary for the effective implementation of the rights and protections under the VEOA. As a result, the Office is proposing regulations that reflect the principles of the veterans' preference laws, as discussed by the Senate Committee on Veterans Affairs, without linking such coverage to employees or positions with competitive service status.

Furthermore, the Board has also taken note of the legislative history suggesting that employing offices with employees covered by the VEOA should create systems incorporating these veterans' preference principles: ''The Committee notes that the requirement that veterans' preference principles be extended to the legislative and judicial branches does not mandate the creation of civil service-type evaluation or scoring systems by these hiring entities. It does require, however, that they create systems that are consistent with the underlying principles of veterans' preference laws.'' Sen. Comm. Report at 17. The implementation of that provision in the Senate Report can only be accomplished by the employing offices.

In their Comments, employing offices strongly expressed their need to preserve their autonomy in determining and administering their respective personnel systems. For example, the Office of the Architect of the Capitol commented that it was incumbent upon the employing offices to create ''systems that are consistent with the underlying principles of veterans'' preference laws,'' pursuant to the Senate Committee Report. The Board agrees, and the newly proposed regulations allow employing offices to do so. What the regulations also do is clearly define the ''underlying principles of veterans'' preference laws'' made applicable to these employing offices, so as to provide a benchmark for the employing offices, applicants, and covered employees, as to whether the systems developed are consistent with these principles.

What is the approach taken by these revamped proposed substantive regulations? The Board has taken great heed to avoid the intricate, OPM-like regulations that formed the basis for its first proposed regulations. Under the current proposed regulations, employing offices will retain their wide latitude, not similarly enjoyed by many employing agencies in the Executive Branch, to devise and administer their own unique and often flexible personnel systems. However, employing offices with covered employees must incorporate into these individual personnel systems the basic veterans' preference protections under the specific statutory mandate that Congress issued in the VEOA, and they must carry out the administration of these veterans' preference provisions in a manner consistent with the Board's commitment to promoting administrative transparency and accountability.

Under this approach, employing offices with the specified covered employees must meet the requirements contained in the statutory mandate of the VEOA, but need not necessarily adopt any of the trappings of an OPM-like personnel system. Thus, should such an employing office choose to administer numeric evaluations of applicants for a position, it must add to a preference eligible's evaluation the points called for in the veterans' preference statutes. If it does not numerically evaluate applicants, it must determine how it will factor veterans' preference status into its employee evaluations and hiring decisions at a level commensurate with the statutory directive. Similarly, should an employing office currently have a policy of placing covered employees who may be potentially subject to a reduction in force on a retention register, it must rank said employees taking into account the directives of the veterans' preference statute. Should an employing office elect not to keep formal retention registers, nothing in these regulations requires it to start doing so. It still must, however, follow the statutory mandate to provide certain veterans' preferences in the course of a reduction in force that affects employees covered by the VEOA.

The goal of preserving employing office autonomy in fashioning personnel systems has further compelled the Board to minimize the impact of these proposed regulations on employment decisions not directly involving preference eligibles. Thus, unlike the initial proposed regulations, should an employing office properly determine that no preference eligibles are qualified applicants, or that no preference eligibles are subject to a RIF, these proposed regulations are designed so as not to govern the employment decisions taken by the employing office. By allowing for such employing office autonomy, the Board hopes to allay the concerns of some of the employing offices, expressed in the initial Comments, that a ''morass'' of intricate regulations would apply to decisions that did not affect preference eligibles. (One isolated, but necessary exception to this approach limiting the effect of the regulations to personnel actions involving preference eligibles is proposed §1.115, governing the transfer of functions between one employing office and another, and the replacement of one employing office by another. This section provides protections for all covered employees, as the term is defined and limited in the VEOA, including non-preference eligibles. The clear statutory language of 5 U.S.C. §3503 (applying to both the competitive and excepted services) commands this result. Congress chose to include this broad statutory provision in the set of provisions made applicable to the Legislative Branch in the VEOA.)

The overall discretion and autonomy reserved to employing offices to administer veterans' preference protections within the context of their personnel systems comes with a responsibility on the part of the employing offices to provide all applicants for covered positions and all covered employees

with certain notice and informational rights, as discussed below. This is to ensure that employing offices are equipped with all information necessary to determine and administer veterans' preference eligibility and that such applicants and employees are properly informed of how their employing office has chosen to give life to the veterans' preference protections.

In sum, should an employing offices already use personnel policies and procedures similar to those in the competitive service, it must factor in the various veterans' preference protections with respect to applicants for covered positions and covered employees. If an employing office chooses to follow more flexible, or merely different, personnel policies from those referenced in the competitive service, it may do so—but may not refuse to apply the veterans' preferences called for in the statute. This would contravene the clear statutory directive to affirmatively apply the veterans' preference protections to the specified covered employees in the Legislative Branch.

In proposing these regulations, the Board has sought to remain faithful to the explicit statutory language of the VEOA. In some cases, we have been guided by OPM veterans' preference implementing regulations. In many cases, ''for good cause shown,'' we have not adopted the OPM regulations so as to tailor simpler and more streamlined regulations. We have issued proposed regulations based on the direct statutory language whenever possible, reserving implementation to the individual employing offices, who then are charged with crafting their own processes and procedures for integrating veterans' preference protections within their personnel systems.

Therefore, in accord with 2 U.S.C.1316a(4)(B), which mandates that ''the Board may determine, for good cause shown and stated . . . a modification of such regulations would be more effective for the implementation of the rights and protections under this section,'' these proposed regulations may not track the most relevant substantive regulations applicable with respect to the Executive Branch. However, the proposed regulations endeavor, to the maximum practical extent, to effect the veterans' preference principles that Congress made applicable to the Legislative Branch through section 206a(2) of the CAA, 2 U.S.C. §1316a(2).

What responsibilities would employing offices have in effectively implementing these regulations? The Board is charging the employing offices with the responsibility of duly factoring the veterans' preference principles into their individualized hiring and retention processes. We will require that such measures be substantive and verifiable. Otherwise, VEOA implementation would be illusory and the Office's remedial responsibility under 2 U.S.C.1316a(3) might be compromised.

Therefore, the proposed regulations would require that all employing offices with covered employees or seeking applicants for covered positions develop a written program, within 120 days of the Congressional approval of the regulations, setting forth each employing office's modality for effecting the veterans' preference principles in its hiring and retention systems. These programs would demonstrate each employing office's efforts to comply with the VEOA. However, technical promulgation of such procedures does not per se relieve an employing office of substantive compliance with the VEOA.

Similarly, Subpart E of the proposed regulations contains various important provisions governing recordkeeping, dissemination of VEOA policies, written notice prior to a RIF, and informational requirements regarding veterans' preference determinations. Certain of these provisions (notably that requiring written notice prior to a RIF) derive directly from statutory provisions made applicable to covered employees by the VEOA. The Board has adopted others so as to ensure that the employing offices, which have significant autonomy and discretion in integrating the veterans' preference requirements into their personnel systems, administer the preferences in a way that promotes accountability and transparency. In response to the earlier Comments of the employing offices, however, the Board has refrained from adopting more burdensome procedural requirements, such as keeping formal retention registers (see 5 CFR §351.505).

Are there substantive differences in the proposed regulations for the House of Representatives, the Senate, and the other employing offices? No. The Board of Directors has identified no ''good cause'' for varying the text of these regulations. Therefore, if these proposed regulations are approved as proposed, there will be one text applicable to all employing offices and covered employees.

Are these proposed substantive regulations available to persons with disabilities in an alternate format? This Notice of Proposed Regulations is available on the Office of Compliance web site, www.compliance.gov, which is compliant with section 508 of the Rehabilitation Act of 1973 as amended, 29 U.S.C. 794d. This Notice can also be made available in large print or Braille. Requests for this Notice in an alternative format should be made to: Alma Candelaria, Deputy Executive Director, Office of Compliance, 110 2nd Street, S.E., Room LA–200, Washington, D.C. 20540; 202–724–9226; TDD: 202–426–1912; FAX: 202–426–1913.

30 Day Comment Period Regarding the Proposed Regulations

How can I submit comments regarding the proposed regulations? Comments regarding the proposed new regulations of the Office of Compliance set forth in this NOTICE are invited for **a period of thirty (30) days** following the date of the appearance of this NOTICE in the *Congressional Record*. In addition to being posted on the Office of Compliance's section 508 compliant web site (www.compliance.gov) this NOTICE is also available in the following alternative formats: Large Print, Braille. Requests for this NOTICE in an alternative format should be made to: Bill Thompson, Executive Director, or Alma Candelaria, Deputy Executive Director, Office of Compliance, at 202–724–9250 (voice) or 202–426–1912 (TDD).

Submission of comments must be made in writing to the Executive Director, Office of Compliance, 110 Second Street, S.E., Room LA–200, Washington, D.C. 20540–1999. It is requested, but not required, that an electronic version of any comments be provided on an accompanying computer disk. Comments may also be submitted by facsimile to the Executive Director at 202–426–1913 (a non-toll-free number.) Those wishing to receive confirmation of the receipt of their comments must provide a self-addressed, stamped post card with their submission.

Copies of submitted comments will be available for review on the Office's web site at www.compliance.gov, and at the Office of Compliance, 110 Second Street, S.E., Washington, D.C. 20540–1999, on Monday through Friday (non-Federal holidays) between the hours of 9:30 a.m. and 4:30 p.m.

Supplementary Information: The Congressional Accountability Act of 1995 (CAA), PL 104–1, was enacted into law on January 23, 1995. The CAA applies the rights and protections of 11 federal labor and employment statutes to covered employees and employing offices within the Legislative Branch of Government. The CAA was amended by adding 2 U.S.C. 1316a as part of the enactment of the Veterans' Employment Opportunities Act of 1998 (VEOA), PL 105–339, section 4(c), to provide additional substantive employment rights for veterans. Those additional rights are the subject of these regulations. Section 301 of the CAA (2 U.S.C. 1381) establishes the Office of Compliance as an independent office within the Legislative Branch.

More Detailed Discussion of the Text of the Proposed Regulations

SUBPART A—MATTERS OF GENERAL APPLICABILITY TO ALL REGULATIONS PROMULGATED UNDER SECTION 4 OF THE VEOA

1.101 Purpose and scope. This section clarifies that the purpose of these regulations is to ensure that the principles of the veterans' preference laws are integrated into the employing offices' existing employment and retention policies and processes, as per the explicit statutory mandate contained in the VEOA. Additionally, through these regulations, the Board seeks to fulfill its goal of achieving transparency in the application of veterans' preference in covered appointment and retention decisions.

Finally, it is noted that nothing in these regulations shall be construed to require an employing office to reduce any existing veterans' preference rights and protections that it may currently afford to preference eligible individuals. Any employing agencies that currently provide greater veterans' preferences than required by these regulations may retain them. Note also that, while the VEOA does not directly cover the GAO, GPO, or Library of Congress, should Congress extend Board jurisdiction over any of these entities in the future, it should take their existing veterans' preference policies into account, which may be based on independent statutory mandates. Note, for example, that 31 U.S.C. §732(h)(1) already mandates that the GAO must afford veterans' preferences (largely similar to those in subchapter I of chapter 35 of title 5 U.S.C.).

1.102 General definitions. This section provides straightforward definitions of key terms referred to in the regulations. Several of the definitions are derived from the statutory provisions made applicable via the VEOA, including ''veteran,'' from 5 U.S.C. §2108(1), ''disabled veteran'' from 5 U.S.C. §2108(2), and ''preference eligible'' from 5 U.S.C. §2108(3). It also contains several other definitions included for explanatory purposes.

The term ''appointment'' is defined as an individual's appointment to employment in a covered position. Consistent with the OPM regulations in 5 C.F.R. §211.102(c), the term excludes inservice placement actions such as promotions. The term ''covered employee'' follows the language of section 101(3) of the CAA, as limited by section 4(c)(5) of the VEOA. Section 4(c)(5) of the VEOA excludes employees whose appointment is made by a committee or subcommittee of either House of Congress. The Board believes this statutory exclusion extends to joint committees and has expressly excluded such employees from the definition of ''covered employee''.

The term ''qualified applicant,'' while not directly originating in the text of U.S.C. Title V, is used to capture the principle in 5 U.S.C. §3309 that only a preference eligible applicant who has received a passing grade in an examination or evaluation for entrance into the competitive service need receive additional points accorded to his or her application (except for certain ''restricted'' positions, discussed below). ''Qualified applicant'' is borrowed from the Americans with Disabilities Act (''ADA,'' 42 U.S.C. §12101 et

seq.) as applied by section 102(a)(3) of the CAA, 2 U.S.C. §1302(a)(3). The ADA's reference to ''requisite skill, experience, education and other minimum job-related requirements'' has been shortened to ''requisite minimum job-related requirements,'' as not every job may require a particular level of acquired skill, experience, or education.

As will be discussed further, we are not requiring an employing office to establish any particular prerequisites or type of evaluation or examination system for applicants. Instead, the term ''qualified applicant'' serves as a means of implementing the statutory mandate that only preference eligible applicants with ''passing scores'' receive preference in the hiring process in the context of appointment processes that do not involve ''scoring'' or similar numeric evaluation.

Where the employing office does not use a numerically scored entrance examination or evaluation, we have authorized the employing office to make the determination of whether the applicant is minimally ''qualified'' for a covered position. In doing so, the employing office may rely on any job-related requirements or on any evaluation system, formal or otherwise, which it chooses to employ in assessing and rating applicants for covered positions, provided that the employing office in no way seeks to create or manipulate a standard as to whether an applicant is ''qualified'' so as to avoid obligations imposed upon it by the VEOA.

If, however, the employing office uses an entrance examination or evaluation that is numerically scored, the term ''qualified applicant'' shall mean that the applicant has obtained a passing score on the examination or evaluation. The Board notes that it expects the level of ''passing scores'' to be roughly comparable to that in the OPM regulations (70 points on a 100 point scale; 5 CFR §337.101). We are not requiring employing offices to administer entrance exams at all, or to model an exam or the grading thereof after OPM's models. However, employing offices may not set the bar on a scored entrance examination or evaluation for a covered position so high that minimally qualified preference eligible applicants cannot pass. Moreover, the determination of what will constitute a ''passing score'' should be made and communicated to applicants before they are evaluated or sit for the entrance examination.

1.103 Adoption of regulations. This section details the process by which the regulations shall be adopted. It also clarifies that, as discussed extensively in the prefatory comments, supra, the Board has at times deviated from the regulations which otherwise were most applicable, i.e. the regulations issued by OPM implementing these selected provisions of U.S.C. Title V. When the Board has so deviated from the OPM regulations, it has done so in an effort to implement the statutory language of the VEOA in a way that respects the autonomy of employing offices' personnel systems and avoids placing undue administrative burdens upon these offices, and that otherwise respects the legislative intent of the VEOA.

1.104 Coordination with section 225 of the Congressional Accountability Act. This section notes that the VEOA requires that regulations promulgated are consistent with section 225 of the CAA. These proposed regulations are consistent with section 225; the regulations follow CAA principles contained therein, including applying CAA definitions and exemptions, and reserving enforcement through CAA procedures, rather than through recourse to the Executive Branch.

SUBPART B—VETERANS' PREFERENCE—GENERAL PROVISIONS

1.105 Responsibility for administration of veterans' preference. This section clarifies that employing offices have responsibility for administering veterans' preference, within the parameters of the VEOA and these regulations.

1.106 Procedures for bringing claims under the VEOA. This section establishes the procedures for contesting an adverse determination.

SUBPART C—VETERANS' PREFERENCE IN APPOINTMENTS

1.107 Veterans' preference in appointments to restricted covered positions. The VEOA makes 5 U.S.C. §3310 applicable to the Legislative Branch, thereby extending an absolute preference to veterans who apply for the positions of guard, elevator operator, messenger and custodian. Despite concerns raised by certain employing offices regarding the singling out of these particular positions, the Board may not ignore the statutory requirement that veterans who apply for them be afforded an absolute preference over non-veteran applicants.

We have based our definitions of the restricted position terms ''guards,'' ''elevator operators,'' ''custodians,'' and ''messengers,'' upon the definitions employed in the veterans'' preference context by the U.S. Office of Personnel Management in its ''Delegated Examining Operations Handbook.'' See http://www.opm.gov/deu/Handbook_2003. The definitions of custodian and messenger have been modified to include a ''primary duty'' requirement, to allow the performance of some custodial or messenger duties in positions having other primary duties without transforming those positions into restricted positions.

1.108 Veterans' preference in appointments to non-restricted covered positions. This section clarifies that preference eligible status is an affirmative factor in the hiring process for covered positions. The requirement that preference eligible status be applied as an ''affirmative factor'' is derived from the directive of the VEOA that the underlying principles of the veterans' preference laws be applied within the Legislative Branch.

Where an employing office assigns points to applicants competing for appointment to a covered position, it should add commensurate points for veterans' preference eligible applicants consistent with 5 U.S.C. §3309, one of the sections made applicable to the Legislative Branch by the VEOA. Should the office choose not to conduct formal evaluations on a point scale, it must apply veterans' preference as an affirmative factor, to a degree consistent with the level of preference applied in 5 U.S.C. §3309.

In no way does this require the creation of any particular type of system of examining or evaluating applicants, and an employing office may properly choose to not assign points at all to applications for covered positions. Rather, this regulation merely states that, whatever system the employing office uses to choose among qualified applicants for a covered position, it must accord a level of preference to preference eligible qualified applicants consistent with the point system indicated in the statute. Thus, the preference must be comparable to affording an additional 5 or 10 points (depending on the status of the preference eligible) on a 100 point scale to qualified applicants, while understanding that under such a point system the applicant must have attained at least 70 points to be considered qualified. (OPM provides a scale for converting other point scales (5 point, 10 point, 25 point, etc.) to a 100-point scale.)

Section 1.108 applies to both restricted and non-restricted positions. While restricted positions are limited to preference eligibles (should there be preference eligible applicants), in the event that more than one preference eligible applies, the employing office should apply the requirement in this section to provide a higher preference to a disabled preference eligible. Thus, 5 U.S.C. §3310, while restricting certain positions to preference eligibles (so long as preference eligibles are available), does not except these positions from this requirement in 5 U.S.C. §3309 to provide higher preference to a disabled preference eligible applicant.

1.109 Crediting experience in appointments to covered positions. This language is taken from 5 CFR §337.101(c), which interprets 5 U.S.C. §3311, one of the sections made applicable to the Legislative Branch by the VEOA. We have elected to use the regulatory language as it is more clearly written, and serves to better guide employing offices than does the direct statutory text. The statutory and regulatory provisions are laid out below for an easy comparison:

SEC. 3311. PREFERENCE ELIGIBLES; EXAMINATIONS; CREDITING EXPERIENCE

In examinations for the competitive service in which experience is an element of qualification, a preference eligible is entitled to credit—

(1) for service in the armed forces when his employment in a similar vocation to that for which examined was interrupted by the service; and

(2) for all experience material to the position for which examined, including experience gained in religious, civic, welfare, service, and organizational activities, regardless of whether he received pay therefor.

5 U.S.C. §3311

(c) When experience is a factor in determining eligibility, OPM shall credit a preference eligible with:

(1) Time spent in the military service (i) as an extension of time spent in the position in which he was employed immediately before his entrance into the military service, or (ii) on the basis of actual duties performed in the military service, or (iii) as a combination of both methods. OPM shall credit time spent in the military service according to the method that will be of most benefit to the preference eligible.

(2) All valuable experience, including experience gained in religious, civic, welfare, service, and organizational activities, regardless of whether pay was received therefor.

5 CFR §337.101(c). Section 1.109 does not require an employing office to consider experience as an element of qualification, but only requires that preference eligibles be afforded credit for certain experience if the employing office chooses to do so. Also, section 1.109 does not preclude an employing office from granting credit for experience to non-preference eligibles, so long as the credit afforded preference eligibles complies with the VEOA. Note also that section 1.109 of these proposed regulations applies equally to restricted and non-restricted positions.

Section 1.110 Waiver of physical requirements in appointments to covered positions. This section contains language derived directly from 5 U.S.C. §3312, one of the sections made applicable to the Legislative Branch by the VEOA. It requires an employing office to waive physical requirements for a position if it determines, after considering any recommendations of an accredited physician that may be submitted by such an applicant, that he or she is physically able to perform efficiently the duties of the position. Note that OPM has chosen to promulgate regulations interpreting 5 U.S.C. §3312 which make clear that: ''[A]gencies must waive a medical standard or physical requirement established under this part when there is sufficient evidence that an applicant or employee, with or

without reasonable accommodation, can perform the essential duties of the position without endangering the health and safety of the individual or others.''

5 CFR 339.204. The Board does not believe that these proposed regulations are the proper vehicle for issuing regulations concerning the Americans with Disabilities Act (''ADA,'' 42 U.S.C. §12101 et seq.) as applied by section 102(a)(3) of the CAA, 2 U.S.C. §1302(a)(3). Therefore, section 1.110(a)(2) tracks the statutory language rather than the OPM regulation. It also clarifies that the employing office need consider a recommendation of an accredited physician only if such a recommendation is submitted by the preference eligible.

The Board does note, however, that Congress passed the ADA subsequent to the veterans' preference protections contained in 5 U.S.C. §3312, and that, under the ADA as applied by the CAA, employing offices may have obligations towards applicants that may in some circumstances be greater than the protections accorded preference eligible applicants in 5 U.S.C. §3312. For example, these regulations do not relieve employing offices from complying with the restrictions imposed on disability-based inquiries under the ADA but, as is discussed in the comments to section 1.118, recognize that an employing office may use information obtained through voluntary self-identification of one's disabled status. Accordingly, the Board has made clear in section 1.110 that nothing in this section shall relieve an employing office of any greater obligation it may have pursuant to the ADA.

SUBPART D—VETERAN'S PREFERENCE IN REDUCTIONS IN FORCE

1.111 Definitions applicable in reductions in force. This section provides definitions of several terms used in the regulations applying veterans' preference principles in the context of reductions in force. Unless clearly stated otherwise, the general definitions in proposed regulation 1.102 continue to apply in the context of reductions in force. For example, as used in the proposed reduction in force regulations, the term ''covered employee'' excludes employees whose appointment is made by a Member of Congress or by a committee or subcommittee of either House of Congress or a joint committee of the House of Representatives and the Senate and other employees excluded under the proposed regulation 1.202(f). The term ''reduction in force'' has been defined to encompass actions that result in termination of employment, reductions in grade or demotions expected to continue for more than 30 days. This definition derives from OPM regulations, which clearly interpret 5 U.S.C. §3502 to include demotions and include the requirement that the personnel action be for more than 30 days [5 CFR §351.201 (a)(2)], and from the statutory provisions of the VEOA that charge the Board to follow OPM's regulations except where the Board may determine that a modification of those regulations would be more effective for the implementation of the rights and protections under the VEOA. Caselaw interpreting the veterans' preference laws also indicates that the inclusion of demotions in what constitutes a reduction in force stems from statutory, not just regulatory, language. (See, e.g., AFGE Local 1904 v. Resor, 442 F. 2d 993, 994 (3rd Cir. 1971); Alder v. U.S., 129 Ct. Cl. 150 (1954).)

5 U.S.C. §3501, which has been included in the CAA through Section (c)(2) of the VEOA, contains special definitions for determining whether an employee is a ''preference eligible'' for purposes of applying veterans' preference in reductions in force. The definitions that appear in section 1.111(b) of the regulations are taken directly from the statutory language in 5 U.S.C. §3501. Note, however, that these definitions do not apply to the application of the provisions of 5 U.S.C. §3504 (and section 1.114 of these regulations) regarding the waiver of physical requirements in determining qualifications for retention. In that context, the definition of ''preference eligible'' set forth in 5 U.S.C. §2108 (and section 1.102(o) of the Board's regulations) shall apply.

As discussed below, 5 U.S.C. §3502(c) provides that preference eligibles are entitled to retention over other ''competing employees''. In the Executive Branch, the question of who are ''competing employees'' is answered by reference to detailed and rather complex retention registers that Executive Branch agencies are required to maintain. (See, e.g., 5 CFR §351.203, 5 CFR §351.404 and 5 CFR §351.501.) The Comments to our initial proposed regulations noted that few if any employing offices in the Legislative Branch maintain retention registers, and that many of the OPM regulations regarding retention registers rely on personnel practices and systems that do not exist in the Legislative Branch.

In keeping with our new approach to the implementation of the VEOA, these regulations do not impose a requirement that an employing office create or maintain OPM-like retention registers but instead provide a framework for determining groups of ''competing employees'' for purposes of applying retention preferences as mandated by 5 U.S.C. §3502(c). In this respect, the Board has determined that several of the terms in the OPM regulations may be used to implement the concept of ''competing employees'' in the Legislative Branch without imposing Executive Branch personnel practices or systems: generally, ''competing covered employees'' are the covered employees within a particular ''position classification or job classification,'' at or within a particular ''competitive area''.

The definition of ''position classification or job classification'' is derived from OPM's basic definition of ''competitive level'' in 5 CFR §351.403(a)(1). The remaining regulations in 5 CFR §351.403(a)(2)–(4), (b)(1)–(5) and (c)(1)–(4) prescribe the manner in which an Executive Branch agency may determine a covered employee's competitive level. While some of these rules could be adopted in the Legislative Branch, others are clearly inapplicable. The Board has decided not to adopt these portions of the OPM regulations in order to provide employing offices with a great amount of flexibility in determining an employee's ''position classification or job classification''. This is in keeping with our understanding that the personnel systems used by employing offices within the Legislative Branch vary significantly from those used in the Executive Branch. This flexibility is, of course, subject to the understanding that such determinations may not be manipulated in order to avoid the employing office's obligations under the VEOA.

The definition of ''competitive area'' more closely tracks OPM's definition of the same term in 5 CFR §351.402. We note that the OPM regulations define ''competitive area'' in terms of an agency's ''organizational units'' and ''geographical locations''. The Board is not adopting OPM definitions or descriptions of these terms, but will allow employing offices flexibility in applying these concepts to their own organizational structure. The Board has retained the OPM requirement that the minimum competitive area be a department or subdivision ''under separate administration''. In this respect, ''separate administration'' is not considered to require that the administration of a proposed competitive area has final authority to hire and fire but that it has the authority to administer the day to day operations of the department or subdivision in question.

The OPM regulations incorporate the term ''tenure'' in their definition of ''competitive group.'' We have used the term in our definition of ''position classification or job classification'' because the statutory language in 5 U.S.C. §3502 identifies ''tenure'' as a factor that will override veterans' preference in determining employee retention in a reduction in force. However, we have not adopted OPM's definition of tenure, as it is tied to Executive Branch service classifications that do not exist in the Legislative Branch. See 5 CFR 351.501. Instead, the use of the term ''tenure'' in these definitions refers only to the type of appointment. For example, an employing office may choose to make ''tenure'' distinctions between permanent and temporary employees, probationary and nonprobationary employees, etc. By referring to ''permanent'' positions, we are referring to jobs that are not limited in advance to a specific temporal duration. Nothing in these Comments and Regulations is intended to address the ''at-will'' status of any covered position.

The Chief Counsel for the Senate noted, in her Comments to the prior proposed regulations, that the Senate does not employ the concept of ''tenure''. If an employing office chooses not to make such distinctions, nothing in these regulations requires it to do so. If the office does, that is one of the factors in the constitution of the ''position classifications or job classifications''. Again, the Board notes that an employing office should not manipulate the creation of tenure so as to avoid its obligations under the VEOA.

We have also included a definition of ''undue interruption'' that is taken directly from the definition of the same term in the OPM regulations, 5 CFR §351.203. The term is used in determining whether various jobs should be included within the same ''position classification'' or ''job classification,'' and is meant to strike a balance between the interests of employing offices in retaining employees who will be able to perform the jobs remaining after a reduction in force, and the interests of preference eligibles whose jobs are being eliminated in remaining employed. OPM struck this balance by generally suggesting that an employee should be able to perform or ''complete'' required work within 90 days of being placed in the position, and the Board considers this time period to be appropriate in the Legislative Branch as well. For example, this protection against ''undue interruption'' would apply if a preference eligible would have to complete a training program of more than 90 days in order to safely and efficiently perform the covered position to which he or she would otherwise be transferred as a result of a RIF. Finally, we note that, since ''undue interruption'' is an affirmative defense, an employing office has the burden of raising it and proving that an employee may not perform work without ''undue interruption'' by objectively quantifiable evidence.

1.112 Application of reductions in force to veterans' preference eligibles. The crux of this regulation derives from 5 U.S.C. §3502(c), which provides:

An employee who is entitled to retention preference and whose performance has not been rated unacceptable under a performance appraisal system implemented under chapter 43 of this title is entitled to be retained in preference to other competing employees. (Emphasis added.)

This provision is the statutory lynchpin underlying veterans' preferences in RIF's. The statutory language in section 3502(c) above in effect requires the employing office

to terminate covered employees subject to a RIF in inverse order of their veterans' preference status, within the appropriate group of covered employees with similar jobs, so long as the employees' performance has not been rated unacceptable. Under section 3502(c), a preference eligible covered employee (without an unacceptable performance appraisal) must be retained in preference to non-preference eligibles—even if the other covered employees in the group in fact have greater length of service or more favorable performance evaluations.

A separate provision in 5 U.S.C. §3502(a) requires Executive Branch agencies to give ''due effect'' to four factors: tenure, veterans'' preference, length of service, and performance or efficiency evaluations. OPM has promulgated regulations addressing these four factors, but which also incorporate the concept that, within the group of employees competing for retention, appropriate veteran's preference status is a factor that may override other factors such as length of service and performance or efficiency evaluations. (''Tenure,'' as discussed below, is factored in to the group of employees within which employees compete for retention during a RIF.)

Case law has also made abundantly clear that section 3502(c) requires that this preference eligible status ''trumps'' the ''due effect'' given to length of service and performance. Courts have interpreted the separate requirement under section 3502(a) to give ''due effect'' to these four enumerated factors as being relevant to retention determinations between two preference eligibles, or between two non-preference eligibles—and *not* relevant to retention determinations between a preference eligible and a non-preference eligible. *Hilton v. Sullivan*, 334 U.S. 323, 335, 336 (1948). The Board has chosen not to explicitly require that length of service or performance or efficiency evaluations be taken into account during RIF's—only that, if they are, veterans' preference remains the controlling factor in making retention decisions within ''position or job classifications'' in a competitive area (assuming other appropriate requirements are also met).

Federal courts have interpreted the present statutory language of section 3502(c) as providing preference eligible employees with an ''absolute preference,'' although only within the confines of their competing group. *Dodd v. TWA*, 770 F. 2d 1038, 1041 (Fed. Cir. 1985); see also *McKee v. TWA*, 1999 LEXIS 25663 at *5 (Fed. Cir. 1999) (unpublished). Additionally, the source of this key language in §3502(c), the Veterans' Preference Act of 1944 (in turn deriving from a series of historical statutes and executive orders, commencing in 1865), and the legislative history of this Act indicate that the section 3502(c) predecessor language was considered the ''heart of the section''. *Hilton v. Sullivan*, 334 U.S. 323, 338 (1948). To this effect, courts have interpreted §3502(c) (or its predecessor under the Veterans' Preference Act of 1944) as overriding such factors as length of service when considering retention standing. *Hilton v. Sullivan*, 334 U.S. at 335, 336, 339 (noting that ''Congress passed the bill with full knowledge that the long standing absolute retention preference of veterans would be embodied in the Act;'' *Elder v. Brannan*, 341 U.S. 277, 285 (1951). Thus, courts have interpreted section 3502(c) as requiring preference to be given to a minimally qualified preference eligible, within his or her competing group, regardless of the preference eligible's length of service or performance in comparison to non-preference eligibles.

To follow this clear statutory directive, the Board has decided that veterans' preference shall be the ''controlling'' factor (provided that the covered employee's performance was not rated unacceptable), in an employment decision taken within ''position or job classifications'' in ''competitive areas,'' as discussed in the Comments to section 1.111 of these proposed regulations, regardless of such factors as length of service or performance or efficiency ratings. Restricting the veterans' preference to RIF's taken within ''position or job classifications'' in ''competitive areas'' provides important limitations on the scope of the preference accorded. As noted above, the preference eligible does not normally compete for retention against all covered employees of an employing office; the definitional terms in section 1.111 restrict the scope of competition only to covered employees in similar occupational groupings (with the further qualification that the preference eligible must perform the position in question without ''undue interruption''(see discussion regarding section 1.111 of these proposed regulations)); in certain facilities involved; and with similar ''tenure,'' or employment status (such as, for example, whether the employee is a permanent or probationary employee). Note that OPM regulations incorporate the concept of ''tenure'' into the definition of ''competing group''; covered employees only compete for retention against co-workers of the same tenure type. As noted in the Comments to section 1.111 of these proposed regulations, employing offices may or may not incorporate the concept of ''tenure,'' and may choose not to make such distinctions as permanent, temporary, or probationary employees. Nothing in these proposed regulations requires employing offices to adopt such distinctions.

Another qualification on the veterans' preference as a ''controlling factor'' is that the preference eligible employee's performance must not have been rated ''unacceptable.'' While 5 U.S.C. §3502(c) contains a reference to performance appraisal systems implemented under 5 U.S.C. §4301 et seq., we are not requiring employing offices to implement a performance appraisal system following 5 U.S.C. §4301 et seq. An employing office may continue to use its own methods for evaluating covered employees and appraising performance, and need not adopt any formal policy regarding performance appraisal. However, the Board notes that employing offices should not manipulate performance appraisals or evaluations so as to avoid obligations under the VEOA.

Another significant qualification on this regulation is that it only governs retention decisions in so far as they affect preference eligible covered employees. In no way does it govern decisions that do not affect preference eligible covered employees; in such cases, an employing office is free to make whatever determinations it so chooses, provided that these determinations are consistent with any other applicable law, and are not used to avoid responsibilities imposed by the VEOA. (Of course, an employing office with covered employees must disseminate information regarding its VEOA policy to covered employees, so as to allow for self-identification of preference eligibles. Furthermore, the notice required by section 1.120 of these regulations will allow covered employees who have not been identified as preference eligibles to assert that status before the RIF becomes effective.) Nor does the regulation require the keeping of formal retention registers, as OPM (and these regulations, as initially proposed) generally requires. However, an employing office must preserve any records kept or made regarding these retention decisions, as detailed in Subpart E of these proposed regulations.

Note also that the Board has included the provision that a preference eligible covered employee who is a ''disabled veteran'' under section 1.102(h) above, who has a compensable service-connected disability of 30 percent or more, and whose performance has not been rated unacceptable by an employing office is entitled to be retained in preference to other preference eligibles. This provision derives from 5 U.S.C. §3502(b), which provides a higher level of preference to certain disabled preference eligibles with regard to other preference eligibles.

Finally, the Board notes that this section does not relieve an employing office of any greater obligation it may be subject to pursuant to the Worker Adjustment and Retraining Notification Act (29 U.S.C. §2101 et seq.) as applied by section 102(a)(9) of the CAA, 2 U.S.C. §1302(a)(9), which would of course apply to all employees covered by the CAA, not only to preference eligible employees covered by the VEOA.

1.113 Crediting experience in reductions in force. This section closely follows 5 U.S.C. §3502(a), one of the sections made applicable to the Legislative Branch by the VEOA, requiring the employing office to provide preference eligible covered employees with credit for certain specified forms of prior service as the office calculates ''length of service'' in the context of a RIF. This provision in no way requires an employing office to utilize ''length of service'' as a factor in its retention decisions regarding employees in the event that the RIF decision does not impact any preference eligible covered employees.

1.114 Waiver of physical requirements—retention. This provision closely follows 5 U.S.C. §3504, one of the sections made applicable to the Legislative Branch by the VEOA, requiring that, when making decisions regarding employee retention during a RIF, an employing office must waive physical requirements for a job for preference eligibles in certain specified circumstances. As discussed in the Comments to section 1.110, nothing in this regulation relieves an employing office of any greater obligation it may have pursuant to the Americans with Disabilities Act (42 U.S.C. §12101 et seq.) as applied by section 102(a)(3) of the CAA, 2 U.S.C. §1302(a)(3).

1.116 Transfer of functions. The language in this section derives from 5 U.S.C. §3503, one of the sections made applicable to the Legislative Branch by the VEOA, requiring covered employees to be transferred to another employing office in the event of a transfer of functions from one employing office to the other, or in the event of the replacement of one employing office by another employing office. The Board expects that employing offices shall coordinate any such transfers in a way that respects both the requirements of this regulation and, to the greatest extent possible, the employing offices' own personnel systems and policies. This section is one of the rare instances where an employing office must follow the regulation even in the event that the personnel action taken does not involve any preference eligible covered employees; however, the clear statutory language of 5 U.S.C. §3503 requires such a result.

Employees and employing offices are reminded that the definition of ''covered employee'' in these proposed regulations does not include employees appointed by a Member of Congress, a committee or subcommittee of either House of Congress, or a joint committee of the House of Representatives and the Senate. *See* proposed regulation 1.102(f)(bb). Therefore, proposed regulation 1.116 will not apply to any such employees affected by the election of new Members of Congress or the transfer of jurisdiction from one committee to another.

SUBPART E: ADOPTION OF VETERANS' PREFERENCE POLICIES, RECORDKEEPING & INFORMATIONAL REQUIREMENTS

We note that, of the six sections in this Subpart, only section 1.120 derives directly from statutory language. The other sections are borrowed from various other employment statutes, and are promulgated pursuant to the authority granted the Board by section 4(c)(4)(A) of the VEOA because they are considered necessary to the implementation of the VEOA. For example, the informational regulations in sections 1.120 and 1.121 are derived from informational regulations promulgated under the Family and Medical Leave Act, which provides employers with some flexibility in determining how the FMLA will be implemented within their own workforce. The Board is strongly committed to transparency as a policy matter. Moreover, for the VEOA rights to become meaningful, applicants for covered positions and covered employees will have to participate in ensuring that this system works properly, since employing offices are permitted to have flexibility in determining their policies, and the Board will not be taking the same active role in policing the veterans' preference requirements that OPM takes in the Executive Branch.

We also note that while this approach differs from OPM's, it reflects the far greater flexibility that employing offices have to tailor substantive requirements to their existing personnel systems and imposes less burdensome obligations on employing offices than that which is imposed on executive agencies: under our regulatory approach, employing offices will have reduced procedural burdens in that they will not be subject to the more detailed requirements of keeping formal retention registers, to the more highly regulated requirements regarding employee access to files (see e.g., 5 CFR §293.101 et seq., 5 CFR §297.101 et seq., and 5 CFR §351.505(b)), or to examining or evaluating applicants on a 100-point scale, seeking prior OPM approval of RIF's, etc.

Section 1.116 Adoption of veterans' preference policy. As noted at the outset of these Comments, the regulations will require each employing office that employs one or more covered employees or seeks applicants for covered positions to develop, within 120 days of the Congressional approval of the regulations, a written program or policy setting forth that employing office's methods for implementing the VEOA's veterans' preference principles in the employing office's hiring and retention systems. Employing offices that have no employees covered by the VEOA are not required to adopt such a policy or program.

Because these regulations afford the employing offices a great amount of flexibility in determining how to implement veterans' preference within their own personnel systems, it is imperative that the methods chosen by the employing offices be reduced to writing and disseminated to covered applicants and employees. This will further the goals of accountability and transparency, as well as consistency in the application of the employing office's veterans' preference procedures. An existing policy may be amended or replaced by the employing office from time to time, as it deems necessary or appropriate to meet changing personnel practices and needs. We note, however, that the employing office's policy or program will at all times remain subject to the requirements of the VEOA and these regulations. Accordingly, while the adoption of a policy or program will demonstrate the employing office's efforts to comply with the VEOA, it will not relieve an employing office of substantive compliance with the VEOA.

Sections 1.117 Preservation of records kept or made. The requirements set forth in this section are derived from OPM regulations regarding retention of RIF records, 5 CFR §351.505, and EEOC regulations regarding the preservation of personnel and employment records kept or made by employers, 29 CFR §1602.14. This section requires that relevant records be retained for one year from the date of the making of the record or the date of the personnel action involved or, if later, one year from the date on which the applicant or employee is notified of the personnel action. In addition, where a claim has been brought under section 401 of the CAA against an employing office under the VEOA, the respondent employing office must preserve all personnel records relevant to the claim until final disposition of the claim.

Section 1.118 Dissemination of veterans' preference policies to applicants for covered positions. Section 1.118 requires that employing offices must furnish information to applicants for covered positions before appointment decisions are made. Before these decisions are made, it is important that applicants be given the opportunity to self-identify themselves as preference eligibles, and that they receive information regarding the employing office's policies and procedures for implementing the VEOA, in order to ensure that they are aware of the VEOA obligations that may apply to their situation. Accordingly, the regulations require that information regarding the employing office's policies and procedures for implementing the VEOA in appointments be furnished to applicants at various stages when the employing office is hiring into covered positions. We note that inviting applicants to voluntarily self-identify as a disabled veteran for purposes of the application of an employing office's veterans' preference policies, as outlined in the proposed regulation, is consistent with the EEOC's ADA *Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations* (EEOC Oct. 10, 1995).

This requirement does not prevent an employing office from appropriately modifying its veterans' preference policies when it sees fit to do so, but is intended to ensure that applicants will be made aware of the employing office's then-current policies and procedures. The requirement that an employing office allow applicants a ''reasonable time'' to provide information regarding their veterans' preference status is intentionally flexible. If an employing office must fill a covered position within a matter of days, one working day may be a ''reasonable time'' for submission of the information. However, if the employing office's appointment process is more prolonged, more time should be allowed.

Sections 1.119 and 1.120 Dissemination of information of veterans' preference policies to covered employees, and notice requirements applicable in RIFs. It is also important that covered employees receive information regarding the employing office's policies and procedures for implementing the VEOA in connection with RIFs, in order to ensure that they are aware of the VEOA obligations that may apply to that situation. Accordingly, section 1.119 requires that information regarding the employing office's policies and procedures for implementing the VEOA in appointments be disseminated through employee handbooks, if the employing office has covered employees and ordinarily distributes such handbooks to those employees, or through any other written policy or manual that the employing office may distribute to covered employees concerning their employee rights or reductions in force.

The notice requirements attendant to a RIF are set out separately in section 1.120 of the regulations. These regulations derive from the express statutory language in 5 USC §3502(d) and (e), which have been applied to the Legislative Branch by the VEOA. The language of section 3502(d) and (e) has been modified in section 1.120 to be consistent with the terms and approach used in the rest of these regulations. Among other changes, section 1.120 refers to ''covered employees'' and the provision in 5 U.S.C. §3502(e) that the ''President'' may shorten the 60 day advance notice period to 30 days has been changed to the ''director of the employing agency.'' Additionally, the provision regarding Job Training Partnership Act notice has been omitted. The requirement to inform the employee of the place where he or she may inspect regulations and records pertaining to this case derives from 5 CFR §351.802(a)(3).

The statutory language requiring notice of ''the employee's ranking relative to other competing employees, and how that ranking was determined'' has been modified to require that the notice state whether the covered employee is preference eligible and that the notice separately state the ''retention status'' (i.e., whether the employee will be retained or not) and preference eligibility of the other covered employees in the same job or position classification within the covered employee's competitive area. The Board is not requiring the keeping of retention registers or the ranking of employees within a job or position classification affected by a RIF. However, the statutory language clearly compels employing offices to provide employees who will be adversely affected by a reduction in force with advance notice of how and why the agency decided to subject that particular employee to the reduction in force. At a minimum, this includes whether the affected employee has preference eligible status, and an objective indication why the employee was not retained in relation to other employees in the affected position classifications or job classifications.

Section 1.121 Informational requirements regarding veterans' preference determinations. Once an appointment or reduction in force decision has been made, it is important that applicants for covered positions and covered employees receive information regarding the employing office's decision, in order to ensure that the rights and obligations created by the VEOA may be effectively enforced under the CAA as contemplated by section 4(c)(3)(B) of the VEOA. Accordingly, section 1.121 of the regulations requires that certain limited information regarding the employing office's decision be made available to applicants for covered positions and to covered employees, upon request.

Proposed Substantive Regulations

PART 1—Extension of Rights and Protections Relating to Veterans' Preference Under Title 5, United States Code, to Covered Employees of the Legislative Branch (section 4(c) of the Veterans Employment Opportunities Act of 1998)

SUBPART A—MATTERS OF GENERAL APPLICABILITY TO ALL REGULATIONS PROMULGATED UNDER SECTION 4 OF THE VEOA

Sec.
1.101 Purpose and scope.
1.102 Definitions.
1.103 Adoption of regulations.
1.105 Coordination with section 225 of the Congressional Accountability Act.

SEC. 1.101 PURPOSE AND SCOPE

(a) Section 4(c) of the VEOA. The Veterans Employment Opportunities Act (VEOA) applies the rights and protections of sections 2108, 3309 through 3312, and subchapter I of chapter 35 of title 5 U.S.C., to certain covered employees within the Legislative Branch.

(b) Purpose and scope of regulations. The regulations set forth herein are the substantive regulations that the Board of Directors of the Office of Compliance has promulgated pursuant to section 4(c)(4) of the VEOA, in accordance with the rulemaking procedure set forth in section 304 of the CAA (2 U.S.C. §1384). The purpose of subparts B, C and D of these regulations is to define veterans' preference and the administration of veterans' preference as applicable to Federal employment in the Legislative Branch. (5 U.S.C. §2108, as applied by the VEOA). The purpose of subpart E of these regulations is to ensure that the principles of the veterans' preference laws are integrated into the existing employment and retention policies and processes of those employing offices with employees covered by the VEOA, and to provide for transparency in the application of veterans' preference in covered appointment and retention decisions. Provided, nothing in these regulations shall be construed so as to require an employing office to reduce any existing veterans' preference rights and protections that it may afford to preference eligible individuals.

SEC. 1.102 DEFINITIONS

Except as otherwise provided in these regulations, as used in these regulations:

(a) Act or CAA means the Congressional Accountability Act of 1995, as amended (Pub. L. 104–1, 109 Stat. 3, 2 U.S.C. §§1301–1438).

(b) Active duty or active military duty means full-time duty with military pay and allowances in the armed forces, except (1) for training or for determining physical fitness and (2) for service in the Reserves or National Guard.

(c) Appointment means an individual's appointment to employment in a covered position, but does not include inservice placement actions such as promotions.

(d) Armed forces means the United States Army, Navy, Air Force, Marine Corps, and Coast Guard.

(e) Board means the Board of Directors of the Office of Compliance.

(f) Covered employee means any employee of (1) the House of Representatives; (2) the Senate; (3) the Capitol Guide Board; (4) the Capitol Police Board; (5) the Congressional Budget Office; (6) the Office of the Architect of the Capitol; (7) the Office of the Attending Physician; and (8) the Office of Compliance, but does not include an employee (aa) whose appointment is made by the President with the advice and consent of the Senate; (bb) whose appointment is made by a Member of Congress or by a committee or subcommittee of either House of Congress or a joint committee of the House of Representatives and the Senate; or (cc) who is appointed to a position, the duties of which are equivalent to those of a Senior Executive Service position (within the meaning of section 3132(a)(2) of title 5, United States Code). The term covered employee includes an applicant for employment in a covered position and a former covered employee.

(g) Covered position means any position that is or will be held by a covered employee.

(h) Disabled veteran means a person who was separated under honorable conditions from active duty in the armed forces performed at any time and who has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pensions because of a public statute administered by the Department of Veterans Affairs or a military department.

(i) Employee of the Office of the Architect of the Capitol includes any employee of the Office of the Architect of the Capitol, the Botanic Gardens, or the Senate Restaurants.

(j) Employee of the Capitol Police Board includes any member or officer of the Capitol police.

(k) Employee of the House of Representatives includes an individual occupying a position the pay of which is disbursed by the Clerk of the House of Representatives, or another official designated by the House of Representatives, or any employment position in an entity that is paid with funds derived from the clerk-hire allowance of the House of Representatives but not any such individual employed by any entity listed in subparagraphs (3) through (8) of paragraph (f) above nor any individual described in subparagraphs (aa) through (cc) of paragraph (f) above.

(l) Employee of the Senate includes any employee whose pay is disbursed by the Secretary of the Senate, but not any such individual employed by any entity listed in subparagraphs (3) through (8) of paragraph (f) above nor any individual described in subparagraphs (aa) through (cc) of paragraph (f) above.

(m) Employing office means: (1) the personal office of a Member of the House of Representatives or of a Senator; (2) a committee of the House of Representatives or the Senate or a joint committee; (3) any other office headed by a person with the final authority to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the House of Representatives or the Senate; or (4) the Capitol Guide Board, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, and the Office of Compliance.

(n) Office means the Office of Compliance.

(o) Preference eligible means veterans, spouses, widows, widowers or mothers who meet the definition of ''preference eligible'' in 5 U.S.C. §2108(3)(A)–(G).

(p) Qualified applicant means an applicant for a covered position whom an employing office deems to satisfy the requisite minimum job-related requirements of the position. Where the employing office uses an entrance examination or evaluation for a covered position that is numerically scored, the term ''qualified applicant'' shall mean that the applicant has received a passing score on the examination or evaluation.

(q) Separated under honorable conditions means either an honorable or a general discharge from the armed forces. The Department of Defense is responsible for administering and defining military discharges.

(r) Uniformed services means the armed forces, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration.

(s) VEOA means the Veterans Employment Opportunities Act of 1998 (Pub. L. 105–339, 112 Stat. 3182).

(t) Veteran means persons as defined in 5 U.S.C. §2108, or any superseding legislation.

SEC. 1.103 ADOPTION OF REGULATIONS

(a) Adoption of regulations. Section 4(c)(4)(A) of the VEOA generally authorizes the Board to issue regulations to implement section 4(c). In addition, section 4(c)(4)(B) of the VEOA directs the Board to promulgate regulations that are ''the same as the most relevant substantive regulations (applicable with respect to the Executive Branch) promulgated to implement the statutory provisions referred to in paragraph (3)'' of section 4(c) of the VEOA. Those statutory provisions are section 2108, sections 3309 through 3312, and subchapter I of chapter 35, of title 5, United States Code. The regulations issued by the Board herein are on all matters for which section 4(c)(4)(B) of the VEOA requires a regulation to be issued. Specifically, it is the Board's considered judgment based on the information available to it at the time of promulgation of these regulations, that, with the exception of the regulations adopted and set forth herein, there are no other ''substantive regulations (applicable with respect to the Executive Branch) promulgated to implement the statutory provisions referred to in paragraph (3)'' of section 4(c) of the VEOA that need be adopted.

(b) Modification of substantive regulations. As a qualification to the statutory obligation to issue regulations that are ''the same as the most substantive regulations (applicable with respect to the Executive Branch),'' section 4(c)(4)(B) of the VEOA authorizes the Board to ''determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under'' section 4(c) of the VEOA.

(c) Rationale for Departure from the Most Relevant Executive Branch Regulations. The Board concludes that it must promulgate regulations accommodating the human resource systems existing in the Legislative Branch; and that such regulations must take into account the fact that the Board does not possess the statutory and Executive Order based government-wide policy making authority underlying OPM's counterpart VEOA regulations governing the Executive Branch. OPM's regulations are designed for the competitive service (defined in 5 U.S.C. §2102(a)(2)), which does not exist in the employing offices subject to this regulation. Therefore, to follow the OPM regulations would create detailed and complex rules and procedures for a workforce that does not exist in the Legislative Branch, while providing no VEOA protections to the covered Legislative Branch employees. We have chosen to propose specially tailored regulations, rather than simply to adopt those promulgated by OPM, so that we may effectuate Congress' intent in extending the principles of the veterans' preference laws to the Legislative Branch through the VEOA.

SEC. 1.104 COORDINATION WITH SECTION 225 OF THE CONGRESSIONAL ACCOUNTABILITY ACT

Statutory directive. Section 4(c)(4)(D) of the VEOA requires that promulgated regulations must be consistent with section 225 of the CAA. Among the relevant provisions of section 225 are subsection (f)(1), which prescribes as a rule of construction that definitions and exemptions in the laws made applicable by the CAA shall apply under the CAA, and subsection (f)(3), which states that the CAA shall not be considered to authorize enforcement of the CAA by the Executive Branch.

SUBPART B—VETERANS' PREFERENCE—GENERAL PROVISIONS

Sec.
1.105 Responsibility for administration of veterans' preference.
1.106 Procedures for bringing claims under the VEOA.

SEC. 1.105 RESPONSIBILITY FOR ADMINISTRATION OF VETERANS' PREFERENCE

Subject to Section 1.106, employing offices are responsible for making all veterans' preference determinations, consistent with the VEOA.

SEC. 1.106 PROCEDURES FOR BRINGING CLAIMS UNDER THE VEOA

Applicants for appointment to a covered position and covered employees may contest adverse veterans' preference determinations, including any determination that a preference eligible is not a qualified applicant, pursuant to sections 401–416 of the CAA, 2 U.S.C. §§1401–1416, and provisions of law referred to therein; 206a(3) of the CAA, 2 U.S.C. §§1401, 1316a(3); and the Office's Procedural Rules.

SUBPART C—VETERANS' PREFERENCE IN APPOINTMENTS

Sec.
1.107 Veterans' preference in appointments to restricted covered positions.
1.108 Veterans' preference in appointments to non-restricted covered positions.
1.109 Crediting experience in appointments to covered positions.
1.110 waiver of physical requirements in appointments to covered positions

SEC. 1.107 VETERANS' PREFERENCE IN APPOINTMENTS TO RESTRICTED POSITIONS

In each appointment action for the positions of custodian, elevator operator, guard, and messenger (as defined below and collectively referred to in these regulations as restricted covered positions) employing offices shall restrict competition to preference eligibles as long as preference eligibles are available. The provisions of sections 1.109 and 1.110 below shall apply to the appointment of a preference eligible to a restricted covered position. The provisions of section 1.108 shall apply to the appointment of a preference eligible to a restricted covered position, in the event that there is more than one preference eligible applicant for the position.

Custodian—One whose primary duty is the performance of cleaning or other ordinary routine maintenance duties in or about a government building or a building under Federal control, park, monument, or other Federal reservation.

Elevator operator—One whose primary duty is the running of freight or passenger elevators. The work includes opening and closing elevator gates and doors, working elevator controls, loading and unloading the elevator, giving information and directions to passengers such as on the location of offices, and reporting problems in running the elevator.

Guard—One who is assigned to a station, beat, or patrol area in a Federal building or a building under Federal control to prevent illegal entry of persons or property; or required to stand watch at or to patrol a Federal reservation, industrial area, or other area designated by Federal authority, in order to protect life and property; make observations for detection of fire, trespass, unauthorized removal of public property or hazards to Federal personnel or property. The term guard does not include law enforcement officer positions of the U.S. Capitol Police Board.

Messenger—One whose primary duty is the supervision or performance of general messenger work (such as running errands, delivering messages, and answering call bells).

SEC. 1.108 VETERANS' PREFERENCE IN APPOINTMENTS TO NON-RESTRICTED COVERED POSITIONS

(a) Where employing offices opt to examine and rate applicants for covered positions on a numerical basis they shall add points to the earned ratings of those preference eligibles who receive passing scores in an entrance examination, in a manner that is proportionately comparable to the points prescribed in 5 U.S.C. §3309.

(b) In all other situations involving appointment to a covered position, employing offices shall consider veterans' preference eligibility as an affirmative factor that is given weight in a manner that is proportionately comparable to the points prescribed in 5 U.S.C. §3309 in the employing office's determination of who will be appointed from among qualified applicants.

SEC. 1.109 CREDITING EXPERIENCE IN APPOINTMENTS TO COVERED POSITIONS

When considering applicants for covered positions in which experience is an element of qualification, employing offices shall provide preference eligibles with credit:

(a) for time spent in the military service (1) as an extension of time spent in the position in which the applicant was employed immediately before his/her entrance into the military service, or (2) on the basis of actual duties performed in the military service, or (3) as a combination of both methods. Employing offices shall credit time spent in the military service according to the method that will be of most benefit to the preference eligible.

(b) for all experience material to the position for which the applicant is being considered, including experience gained in religious, civic, welfare, service, and organizational activities, regardless of whether he/she received pay therefor.

SEC. 1.110 WAIVER OF PHYSICAL REQUIREMENTS IN APPOINTMENTS TO COVERED POSITIONS

(a) Subject to (c) below, if an employing office determines, on the basis of evidence before it, that an applicant for a covered position is preference eligible, the employing office shall waive in determining whether the preference eligible applicant is qualified for appointment to the position:

(1) requirements as to age, height, and weight, unless the requirement is essential to the performance of the duties of the position; and

(2) physical requirements if, in the opinion of the employing office, on the basis of evidence before it, including any recommendation of an accredited physician submitted by the preference eligible, the preference eligible is physically able to perform efficiently the duties of the position;

(b) Subject to (c) below, if an employing office determines that, on the basis of evidence before it, an otherwise qualified applicant who is a preference eligible described in 5 U.S.C. §2108(3)(c) who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of the covered position, the employing office shall notify the preference eligible of the reasons for the determination and of the right to respond and to submit additional information to the employing office, within 15 days of the date of the notification. Should the preference eligible make a timely response the employing office, at the highest level within the employing office, shall render a final determination of the physical ability of the preference eligible to perform the duties of the position, taking into account the response and any additional information provided by the preference eligible. When the employing office has completed its review of the proposed disqualification on the basis of physical disability, it shall send its findings to the preference eligible.

(c) Nothing in this section shall relieve an employing office of any greater obligation it may have pursuant to the Americans with Disabilities Act (42 U.S.C. §12101 et seq.) as applied by section 102(a)(3) of the CAA, 2 U.S.C. §1302(a)(3).

SUBPART D—VETERAN'S PREFERENCE IN REDUCTIONS IN FORCE

Sec.
1.111 Definitions applicable in reductions in force.
1.112 Application of preference in reductions in force.
1.113 Crediting experience in reductions in force.
1.114 Waiver of physical requirements in reductions in force.
1.115 Transfer of functions.

SEC. 1.111 DEFINITIONS APPLICABLE IN REDUCTIONS IN FORCE

(a) Competing covered employees are the covered employees within a particular position or job classification, at or within a particular competitive area, as those terms are defined below.

(b) Competitive area is that portion of the employing office's organizational structure, as determined by the employing office, in which covered employees compete for retention. A competitive area must be defined solely in terms of the employing office's organizational unit(s) and geographical location, and it must include all employees within the competitive area so defined. A competitive area may consist of all or part of an employing office. The minimum competitive area is a department or subdivision of the employing office under separate administration within the local commuting area.

(c) Position classifications or job classifications are determined by the employing office, and shall refer to all covered positions within a competitive area that are in the same grade, occupational level or classification, and which are similar enough in duties, qualification requirements, pay schedules, tenure (type of appointment) and working conditions so that an employing office may reassign the incumbent of one position to any of the other positions in the position classification without undue interruption.

(d) Preference Eligibles. For the purpose of applying veterans' preference in reductions in force, except with respect to the application of section 1.114 of these regulations regarding the waiver of physical requirements, the following shall apply:

(1) ''active service'' has the meaning given it by section 101 of title 37;

(2) ''a retired member of a uniformed service'' means a member or former member of a uniformed service who is entitled, under statute, to retired, retirement, or retainer pay on account of his/her service as such a member; and

(3) a preference eligible covered employee who is a retired member of a uniformed service is considered a preference eligible only if—

(A) his/her retirement was based on disability—

(i) resulting from injury or disease received in line of duty as a direct result of armed conflict; or

(ii) caused by an instrumentality of war and incurred in the line of duty during a period of war as defined by sections 101 and 1101 of title 38;

(B) his/her service does not include twenty or more years of full-time active service, regardless of when performed but not including periods of active duty for training; or

(C) on November 30, 1964, he/she was employed in a position to which this subchapter applies and thereafter he/she continued to be so employed without a break in service of more than 30 days.

The definition of ''preference eligible'' as set forth in 5 U.S.C §2108 and section 1.102(o) of these regulations shall apply to waivers of physical requirements in determining an employee's qualifications for retention under section 1.114 of these regulations.

(e) Reduction in force is any termination of a covered employee's employment or the reduction in pay and/or position grade of a covered employee for more than 30 days and that may be required for budgetary or workload reasons, changes resulting from reorganization, or the need to make room for an employee with reemployment or restoration rights. This does not encompass terminations or other personnel actions predicated upon performance, conduct or other grounds attributable to an employee.

(f) Undue interruption is a degree of interruption that would prevent the completion of required work by a covered employee 90 days after the employee has been placed in a different position under this part. The 90-day

standard should be considered within the allowable limits of time and quality, taking into account the pressures of priorities, deadlines, and other demands. However, a work program would generally not be unduly interrupted even if a covered employee needed more than 90 days after the reduction in force to perform the optimum quality or quantity of work. The 90-day standard may be extended if placement is made under this part to a program accorded low priority by the employing office, or to a vacant position. An employing office has the burden of proving ''undue interruption'' by objectively quantifiable evidence.

SEC. 1.112 APPLICATION OF PREFERENCE IN REDUCTIONS IN FORCE

Prior to carrying out a reduction in force that will affect covered employees, employing offices shall determine which, if any, covered employees within a particular group of competing covered employees are entitled to veterans' preference eligibility status in accordance with these regulations. In determining which covered employees will be retained, employing offices will treat veterans' preference as the controlling factor in retention decisions among such competing covered employees, regardless of length of service or performance, provided that the preference eligible employee's performance has not been rated unacceptable. Provided, a preference eligible who is a ''disabled veteran'' under section 1.102(h) above who has a compensable service-connected disability of 30 percent or more and whose performance has not been rated unacceptable by an employing office is entitled to be retained in preference to other preference eligibles. Provided, this section does not relieve an employing office of any greater obligation it may be subject to pursuant to the Worker Adjustment and Retraining Notification Act (29 U.S.C. §2101 et seq.) as applied by section 102(a)(9) of the CAA, 2 U.S.C. § 1302(a)(9).

SEC. 1.113 CREDITING EXPERIENCE IN REDUCTIONS IN FORCE

In computing length of service in connection with a reduction in force, the employing office shall provide credit to preference eligible covered employees as follows:

(a) a preference eligible covered employee who is not a retired member of a uniformed service is entitled to credit for the total length of time in active service in the armed forces;

(b) a preference eligible covered employee who is a retired member of a uniformed service is entitled to credit for:

(1) the length of time in active service in the armed forces during a war, or in a campaign or expedition for which a campaign badge has been authorized; or

(2) the total length of time in active service in the armed forces if he is included under 5 U.S.C. §3501(a)(3)(A), (B), or (C); and

(c) a preference eligible covered employee is entitled to credit for:

(1) service rendered as an employee of a county committee established pursuant to section 8(b) of the Soil Conservation and Allotment Act or of a committee or association of producers described in section 10(b) of the Agricultural Adjustment Act; and

(2) service rendered as an employee described in 5 U.S.C. §2105(c) if such employee moves or has moved, on or after January 1, 1966, without a break in service of more than 3 days, from a position in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard to a position in the Department of Defense or the Coast Guard, respectively, that is not described in 5 U.S.C. §2105(c).

SEC. 1.114 WAIVER OF PHYSICAL REQUIREMENTS IN REDUCTIONS IN FORCE

(a) If an employing office determines, on the basis of evidence before it, that a covered employee is preference eligible, the employing office shall waive:

(1) requirements as to age, height, and weight, unless the requirement is essential to the performance of the duties of the position; and

(2) physical requirements if, in the opinion of the employing office, on the basis of evidence before it, including any recommendation of an accredited physician submitted by the preference eligible, the preference eligible is physically able to perform efficiently the duties of the position.

(b) If an employing office determines that, on the basis of evidence before it, a preference eligible described in 5 U.S.C. §2108(3)(c) who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of the covered position, the employing office shall notify the preference eligible of the reasons for the determination and of the right to respond and to submit additional information to the employing office within 15 days of the date of the notification. Should the preference eligible make a timely response the employing office, at the highest level within the employing office, shall render a final determination of the physical ability of the preference eligible to perform the duties of the covered position, taking into account the evidence before it, including the response and any additional information provided by the preference eligible. When the employing office has completed its review of the proposed disqualification on the basis of physical disability, it shall send its findings to the preference eligible.

(c) Nothing in this section shall relieve an employing office of any greater obligation it may have pursuant to the Americans with Disabilities Act (42 U.S.C. §12101 et seq.) as applied by section 102(a)(3) of the CAA, 2 U.S.C. §1302(a)(3).

SEC. 1.115 TRANSFER OF FUNCTIONS

(a) When a function is transferred from one employing office to another employing office, each covered employee in the affected position classifications or job classifications in the function that is to be transferred shall be transferred to the receiving employing office for employment in a covered position for which he/she is qualified before the receiving employing office may make an appointment from another source to that position.

(b) When one employing office is replaced by another employing office, each covered employee in the affected position classifications or job classifications in the employing office to be replaced shall be transferred to the replacing employing office for employment in a covered position for which he/she is qualified before the replacing employing office may make an appointment from another source to that position.

SUBPART E—ADOPTION OF VETERANS' PREFERENCE POLICIES, RECORDKEEPING & INFORMATIONAL REQUIREMENTS

Sec.

1.116 Adoption of veterans' preference policy.
1.117 Preservation of records made or kept.
1.118 Dissemination of veterans' preference policies to applicants for covered positions.
1.119 Dissemination of veterans' preference policies to covered employees.
1.120 Written notice prior to a reduction in force.
1.121 Informational requirements regarding veterans' preference determinations.

SEC. 1.116 ADOPTION OF VETERANS' PREFERENCE POLICY

No later than 120 calendar days following Congressional approval of this regulation, each employing office that employs one or more covered employees or that seeks applicants for a covered position shall adopt its written policy specifying how it has integrated the veterans' preference requirements of the Veterans Employment Opportunities Act of 1998 and these regulations into its employment and retention processes. Upon timely request and the demonstration of good cause, the Executive Director, in his/her discretion, may grant such an employing office additional time for preparing its policy. Each such employing office will make its policies available to applicants for appointment to a covered position and to covered employees in accordance with these regulations and to the public upon request. The act of adopting a veterans' preference policy shall not relieve any employing office of any other responsibility or requirement of the Veterans Employment Opportunity Act of 1998 or these regulations. An employing office may amend or replace its veterans' preference policies as it deems necessary or appropriate, so long as the resulting policies are consistent with the VEOA and these regulations.

SEC. 1.117 PRESERVATION OF RECORDS MADE OR KEPT

An employing office that employs one or more covered employees or that seeks applicants for a covered position shall maintain any records relating to the application of its veterans' preference policy to applicants for covered positions and to workforce adjustment decisions affecting covered employees for a period of at least one year from the date of the making of the record or the date of the personnel action involved or, if later, one year from the date on which the applicant or covered employee is notified of the personnel action. Where a claim has been brought under section 401 of the CAA against an employing office under the VEOA, the respondent employing office shall preserve all personnel records relevant to the claim until final disposition of the claim. The term ''personnel records relevant to the claim,'' for example, would include records relating to the veterans' preference determination regarding the person bringing the claim and records relating to any veterans' preference determinations regarding other applicants for the covered position the person sought, or records relating to the veterans' preference determinations regarding other covered employees in the person's position or job classification. The date of final disposition of the charge or the action means the latest of the date of expiration of the statutory period within which the aggrieved person may file a complaint with the Office or in a U.S. District Court or, where an action is brought against an employing office by the aggrieved person, the date on which such litigation is terminated.

1.118 DISSEMINATION OF VETERANS' PREFERENCE POLICIES TO APPLICANTS FOR COVERED POSITIONS

(a) An employing office shall state in any announcements and advertisements it makes concerning vacancies in covered positions that the staffing action is governed by the VEOA.

(b) An employing office shall invite applicants for a covered position to identify themselves as veterans' preference eligibles, provided that in doing so:

(1) the employing office shall state clearly on any written application or questionnaire used for this purpose or make clear orally, if a written application or questionnaire is not used, that the requested information is intended for use solely in connection with the employing office's obligations and efforts to provide veterans' preference to preference eligibles in accordance with the VEOA; and

(2) the employing office shall state clearly that disabled veteran status is requested on

a voluntary basis, that it will be kept confidential in accordance with the Americans with Disabilities Act (42 U.S.C. §12101 et seq.) as applied by section 102(a)(3) of the CAA, 2 U.S.C. §1302(a)(3), that refusal to provide it will not subject the individual to any adverse treatment except the possibility of an adverse determination regarding the individual's status as a preference eligible as a disabled veteran under the VEOA, and that any information obtained in accordance with this section concerning the medical condition or history of an individual will be collected, maintained and used only in accordance with the Americans with Disabilities Act (42 U.S.C. §12101 et seq.) as applied by section 102(a)(3) of the CAA, 2 U.S.C. §1302(a)(3).

(c) An employing office shall provide the following information in writing to all qualified applicants for a covered position:

(1) the VEOA definition of veterans' ''preference eligible'' as set forth in 5 U.S.C. §2108 or any superseding legislation, providing the actual, current definition in a manner designed to be understood by applicants, along with the statutory citation;

(2) the employing office's veterans' preference policy or a summary description of the employing office's veterans' preference policy as it relates to appointments to covered positions, including any procedures the employing office shall use to identify preference eligible employees;

(3) the employing office may provide other information to applicants, but is not required to do so by these regulations.

(d) Except as provided in this subparagraph, the written information required by paragraph (c) must be provided to all qualified applicants for a covered position so as to allow those applicants a reasonable time to respond regarding their veterans' preference status.

(e) Employing offices are also expected to answer applicant questions concerning the employing office's veterans' preference policies and practices.

SEC. 1.119 DISSEMINATION OF VETERANS' PREFERENCE POLICIES TO COVERED EMPLOYEES

(a) If an employing office that employs one or more covered employees or that seeks applicants for a covered position provides any written guidance to such employees concerning employee rights generally or reductions in force more specifically, such as in a written employee policy, manual or handbook, such guidance must include information concerning veterans' preference entitlements under the VEOA and employee obligations under the employing office's veterans' preference policy, as set forth in subsection (b) of this regulation.

(b) Written guidances and notices to covered employees required by subsection (a) above shall include, at a minimum:

(1) the VEOA definition of veterans' ''preference eligible'' as set forth in 5 U.S.C. §2108 or any superseding legislation, providing the actual, current definition along with the statutory citation;

(2) the employing office's veterans' preference policy or a summary description of the employing office's veterans' preference policy as it relates to workforce adjustments; and the procedures the employing office shall take to identify preference eligible employees.

(3) The employing office may include other information in the notice or in its guidances, but is not required to do so by these regulations.

(c) Employing offices are also expected to answer covered employee questions concerning the employing office's veterans' preference policies and practices.

1.120 WRITTEN NOTICE PRIOR TO A REDUCTION IN FORCE

(a) Except as provided under subsection (b), a covered employee may not be released, due to a reduction in force, unless the covered employee and the covered employee's exclusive representative for collective-bargaining purposes (if any) are given written notice, in conformance with the requirements of paragraph (b), at least 60 days before the covered employee is so released.

(b) Any notice under paragraph (a) shall include—

(1) the personnel action to be taken with respect to the covered employee involved;

(2) the effective date of the action;

(3) a description of the procedures applicable in identifying employees for release;

(4) the covered employee's competitive area;

(5) the covered employee's eligibility for veterans' preference in retention and how that preference eligibility was determined;

(6) the retention status and preference eligibility of the other employees in the affected position classifications or job classifications within the covered employee's competitive area;

(7) the place where the covered employee may inspect the regulations and records pertinent to him/her, as detailed in section 1.121(b) below; and

(8) a description of any appeal or other rights which may be available.

(c) (1) The director of the employing office may, in writing, shorten the period of advance notice required under subsection (a), with respect to a particular reduction in force, if necessary because of circumstances not reasonably foreseeable.

(2) No notice period may be shortened to less than 30 days under this subsection.

SEC. 1.121 INFORMATIONAL REQUIREMENTS REGARDING VETERANS' PREFERENCE DETERMINATIONS

(a) Upon written request by an applicant for a covered position, the employing office shall promptly provide a written explanation of the manner in which veterans' preference was applied in the employing office's appointment decision regarding that applicant. Such explanation shall state at a minimum:

(1) Whether the applicant is preference eligible and, if not, a brief statement of the reasons for the employing office's determination that the applicant is not preference eligible. If the applicant is not considered preference eligible, the explanation need not address the remaining matters described in subparagraphs (2) and (3).

(2) If the applicant is preference eligible, whether he/she is a qualified applicant and, if not, a brief statement of the reasons for the employing office's determination that the applicant is not a qualified applicant. If the applicant is not considered a qualified applicant, the explanation need not address the remaining matters described in subparagraph (3).

(3) If the applicant is preference eligible and a qualified applicant, the employing office's explanation shall advise whether the person appointed to the covered position for which the applicant was applying is preference eligible.

(b) Upon written request by a covered employee who has received a notice of reduction in force under section 1.120 above (or his/her representative), the employing office shall promptly provide a written explanation of the manner in which veterans' preference was applied in the employing office's retention decision regarding that covered employee. Such explanation shall state:

(1) Whether the covered employee is preference eligible and, if not, the reasons for the employing office's determination that the covered employee is not preference eligible.

(2) If the covered employee is preference eligible, the employing office's explanation shall include:

(A) a list of all covered employee(s) in the requesting employee's position classification or job classification and competitive area who were retained by the employing office, identifying those employees by job title only and stating whether each such employee is preference eligible,

(B) a list of all covered employee(s) in the requesting employee's position classification or job classification and competitive area who were not retained by the employing office, identifying those employees by job title only and stating whether each such employee is preference eligible, and

(C) a brief statement of the reason(s) for the employing office's decision not to retain the covered employee.

END OF PROPOSED REGULATIONS

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker's table and referred as follows:

825. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Modification of Class E Airspace; South Haven, MI; correction [Docket No. FAA-2004-17096; Airspace Docket No. 04-AGL-05] received January 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

826. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Modification of Class D Airspace; Camp Douglas, WI; Correction [Docket No. FAA-2004-17136; Airspace Docket No. 04-AGL-08] received January 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

827. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Establishment of Class E Airspace; Northwood, ND; correction [Docket No. FAA-2004-17094; Airspace Docket No. 04-AGL-03] received January 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

828. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Modification of Class D Airspace; Mount Clemens, MI; correction [Docket No. FAA-2004-16705; Airspace Docket No. 03-AGL-20] received January 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

829. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Establishment of Class E Airspace; Southeast, AK [Docket No. FAA-2003-16342; Airspace Docket No. 03-AAL-15] received January 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

830. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Modification of Class C Airspace, Des Moines International Airport, Des Moines; IA [Docket No. FAA-2004-17145; Airspace Docket No. 04-ACE-19] (RIN: 2120-AA66) received Janaury 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

831. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Modification of Restricted Areas 3801A, 3801B, and 3801C, Camp Claiborne, LA [Docket No. FAA-2003-16438; Airspace Docket No. 03-ASW-02]

(RIN: 2120-AA66) received January 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

832. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Modification of Class E Airspace; St. Francis, KS [Docket No. FAA-2004-18821; Airspace Docket No. 04-ACE-47] received January 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

833. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Establishment of Class E Airspace; Jonesville, VA [Docket No. FAA-2004-18736; Airspace Docket No. 04-AEA-10] received January 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

834. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Correction to Class E airspace; Durango, CO [Docket No. FAA 2004-16971; Airspace Docket 02-ANM-14] received January 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

835. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Modification of Class E Airspace; Kennett, MO [Docket No. FAA-2004-18820; Airspace Docket No. 04-ACE-46] received January 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

836. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Revision of Class E Airspace; Kotzebue, AK [Docket No. FAA-2004-18897; Airspace Docket No. 04-AAL-12] received January 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

837. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Modification of Class E Airspace; Warrensburg, MO. [Docket No. FAA-2004-19333; Airspace Docket No. 04-ACE-62] received January 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

838. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Modification of Class E Airspace; Harvard, NE. [Docket No. FAA-2004-19331; Airspace Docket No. 04-ACE-60] received January 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

839. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Modification of Class E Airspace; Hastings, NE. [Docket No. FAA-2004-19330; Airspace Docket No. 04-ACE-59] received January 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

840. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Modification of Class E Airspace; Hartington, NE [Docket No. FAA-2004-19332; Airspace Docket No. 04-ACE-61] received January 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

841. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Modification of Class E Airspace; Hastings, NE. [Docket No. FAA-2004-19330; Airspace Docket No. 04-ACE-59] received January 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

842. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Modification of Class E Airspace; Dodge CIty, KS [Docket No. FAA-2004-19325; Airspace Docket No. 04-ACE-54] received January 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

843. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Amendment to Restricted Areas 2932, 2933, 2934, and 2935; Cape Canaveral, FL. [Docket No. FAA-2004-19438; Airspace Docket No. 04-ASO-9] (RIN: 2120-AA66) received Janaury 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

844. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Revision of Class E Airspace; Sunriver, OR. [Docket FAA 2003-16567; Airspace Docket 03-ANM-14] received Janaury 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

845. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Establish Class D Airspace; Provo, UT [Docket FAA 2003-16805; Airspace Docket 03-ANM-22] received Janaury 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

846. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Modification of Class E Airspace; Harrisonville, MO. [Docket No. FAA-2004-18825; Airspace Docket No. 04-ACE-51] received Janaury 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

847. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Modification of Class E Airspace; Kennett, MO. [Docket No. FAA-2004-18820; Airspace Docket No. 04-ACE-46] received Janaury 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

848. A letter from the Program Analyst, FAA, Department of Transportation, transmitting the Department's final rule — Modification of Class D Airspace; and Modification of Class E Airspace; Joplin, MO. [Docket No. FAA-2004-18824; Airspace Docket No. 04-ACE-50] received January 31, 2005, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

849. A letter from the Chair of the Board of Directors, Office of Compliance, transmitting notice of proposed procedural rulemaking regulations under Section 304(b)(1) of the Congressional Accountability Act of 1995 for publication in the Congressional Record, pursuant to 2 U.S.C. 1384(b)(1); jointly to the Committees on Education and the Workforce and House Administration.

PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions were introduced and severally referred, as follows:

By Mr. NORWOOD:

H.R. 836. A bill to require the Secretary of Defense to take such actions as are necessary to change the reimbursement rates and cost sharing requirements under the TRICARE program to be the same as, or as similar as possible to, the reimbursement rates and cost sharing requirements under the Blue Cross/Blue Shield Standard Plan provided under the Federal Employee Health Benefit program under chapter 89 of title 5, United States Code; to the Committee on Armed Services.

By Mr. DOGGETT (for himself, Mr. SHAYS, Mr. ANDREWS, Mr. BLUMENAUER, Mr. KUCINICH, Mr. LEWIS of Georgia, Mr. MARKEY, Mr. MCGOVERN, Mr. SANDERS, Mr. BERMAN, Mr. COOPER, Ms. DELAURO, Mr. GRIJALVA, Ms. LEE, Mr. MCDERMOTT, Mr. MORAN of Virginia, Mr. SCHIFF, Mr. STARK, Mr. TAYLOR of Mississippi, and Mr. TIERNEY):

H.R. 837. A bill to amend the Internal Revenue Code of 1986 to eliminate the inflation adjustment of the phaseout of the credit for producing fuel from a nonconventional source and to repeal the extension of the credit for facilities producing synthetic fuels from coal; to the Committee on Ways and Means.

By Mr. LANTOS (for himself, Mr. GRAVES, Mr. MCGOVERN, Mr. SHAYS, Mr. OLVER, Ms. WATSON, Mr. GEORGE MILLER of California, Ms. KAPTUR, Mr. RUPPERSBERGER, Mrs. CAPPS, Mr. STRICKLAND, Mr. GRIJALVA, Mr. CUMMINGS, Mr. GENE GREEN of Texas, Ms. DELAURO, Mrs. MCCARTHY, Mr. BLUMENAUER, Mr. OWENS, Mr. MCDERMOTT, Mr. BROWN of Ohio, Mr. JEFFERSON, Mr. MOORE of Kansas, Mr. DELAHUNT, Mr. ETHERIDGE, Ms. NORTON, Mr. CHANDLER, Mrs. MALONEY, Mr. FALEOMAVAEGA, Mr. CLAY, Mr. COSTELLO, Mr. JONES of North Carolina, and Mr. STARK):

H.R. 838. A bill to ensure that the reserve components are able to maintain adequate retention and recruitment levels by protecting the financial security of the families of activated members of the National Guard and of the Reserve; to the Committee on Ways and Means, and in addition to the Committee on Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. WAXMAN (for himself and Mr. GORDON):

H.R. 839. A bill to protect scientific integrity in Federal research and policymaking; to the Committee on Government Reform, and in addition to the Committee on Science, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. TOM DAVIS of Virginia (for himself, Mr. WAXMAN, Mrs. CAPPS, Mr. LYNCH, and Mr. WEINER):

H.R. 840. A bill to amend the Federal Food, Drug, and Cosmetic Act with respect to the sale of prescription drugs through the Internet, and for other purposes; to the Committee on Energy and Commerce.

By Mr. SENSENBRENNER (for himself, Mr. DREIER, Mrs. MILLER of Michigan, Mr. CHABOT, Mr. BARTLETT of Maryland, Mr. PAUL, and Mr. COLE of Oklahoma):

H.R. 841. A bill to require States to hold special elections to fill vacancies in the House of Representatives not later than 45 days after the vacancy is announced by the Speaker of the House of Representatives in extraordinary circumstances, and for other purposes; to the Committee on House Administration.

By Mrs. MALONEY (for herself, Mr. TOM DAVIS of Virginia, Mr. HOEKSTRA, Mr. WAXMAN, Ms. HARMAN, Mr. CONYERS, Mr. HINCHEY, Mr. TOWNS, Mr. ACKERMAN, Mr. NADLER, Mr. VAN HOLLEN, Mr. CROWLEY, and Mr. SHAYS):

H.R. 842. A bill to extend the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group for 2 years; to the Committee on Government Reform.

By Mr. ABERCROMBIE (for himself and Mr. CASE):

H.R. 843. A bill to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize certain projects in the State of Hawaii and to amend the Hawaii Water Resources Act of 2000; to modify the water resources study; to the Committee on Resources.

By Mr. BACA (for himself, Mr. TERRY, Mr. MCGOVERN, Mr. TOWNS, Ms. BORDALLO, Mr. LYNCH, Mr. SERRANO, and Mr. BUTTERFIELD):

H.R. 844. A bill to amend the Richard B. Russell National School Lunch Act to provide for automatic eligibility for free school lunch and breakfast programs to children of parents who are enlisted members of the Armed Forces on active duty; to the Committee on Education and the Workforce.

By Mr. BARRETT of South Carolina (for himself and Mr. GREEN of Wisconsin):

H.R. 845. A bill to amend the Congressional Budget Act of 1974 to simplify annual concurrent resolutions on the budget and to budget for emergencies; to the Committee on the Budget, and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Ms. GINNY BROWN-WAITE of Florida (for herself, Mr. DAVIS of Florida, Mr. SHERMAN, Ms. ROS-LEHTINEN, Mr. LARSEN of Washington, Ms. BORDALLO, Mr. LEWIS of Georgia, Mr. WELDON of Florida, Ms. HOOLEY, Mr. WOLF, Ms. WASSERMAN SCHULTZ, Mr. BILIRAKIS, Mr. GENE GREEN of Texas, and Mr. FEENEY):

H.R. 846. A bill to establish a Federal program to provide reinsurance to improve the availability of homeowners' insurance; to the Committee on Financial Services.

By Mr. FOLEY (for himself, Mr. MARIO DIAZ-BALART of Florida, Mr. HASTINGS of Florida, Mr. SHAW, and Mr. DAVIS of Florida):

H.R. 847. A bill to authorize ecosystem restoration projects for the Indian River Lagoon and the Picayune Strand, Collier County, in the State of Florida; to the Committee on Transportation and Infrastructure.

By Mr. GARRETT of New Jersey:

H.R. 848. A bill to provide that the income tax shall not apply for taxable years during which the taxpayer, or either spouse of a married couple, is serving in the war in Iraq; to the Committee on Ways and Means.

By Mr. GIBBONS (for himself, Mr. PORTER, and Ms. BERKLEY):

H.R. 849. A bill to provide for the conveyance of certain public land in Clark County, Nevada, for use as a heliport; to the Committee on Resources.

By Mr. HOYER (for himself and Mr. NEY):

H.R. 850. A bill to amend chapter 95 of the Internal Revenue Code of 1986 to establish a uniform date for the release of payments from the Presidential Election Campaign Fund to eligible candidates for election to the office of President of the United States; to the Committee on House Administration.

By Mr. LARSEN of Washington (for himself and Mr. INSLEE):

H.R. 851. A bill to enhance ecosystem protection and the range of outdoor opportunities protected by statute in the Skykomish River valley of the State of Washington by designating certain lower-elevation Federal lands as wilderness, and for other purposes; to the Committee on Resources.

By Mr. MCDERMOTT:

H.R. 852. A bill to extend Federal recognition to the Duwamish Tribe, and for other purposes; to the Committee on Resources.

By Mr. MCKEON:

H.R. 853. A bill to remove certain restrictions on the Mammoth Community Water District's ability to use certain property acquired by that District from the United States; to the Committee on Resources.

By Mr. MCKEON:

H.R. 854. A bill to provide for certain lands to be held in trust for the Utu Utu Gwaitu Paiute Tribe; to the Committee on Resources.

By Mr. ORTIZ:

H.R. 855. A bill to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the Brownsville Public Utility Board water recycling and desalinization project; to the Committee on Resources.

By Mr. OSBORNE (for himself, Mr. FORD, Mr. HOEKSTRA, and Mr. PAYNE):

H.R. 856. A bill to establish a Federal Youth Development Council to improve the administration and coordination of Federal programs serving youth, and for other purposes; to the Committee on Education and the Workforce.

By Mr. PALLONE (for himself, Mr. BILIRAKIS, Mrs. MALONEY, Mr. CALVERT, Mr. VAN HOLLEN, Mr. LOBIONDO, Mr. ANDREWS, Mr. ROGERS of Alabama, Mr. HINCHEY, Mr. MENENDEZ, Mr. MCGOVERN, and Mr. MCNULTY):

H.R. 857. A bill to amend the International Claims Settlement Act of 1949 to allow for certain claims of nationals of the United States against Turkey, and for other purposes; to the Committee on International Relations, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. PAUL (for himself, Mr. BARTLETT of Maryland, Mr. DUNCAN, Mr. GARRETT of New Jersey, Mr. GOODE, Mr. MCCOTTER, and Mr. WAMP):

H.R. 858. A bill to amend title II of the Social Security Act and the Internal Revenue Code of 1986 to provide prospectively that wages earned, and self-employment income derived, by individuals who are not citizens or nationals of the United States shall not be credited for coverage under the old-age, survivors, and disability insurance program under such title, and to provide the President with authority to enter into agreements with other nations taking into account such limitation on crediting of wages and self-employment income; to the Committee on Ways and Means.

By Mr. PETERSON of Minnesota (for himself, Mr. SHERWOOD, Mr. SWEENEY, Ms. BALDWIN, Mr. GREEN of Wisconsin, Mr. OBEY, Mr. OBERSTAR, Mr. ENGLISH of Pennsylvania, Mr. SENSENBRENNER, Mr. PETERSON of Pennsylvania, Mr. RYAN of Wisconsin, Mr. KIND, Mr. PETRI, Mr. KENNEDY of Minnesota, and Ms. SLAUGHTER):

H.R. 859. A bill to amend the Farm Security and Rural Investment Act of 2002 to extend contracts for national dairy market loss payments through the end of fiscal year 2007; to the Committee on Agriculture.

By Mr. REYES:

H.R. 860. A bill to provide for the conveyance of the reversionary interest of the United States in certain lands to the Clint Independent School District, El Paso County, Texas; to the Committee on International Relations.

By Mr. REYES:

H.R. 861. A bill to amend the Ysleta del Sur Pueblo and Alabama and Coushatta Indian Tribes of Texas Restoration Act to decrease the requisite blood quantum required for membership in the Ysleta del Sur Pueblo tribe; to the Committee on Resources.

By Mr. REYES:

H.R. 862. A bill to redesignate the Rio Grande American Canal in El Paso, Texas, as the ''Travis C. Johnson Canal''; to the Committee on Resources.

By Mr. REYES:

H.R. 863. A bill to amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the El Paso, Texas, water reclamation, reuse, and desalinization project, and for other purposes; to the Committee on Resources.

By Ms. ROYBAL-ALLARD (for herself, Mr. WOLF, Mr. OSBORNE, Ms. DELAURO, Mr. WAMP, Mr. VAN HOLLEN, Mrs. NAPOLITANO, Mr. GEORGE MILLER of California, Mr. WAXMAN, Mr. CASE, Mrs. JONES of Ohio, Mr. FORTUÑO, Mr. FRANK of Massachusetts, Mr. CAPUANO, Mr. CARDOZA, Mr. SANDERS, Mr. PLATTS, Mrs. JO ANN DAVIS of Virginia, Mrs. BONO, and Mr. GRIJALVA):

H.R. 864. A bill to provide for programs and activities with respect to the prevention of underage drinking; to the Committee on Energy and Commerce.

By Mr. SAXTON (for himself, Mr. ANDREWS, Ms. JACKSON-LEE of Texas, Mr. COBLE, Ms. ROS-LEHTINEN, Mrs. JO ANN DAVIS of Virginia, Mr. ENGEL, Mr. WEINER, Mr. LANGEVIN, Mr. ETHERIDGE, Mr. FORTUÑO, and Mr. HOSTETTLER):

H.R. 865. A bill to amend title 28, United States Code, to clarify that persons may bring private rights of actions against foreign states for certain terrorist acts, and for other purposes; to the Committee on the Judiciary.

By Mr. SENSENBRENNER (for himself and Mr. CONYERS):

H.R. 866. A bill to make technical corrections to the United States Code; to the Committee on the Judiciary.

By Mr. SMITH of Texas:

H.R. 867. A bill to promote openness in Government by strengthening section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act), and for other purposes; to the Committee on Government Reform.

By Mr. SMITH of Washington (for himself, Mr. BAIRD, Mr. DICKS, Mr. INSLEE, Mr. LARSEN of Washington, and Mr. MCDERMOTT):

H.R. 868. A bill to amend title XVIII of the Social Security Act to improve the provision of items and services provided to Medicare beneficiaries residing in rural areas; to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. SOUDER (for himself, Mr. CUMMINGS, Mr. CAPUANO, Mr. TOM DAVIS of Virginia, Mr. PORTMAN, Mr. RANGEL, Mr. RAMSTAD, Mrs. MCCARTHY, Mr. MEEKS of New York, Mr.

KENNEDY of Rhode Island, Mr. WEINER, Mr. BOOZMAN, Mr. WAMP, Mrs. BIGGERT, Mr. SERRANO, Mr. ACKERMAN, Mrs. MALONEY, Mr. PRICE of North Carolina, Mr. OWENS, Mr. GENE GREEN of Texas, Mr. WYNN, and Mrs. CHRISTENSEN):

H.R. 869. A bill to amend the Controlled Substances Act to lift the patient limitation on prescribing drug addiction treatments by medical practitioners in group practices, and for other purposes; to the Committee on Energy and Commerce, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. STARK (for himself and Mr. BERRY):

H.R. 870. A bill to amend the Federal Food, Drug, and Cosmetic Act to provide enhanced criminal penalties for certain violations of the Act involving knowing concealment of evidence of a serious adverse drug experience, and for other purposes; to the Committee on Energy and Commerce.

By Mr. THOMPSON of California (for himself, Mr. BERRY, Mrs. TAUSCHER, Mr. CASE, Mr. SCOTT of Georgia, Mr. COOPER, Mr. TANNER, Mr. MATHESON, Mr. ROSS, Mr. SCHIFF, Ms. HARMAN, Mr. PETERSON of Minnesota, Ms. HERSETH, Mr. BOSWELL, Mr. COSTA, Mr. ISRAEL, Mr. CHANDLER, Mr. CARDOZA, Mr. DAVIS of Tennessee, Mr. MICHAUD, Ms. LORETTA SANCHEZ of California, and Mr. MELANCON):

H.R. 871. A bill to establish reporting requirements relating to funds made available for military operations in Iraq or the reconstruction of Iraq and for military operations in Afghanistan or the reconstruction of Afghanistan, and for other purposes; to the Committee on Armed Services, and in addition to the Committee on International Relations, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. TOWNS (for himself and Mr. UPTON):

H.R. 872. A bill to amend title XVIII of the Social Security Act to provide for reimbursement of certified midwife services and to provide for more equitable reimbursement rates for certified nurse-midwife services; to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. MURTHA:

H.J. Res. 21. A joint resolution proposing an amendment to the Constitution of the United States relating to school prayer; to the Committee on the Judiciary.

By Mr. POE:

H. Con. Res. 66. Concurrent resolution providing for the adjournment or recess of the two Houses; considered and agreed to.

By Ms. EDDIE BERNICE JOHNSON of Texas (for herself, Mr. YOUNG of Alaska, and Mr. OBERSTAR):

H. Con. Res. 67. Concurrent resolution honoring the soldiers of the Army's Black Corps of Engineers for their contributions in constructing the Alaska-Canada highway during World War II and recognizing the importance of these contributions to the subsequent integration of the military; to the Committee on Transportation and Infrastructure.

By Mr. EVANS (for himself, Ms. BORDALLO, Mr. HONDA, Mr. TOWNS, Mr. GRIJALVA, Mr. MCGOVERN, Mr. ABERCROMBIE, Mr. FRANK of Massachusetts, Mrs. NAPOLITANO, Mr. KUCINICH, Ms. NORTON, Mr. GEORGE MILLER of California, Mr. CROWLEY, and Mr. SANDERS):

H. Con. Res. 68. Concurrent resolution expressing the sense of Congress that the Government of Japan should formally issue a clear and unambiguous apology for the sexual enslavement of young women during colonial occupation of Asia and World War II, known to the world as ''comfort women'', and for other purposes; to the Committee on International Relations.

By Mr. TANCREDO (for himself, Mr. SOUDER, Ms. ROS-LEHTINEN, Mr. TOWNS, and Mr. SHIMKUS):

H. Con. Res. 69. Concurrent resolution expressing the sense of Congress that the United States should resume normal diplomatic relations with the Republic of China on Taiwan, and for other purposes; to the Committee on International Relations.

By Mr. BOEHLERT:

H. Res. 105. A resolution providing amounts for the expenses of the Committee on Science in the One Hundred Ninth Congress; to the Committee on House Administration.

By Mr. DREIER (for himself and Ms. SLAUGHTER):

H. Res. 106. A resolution providing amounts for the expenses of the Committee on Rules in the One Hundred Ninth Congress; to the Committee on House Administration.

By Mr. HYDE:

H. Res. 107. A resolution providing amounts for the expenses of the Committee on International Relations in the One Hundred Ninth Congress; to the Committee on House Administration.

By Mr. GALLEGLY (for himself, Mr. SMITH of New Jersey, and Mr. WEXLER):

H. Res. 108. A resolution commemorating the life of the late Zurab Zhvania, Prime Minister of the Republic of Georgia; to the Committee on International Relations.

By Mr. MANZULLO:

H. Res. 109. A resolution providing amounts for the expenses of the Committee on Small Business in the One Hundred Ninth Congress; to the Committee on House Administration.

By Mr. BOEHNER (for himself and Mr. GEORGE MILLER of California):

H. Res. 110. A resolution providing amounts for the expenses of the Committee on Education and the Workforce in the One Hundred Ninth Congress; to the Committee on House Administration.

By Mr. MENENDEZ:

H. Res. 111. A resolution electing Members to certain standing committees of the House of Representatives; considered and agreed to.

By Mr. POE:

H. Res. 112. A resolution electing a certain Member to a certain standing committee of the House of Representatives; considered and agreed to.

By Mr. BUYER (for himself and Mr. EVANS):

H. Res. 113. A resolution providing amounts for the expenses of the Committee on Veterans' Affairs in the One Hundred Ninth Congress; to the Committee on House Administration.

By Mr. GREEN of Wisconsin:

H. Res. 114. A resolution expressing the sense of the House of Representatives that a postage stamp should be issued honoring American farm women; to the Committee on Government Reform.

By Ms. KAPTUR:

H. Res. 115. A resolution expressing the sense of the United States House of Representatives that the United States should adhere to moral and ethical principles of economic justice and fairness in developing and advancing United States international trade treaties, agreements, and investment policies; to the Committee on Ways and Means, and in addition to the Committee on International Relations, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. LEACH (for himself and Mr. TIERNEY):

H. Res. 116. A resolution creating a select committee to investigate the awarding and carrying out of contracts to conduct activities in Afghanistan and Iraq and to fight the war on terrorism; to the Committee on Rules.

By Mr. NUSSLE:

H. Res. 117. A resolution providing amounts for the expenses of the Committee on the Budget in the One Hundred Ninth Congress; to the Committee on House Administration.

By Mr. SENSENBRENNER:

H. Res. 118. A resolution providing amounts for the expenses of the Committee on the Judiciary in the One Hundred Ninth Congress; to the Committee on House Administration.

ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 13: Mr. MCCAUL of Texas, Mr. OTTER, and Mr. PETERSON of Pennsylvania.

H.R. 29: Mrs. MYRICK, Mr. MURPHY, Mrs. BLACKBURN, and Mr. ROSS.

H.R. 113: Mr. GUTKNECHT and Mr. SOUDER.

H.R. 114: Mr. OLVER and Ms. SLAUGHTER.

H.R. 136: Mr. KLINE.

H.R. 147: Mr. BAIRD, Mr. BISHOP of Utah, Mr. WU, Mrs. MUSGRAVE, Ms. WOOLSEY, Mr. CASE, Mr. BILIRAKIS, Mr. LARSEN of Washington, Mr. TAYLOR of North Carolina, Mr. BECERRA, Mr. GIBBONS, and Mr. GONZALEZ.

H.R. 181: Mr. EVERETT and Mr. ROGERS of Michigan.

H.R. 203: Mr. CROWLEY, Mr. MCNULTY, Mr. RANGEL, Mr. TOWNS, and Mr. WEINER.

H.R. 204: Mr. CROWLEY, Mr. MCNULTY, Mr. RANGEL, Mr. TOWNS, and Mr. WEINER.

H.R. 274: Mr. CAMP, Mr. BUYER, and Mr. KANJORSKI.

H.R. 282: Mr. DAVIS of Illinois, Mr. PALLONE, Mr. BUTTERFIELD, and Mrs. MILLER of Michigan.

H.R. 341: Mr. UPTON and Mr. RENZI.

H.R. 342: Mrs. LOWEY, Mr. GRIJALVA, Mr. FRANK of Massachusetts, Ms. CARSON, Mr. WEINER, Mr. HINCHEY, Mr. LANTOS, Mr. GUTIERREZ, and Ms. LINDA T. SÁNCHEZ of California.

H.R. 354: Mr. TOM DAVIS of Virginia, Mr. MENENDEZ, Mr. BLUNT, Mr. ORTIZ, and Mr. MILLER of North Carolina.

H.R. 357: Mrs. BLACKBURN.

H.R. 358: Ms. DEGETTE, Ms. SCHAKOWSKY, Mr. STARK, Mr. ACKERMAN, Mr. CLEAVER, Ms. SLAUGHTER, Mr. SIMMONS, Mr. WELLER, Mr. WELDON of Pennsylvania, Mr. WHITFIELD, Mr. ISSA, Mr. MURTHA, Mr. LAHOOD, and Mr. CAPUANO.

H.R. 376: Mr. TAYLOR of Mississippi, Mr. ENGEL, Mrs. CHRISTENSEN, Ms. LINDA T. SÁNCHEZ of California, Ms. CORRINE BROWN of Florida, Mr. OLVER, Mr. DEFAZIO, Mr. HINCHEY, Mr. WEINER, Mr. DOYLE, Mr. SIMPSON, Mr. RANGEL, Ms. MCCOLLUM of Minnesota, Mrs. DAVIS of California, Mr. SKELTON, Mr. MCNULTY, Mr. MARSHALL, Mr. OWENS, Mr. SNYDER, and Mr. MCDERMOTT.

H.R. 389: Mr. MURTHA and Ms. HART.

H.R. 390: Mr. PETERSON of Minnesota.

H.R. 414: Mr. LINCOLN DIAZ-BALART of Florida, Mr. HALL, Mr. JOHNSON of Illinois, Mr. MCCOTTER, MR. SHAYS, Mr. WALSH, Mr. MARIO DIAZ-BALART of Florida, Mr. BOEHLERT, Mr. GRIJALVA, Mr. PETERSON of Minnesota, Mr. FITZPATRICK of Pennsylvania, and Mr. GUTKNECHT.

H.R. 438: Ms. WATSON, Mr. MCDERMOTT, Mr. GEORGE MILLER of California, Mr. FARR, Mr. BECERRA, Mr. BACA, Mr. LANTOS, Mr. ISSA, Ms. WOOLSEY, Ms. PELOSI, and Mr. FILNER.

H.R. 454: Mr. WICKER, Mr. HALL, Mr. BURGESS, Mr. SMITH of Texas, and Mr. BLUNT.

H.R. 459: Mr. FRANK of Massachusetts.

H.R. 516: Ms. HARMAN, Mr. GARY G. MILLER of California, and Mr. MCCAUL of Texas.

H.R. 550: Ms. CARSON, Mr. ETHERIDGE, Mr. OLVER, Mr. BISHOP of New York, Mr. CROWLEY, Ms. CORRINE BROWN of Florida, Mr. BISHOP of Georgia, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. TOWNS, Mr. INSLEE, Ms. HOOLEY, Mr. RANGEL, Mr. GUTIERREZ, Mr. DOGGETT, Mr. DELAHUNT, Mr. EMANUEL, Mr. DOYLE, Mr. GRIJALVA, Mr. RAHALL, Mr. MURTHA, Mr. SNYDER, Mr. THOMPSON of California, and Mr. PASTOR.

H.R. 556: Mr. GALLEGLY and Mr. LIPINSKI.

H.R. 577: Mr. LINCOLN DIAZ-BALART of Florida.

H.R. 581: Mr. ENGEL, Ms. SLAUGHTER, and Mr. BLUNT.

H.R. 598: Mr. MCINTYRE.

H.R. 623: Mr. ROSS.

H.R. 649: Mr. TIBERI.

H.R. 651: Mr. GREEN of Wisconsin, Mr. PAUL, and Mr. ENGLISH of Pennsylvania.

H.R. 655: Mr. MCNULTY and Mr. WEXLER.

H.R. 682: Mrs. BLACKBURN, Mr. POE, and Mr. GREEN of Wisconsin.

H.R. 703: Mr. BURTON of Indiana, Mr. ENGLISH of Pennsylvania, Mr. FOSSELLA, Mr. WOLF, Mr. CULBERSON, Mr. SOUDER, Mr. PITTS, and Mr. HOSTETTLER.

H.R. 731: Mr. MATHESON and Ms. BORDALLO.

H.R. 743: Mr. DAVIS of Illinois.

H.R. 744: Mr. SCHWARZ of Michigan, Mr. CONYERS, Mr. CASE, and Mr. GREEN of Wisconsin.

H.R. 746: Mrs. JONES of Ohio.

H.R. 759: Mr. CASE, Mr. FRANK of Massachusetts, Mrs. MALONEY, and Mr. HONDA.

H.R. 762: Mr. TOWNS and Mr. MCNULTY.

H.R. 763: Mr. TOWNS and Mr. MCNULTY.

H.R. 771: Mr. DAVIS of Illinois, Mr. BUTTERFIELD, and Mr. LYNCH.

H.R. 772: Mr. WEXLER, Mr. DEFAZIO, and Mr. UDALL of New Mexico.

H.R. 783: Mr. GORDON, Mr. EVERETT, Mr. HOSTETTLER, Mr. OBERSTAR, Mr. MENENDEZ, Mr. HASTINGS of Florida, and Mr. PAYNE.

H.R. 788: Mrs. NAPOLITANO, Mr. RAHALL, Mr. CANNON, Ms. BORDALLO, and Mr. GRIJALVA.

H.R. 792: Mr. HINCHEY and Ms. KILPATRICK of Michigan.

H.R. 793: Mr. BARTLETT of Maryland.

H.R. 795: Mr. MEEHAN, Mr. HOLDEN, Mrs. BONO, Mr. EVANS, Mr. UDALL of New Mexico, Mr. CHABOT, Mr. KILDEE, Mrs. CHRISTENSEN, Mr. Bass, Ms. CARSON, Mr. WELDON of Pennsylvania, Mr. HULSHOF, and Mr. WELLER.

H.R. 809: Mr. HAYWORTH, Mr. HULSHOF, and Mr. PORTMAN.

H.R. 815: Mr. GALLEGLY, Mr. PITTS, and Mr. GARY G. MILLER of California.

H.R. 818: Mr. WEXLER.

H. Con. Res. 42: Mr. PLATTS.

H. Con. Res. 52: Mr. JONES of North Carolina and Mr. SOUDER.

H. Con. Res. 56: Mr. GARRETT of New Jersey.

H. Res. 15: Mr. FOLEY, Mr. RAMSTAD, and Mrs. MALONEY.

H. Res. 26: Mr. HYDE and Mr. LAHOOD.

H. Res. 41: Mr. BACA and Mr. ETHERIDGE.

H. Res. 55: Ms. CARSON, Mr. MEEKS of New York, Mr. COOPER, Mr. RYAN of Ohio, Mr. GORDON, Mr. BUYER, Ms. ROS-LEHTINEN, Mr. BILIRAKIS, Ms. MCCOLLUM of Minnesota, Mr. PETERSON of Minnesota, and Mr. MEEHAN.

H. Res. 77: Mr. WEXLER.

H. Res. 91: Ms. HARRIS, Mr. Mack, Mr. POE, Mr. ROYCE, Mr. BERMAN, Mr. BOOZMAN, Mr. ACKERMAN, Ms. WATSON, Mr. ROHRABACHER, Mr. TANCREDO, Ms. JACKSON-LEE of Texas, Mr. PRICE of North Carolina, Mr. GILCHREST, Ms. KAPTUR, Mr. HINCHEY, and Mr. ENGEL.

H. Res. 101: Mr. WILSON of South Carolina.

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PROCEEDINGS AND DEBATES OF THE *109th* CONGRESS, FIRST SESSION

Vol. 151 WASHINGTON, WEDNESDAY, FEBRUARY 16, 2005 *No. 17*

Senate

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

PRAYER

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

Let us pray.

O God, our protection, who fills the universe with the mysteries of Your power, guide and direct our lawmakers today in their work. Sustain them with the knowledge of Your mercy and supply them with wisdom for life's crossroads. Make them aware of Your presence during critical moments of decision.

In the hour of temptation, help them to exercise self-control. Use their skills for the strengthening of the Nation. Give each of us a faith in You that can be seen in our daily lives.

Thank You, Lord, for the opportunity You have given so many of us to serve You as we labor for our country. Enable us to live quiet and peaceful lives as we honor You.

We pray also for our men and women in harm's way around the world.

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, leadership time is reserved.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, there will now be a period for the transaction of morning business for up to 90 minutes with Senators permitted to speak therein, with the first 30 minutes under the control of the majority leader or his designee, and the next 30 minutes under the control of the Democratic leader or his designee.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The Senator from Kentucky is recognized.

SCHEDULE

Mr. MCCONNELL. Mr. President, today we have a period of morning business for up to 90 minutes. The first hour of that time is divided with the majority controlling the first 30 minutes, and the minority in control of the second 30 minutes.

At about 11 o'clock, the Senate will begin consideration of S. 384, the Nazi War Crimes Working Group extension bill. Senator DEWINE is the primary sponsor of that legislation, and he will be here to begin the debate.

Last night, we reached an agreement for 90 minutes of debate on the bill to accommodate several Senators who want to speak on the underlying legislation. It does not appear that a rollcall vote will be necessary on passage of S. 384, and we will notify everyone if someone requests a vote.

We are also working on agreements for the genetic nondiscrimination bill and the high-risk pooling bill.

This week, we also hope to consider the committee funding resolution, as well as any additional nominations that become available.

Finally, I remind all of our colleagues of the traditional reading of George Washington's Farewell Address that will occur this Friday. The junior Senator from North Carolina, Mr. RICHARD BURR, has agreed to deliver that address, and we thank him in advance for his contribution to this longstanding Senate tradition.

Mr. President, I ask unanimous consent that the final 30 minutes of the allotted morning business time be under the control of Senators CORNYN and LEAHY, or their designees.

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. MCCONNELL. 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. COLEMAN. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDENT pro tempore. Without objection, it is so ordered.

SOCIAL SECURITY

Mr. COLEMAN. Mr. President, much of the discussion of Social Security has been dominated by the politics of fear, scaring seniors into believing their benefits will be cut or taken away.

Let me be clear. Discussions about Social Security are not about the retirement security of those Americans who are 55 or older; the Social Security system for folks 55 and older is fine. It is not going to be changed. I will be one of those. If you were born before 1950, you are OK. There is nothing to worry about. In fact, I urge those 55 or older, talk to your kids; Talk to your grandkids; Start thinking a little bit about their future.

Social Security is a sacred trust. Many Minnesotan seniors depend on Social Security each month to buy food and medicine. Those checks are going to continue regardless of what happens in the discussion today.

The reality is we face a challenge, the challenge that the President of the United States talked about in the State of the Union, a challenge to work in a bipartisan way to fix the problems we all know Social Security faces today.

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

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Society is changing. We are living longer. We are healthier, more productive. This places greater pressures on America's retirement system.

When Social Security was started, there were 41 workers for every retiree. By 1960, there were 16 workers per retiree. Today there are 3 workers per retiree. When the baby boomers start to retire in only 3 years, there will be a point where there are 2 workers for every retiree. That is the challenge we face.

As we start to retire, right now we have a surplus. In 13 years, we will be paying more out of Social Security than is coming in as more and more baby boomers retire. Congress will be faced in a little over a decade and beyond with a decision of how to make up the hundreds of billions of dollars going out of a system, than is coming in. That will have an impact on many other things we need to do for the country.

The challenge is, do we sit and wait? Three years comes quickly. In 13 years, the system pays out more than comes in. What do we do before we reach that point? It is not bankrupt but it means it does not have enough money to pay its obligations. Two-thirds of the folks working today every day have 12 percent from their paycheck taken out for Social Security every week. At a certain point they will not have that. That is a reality. It is not political rhetoric. It is a reflection of demographics.

The question is, What do we do? I offer personal experience on an issue like this to my colleagues to reflect upon. When I was elected mayor of St. Paul in 1993, there was a contract settled before I became mayor. My budget director then walked in, and said: Mr. Mayor, we will have $200 million of unfunded liability retiree health benefits based on their contract unless we do something. The good news is it is 15 years away. My advisers said, 15 years away, that is not your problem; that is someone else's problem down the road.

I had a son who was 8 years old and my daughter was 4. I thought that 8 years was a blink of the eye. Fifteen years is two blinks of the eye. It comes quickly. Any parent knows if your kid today is 3 years old, 5 years old, they will start college in 13 years. It is a blink of the eye.

The reality is I got sued and picketed, but we worked out a solution. We rejected a contract and worked out a solution that did not impact those in the program today, not unlike what the President is saying, that we are not going to impact those who are 55 or older today, but for younger people coming in we are going to look at their future and figure out what we are going to do. And we did. That was a little over a decade, 12 years ago. I don't see discussion today in St. Paul, the capital city, about unfunded liability. We had the courage to address the situation.

The challenge is to fix Social Security permanently in an open, candid, and bipartisan approach to reviewing the option. Any proposal must be fashioned in a bipartisan way. On this score, the President highlighted a number of proposals that friends on the other side of the aisle in the past have offered.

For example, President Clinton spoke of increasing the retirement age when he was in office. Former Congressman Tim Penny from my home State of Minnesota has raised the possibility of indexing benefits to prices rather than wages. Former Senator John Breaux suggested discouraging the early collection of Social Security benefits. The late Senator Daniel Patrick Moynihan recommended changing the way benefits are calculated.

I am hopeful my Democratic colleagues today will have the wisdom of their predecessors to recognize a problem is on the horizon and will have the willingness to work with us to find a solution. Again, some will tie this discussion to a national scare campaign to exploit fears for political gain. Don't. Talking about the future of our kids is way too important. Today's discussion about Social Security is about giving the younger generation, in part, a higher rate of return on the paltry 1.6 percent they earn from Social Security today, a 1.6-percent return on their investment.

There is a discussion we are having about allowing younger workers the opportunity to build their own nest egg, to give them a sense of ownership that they do not have over the money they themselves earn and pay into Social Security. It is their money and they are working for it. They should have the right to generate a return on that investment in a way that is not subject to speculation, not subject to rolling the dice. We can set up a system that gives younger workers an opportunity to have a nest egg that will grow. That is not the entire solution, but it is part of the solution.

Let us have the willingness to work together to give young people that opportunity to have a piece of the rock for themselves and, at the same time, have the courage to deal with some of the broader issues.

The question is, Will we in Congress make a political decision and do what is easy and push a $10.4 trillion gap in Social Security to another generation and another Congress or will we make the responsible decision and try to find a way to make sure America's retirement system is there for future generations? I sincerely hope we choose not to pass along to our children and grandchildren a decision which may be difficult today but devastating tomorrow.

It has been said that necessity is the mother of invention. There is a real opportunity right now as parents and grandparents to come up with a plan that leaves our kids with something better than we have; that is, an opportunity to own, build, and grow a nest egg of their own.

In conclusion, as President Clinton declared in 1998 about Social Security reform:

> We all know a demographic crisis is looming. If we act now, it will be easier and less painful than if we wait until later.

It is 2005. It is time to do something. I hope my colleagues on both sides of the aisle come together and get it done.

I yield the floor.

The PRESIDING OFFICER (Mr. VITTER). The Senator from Wyoming.

Mr. THOMAS. Mr. President, I will continue discussing the issue before the Senate, Social Security, which in the last several weeks has been talked about in Washington, DC, and throughout the country.

Reactions have been interesting—many without much information about the alternatives, the needs. I suspect the most important thing we can do is to talk about the situation as it exists, the situation as it will exist if we do nothing, what the options are and what the impacts will be.

It has become, right or wrong, the principal issue. I don't think anything will happen too quickly because there needs to be time taken to explore the issue, to get people to understand the issues. Everyone is meeting at home with their constituents.

I met last weekend in Cheyenne, WY, with the AARP and exchanged some ideas. We have to continue that.

In my view, the President has properly brought forth the issue. He has indicated, if we do not do something now it will be even more difficult to do it in the future years. I don't think anyone argues the idea that our prime purpose is to maintain Social Security so it fulfills what has been laid out for people in the future, so it does not affect those in retirement on Social Security or affect those closer to that age.

It is naive to imagine a program put into place in the 1930s will go on for another 100 years without having some changes. Changes have taken place certainly in this country and will continue to take place.

I am hopeful we can explore the situation, that we can become more familiar with the impact if we do nothing, become more familiar with potential problems that will exist, and then, of course, take a look at potential changes.

It is important to understand what the administration and the President has laid out. As the President has said a number of times, he is willing to take a look at different solutions. That is where we are.

We had a meeting in the Finance Committee yesterday and went over interesting ideas, primarily, the so-called trust fund that exists. You can predict what will happen in that in terms of the cashflow, in terms of the interest.

Everyone does not recognize that when the Social Security moneys come in they go into the Federal fund with all other incomes and then they are sent over with a bond to the trust fund

and interest is earned on that trust fund from the Federal Government basic incomes. Those are bonds that come over and, of course, will, over time, like about 2009 when the income does not equal the outgo, these trust funds will have to be turned into cash so they can then be used to pay benefits.

My goals are to protect the promised benefits to retirees and potential retirees, to create a system for future generations, so the benefits of financial security that have been enjoyed by others will continue to be enjoyed for our kids as time goes by.

I believe strongly in the idea of incentives for people to create their own retirement program. Social Security was designed to be a supplement. I am hopeful—whether it is in the Social Security Program or whether it is outside of that program—that we continue to provide incentives for people to put aside their own money for retirement. Of course, in order to make that successful, the earlier you start putting aside some money, the more likely you are to have some when you need it later.

That is one of the issues before the Congress, whether the personal accounts should be made part of Social Security so there would be an opportunity for the kind of growth that can take place in the private sector.

However, those are two different issues. They are both very important. We can talk about them both, some of the things that need to be done for the Social Security Program as it exists and some of the things that can be done in the area of personal accounts.

There are difficult choices to be made. Obviously, some talk about increasing the payroll taxes. I don't think anyone is enthusiastic about that idea. There are ideas of going over the limits that are now there for the people who pay into, over a certain amount. That could be increased, I suppose. That is one of the options.

The idea of doing something about benefits, of course, is also an option. I do not know quite what specifically could be done, but I suppose there is talk about having benefits somewhat tied to the person's own resources and providing more benefits to people who have less resources than those who have more. That is a possibility.

I mentioned increasing the cap on the wages taxed. That has been talked about. Now the limit is $90,000. Some say it might be able to go above that.

There certainly are opportunities to talk about raising the age limit. One of the things that has changed so much, of course, is the fact that when the Social Security Program started, there were maybe as many as 20-some people working for every person drawing benefits. Now that has changed dramatically. It is my understanding that now there are about three working people for every person drawing benefits. So that is quite a different situation.

At the start of Social Security I think life expectancy was probably in the lower sixties. If you retired at age 65, quite a number of people did not enjoy the benefits of Social Security. Now, fortunately, life expectancy is much longer than that. So some have talked about perhaps over time raising the age for retirement.

There will be other options, of course, as to how these things might be done. I guess my real strong feeling is, No. 1, we have to do something because the system cannot go on as it has. No. 2, we ought to get as knowledgeable as we possibly can—all of us—about what the impacts are, what the situation is, what the alternatives are that could be used.

I think another idea is that it does not need to be done next week. This is something we can work on for a while. I do not mean 5 years, but maybe towards the end of the year we would be in a better position to do something. But the changes are not an option. We have to do some of those kinds of things, and we have to do them fairly quickly.

I was a little disappointed that, as this issue came out, we found some kind of immediate reaction: We are not going to do anything with that; We don't want to touch it.

Well, that is not an option, in our view. I suppose you could argue about critical timing, but it is very clear the longer we wait, the more difficult it will be to find solutions, and the more impact those solutions will have on what we are talking about.

Another idea, of course, is that we ought to look at other ways to do it. As a matter of fact, we have some bills, and the administration is looking at doing some things to encourage more tax-free investments for people's retirement years. I think that is one of the great ideas. There are two ways to do that, of course. No. 1, you can allow those moneys to go into an account before taxes, or the alternative is to go ahead and pay taxes on it now, and when it comes out, there would be no taxes on it.

For people who are in their retirement years, to be able to take their money out without taxing it is probably one of the most attractive alternatives. I have been working with the administration, and we intend to have a bill soon that will make it a little simpler. We have quite a number of different kinds of retirement programs now, and they are a little difficult to keep up with, and a little confusing, so we will soon, hopefully, make those a little bit different.

I am very pleased the President has undertaken this effort and has spent a good deal of time on it. He has basically handed the Congress a blueprint. Some are saying: Well, where is the plan? I think it is good the President has laid out the problem, laid out some of the alternatives, but has, in fact, said—and our committee met with him some time ago in the White House, and he indicated that, no, he is not sending out a specific proposal but is giving us ideas and a broader concept of where he would like to see us go.

So looking to the future, for all of us, as citizens—for the country, for ourselves—is something we must do.

Mr. President, I see my friend from Pennsylvania in the Chamber. I yield the floor.

The PRESIDING OFFICER. The majority's 30 minutes is now expired.

Mr. SANTORUM. Mr. President, since I do not see anybody on the other side, I ask unanimous consent for 5 minutes.

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

The Senator from Pennsylvania is recognized.

Mr. SANTORUM. Mr. President, first I thank and congratulate the Senator from Wyoming for his comments and also for his steadfast duty in coming here to make the case on a variety of different issues. This issue, in particular, Social Security, is a passion of mine, something I have worked on since I came to the Senate back in 1995. To me, this, as the Senator from Wyoming just said, is about a social compact from one generation to the next.

What we are in danger of doing is breaking that compact. We are in danger of telling the next generation of Americans who are entering the workforce that if we do nothing now, they, as a generation, will not get a positive return on their money. In other words, they will not get out of the system money they put in. To me, that is breaking this compact.

Every generation of seniors that has retired—in fact, those who are at or near retirement now—will, in fact, be able to get some measure of return on their money. Some earlier generations got very high rates of return. This generation's retirees will get a relatively low rate of return, but they will have invested money or paid into the program for people in the system while they were working and at least be able to get their money out of the system they paid in when they retire.

If we do nothing, which some have suggested we should do, which I think is irresponsible, but if we do nothing and simply wait for this generation that is in their twenties and thirties right now to retire, then they will be hit with one of two things. Either in the next few years—10 to 15 years—they will be hit with payroll taxes which will take their rate of return, if you will, from a bare positive to a negative or they will be hit with benefit cuts which, again, will take their rate of return—to get out of the system what they put in—and turn that into a negative.

That, in my mind, is breaking the compact. That is saying we have now turned Social Security into somewhat of just simply a tax from one generation and transferring it to another in an ever-increasing severity of tax. I think we can do better than that. That is what the President has suggested. He has come forward on an issue that he

did not have to. This problem is not going to hit America until probably the midteens when we begin to go negative into the Social Security system. In other words, we will not have the amount of money coming in to pay for benefits. Borrowing will have to start to occur from the Government side to pay off these bonds that are in the Social Security trust fund in order to pay benefits. We will do something at that point in time because the deficit impact will be huge on the United States of America.

Social Security, instead of running $100 billion surpluses, will be running $200 billion deficits. Compound that with the growth of Medicare and other things we are seeing, and we will be in a huge deficit situation, which will cause either income taxes to go up, spending on the Government side to go down—which I think is highly unlikely—benefit cuts in Medicare and Social Security, or tax increases for Medicare and Social Security. Any one of those situations puts a burden on future generations either through benefit reductions or tax increases, which I think is breaking the compact that we have had since 1936 with our seniors.

I am hopeful we can find some bipartisan cooperation to look at the problem that is confronting us and say: We have an opportunity to give people hope, to give younger people hope that we can have a better system for them than currently is promised. What is promised for people in their twenties right now is basically 70 cents on the dollar of the benefits that are promised under the system. We can only pay for 70 cents on the dollar. That is what this current system provides.

So when you hear, ''We will keep these promises,'' I understand what keeping the promises means. It means higher taxes for future workers or lower benefits for future retirees. That is what happens if we wait.

So the idea that says there is no problem, understand what that means. That means future generations—whether it is 5 years from now, 10 years from now, 15 years from now—will be hit with higher taxes and lower benefits or some combination of them or maybe one exclusive of the other. But the bottom line is, it is going to impact adversely that generation of workers and that generation of seniors.

We can avoid this problem right now if we allow younger workers the opportunity to put some money away, invest in the American economy, the strength of the American economy, with broad-based index funds that invest in the growth and future of the American economy, which I think we all have high hopes for and believe will be strong going into the future. We believe that is the most responsible way of avoiding this breaking of the compact with future generations, of saying to future generations they will not do as well as other generations of Americans have done under the current system.

So with that, Mr. President, I thank the other side for their indulgence and for the 5 minutes, and I yield the floor.

The PRESIDING OFFICER. The next 30 minutes is controlled by the Democratic leader or his designee.

Mrs. MURRAY. Mr. President, I ask unanimous consent for an additional 5 minutes on the Democratic side as well.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

SOCIAL SECURITY

Mrs. MURRAY. Mr. President, I come to the floor today to reiterate that I am extremely concerned about President Bush's proposed Social Security restructuring, privatization—whatever the code word of the day is—restructuring, which I believe is going to put at real risk the security of all Americans in this country, from our young workers who will be retiring in future decades, to our seniors who are retiring today or who are already retired.

As President Bush's plan has come out, we are realizing what it will do. It will end the guaranteed benefit that is such a critical part of this insurance program today. We also see that it is going to do nothing to fix the long-term issues that face Social Security. Just privatizing and restructuring it is not going to solve those long-term issues.

I am also here today to emphasize the fact that this restructuring or privatization plan is going to add trillions of dollars to our national debt—trillions of dollars when we already have record deficits that future generations will be responsible for. This privatization plan adds trillions of dollars to our national debt.

As President Bush has been traveling around the country to sell his privatization plan, we hear him say:

We have an obligation and a duty to confront problems and not pass them on to future generations.

Well, many of us, on both sides of the aisle, agree with him. We should not create new problems for the next generation to handle. But the trouble is, that is exactly what this President's plan does. It actually adds to the problems of the next generation. It does nothing to solve them.

I think it is time for President Bush to level with the American people about what his program really is. It really is a new recipe for a continuing fall into a black hole of debt. This plan, as the President is proposing, is going to run up $5 trillion in debt that our generation will not pay for. It is going to fall squarely on the shoulders of our children and our grandchildren.

The President not only wants to gamble away the secure future that retirees count on today, he wants to burden them with a huge new $5 trillion debt.

Now, there is another point worth making about the President's plan as well. I keep hearing him say that anyone over 55 will not be affected. Anyone over 55—well, let's be clear. Anyone over 55 will be impacted by this tremendous new debt that is incurred.

President Bush can say he will not cut your benefits now, but how can he guarantee that if we take trillions of dollars from the Social Security trust fund for this privatization plan?

All we have to do, to understand this situation, is to look at the record.

Just last week, we got a budget with the biggest deficit in our Nation's history—4 short years after the budget had the largest surplus in our Nation's history. A few days later, we saw cost estimates for the Medicare prescription drug benefit balloon from the $400 billion we were told it would cost to now it costing more than $700 billion.

Now the Bush administration plans to add trillions to our balance sheet by privatizing Social Security. Let's take a look at this chart. It tells the picture clearly. As we see with this chart, there is more red ink in the President's budget than we care to see for years to come. Unfortunately, if his privatization plan goes into effect, massive new debt increases are added in the years after this plan takes effect. The President, as he did with Medicare, likes to talk about the cost of implementation over 10-year periods. What he does not mention is that for 5 years under those projections, the plan is not fully phased in. So rather than considering his already bloated $700 billion transition projection, let's look at an outside source.

The Center on Budget and Policy Priorities says the borrowing numbers we have heard from the administration ''are misleadingly low.''

They are generated by using a ten-year budget window (2006 to 2015) that includes only five years of the fully phased-in plan. The plan would not be launched until 2009 and not be in full effect until 2011.

Over the first ten years that the plan actually was in effect (2009 to 2018) it would add $1.4 trillion to the debt. Over the next ten years (2019 to 2028) it would add about $3.5 trillion more to the debt. All told, the plan would add $4.9 trillion (14 percent of GDP in 2028) to the debt over the first 20 years.

That is almost $5 trillion. That money is going to have to come from somewhere, and it is pretty naive to think that huge new borrowing will not affect our current retirees. It is naive to think massive new borrowing won't affect programs such as Medicare or Medicaid that do need our attention. And it is naive to think we will simply go along and pass this massive new problem on to our children and grandchildren.

A story a couple of days ago in the Washington Post was headlined ''After Bush Leaves Office, His Budget Costs Balloon.'' I want to read a few lines from that story.

It warned that ''the numbers released in recent days add up to a budgetary landmine that could blow up just as the next president moves into the Oval Office.''

Philip G. Joyce, professor of public policy at George Washington University, said in the piece:

It's almost like you've got a budget and you've got a shadow budget coming in behind that's a whole lot more expensive.

And a Republican adviser to one of our colleagues said:

Hopefully some very difficult decisions will be addressed between now and the time we have a new White House resident so that occupant isn't faced with some very expensive chickens coming home to roost. There are some things that we can do, but unfortunately in the political world kicking down the road is often seen as leadership.

That is what kicking down the road is going to give us. That says it all.

This huge new debt is not the only bad part of privatization. In fact, we need to remember this plan that is being put forward does nothing to extend Social Security solvency—not for a year, a day, not for an hour. That is the issue we are trying to solve. The President's plan, at least the part he has been willing to share with us, does not address that. It is an ideological gamble that we in the Senate and those who depend on Social Security today and tomorrow and around the country should not stand for.

Rather than gambling away our security and running up this huge new debt, we should promote personal savings to help every American with their retirement security and we should stop raiding the Social Security trust fund to pay for misguided priorities such as massive tax cuts for the wealthy.

The ideas we have heard from the President are too dangerous for this generation's retirees or those who are to follow. As you can imagine, like all of my colleagues, I have heard a lot about this proposal from my constituents in Washington. I have heard from current retirees, from disabled workers whom we have not even begun to talk about how this plan will affect, and from young people who would supposedly benefit. President Bush would be very surprised by the tremendous number of comments I have been getting and the tone of them. I will share a few.

From a retiree who lives on Whidbey Island:

The administration should be ashamed of its effort to confuse and mislead the hard-working citizens of the United States.

I heard from a 20-something, who supposedly is going to benefit from privatization, who said:

I want Social Security to be left in its current form.

I heard from a 51-year-old self-employed fisherman who said:

My main concern about Social Security is that it survive for my children. The risks are simply too great for the future of our citizens and our country.

I agree with him. This plan is a plan for social insecurity. It is a guaranteed gamble, not a guaranteed benefit. We are going to continue to stand up for future generations, the young people who are following us, against a private solution that simply will add trillions of dollars in debt to the future generations we are supposedly thinking about here in the Senate. We want to be proud of what we pass along to our children and grandchildren.

I yield the floor.

The PRESIDING OFFICER. The Senator from Hawaii.

(The remarks of Mr. AKAKA pertaining to the introduction of S. 393 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. The Senator from Texas.

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

The PRESIDING OFFICER. Without objection, the clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CORNYN. 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. CORNYN. Mr. President, I ask unanimous consent that I be allotted 15 minutes of the 30 minutes of the time allotted to myself and the Senator from Vermont.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

(The remarks of Mr. CORNYN and Mr. LEAHY pertaining to the introduction of S. 394 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Mr. LEAHY. Mr. President, 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. CORNYN. 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. CORNYN. Mr. President, I want to take a second to convey my appreciation to the Senator from Vermont for his eloquent and I know heartfelt remarks. Today is a good day for open Government in the Senate.

I wish to recognize the leadership of Senator DEWINE for legislation he will be pursuing later today that enhances disclosure of records regarding Nazi war criminals. Senator DEWINE, Senator FEINSTEIN, and I are proud to be cosponsors of the legislation, as is the Senator from Vermont. We are all proud of that effort under the leadership of Senator DEWINE.

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. DURBIN. 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. DURBIN. Mr. President, how much time is remaining in morning business on the Democratic side?

The PRESIDING OFFICER. Fifteen minutes.

SOCIAL SECURITY

Mr. DURBIN. Mr. President, my staff just brought to my attention a publication from the Republican Policy Committee, which our colleague, Senator KYL of Arizona, chairs. It is on their Web site. I found it interesting because it is a description of the Democrat's Social Security plan. What is interesting about this so-called bill, as described by Senator KYL and the Republican Policy Committee, is that it does not exist.

They go on to describe this so-called bill by the Democrats which, according to the Republicans, will require new borrowing or tax increases of $5.8 trillion between 2018 and 2042. This does not exist. What I hold in my hand and what is on the Republican Policy Committee site is a complete fabrication. There is no truth to this.

It surprises me that my colleagues will reach a point where they would put this into the public discussion—try to—when they know it is not true.

Let's try to recap where we are on the debate about Social Security. It was President Bush who told us we needed to talk about Social Security. It was President Bush who told us we face a crisis, a challenge, a bankruptcy in Social Security. It was the President who said we needed to privatize Social Security. It was the President's leadership who brought us to this point in the discussion. And many of us are still waiting for the President's bill.

The President has spoken about Social Security. Some of his colleagues and friends on the Republican side of the aisle have applauded his suggestions, but as yet we have not seen President Bush's proposal. What we know about it concerns us.

Instead of strengthening Social Security, President Bush's privatization plan will weaken Social Security. Let me be specific.

A memo is released from the White House. It suggests changing the indexing rate for Social Security. That is the rate of inflation and other increases in the outyears. So we put the calculation together. What if you change the index from the wage index to the price index?

We find out that in a few decades, we would be cutting Social Security benefits by 40 percent. President Bush's proposal is to cut Social Security benefits by 40 percent.

How does that strengthen Social Security? It weakens it. For many seniors, it means they are going to be tipped over the edge. They are going to end up with less money from Social Security, despite a lifetime of contributions. So there is the first weakness.

The second weakness is the President wants to take money out of the Social

Security trust fund for these so-called private accounts, and as he takes the money out of the Social Security trust fund, it creates a greater deficit in America, a greater debt. This debt, of course, has to be paid off. We have to borrow money to make up for the amount the President wants to take out of the Social Security trust fund.

How much is it? Well, the conservative estimates are less than $1 trillion in the first 10 years but then up to $4 trillion or $5 trillion in the second 10 years. So the President is heaping debt on future generations for this privatization of Social Security plan and has no plan to pay for it.

So we have said to the President: Mr. President, you started this debate; you told us we should act now. Where is your proposal? And he cannot produce it.

If one takes a look at the President's budget for America, one would expect this is his highest priority, that the first chapter would be on Social Security privatization. Well, search if one will, get a magnifying glass, bring a bloodhound from the Westminster Kennel Show, take whatever one can find, and they are not going to find it in his budget. Highest priority for the Bush administration and not a word about paying for privatizing Social Security in the President's budget. Why? He cannot explain it. He cannot defend it. He cannot tell the American people that what he is proposing will actually strengthen Social Security.

As a result, people across America have said: Mr. President, we are not interested in your approach. If the President's approach means weakening Social Security and not strengthening it, if the President's privatization approach means substantial cuts in Social Security benefits, if the President's privatization plan means $2 trillion to $4 trillion more in debt for America, the American people, seniors and their families, are saying to the President, no, thanks.

That is not good news on the Republican side of the aisle. So because their plan is starting to fall apart and the support is not there for it, they have decided to go on the attack. The best defense is a good offense. So they want to attack the Democrats. Along comes the Republican Policy Committee and completely manufactures and fabricates a so-called Democratic bill that does not exist and says the Democratic plan is worse.

Well, I have news for them. November 2 was an important day in American political history last year. That was the day of our national election. If one wants to draw a parallel to a football game, there was a coin toss. President George W. Bush won the coin toss and he will receive. He received the opportunity to lead this Nation as a President. Now he has the ball and he has to run the plays. The President's theory about the game becomes the reality of governing, and the President has to step forward and give us his plan, tell us how he is going to privatize Social Security and make it stronger.

Everyone says if one takes money out of the Social Security trust fund, it weakens Social Security. Most everyone agrees that adding to our national debt means we have to turn to other countries in the world to borrow money. Who is paying for the debt of America today? The No. 1 country in the world is Japan. Not far down the list we will find China and Korea. As we look at these countries, the mortgage holders of America, it is no surprise that many of them are exporting more goods to America at the same time as they own our debt. The two go hand in hand. The actual deficit and the trade deficit go hand in hand. So as we lose millions of manufacturing jobs across America, we lose them to countries that are holding and owning America's debt: China, Japan, Korea.

What does this administration suggest we do? Go more deeply into debt, borrow more money from these foreign countries, become more dependent on them in the hopes that some day they will not turn around and tell us, we do not want to buy your debt anymore? The only way we will buy it is if you raise the interest rates, which, of course, affect our businesses, our families, and all of us as individuals.

This is an extremely shortsighted plan by President Bush. It is a plan which he has not brought forward in detail because he cannot explain it. He cannot explain to the American people how weakening Social Security is in the Nation's best interest.

The American people are wise enough to understand the reality. If we do not touch Social Security, if we leave it exactly as it is today, it will make every single promised payment, with a cost-of-living adjustment, every week, every month, and every year until the year 2042. That is 37 years of payments from the Social Security system as it currently exists. There is not another program of Government that one can say with certainty will make every payment for 37 years, but it can be said about Social Security.

Can we do better and extend its life even longer? Of course we can. But we will not reach that goal by creating this privatization of Social Security, by attacking the very premise of Social Security.

The President says this is all about the ownership society. I think it is time for the President to own up about the ownership society. He ought to be honest about it. What he is proposing in privatizing Social Security will not make it any stronger. What he is proposing is going to cut benefits. What he is proposing is going to end up in more national debt.

This idea of the Republicans to come back and attack the Democrats for legislation that does not exist shows how desperate their position has become. Maybe it is time to call a timeout in the game I referred to earlier. Maybe it is time to do something totally radical. Maybe it is time to have a bipartisan conversation about Social Security. We did it before. I was here. Twenty years ago, Democrats and Republicans sat down and asked: What can we do together in the best interest of Social Security? And we came up with a plan. With that plan, we bought more than 50 years of solvency for Social Security. There were no bragging rights for Democrats, no bragging rights for Republicans. We did it for the country, we did it for people and families who depend on Social Security. That is where we need to return today.

The privatization plan of the President is not going anywhere. People understand it is too great a risk. They do not want to play retirement roulette. They have invested for a lifetime in Social Security to have a basic safety net of protection, and today they need it more than ever. Today, as corporations declare bankruptcy and walk away from their pension obligations, as they walk away from health care for retirees, there are certain things which we ought to say are protected in America. Social Security is one of them.

We need to come together as a nation and first make a commitment that Social Security is going to survive and be strong; secondly, that any savings incentives we create should not be at the expense of Social Security. We have a thrift savings plan for Federal employees. I am part of it. My family participates in it. It is a good idea. It is over and above Social Security. We pay into Social Security and with extra money pay into this thrift savings plan. I think it is a smart thing for my wife and for my family. Other Americans could reach the same conclusion. There are ways to encourage savings but not at the expense of the Social Security trust fund.

The biggest problem the Social Security trust fund has today is all the money that has been taken out of the Social Security trust fund by this administration and others. When this President wants to pay for a tax cut for the wealthiest people in America, the money comes out of the Social Security trust fund. Want to keep Social Security strong? Put the money back into the Social Security trust fund. Stop taking it out.

When we had a surplus in our budget, the future of Social Security was even brighter. Today, with record deficits under the Bush administration, it is no wonder we are worried about Social Security after 40 years.

So I urge my colleagues, do not engage in this kind of political trickery, trying to suggest that legislation exists which does not exist, trying to assign certain numbers and costs to a bill that does not exist. It reflects very quickly how weak the President's proposal is.

I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). Morning business is closed.

EXTENSION OF NAZI WAR CRIMES AND JAPANESE IMPERIAL GOVERNMENT RECORDS INTERAGENCY WORKING GROUP

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of S. 384, which the clerk will report by title.

The legislative clerk read as follows:

A bill (S. 384) to extend the existence of the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group for 2 years.

The PRESIDING OFFICER. Under the previous order, there will be 90 minutes of debate equally divided between the two leaders or their designees. Who seeks recognition?

The Senator from Ohio.

Mr. DEWINE. Mr. President, I ask unanimous consent to add the following members as original cosponsors of S. 384: Senators COLEMAN, COLLINS, and SANTORUM.

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

Mr. DEWINE. Mr. President, I rise this morning to urge support for S. 384, a bill that would extend a very important law; that is, the Nazi War Crimes Disclosure Act. This act launched a mission of discovery, and what we have learned from this bill has been extremely disturbing. It has been necessary that we learn what we have learned from this bill.

I will take a few moments to talk about the act's specific merits, but before I do that, there are some people I will thank. First, I thank the majority leader and his staff for allowing us time today on the Senate floor to debate this measure. I also thank Judiciary Chairman ARLEN SPECTER for agreeing some time ago to schedule a hearing about our bill. It was not necessary to hold the hearing, but it was important that he schedule it. It was his strong support for our efforts that allowed us to move so quickly on this issue. Senator SPECTER gave a strong push to all involved to resolve their differences and to move forward so we could be in the position that we are today. I thank him for his leadership and for his support.

In 1998, Congress first passed the Nazi War Crimes Disclosure Act, which our friend and colleague the late Senator Daniel Patrick Moynihan and I introduced, along with my friend Congresswoman CAROLYN MALONEY, who introduced it in the House.

The purpose of this law was to make public previously classified information about a terrible part of history, the history of Nazi persecution and also the relationship of the U.S. Government to the Nazi war criminals in the aftermath of World War II and during the Cold War.

The bill provided that we would disclose, within the constraints of national security, the information we had about these Nazi war criminals. Undeniably, the Nazi era was one of the darkest chapters in human existence and there is a natural tendency not to even want to think or talk about it. Congress passed the Nazi war crimes law because we understood that we owe it to all those who suffered and died in the death camps. We also owe it to their families to bring the whole truth to light.

The Nazi War Crimes Disclosure Act has been in effect since 1998, and it has resulted in a tremendous amount of information. These results have been produced primarily through the good efforts of a group called the Interagency Working Group, also known as the IWG, which was created by that law. By statute, the IWG includes the director of the Holocaust Museum, the historian of the Department of State, the Archivist of the United States, representatives from the CIA, FBI, Department of Justice, specifically the Office of Special Investigations, the Department of Defense, and three outside appointees, known as public members, who are Elizabeth Holtzman, Richard Ben-Veniste, and Thomas Baer.

The IWG also includes a number of professional historians and archivists, who, along with the public members and the other IWG members, took on the task of locating, identifying, and recommending documents for declassification, of course always provided as long as the declassification posed no threat to national security.

At this point I think it is important to offer thanks to all the members of the IWG for their years of hard work on this project. The staff, including the archivists and historians, has done remarkable work and has helped to produce a tremendous amount of research on this critical project. In particular, we owe a debt of gratitude to the public members of the IWG—Elizabeth Holtzman, Richard Ben-Veniste and Thomas Baer—who have worked without compensation and spent literally hundreds and hundreds of hours of their own time on this effort. We give them our thanks. They have contributed mightily to the knowledge of this terrible era in world history.

Once the IWG was created, it worked closely with the CIA, the FBI, the NSA, the Army, and a number of other agencies to examine and evaluate an enormous number of documents. In fact, since 1998, the Interagency Working Group has coordinated the single largest specifically focused declassification effort in American history. In its first year of operation alone, the IWG screened so many documents for possible declassification and uncovered so much work to do that Congress extended its life in 2001, under the leadership of Senator FEINSTEIN, and then again with my sponsorship in 2004.

At this point, over 100 million documents have been screened for possible relevancy, and over 8 million documents have been declassified and used to create a book titled, U.S. Intelligence and the Nazis. This book, which I have right here, now provides us with 15 chapters of insight into the Holocaust and the post-World War II era—insight into what U.S. Government officials knew and when they knew it. It makes for absolutely fascinating reading. We can be assured that, as more documents are uncovered and as historians have the opportunity to study what has already been uncovered, there will be more articles published, more interpretation, more understanding of history.

When I came to the floor almost 7 years ago to introduce and help pass the Nazi War Crimes Disclosure Act, I brought with me several aerial U.S. intelligence photographs taken in 1944 of Auschwitz. In the photographs, which were discovered by photo analysts from the CIA in 1978, prisoners were being led into gas chambers. This confirmed that our government knew that these atrocities were occurring. What else did they know? At that time, we could not be sure.

Now, however, due in great part to this law, we are much closer to answering that question. The book has contributed to our understanding of history—much more so than we ever hoped. Let me tell just a couple of the many stories this research has uncovered.

Let me tell a couple of the many stories that this research has uncovered so far.

For example, the historians were able to examine a range of documents produced by Gonzalo Montt, the Chilean consul in Prague during the early 1940s. Montt was a Nazi sympathizer and, as such, appears to have had significant access to Nazi plans regarding ''the Jewish problem'' and how the regime was planning to address it—and that plan involved moving the Jews into ghettos, expropriating their assets, and eventually eradicating the Jewish population.

British intelligence got access to many of Montt's dispatches to his home government and provided them to the United States as early as March 1942. Under the law, the IWG recommended that these documents be declassified, and our government agreed. These documents show that certain officials in our government had some evidence of Nazi intentions toward the Jews at least 6 months earlier than had previously been known.

Further, as the authors, themselves, say, these documents show again that:

for many Americans and Britons inside and outside of government, the central, overriding concern during 1939–1945 was the war, itself—not the barbaric policies that accompanied it.

Our job in Congress, at least in passing the law, was not to judge history. That is up to historians. That is up to the people who read it. That will be up to us, later on. As these documents come out, we can begin to judge it.

The point is, though, to make this information available, to let the truth come out, whatever that truth is. Let these raw documents come out to let people make judgments based on those documents. Let historians view it. Let historians argue about them. But to get those documents out in front of the historians and, ultimately, in front of the American people and in front of the world.

We learn from history. We learn from the truth. What this bill is about is getting out the truth.

Other documents showed other details. For example, in a chapter written by Professor Norman J.W. Goda, a professor at Ohio University, the book details how the German government, in coordination with a number of U.S. and European banks, worked together to funnel money illegally expropriated from the accounts of German Jewish nationals back to Germany. Although the details are somewhat complex, in essence, the German government used these expropriated assets to lure a prior generation of German immigrants back to Germany from the United States and, essentially, invest in the German war effort.

A large U.S. bank was intimately involved in this scheme, and profited greatly from it. The scheme was discovered in late 1940 by the FBI, and it began a lengthy investigation. Rather than shut down the operation, the Bureau surveilled the many participants and eventually did arrest a large number of them. At some point during the investigation, the bank, itself, did cooperate with the investigation and was never prosecuted in order to protect FBI and Army intelligence sources. Until this project began, this story had never fully been exposed.

As this book shows and those stories illustrate, this project has been a great success, and the IWG has been very effective at their task—but the law is due to expire at the end of March and the IWG needs more time. Unfortunately, during the course of the last year, the IWG and the CIA have had several ongoing disagreements about the correct interpretation of the law and what type of disclosure the law requires.

After a great deal of effort, the parties have finally come to a common understanding of what the law requires. Specifically, it is now understood that the law was drafted broadly, so that as much information as possible may be released—both about specific Nazi war crimes and also about the relationship the U.S. Government had with Nazi war criminals in the post World War II and Cold War era.

With this understanding going forward, the various parties who comprise the IWG agree that there is a need for some more time to conclude their important work, and I agree, as well. Accordingly, yesterday I introduced, along with Senators FEINSTEIN and CORNYN, legislation that will extend the life of the IWG for 2 additional years, until March 2007. Both the IWG and the CIA agree that 2 years is a reasonable amount of time for the extension, and I agree.

I hope and expect that well within those 2 years, the IWG, working closely with the CIA, will be able to examine the remaining documents and release the important information that still lays within the files of the CIA—unexamined by the public until now. We have come a long way and told a large part of the story, and it is time to finish the job.

Finally, I would like to note for the record the contributions of the many people who have helped us to get to where we are today. Once again, Senator SPECTER, the chairman of the Judiciary Committee, was instrumental in putting the power of the Judiciary Committee behind our effort to move this issue quickly. I also would like to thank Senator LEAHY, the ranking member of the Judiciary Committee, who has been a leader on this issue since the beginning, along with our cosponsors on the Committee, Senator FEINSTEIN and Senator CORNYN.

In the House of Representatives, as I mentioned earlier, Representative CAROLYN MALONEY has been my counterpart and the leader on this issue since the beginning. I look forward to working with Representative MALONEY and with Chairman DAVIS, Chairman SENSENBRENNER and Chairman HOEKSTRA to help move this legislation in the House.

Of course, I also must recognize the commitment, dedication, and vision of the late Senator Daniel Patrick Moynihan. He spent countless hours involved in this issue. He knew how important this was to deepening our understanding of history. He appreciated the value of uncovering this information and what it would mean to those who suffered through the Holocaust and their families.

I also must mention that the CIA, of course, has played a critical role in resolving this dispute and moving forward toward the completion of this project. I'd like to thank former DCI George Tenet for his efforts in that regard and, in particular, mention current DCI Porter Goss, who, as a Congressman from Florida, was a cosponsor of the original legislation in the House. Again, as I noted earlier, the members and staff of the IWG, including the public members, deserve our special thanks.

I should mention again the efforts of leadership and Floor staff, particularly Sharon Soderstrom and Laura Dove, for helping to move this legislation so quickly and make sure we had the opportunity to consider it prior to the expiration of the IWG next month.

Finally, on a personal note, I thank the staffs of all of the Members who have played such a large role on this issue. In particular, I would like to recognize the contributions of my former Judiciary Committee Staff Director Louis Dupart. Louis was a critical part of the team that helped us turn this idea into law back in 1998. Even though he is no longer working in the Senate, he has never stopped working to help promote this legislation and the effective implementation of the law. His ongoing efforts have been crucial to the success of our efforts here today.

Again I urge my colleagues to vote for this important and timely legislation to extend our efforts to finally and fully open our files regarding this horrific period in history and give the victims of the Nazi era and their families as complete an accounting as possible. We owe them no less.

Mr. LEAHY. Mr. President, I am a strong supporter of this bill, and I am pleased to again work with Senator DEWINE to help ensure that our government discloses what it knows about Nazi war criminals and their counterparts in the Japanese Imperial Government.

We passed the Nazi War Crimes Disclosure Act in 1998, and I had the opportunity to work on the bill in the Judiciary Committee. The act required U.S. Government agencies to disclose documents in its possession that related to Nazi war criminals and was later expanded to cover the Japanese Government. Congress took care to respect legitimate national security concerns, including exemptions to allow agencies to withhold documents under a variety of circumstances, provided they reported such withholding promptly to the relevant committees.

The act also established the Interagency Working Group, IWG, to study and report on the documents held by government agencies. Through no fault of its own, the IWG has not been able to complete its work, and the legislation before us today would extend its life for an additional 2 years.

President Clinton instructed agencies to comply fully and rapidly with the act. Most have done so. The Central Intelligence Agency, however, has until recently insisted on a cramped interpretation of the statute that did not accord with congressional intent. The CIA's approach if left unquestioned would have denied researchers and the American people a complete accounting of U.S. Government information about Nazi war criminals.

The plain reading of the act says that if the CIA, or any other agency, possesses documents relating to war criminals, all such documents must be disclosed unless a specific statutory exemption applies. I understand that the FBI, the Army, and other agencies covered by the law adopted that interpretation. The CIA, however, took the position that it must disclose only those documents directly relating to the individual's criminality.

In recent weeks, however, under the continued prodding of Senator DEWINE and the public members of the IWG, the CIA has agreed to revise its interpretation of the law and provide the IWG with the additional documentation it has sought. Richard Ben-

Veniste, Elizabeth Holtzman, and Tom Baer, the public members, deserve our thanks for their persistent efforts to uncover the whole truth about the criminals of World War II that is contained in U.S. Government files.

In addition to providing additional information, the CIA must also comply with its obligation under the act to report to the Senate Judiciary Committee and the House Government Reform Committee whenever it invokes an exemption to avoid disclosing documents. Seven years after enactment, we have yet to receive any such report from the CIA, even as it declined to disclose a number of documents sought by the IWG.

The enactment of this law was an important victory for openness in government, and it is critical that all agencies offer full compliance. I have been a strong supporter of the Freedom of Information Act, FOIA, throughout my service in the Senate, and in fact worked to ensure that the Nazi War Crimes Disclosure Act would not inadvertently reduce agencies' ordinary obligations under FOIA.

The actions of this body today are a welcome departure from our sometimes complacent attitude toward secrecy. Indeed, I believe this Congress has been all too willing to accept the secretive ways of the Bush administration. The Bush White House has conducted its policymaking behind closed doors to an unprecedented degree, from the energy task force to the construction of the legal regime that would govern the war on terror. When we have sought to exercise our oversight responsibilities, we have frequently been stonewalled.

This stonewalling is most apparent in the administration's refusal to disclose information about the abuse of detainees in Afghanistan, Iraq, and Guantanamo Bay. Nearly 10 months after the world learned of the atrocities at Abu Ghraib, those of us in the Congress who strongly believe that oversight and accountability are paramount to restoring America's reputation as a human rights leader remain stymied in our efforts to learn the full truth about how this administration's policies trickled down from offices in Washington to cellblocks in Abu Ghraib.

We know that the CIA is reluctant to provide documents related to Nazi war criminals that are 50 years old and older. How can we expect the same agency to willingly disclose information that might implicate its own agents for recent violations of international law? The administration contends that the prisoner abuse scandal has been fully investigated, yet we continue to learn about new abuses in the press. Several reports, including a recent article by Jane Mayer in The New Yorker, detail the CIA's use of extraordinary rendition to transfer terrorism suspects in U.S. custody to the custody of countries where they are likely to be tortured, a practice expressly prohibited by international law. Other recent reports describe how female interrogators at Guantanamo repeatedly used sexually suggestive tactics to try to humiliate Muslim prisoners. To fully understand this sad chapter in our Nation's history, there needs to be an independent investigation of the actions of those involved, from the people who committed abuses to the officials who set these policies in motion.

Even without an independent investigation, we know the genesis of this scandal began in Washington, not Abu Ghraib. Based on flawed legal reasoning that was contrary to the advice of the State Department and military lawyers, the President determined more than 3 years ago that suspected members of al-Qaida were not entitled to any protections under the Geneva Conventions. Unfortunately, this decision traveled down the chain of command and led to the abuses we have seen in Iraq, Afghanistan, and Guantanamo Bay.

The President's decision to deny suspected terrorists Geneva Conventions protections is particularly relevant as we discuss the Nazi War Crimes Act. It was in August 1949, in response to the Nazi atrocities committed during World War II, that the international community adopted the Geneva Convention on Rules of War. The United States and most other nations of the world ratified the Conventions to ensure that, even in times of war, all nations would be bound by the rule of law. More than fifty years later, we must now investigate our Nation's failure to remain committed to these laws.

Finally, as we discuss the commission of war crimes from the World War II era, I would like to note the passage in December of the Anti-Atrocity Alien Deportation Act, which was included in the National Intelligence Reform Act. This law, which has already been employed to bring removal proceedings against a former Ethiopian government official who has been convicted of torture there, expands the grounds under which we can deport or deny entry to those who have engaged in war crimes and other serious violations of human rights abroad. I began introducing this bill in 1999, but it was only in 2004 that we were finally able to overcome the opposition of some House Judiciary Committee Republicans, with the great help of the lead sponsor of the House companion bill, Representative MARK FOLEY of Florida.

I support the extension and full compliance with the Nazi War Crimes Disclosure Act.

Mrs. FEINSTEIN. Mr. President, I rise today in support of legislation to authorize the extension of the Nazi War Crimes Records Disclosure Act and the Japanese Imperial Army Disclosure Act for an additional 2 years.

In 1998, Congress passed the Nazi War Crimes Records Disclosure Act to ensure that the records of our national security and intelligence agencies related to the criminal activities of the Nazi regime could, after more than half a century, become public.

During the 106th Congress, I introduced, and the President signed into law, the Japanese Imperial Army Disclosure Act which expanded the scope of the original statute to cover war crimes that occurred in the Pacific theater.

That legislation was sought by a large number of Californians who believed that there was an effort to keep information about possible Japanese Imperial Army abuse of war prisoners from the public record.

Indeed, both pieces of legislation were much needed because many of the records and documents regarding Germany's and Japan's wartime activities were classified and hidden in U.S. government archives and repositories. Even worse, according to some scholars, some of these records were being inadvertently destroyed.

The statutes were designed to work through an Interagency working group which would ensure that the documents that needed to be declassified would be declassified, and that the process would occur in an orderly and expeditious manner.

At the time, it was recognized that there could be circumstances where classification was still appropriate, so the best way for the working group to conduct its work was to do so in coordination with other agencies. What we did not recognize was the bureaucratic setbacks that the working group would encounter.

The bottom line here is that the working group did its part and tried diligently to meet its deadline. Nevertheless, despite the group's best efforts, it appears that delay and confusion on the part of the CIA have obstructed its progress.

As a result, the working group, through no fault of its own, was unable to complete this important work within the timetable that the legislation contemplated and now requires additional time to finish.

I find this to be very unfortunate because the time has already long since passed for the full truth to come out.

However, I have been assured that the intelligence community, in general, and the CIA, in particular, have a renewed understanding of the importance of this matter and will now work expeditiously with the working group until the work is completed.

With the fast-thinning ranks of our brave American World War II veterans, it is all the more imperative that the truth comes out sooner, not later. Especially for those that were the victims of war crimes, there should be a full accounting of what happened so that old wounds have a chance to heal.

We need to pass this legislation now so the working group can finish the work that it has started before it is too late. Our veterans gave and risked their lives for this country. The least we can do is provide them with the truth before they are all gone.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DEWINE. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mr. DEWINE. Mr. President, I ask unanimous consent that Senators LEAHY, GRAHAM, and ALLEN be added as cosponsors to the bill.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DEWINE. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mr. DEWINE. Mr. President, I yield all time.

The PRESIDING OFFICER. All time has been yielded.

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

The bill (S. 384) was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 384

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

SECTION 1. TWO-YEAR EXTENSION OF WORKING GROUP.

Section 802(b)(1) of the Japanese Imperial Government Disclosure Act of 2000 (Public Law 106–567; 114 Stat. 2865) is amended by striking ''4 years'' and inserting ''6 years''.

MORNING BUSINESS

Mr. DEWINE. Mr. President, I ask unanimous consent that there 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.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

TRIBUTE TO AMBASSADOR MICHAEL KERGIN

Ms. MURKOWSKI. Mr. President, I rise today to honor an individual who is a credit to his nation, his government, and the office in which he serves. He has earned the admiration and appreciation of his staff, the respect of his colleagues, and the friendship of many of us here in Washington. Sadly, he is also a man whose current service in our Nation's Capital has come to an end, and he will soon be departing to return home. The man I am speaking of this morning is Canada's Ambassador to the United States, Mr. Michael Kergin.

At the end of February, Ambassador Kergin will be returning to Canada after serving admirably here in Washington for the past 4-plus years. He assumed his position in October of 2000, just the 19th representative to the United States for our northern neighbor—our eastern neighbor for those of us in Alaska. His background prior to serving as Ambassador to the United States is impressive.

He was born in a Canadian military hospital in England. Ambassador Kergin joined the Canadian Department of External Affairs in 1967. He served in New York, Cameroon, and Chile. He was Ambassador to Cuba from 1986 to 1989. In 1998, Ambassador Kergin was asked by Prime Minister Jean Chretian to serve as his Foreign Policy Adviser as well as Assistant Secretary to the Cabinet for Foreign and Defense Policy—the equivalent of our National Security Adviser.

It is from this background that Ambassador Kergin drew when the terrorists attacked on September 11, 2001. If you were to ask the Ambassador about his most memorable activities while here in Washington, working with his U.S. counterparts to prevent further terrorist attacks would rank toward the top of that list—taking our border relations to the next level to fight terrorism by implementing the Smart Border Process to keep terrorists out while allowing for the legitimate flow of commerce and visitors between our nations.

It is appropriate to remember, as we are again considering comprehensive energy legislation, that Ambassador Kergin played a key role in the aftermath of the August 2003 blackout that hit the Northeast through the Canada-United States Power Outage Task Force, which was to improve our integrated electricity grid.

I would also be remiss if I did not mention the Ambassador's work to develop natural gas pipelines from both Canada's MacKenzie Delta and Alaska's North Slope to meet our common energy needs.

Mr. President, many of my colleagues from the West are quick to point out the differences between Eastern and Western United States. Canada is much the same. And when you look at a map, it is readily apparent that the seats of government for both nations are very much in the East. So it was a pleasant surprise for me when I first met Ambassador Kergin to learn that he was from British Columbia. When Alaskans speak about fishing or timber or mining issues, he gets it. He understands the Alaskans' point of view.

I look forward to working with Ambassador Kergin's successor, but I will also miss the good Ambassador's presence here in Washington, DC.

So I would like to say to him: Mr. Ambassador, thank you for your service in our Nation's Capital, and thank you for your willingness to work so closely with Congress and the American people to continue our strong relationship.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Ms. MURKOWSKI). Without objection, it is so ordered.

Mr. BINGAMAN. Madam President, I ask unanimous consent that I be allowed to speak for 15 minutes in morning business.

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

GLOBAL WARMING

Mr. BINGAMAN. Madam President, today marks the entry into force of the Kyoto Protocol on Climate Change. Following President Bush's decision to opt out of ratification of that treaty, enforcement of the Protocol fell onto Russian shoulders and was finally ratified by the Russian Federation late last year. Today it is a legally binding treaty.

The basic climate change problem is well understood. We have been told repeatedly in peer reviewed scientific assessments that increasing concentrations of greenhouse gases will lead to an increase in the average global temperature. The increasing temperature of the earth will lead to a large number of important changes to today's climate system. Through past emissions and projected emissions over coming years and decades we expect that the warming will accelerate unless the world alters its emissions path. Indications of warming are already evident in the global temperature record. Last year was the fourth-warmest year since temperature measurements began in the 19th century. The warmest year on record was 1998, followed by 2002 and 2003. Indications are also evident in the vast changes now underway in the Arctic and the bleaching of coral reefs around the world.

Over the years there have been many who have been skeptical of the science that has informed us of the climate change problem. But the mainstream of the scientific community, as evidenced by panels organized through the National Academy of Sciences, has been quite consistent in their views. Our doubling of the pre-industrial level of carbon dioxide has been a major factor in increased global average temperatures.

If human-induced global warming continues on its present path, the

changes to our way of life could be vast. We know this from looking at climates of the past as well as projections made by scientific models. There would be significant changes in water resources, because precipitation patterns will change. The sea level will increase because the oceans will warm and will expand. The ice sheets of Greenland and parts of Antarctica could disintegrate, further adding to long-term sea level rise. A warming of the earth will place major ecological systems at risk, including many of our forests and coral reefs. We are essentially performing a global experiment with our planet, with increasing risk to the future. A prudent course of action would be to take steps now to lower these risks, while we continue to improve our understanding of the implications of the warming of our planet.

The desirability of taking prudent steps now, on a national and international basis, to stem global warming is further highlighted by other developments. Across the United States, an increasing number of individual States are taking policy steps related to global warming. California and New York are moving forward with innovative programs to do their part in minimizing emissions. Add into the mix States like Pennsylvania, Colorado, Texas, Minnesota and others and you can see that a patchwork quilt of climate policies is being formed across the United States. While States can be a great laboratory of ideas, the developing situation really calls out for Federal leadership to get to a more coordinated and rational approach across the country.

The business community is looking for federal leadership as well. At a recent hearing before the Energy Committee, an industry economist called climate change a ''wild card'' that could shape energy markets and governance worldwide. He testified that it would be ''prudent to take preparatory steps'' to reduce carbon dioxide emissions. He is not alone. Many U.S.-based multinational corporations are looking to the Federal Government for help as they seek to comply with the EU emissions trading scheme. More than 12,000 factories and power plants in Europe are subject to emissions caps, affecting many U.S. multinationals with operations in Europe.

I applaud the hard work that has been done by many of my colleagues on the issue of global warming. In past Congresses, we have seen productive work both in terms of discrete bills, such as that by Senators MCCAIN and LIEBERMAN or the abrupt climate change bill by Senator COLLINS, or as part of large legislation, such as the bipartisan climate change titles in past comprehensive energy bills. It is clear that most Members of the Senate understand the importance of global warming. I hope that we will continue to work together this Congress on a path toward sensible climate legislation. For my part, as the ranking member on the Senate Committee on Energy and Natural Resources, I hope that we can find a way to continue to integrate global warming concerns in energy legislation.

Energy legislation is an appropriate place to deal with global warming. I have said many times that climate change is so closely related to energy policy because the two most prominent greenhouse gases—that is, carbon dioxide and methane—are largely released due to energy production and use. To a large extent, to do energy legislation is to do climate legislation and vice versa.

As we consider climate in an energy context, I would like to lay out three principles that I stand for and that I think are important. I think that these principles are both modest and aimed at providing more certainty to decisions that need to be made by the many actors who are part of our national energy picture.

The first principle is to have a sensible plan to reduce emissions of carbon dioxide. I am very impressed with the recent proposal by the bipartisan National Commission on Energy Policy in this regard. They have presented a well-thought out plan to create a mandatory emission trading scheme that protects the economy and provides the essential framework for certainty.

Industry needs the certainty of a program that will help them make investment decisions for the future without causing them to prematurely retire capital stock. For example, I would bring to the Senate's attention the recent report of the Cinergy Corporation and their detailed analysis of the implications of potential greenhouse gas regulations. They conclude that neither their company, nor their region, nor this country would be endangered in the face of a modest greenhouse gas emissions policy that includes a safety valve to protect against shocks to the economy. This approach has been championed by well known economists such as Glenn Hubbard and Joseph Stiglitz, as well as institutions such as Resources for the Future, the Climate Policy Center and the Washington Post.

Protecting our economy will not come from ignoring the situation. Lack of attention is as detrimental as legislation that is too aggressive. The Energy Commission's proposal is the right mix of modesty and certainty.

The second principle is to couple any emission reduction plan with robust technology research and development and a broader energy package that addresses energy supply from nuclear power, renewable energy, natural gas, IGCC, and other sources. We need our approach to research and development to be strategic in the sense of creating new options for dealing with greenhouse gases in an economic way.

The third and final principle I wanted to mention is the need to enact policies that affect emissions trends in developing countries, at the same time that we try to deal with emissions trends here. EIA has projected that we will soon be overtaken by the developing countries in terms of greenhouse gas emissions. At the same time, these developing countries are not required by the Kyoto Protocol to reduce emissions. This has been a key point for opponents of the Protocol who are worried about losing competitive advantage to countries with weak environmental standards.

In terms of the long-term resolution of this issue and the competitiveness of the U.S. economy, it is essential that the United States and developing countries coordinate action. One way to do this is to link progress in the United States to policies overseas. Here again I point to the Energy Commission proposal that links progress on American action to what is done by the international community.

Climate change is important to the international community. It is important to Prime Minister Blair and the other members of the G–8 who will be meeting later this year. And, finally, it is important to all Americans.

I intend to propose some sensible climate legislation at an appropriate point that is consistent with the principles I have laid out here.

I hope we can address elements of it in energy legislation as it moves forward through Congress. We need to find a way to move forward, and I believe we can before this Congress concludes.

I ask unanimous consent that several items be printed in the RECORD: First, an editorial out of the Washington Post entitled ''A Warming Climate''; second, a letter from Glenn Hubbard, professor, Columbia University, and Joseph Stiglitz, professor, Columbia University to JOHN MCCAIN and JOSEPH LIEBERMAN; third, a summary of the Report to Stakeholders on air issues that has been developed by Cinergy Corporation; and finally, a summary of recommendations of the National Commission on Energy Policy entitled Ending the Energy Stalemate.

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

[From the Washington Post, Jan. 28, 2005]

A WARMING CLIMATE

For the past four years members of the Bush administration have cast doubt on the scientific community's consensus on climate change. But even if they don't like the science, British Prime Minister Tony Blair, one of their closest allies in Iraq and elsewhere, has given the administration another, more realpolitik, reason to rejoin the climate change debate: ''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,'' the prime minister said this week.

Mr. Blair's speech came at an interesting moment, both for the administration's energy and climate change policies and for the administration's diplomatic agenda. In the next few weeks, the House will almost certainly vote once again on last year's energy bill, a mishmash of subsidies and tax breaks that finally proved too expensive even for a Republican Senate to stomach. After a House vote, there may be an attempt to trim

the cost of the bill and add measures to make it acceptable to more senators—including the growing number of Republicans who have, sometimes behind the scenes, indicated an interest in climate change legislation. Indeed, any new discussion of energy policy could allow Sens. John McCain (R–Ariz.) and Joseph I. Lieberman (D–Conn.) to seek another vote on their climate change bill, which would establish a domestic ''cap and trade'' system for controlling the greenhouse gas emissions that contribute to global warming.

If domestic politics could prompt the president to look again at the subject, international politics certainly should. Administration officials assert that mending fences with Europe is a primary goal for this year; if so, the relaunching of a climate change policy—almost any climate change policy—would be widely interpreted as a sign of goodwill, as Mr. Blair made clear. Beyond the problematic Kyoto Protocol, there are ways for the United States to join the global discussion, not least by setting limits for domestic carbon emissions.

Although environmentalists and the business lobby sometimes make it sound as if no climate change compromise is feasible, several informal coalitions in Washington suggest the opposite. The Pew Center on Global Climate Change got a number of large energy companies and consumers—including Shell, Alcoa, DuPont and American Electric Power—to help design the McCain-Lieberman legislation. A number of security hawks have recently joined forces with environmentalists to promote fuel efficiency as a means of reducing U.S. dependence on Middle Eastern oil. Most substantively, the National Commission on Energy Policy, a group that deliberately brought industry, environmental and government experts together to hash out a compromise, recently published its conclusions after two years of debate. Among other things, it proposed more flexible means of promoting automobile fuel efficiency and suggested determining in advance exactly how high the ''price'' for carbon emissions should be allowed to go, thereby giving industry some way to predict the ultimate cost of a cap-and-trade system.

They also point out that legislation limiting carbon emissions would immediately create incentives for industry to invent new fuel-efficient technologies, to build new nuclear power plants (nuclear power produces no carbon) and to find cleaner ways to burn coal. Technologies to reduce carbon emissions as well as fossil fuel consumption around the world are within reach, in other words—if only the United States government wants them.

COLUMBIA UNIVERSITY,
GRADUATE SCHOOL OF BUSINESS,
New York, NY, June 12, 2003.

Hon. JOHN MCCAIN,
Russell Office Building,
Washington, DC.
Hon. JOSEPH LIEBERMAN,
Hart Senate Office Building,
Washington, DC.

DEAR SENATORS MCCAIN AND LIEBERMAN: As Congress takes up the issue of market-based systems to reduce emissions of carbon dioxide and other greenhouse gases, we are writing to encourage you to incorporate an allowance price cap sometimes referred to as a ''safety valve.'' In the context of a cap-and-trade system for emission allowances, a safety valve would specify a maximum market price at which the government would step in and sell additional allowances to prevent the price from rising any further. Much like the Federal Reserve intervenes in bond and currency markets to protect the economy from adverse macroeconomic shocks, this intervention is designed to protect the economy automatically from adverse energy demand and technology shocks. While we disagree on what steps are necessary in the short run, we both agree it is particularly important to pursue them in a manner that limits economic risk.

Our support for the safety valve stems from the underlying science and economics surrounding the problem of global climate change, and is something that virtually all economists—even two with as politically diverse views as ourselves—can agree upon. It is based on three important facts.

First, unexpected events can easily make the cost of a cap-and-trade program that includes carbon dioxide quite high, even with a modest cap. For example, consider an effort to reduce domestic carbon dioxide emissions by 5% below future forecast levels over the next ten years—to about 1.8 billion tons of carbon. This is in the ballpark of the domestic reductions in the first phase of McCain-Lieberman allowing for offsets, the targets in the Bush climate plan, and the level of domestic emission reductions described by the Clinton administration under its vision of Kyoto implementation. Based on central estimates, the required reductions would amount to about 90 million tons of carbon emissions, and might cost the economy as a whole around $1.5 billion per year. However, reaching the target could instead require 180 million tons of reductions because of otherwise higher emissions related to a warm summer, a cold winter, or unexpected economic growth. Based on alternative model estimates, it could also cost twice as much to reduce each ton of carbon. The result could be costs that are eight times higher than the best guess.

Second and equally important, the benefits from reduced greenhouse gas emissions have little to do with emission levels in a particular year. Benefits stem from eventual changes in atmospheric concentrations of these gases that accumulate over very long periods of time. Strict adherence to a short-term emission cap is therefore less important from an environmental perspective than the long-term effort to reduce emissions more substantially. Without a safety valve, cap-and-trade risks diverting resources away from those long-term efforts in order to meet a less important short-term target.

Finally, few approaches can protect the economy from the unexpected outcome of higher energy demand and inadequate technology as effectively as a safety valve. For example, opportunities to seek offsets outside a trading program can effectively reduce the expected cost of a particular emission goal—which is beneficial—but that does not address concerns about unexpected events. In fact, if the system becomes dependent on these offsets, their inclusion can increase uncertainty about program costs if the availability and cost of the offsets themselves is not certain. Another proposal, a ''circuit breaker,'' would halt future declines in the cap when the allowance price exceeds a specified threshold, but would do little to relax the current cap if shortages arise. Features that do provide additional allowances when shortages arise, such as the possibility of banking and borrowing extra allowances, are helpful, but only to the extent they can ameliorate sizeable, immediate, and persistent adverse events.

To summarize, the climate change problem is a marathon, not a sprint, and there is little environmental justification for heroic efforts to meet a short-term target. Such heroic efforts might not only waste resources, they risk souring our appetite to confront the more serious long-term problem. Absent a safety valve, a cap-and-trade program risks exactly that outcome in the face of surprisingly high demand for energy or the failure of inexpensive mitigation opportunities to arise as planned. A safety valve is the simplest, most transparent way to signal the market about the appropriate effort to meet short-term mitigation goals in the face of adverse events.

While trained economists hold divergent views on many topics—as our own views demonstrate—economic theory occasionally delivers a relatively crisp message that virtually everyone can agree on. We believe this is one of those occasions, and hope you will consider these points as Congress addresses various climate change policies in the coming months.

Sincerely,

R. GLENN HUBBARD,
Professor, Columbia University, Chairman, Council of Economic Advisers.
JOSEPH E. STIGLITZ,
Professor, Columbia University, Chairman, Council of Economic Advisers.

AIR ISSUES—REPORT TO STAKEHOLDERS
EXECUTIVE SUMMARY

This report discusses the potential impact on Cinergy Corp.'s operations and risk exposure should Congress pass legislation requiring limits on the emissions of greenhouse gases (GHGs), or if GHG emissions are otherwise limited by treaty, regulations or judicial action. We have worked with a respected shareholder group, Committee on Mission Responsibility Through Investment of the Presbyterian Church (U.S.A.), and Ceres to discuss the potential for eventual GHG regulations and their consequences on the coal-fired electric generating industry in general, and on Cinergy in particular.

Cinergy operates nine coal-fired generating stations and burns almost 30 million tons of coal per year. We generate approximately 70 million gross megawatt hours of electricity for use by our 1.5 million customers in southwestern Ohio, northern Kentucky and much of Indiana. Our newer stations, representing 35 percent of our total generation, operate with sulfur dioxide (SO_2) scrubbers, while approximately 50 percent of our generation has been fitted with selective catalytic reduction equipment (SCRs), which reduces nitrogen oxides (NO_X) emissions. Our operations are in full compliance with all applicable clean air laws and regulations. We have recently announced a significant construction program of additional emission control equipment to comply with more restrictive pending regulations.

The first comprehensive regulation of air emissions occurred in 1970 when Congress passed the first Clean Air Act (CAA) and established the Environmental Protection Agency (EPA). The CAA has been amended at various times in the last 34 years, most recently in 1990.

Early regulations were based on ''command and control'' that prescribed the maximum amount of a specified ''pollutant'' a company was allowed to emit in a given time frame from a particular unit. Command and control often did not allow any flexibility or account for individual characteristics in the age or type of coal-fired generating stations. Command and control regulations also failed to recognize other important variables that could have lowered compliance costs.

In the 1990 CAA Amendments, Congress replaced command and control regulations in certain air emissions programs with a newer mechanism—''cap and trade.'' Cap and trade uses the market to produce a far more efficient, least-cost approach to achieving a prescribed level of emissions reductions. Cap

and trade imposes a cap on the level of permissible emissions, yet offers companies flexibility by recognizing the large number of technical and operational differences in regulated facilities. This flexibility allows generators to make decisions based on economic and environmental factors and provides incentives to reduce emissions below threshold requirements. An emissions ''cap'' is achieved, but the exact reductions occur where they are most economic. Emissions ''credits'' are traded with units where reductions are not as easily or economically achieved. The result, proven over the last 14 years, is improved air quality at less cost to electric customers than under command and control regulation.

In early 2004, the EPA proposed new rules to further control $S0_2$, NO_X and, for the first time, mercury emissions from coal-fired generating stations. The EPA proposed requirements after Congress was unable to pass several emissions reduction bills presented to it, including President Bush's Clear Skies Act. Cinergy expects the EPA to finalize the rule further reducing $S0_2$ and NO_X emissions before the end of 2004 and anticipates the final mercury rule to be issued by March 2005.

Presently, GHG emissions are not regulated, and while several legislative proposals have been introduced in Congress to reduce utility GHG emissions, none has been approved. We anticipate the climate change debate will continue into the 109th Congress, but believe it is unlikely legislation requiring GHG limits will be passed in the next two years.

Our costs to comply with these or other new environmental regulations will depend on a number of factors, including the timetables, levels of emissions reduction required, the impact on coal prices and, most importantly, whether the EPA will adopt a cap and trade or a command and control approach to further regulation.

In anticipation of the proposed rules on $S0_2$, NO_X and mercury, in September 2004, Cinergy announced the largest environmental construction project in its history, asking state regulators to approve a plan that would retrofit scrubbers and SCRs on generating units not currently equipped with these devices. The company also intends, as a pilot project, to install large scale mercury control equipment at a generating station in southern Indiana. The cost for the entire program is projected to be between $1.65 and $2.15 billion through the next decade, depending on whether the ultimate regulations adopt cap and trade or command and control. This plan has been developed so as to comply with a command and control regulatory scheme, with the ability to reduce certain aspects of the plan should cap and trade ultimately be the method of regulation.

The uncertainty Cinergy faces in the current regulatory climate has made it difficult to plan the capital expenditures we will need to make to comply with all environmental requirements while continuing to serve our customers' future energy needs in a reliable manner. Overlapping regulations with differing implementation timelines are inefficient and unnecessarily costly for the company and its customers. Cinergy has asked Congress to act and has urged passage of a long-term, multi-emissions bill that would take the unnecessary uncertainty out of national environmental policy.

Although we do not believe Congress will soon vote to regulate GHGs, we remain hopeful that it will move forward on legislation that provides greater certainty regarding the levels and timetables for reducing emissions of SO_2, NO_X mercury and particulates. We do believe, however, as our CEO Jim Rogers has said, that we eventually will operate our business ''in a carbon-constrained world'' and that it is our responsibility to prepare for that likelihood. We began that preparation in September 2003 by launching a voluntary GHG emissions reduction program, partnering with Environmental Defense and in concert with the President's Climate Leaders program.

Cinergy's goal is to reduce our GHG emissions to five percent below our 2000 level during the period between 2010 and 2012. With our 2000 CO_2 emissions at approximately 74 million tons, we intend to reduce our emissions to no more than 70 million tons per year through the period 2010–2012. We have committed $21 million to fund projects through the remainder of this decade to help us reach this voluntary goal. We plan to achieve these reductions despite a steadily rising demand for electricity by our customers and greater internal needs for electric generation to operate the pollution control equipment being installed at most of our stations. Given historical trends in electric demand, we estimate that we will need to cut GHG releases by a total of 30 million tons versus the business-as-usual case.

It is important to note that we must accomplish this goal without access to a readily available CO_2 control technology. Unlike SO_2 NO_X, mercury and particulates, there is no ''carbon machine'' that can remove GHG emissions from our stations. Instead, we expect to meet the goal by improving energy efficiency at our stations, employing effective demand side management programs, adding renewable energy to our generation mix, sequestering carbon through forest preservation, purchasing allowances when economically prudent and, possibly, sequestrating GHGs in underground geologic formations. This latter program would most likely be linked to a demonstration project at a utility scale integrated gasification combined cycle (IGCC) plant that we considering for our next ''base load'' facility. Cinergy recently announced a joint project with General Electric Company and Bechtel Corporation to study the feasibility of constructing an IGCC station in Indiana. We expect that the IGCC plant will run more efficiently than traditionally constructed coal-fired generation and will, thus, contribute fewer CO_2 tons per megawatt of electricity produced.

Cinergy's expertise is also being deployed outside of our legacy utility businesses. Over the last several years, we have created two companies that provide energy management services to a number of industrial and large commercial customers. These services have resulted in significant GHG emissions reductions and operating efficiencies for those customers. To date, we estimate these programs have resulted in the reduction of three million tons of GHGs.

We anticipate that our voluntary program will help us learn about effective methods of obtaining GHG emission reductions and help us comply with any future regulatory program limiting GHG. Regardless of our planning, however, our ultimate strategy for complying with GHG-restricting regulations will depend greatly on the final direction and timing of such requirements. A well-constructed policy that gradually and predictably reduces emissions can be managed without undue disruption to the company or economy, though even the best plan will have rate impacts on our customers. Much of the future impacts also depend on how readily new technologies emerge, as well as the response of the gas market and resulting gas prices.

Cinergy and its generating stations are similar to other coal-fired utilities in our market region. Natural gas-fired units in our region are typically the market's price setters—meaning that they are the last units to be deployed or ''dispatched'' to meet short term peak demand—so they would not enjoy any particular advantage With CO_2 constraints unless gas prices were to drop dramatically, which is a scenario we find highly unlikely. Nuclear and hydropower stations will be well-positioned, though neither is likely to displace coal-fired generation in the short to medium timeframes because their capacity is fully utilized now, with no new construction anticipated in the near term. Renewable energy may well increase in the future, but there are significant impediments, both technologically and economically, before it will make much of an impact in the Midwest.

Coal fuels more than 80 percent of the Midwest electric market. We do not see it being displaced as the main fuel source for electric production without what we believe would be unacceptable economic and social consequences, not only to the region, but to the entire nation. Although other alternatives are likely to become more economic or practical over time with technological breakthroughs, the nation cannot dismiss a fuel that is as domestically abundant as coal. The capital expenditures we are making at our stations today to comply with the EPA's pending rules are prudent investments because we expect that the generating units will remain economically viable under any reasonable GHG program. We do not believe the resulting price dynamics in the natural gas market will render operation of our coal-fired generating stations cost-prohibitive.

The preparation of this report demonstrates our desire to inform our stakeholders of the GHG challenges we face as a coal-fired electric utility company and to provide insight into how we are meeting those challenges. Because we are a stakeholder-focused company, it is our goal to weigh the interests of all of our stakeholders and come to a balanced result. Our customers, the communities we serve, our employees, regulators, suppliers and most certainly our investors have much at stake as we anticipate and begin to prepare for the challenges we may face in a carbon-constrained world.

We do not project that any of the current legislative proposals would produce these higher prices in the short or medium timeframe. However, this example manifests the importance of developing a policy that does not force reductions too quickly or otherwise limit flexibility and international trading.

Risk of Very High CO_2 Prices Unlikely—Though Details Matter

It is our view that the very high range of prices shown above would only be expected in the near term (20 years) if sharp emissions reductions were required without being preceded by a period of slowed growth followed by zero growth or there were imposed limits on flexibility. Having said that, the fact is we don't know what prices will be and the risk remains. Should high CO_2 prices emerge within the next 20 years, they would flow through to electricity prices because there would be no time to replace the generation fleet with much lower emitting technologies that do not rely on high-priced natural gas. Because electricity prices play an important role in our manufacturing economy, we think that policies that cause dramatic price increases are not viable and, should they occur, would not last long because of political reaction.

One strategy to protect consumers and producers from CO_2 price risks may be to assign price caps to CO_2 that increase over time—this is the so called ''safety valve.'' Price caps will provide price certainty (or at

least protection from high prices) during the critical years of program start up. This should be important to climate change advocates because price shocks will likely result in a program reversal or unwinding. An unrelated, yet telling example is provided by the price shocks of the California energy crisis, brought on by flawed deregulation. They demonstrate how a program can be quickly scrapped if newly created markets are subjected to dramatic price increases.

Escalating price caps should be given serious attention by policy makers because of the following important points:

1. There is a broad range of uncertainty around forecasted CO_2 prices as reported by policy analysts. Reported prices are only the single values within a broad distribution of outputs that depend on what input assumptions are made.

2. The actual prices generated by a real market will be higher or lower than the reported numbers and will vary depending on the supply-demand balance at any particular moment.

3. If they happen to be quite a lot higher for a sustained period, which is a real possibility, the program will be at risk of being rolled back because of the economic pain generated.

4. An escalating price cap will prevent this from happening, while creating a less uncertain price signal for those trying to make forward looking decisions.

5. An escalating price cap will serve as the program's insurance policy, dramatically decreasing the risk of the program producing very high prices that lead to its demise.

ENDING THE ENERGY STALEMATE: REDUCING RISKS FROM CLIMATE CHANGE

To address the risks of climate change resulting from energy-related greenhouse gas emissions without disrupting the nation's economy, the Commission recommends:

Implementing in 2010 a mandatory, economy-wide tradable-permits system designed to curb future growth in the nation's emissions of greenhouse gases while capping initial costs to the U.S. economy at $7 per metric ton of carbon dioxide-equivalent.

Linking subsequent action to reduce U.S. emissions with comparable efforts by other developed and developing nations to achieve emissions reductions via a review of program efficacy and international progress in 2015.

The Commission believes the United States must take responsibility for addressing its contribution to the risks of climate change, but must do so in a manner that recognizes the global nature of this challenge and does not harm the competitive position of U.S. businesses internationally.

The Commission proposes a flexible, market-based strategy designed to slow projected growth in domestic greenhouse gas emissions as a first step toward later stabilizing and ultimately reversing current emissions trends if comparable actions by other countries are forthcoming and as scientific understanding warrants.

Under the Commission's proposal, the U.S. government in 2010 would begin issuing permits for greenhouse gas emissions based on an annual emissions target that reflects a 2.4 percent per year reduction in the average greenhouse gas emissions intensity of the economy (where intensity is measured in tons of emissions per dollar of GDP).

Most permits would be issued at no cost to existing emitters, but a small pool, 5 percent at the outset, would be auctioned to accommodate new entrants, stimulate the market in emission permits, and fund research and development of new technologies. Starting in 2013, the amount of permits auctioned would increase by one-half of one percent each year (i.e., to 5.5 percent in 2013; 6 percent in 2014, and so on) up to a limit of 10 percent of the total permit pool.

The Commission's proposal also includes a safety valve mechanism that allows additional permits to be purchased from the government at an initial price of $7 per metric ton of carbon dioxide (CO_2)-equivalent. The safety valve price would increase by 5 percent per year in nominal terms to generate a gradually stronger market signal for reducing emissions without prematurely displacing existing energy infrastructure.

In 2015, and every five years thereafter, Congress would review the tradable-permits program and evaluate whether emissions control progress by major trading partners and competitors (including developing countries such as China and India) supports its continuation. If not, the United States would suspend further escalation of program requirements. Conversely, international progress, together with relevant environmental, scientific, or technological considerations, could lead Congress to strengthen U.S. efforts.

Absent policy action, annual U.S. greenhouse gas emissions are expected to grow from 7.8 billion metric tons of CO_2-equivalent in 2010 to 9.1 billion metric tons by 2020—a roughly 1.3 billion metric ton increase. Modeling analyses suggest that the Commission's proposal would reduce emissions in 2020 by approximately 540 million metric tons. If the technological innovations and efficiency initiatives proposed elsewhere in this report further reduce abatement costs, then fewer permits will be purchased under the safety valve mechanism and actual reductions could roughly double to as much as 1.0 billion metric tons in 2020, and prices could fall below the $7 safety valve level.

The impact of the Commission's proposed greenhouse gas tradeable-permits program on future energy prices would be modest. Modeling indicates that relative to business-as-usual projections for 2020, average electricity prices would be expected to rise by 5–8 percent (or half a cent per kilowatt-hour); natural gas prices would rise by about 7 percent (or $0.40 per mmBtu); and gasoline prices would increase 4 percent (or 6 cents per gallon). Coal use would decline by 9 percent below current forecasts, yet would still increase in absolute terms by 16 percent relative to today's levels, while renewable energy production would grow more substantially; natural gas use and overall energy consumption, meanwhile, would change only minimally (1.5 percent or less) relative to business-as-usual projections.

Overall, the Commission's greenhouse gas recommendations are estimated to cost the typical U.S. household the welfare equivalent of $33 per year in 2020 (2004 dollars) and to result in a slight reduction in expected GDP growth, from 63.5 percent to 63.2 percent, between 2005 and 2020.

The PRESIDING OFFICER. The Senator from Missouri.

SMALL BUSINESS HEALTH FAIRNESS ACT

Mr. TALENT. Madam President, I am hopeful that later in the day the Senate will be able to take up the Genetic Nondiscrimination Act. It is a bill I sponsored in the past. I know discussions are going on right now about getting it done, and hopefully we will be able to get it done. If that happens, it will be in no small measure because of the leadership of Senator ENZI, who has already shown in the brief period that we have been in session a great ability to work with Senator KENNEDY and others on the HELP Committee to pass legislation.

I was moved by that to come down and to discuss another piece of legislation that a number of us are discussing with Chairman ENZI. I am grateful to him for his openmindedness to it and the discussions that have been going on. I am talking about the Small Business Health Fairness Act which the chairman of the Small Business Committee, Senator SNOWE, will introduce today for herself and a number of others who have sponsored this bill in the past.

I congratulate Senator SNOWE on her great work on behalf of this bill. I am hopeful that we will be able to pass it this year in the Senate. It may be the most significant thing we can do to reduce the number of people in this country who do not have health insurance.

I want to talk about that for a few minutes. There really is no problem in confronting small business and the economy greater than that problem. It is everybody's problem, even if you have health insurance.

There are 44 million people in the country who do not have health insurance. We have about 500,000 people in Missouri—about 10 percent of our State's population, a little less than that, including 70,000 children who get up and go to school without any health insurance coverage.

Sixty percent of the people in the State of Missouri and around the United States who do not have health insurance are working people. It is a mistake to assume that most of these folks are people who are not employed. They are not classically the disadvantaged people as we normally think of that. Most of those folks we have made eligible for Medicaid, which certainly has a problem, but it is at least health insurance coverage.

Health insurance costs have been increasing for small business employers and their employees on average about 20 percent per year, which means this is not just a health access problem but a huge economic growth problem as well.

Those small businesses that are providing health insurance are having to deal with these enormous costs every year. They will have to take money out of wages or out of investments in the business to try to keep their heads above water in terms of providing health insurance.

Over the years of my experience in the House and the Senate, I have encountered many such small employers. I have talked to hundreds of their employees. We have all done that. All of us, when we get around our States, hear about this problem. It is everywhere. It may be the biggest day-to-day problem the average person in our State confronts, at least if they work for a small business.

Let me just tell you one story of a fine lady named Janet Hoppin from

Missouri. Janet owns a small business in the St. Louis area. She wants to do right by her five employees by providing them with health insurance. Over the past few years, one of her employees became ill. She contracted breast cancer. As a result of that, the insurance costs for Janet's company have increased by $431 per employee per month, or a total increase over the last 2 years of 35 percent. Actually, it could have been a lot more than that.

I have talked to people whose insurance costs have doubled or tripled over the course of several years, particularly if an employee actually gets sick and has the temerity to file a major health insurance claim.

Like most small business owners, health insurance costs for Janet affect the rest of her business. There is downward pressure on the wages and salaries of her other employees and her own salary. She has resolved this by taking it out of her own salary so she can continue to provide health insurance for herself and for her employees.

There are many small businesspeople around the country who are doing exactly the same.

One of the bad things about this situation is because so many people who work for small businesses do not have health insurance, it is easy to assume that small businesspeople just do not care about their employees and that is why they don't provide health insurance. It is terribly unfair. They do care about their people. They work with them every day. Most small business owners are employees of their own company. If they can provide health insurance to the company and the other employees, they will be able to get health insurance under a group policy rather than having to try to go out and buy it on the individual market. It affects their ability to compete for employees.

For a while, when I was chairman of the Small Business Committee in the House, I would meet with groups of small businesspeople and I would ask them to raise their hand if they had lost an employee or had been unable to hire an employee because the employee wanted to work for a big business that had health insurance. Whenever I asked that question, at least half of the people there would raise their hand. They have a disadvantage of getting good employees because of their competitive disadvantage in buying health insurance.

What do we do about it? Fortunately, there is a solution. The legislation has passed the House I think 4 or 5 years running by large bipartisan votes. It passed the House by 100 votes the last time it passed. It is a solution that the President strongly supports. It is a solution that had bipartisan sponsorship in this body last year. What I am about to say is not unimportant at the same time when we are all suffering under a tight budget. It is a solution that doesn't cost the taxpayers any money. It is not a Government program as such. It is not the Government deciding to buy health insurance for somebody, or expanding Medicaid. Those may be good things to do.

We do not have to do it here. We need to empower small business people to do what the big companies already do. We need to allow them to buy health insurance as part of big national pools which will save money because the overhead costs, the administrative costs of buying health insurance, are a lot greater per employee for small businesses than for big businesses. The reason for that is there are economies of scale in insuring large pools.

That is what the small business health plan would do. It would take advantage of the same national structure currently used by 275,000 plans which already cover over 72 million people, including union members, people who work for Fortune 500 companies. The irony is that everyone else in the country, except the employees of small business, everyone else who has health insurance, has it now as part of a big national pool, either private or public. Either you work for a big company—in Missouri at Anheuser-Busch or Sprint or Hallmark—and you are part of a big national pool or maybe you are a labor union member and you get it through one of their health and welfare plans or you are on a public plan, in Medicare, a big national pool, or Medicaid or you are a Federal employee or a retired Federal employee.

There is a reason everyone else gets their health insurance as part of a big national pool. It is cheaper that way. It is administratively easier. The overhead costs are less. It is common sense to believe it costs less to set up and administer a plan where you can spread the costs over a pool of hundreds of thousands of people, rather than a pool of 5 or 10 employees or fewer, which is what people such as Janet Poppin have to face every day today.

All we want to do is allow the trade associations, in which small businesses currently organize for other purposes, to sponsor national health insurance pools. The National Restaurant Association, as an example, could go out, contract with insurance companies nationally, and then you join the restaurant association if you own a small restaurant, as my brother does, and you become part of this big pool. The easiest way to think of it is a small company would get health insurance on the same terms and conditions as if you had been acquired by a Fortune 500 company. You become like a little division of that company. It would be exactly the same thing.

What would it mean for this country if at no cost to the taxpayers every working person has access to health insurance as if they worked for a Fortune 500 company? When I chaired the Committee on Small Business, we had a number of hearings on this. Senator SNOWE has had a number of hearings. We estimate a reduction in the cost of health insurance to small business of 10 to 20 percent, and for very small businesses it would be much less than that. For every percent you decrease the cost of health insurance, many people become insured. Small businesses, such as my brother's, who runs this little restaurant, are in a position now to afford health insurance for their employees and, by the way, for themselves because the owners of the companies are almost always employees of the company themselves and they will go out and get health insurance this way.

Think of the savings from their perspective, not just in money but time and effort. I use my brother as a example. He and my sister-in-law run the place. Getting health insurance for their business means spending hours and hours soliciting bids, trying to work their way through it, making sure they are not cheated, dealing with all the legal risks today of making a contract like that. They do not know whether they might get sued for something if they contract with an HMO and there is a screwup. If you can join the restaurant association, they send him the papers, the papers describe what options are available for the employees, and he says I will pay this much for you, you choose what you want.

It is easier, it is cheaper, it is safer. It will mean millions of people who currently do not have health insurance coverage will get it and millions of others will get better, more secure, lower cost, higher quality health insurance—again, at no cost to the taxpayer.

There isn't any reason not to do this. We have been working with those who have had concerns about solvency. How do we make sure these association health plans are solvent? That is a legitimate concern. We already have in the bill tough standards to try and guarantee that. We want to work with people to try and make certain that everybody is satisfied on those points.

We can work our way through this and produce a bill that will make a big difference for America. I am not the only one who thinks so. In addition to Senator SNOWE and her great leadership, nine other Members of the Senate who cosponsored this bill last year, Association Health Plans, or the Small Business Health Fairness Act, strongly supported by the administration, 170 organizations representing over 12 million employers, and 80 million American workers support it. The coalition is as broad as the U.S. Chamber, National Federation of Independent Business, the American Farm Bureau, the Associated Builders and Contractors, the Latino Coalition, the National Black Chamber of Commerce, the National Association of Women Business Owners. They all support it.

I mention the Farm Bureau. The Presiding Officer and I have a number of farmers in our States. One of the big problems they have is getting health insurance for themselves and their families. This is a classic example of

people trapped in a small group for individual markets situation. What if they could join the American Farm Bureau and become part of a pool of tens and tens of thousands of people?

In recessions, when people get laid off from big businesses—and I have talked to many people in this situation—one of the biggest and most immediate problems when you are laid off is what do you do about health insurance, particularly if you have kids. Many people are able to get another job pretty quickly, maybe with a small business, or they want to start their own spinoff firm when they get laid off from a big company. This is increasingly common today, and a big problem they have is health insurance. What do they do about health insurance? A sole proprietor can join the Chamber of Commerce and the National Chamber of Commerce would be able to start an association health plan under this bill. You would be part of a pool of tens and tens of thousands of people. You would not be at the mercy of a big company deciding it is going to cut your job.

I could go on and on on the subject. I am sure the Senate has become convinced of that, if I have convinced Senators of nothing else. I am very enthusiastic about it. I cannot compliment enough the work of Senator SNOWE. Her leadership on this is crucial. Her credibility in this Senate is great. She has taken the whole Small Business Committee in the Senate in the direction of supporting this. I am very pleased to be helping her in this and grateful again to Senator ENZI for his open-mindedness. I cannot speak for him and do not want to, but I remember I was presiding and the Senator from Wyoming was speaking about what he intended to do with the HELP Committee. He said his door was open; he wanted to hear ideas from Senators. He wanted to work with them. He has been as good as his word. I am grateful to him for that.

Let's do this. Members have concerns and we want to address them. I believe we can address them. This is too good an idea to pass up. There is no reason to. I have said for several years, what is the downside? Suppose we allow these associations, however they are constructed, to set up these association health plans, and it doesn't work as well as we think it will work; they do not lower costs quite as much as we hope, and not as many people take advantage of them. What is the downside? Not so many people use the plans as we hope will use the plans. There is no cost to the taxpayers. It is not as though we are spending billions and billions of dollars for something and if it does not work, there is an enormous loss. We are giving people another option, the same option big companies already have. There is no reason not to do it.

Let's work out whatever concerns we have, pass this on a bipartisan basis as they have in the House, and empower our small business people and their employees to have health insurance and to have protection against these rising costs.

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

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

The legislative clerk proceeded to call the roll.

Mr. DORGAN. 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. DORGAN. Mr. President, I ask unanimous consent to speak in morning business for as much time as I may consume.

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

SOCIAL SECURITY

Mr. DORGAN. Mr. President, we are about to embark on a 1-week recess. Many of us will be back in our home States next week. I expect that most of us will hold some kind of event or meeting to talk about Social Security with our constituents. I want to talk about that a bit today.

In the Senate, we deal with all kinds of issues, some big and some small. Sometimes we treat the big issues in a manner that suggests it is a rather small item. Sometimes we take a very small item and blow it up into something we suggest is very large.

On the issue of Social Security, my feeling is people on all sides of this debate understand this is a very big issue with very big consequences for the American people.

It will not be surprising that we will have very aggressive differences of opinion on how we should handle this issue of Social Security. The reason it is brought to our attention at this point is the President is offering a proposal. He says the proposal is not specific, and I agree with that, but it is specific enough for us to understand what he wants to do.

What the President has been saying—and the Vice President as well and others in the administration—is that Social Security is about to be bankrupt, broke, flat busted, and any number of other words to describe that Social Security is about to fail.

As a result, the President says we should do the following: We should borrow a substantial amount of money now, anywhere from $1 trillion to $3.5 trillion or more, invest it in the stock market in private accounts, change the indexing of Social Security, reduce Social Security benefits, and with a combination of the remaining Social Security and his private accounts, people will be better off in the long term.

Social Security was created in 1935. When Franklin Delano Roosevelt signed that legislation, he talked about the legislation being able to lift people out of a poverty-ridden old age. At that point, one-half of our elderly were living in poverty. That is what was happening to our grandparents: 50 percent in poverty; now it is less than 10 percent. Why? Because Social Security has lifted tens of millions of Americans out of poverty in the last 70 years.

The President says Social Security needs to be changed because it is about to be bankrupt. With respect, I say to the President that he is wrong. Social Security is not about to be bankrupt. Social Security has some problems that are born of success.

What is the success? In a century, we have increased life expectancy in America from about 46 years of age to 76 years of age. We ought to celebrate that fact. What a successful thing to have happen. Since people are living longer, better lives, we have some strain on the Social Security program. But it is not about to be bankrupt, and it does not require major surgery to fix it. It will require some adjustments as we proceed ahead, but it is not about to be bankrupt or flat busted. And it is not a cause to take apart what I think is one of the most successful programs we have ever developed in this country to lift a large group of Americans out of poverty.

The President is not new to this position of private accounts. In 1978, he ran for Congress in Texas. President George W. Bush, then a candidate for Congress, said in 1978: Social Security will be broke in 10 years. That is when he was a candidate for Congress. What was his remedy for that in 1978? Private accounts. Some things never change very much.

The fact is, the President was wrong in 1978. Social Security did not go belly up in 1988 as he predicted. And the fact is, he was wrong then calling for private accounts in Social Security, and he is wrong now.

I happen to support private investment accounts such as IRAs and 401(k)s. I have them and so do many Americans, and we have incentivized them with tax incentives because we believe in encouraging people to invest in the market and to save for retirement. But I do not believe we ought to take a portion of the core insurance program—and that is what Social Security is, an insurance program, not an investment program—that provides the bedrock financial security for retirement.

We pay for Social Security principally through a paycheck deduction called FICA. That is your FICA tax. The I in FICA is for insurance, not investment; insurance, that is what it stands for. It creates an insurance program for which you pay. Yes, part is retirement old-age benefits, some is disability. Another part is for dependents, should the wage earner die.

So it is more than just an old-age benefit. It has always been an insurance program, and never an investment program.

The President says let's try to create an investment program out of Social Security and begin to take it apart.

The suggestion is, of course, that the investment portion of Social Security would always be wonderful.

Will Rogers once said his daddy told him how to do really well. He said his daddy said you should buy stock and hold it until it goes up, and then you should sell it. And he said if it does not go up, do not buy it. So that was Will Rogers's description of how his dad suggested he handle the market.

I suppose there is an element of that suggestion in Social Security because of those who say if one takes Social Security apart and creates private investment accounts, things will be just Nirvana, just fine. But we all know better than that.

I believe there ought to be two major parts to a retirement program. One is Social Security. Make sure it is there—it always has been. Make sure it works. We can do that. The second is the private investments that we now incentivize to the tune of $140 billion each year in tax incentives to encourage people to invest in IRAs and 401(k)s and private pensions. I support both. Strengthen, improve, and keep Social Security, and provide additional incentives for private savings in 401(k)s and IRAs.

I just described President George W. Bush's prediction about bankruptcy in 1978. He said Social Security would be bankrupt in 10 years, by 1988. We have plenty of people who say it is going to go broke, flat busted, on its back, bankrupt. They remind me of the economists who predicted ten of the last two recessions. It is easy enough to walk around and claim these things. However, it is just not accurate to suggest that Social Security is about to go belly up.

What is true is that the taxes collected for Social Security this year are expected to exceed the amount of money we will need to pay out in Social Security by $160 billion. We will have a surplus this coming year in the Social Security accounts of $160 billion. That money will be invested in U.S. Treasury securities.

The President has a fiscal policy that suggests we have large deficits. I understand there are a lot of reasons for it, but I do not understand why we were not a bit more conservative earlier. I stood on the Senate floor 4 years ago, and when the President said, We are going to have 10 years of surplus and we need to start doing big tax cuts right now, I and some others said maybe we should be a little conservative. Maybe we will not have 10 years of surplus. Maybe things will change. Maybe something will happen we do not anticipate. Maybe we ought to be a little conservative. No, Katey, bar the door, let us pass these tax cuts.

What happened? We had a terrorist attack. We have had a war on terror. We have had a war in Iraq. A whole series of things have occurred that have changed the economic fortunes of this country. We went from the largest surpluses in the history of this country to the largest deficits. We are now the biggest debtor country in the world. We have a budget in front of us with budget deficits that I believe are predicted at $427 billion this year. But that is not accurate at all because there is zero money in the budget for Iraq and Afghanistan. I will be going to a hearing in about 10 minutes with Secretary Rumsfeld. They are asking for $82 billion in emergency funding now.

So in the next fiscal year add another $82 billion for Iraq and Afghanistan—we are spending $1 billion a week—and that gets us to roughly a $500 billion estimated deficit next year. Then take the Social Security surplus out of it because we cannot use those surplus funds against the rest of the budget. It ought to be put in a trust fund, not counted. So then there is an honest deficit next year of about $660 billion or so. That is where we are. That is where we start.

So the discussion is not just about Social Security. It is a discussion about values. I think most of us would agree that there are a couple of things in life that are of primary importance to us. One, we will do almost anything for our kids. If there is anything more important to any of us than our kids, I would like to hear what it is.

Second, we care a lot about what happens to grandpa and grandma. When they reach that point in their life where they cannot work anymore, they are dependent on what they might have saved, dependent on Social Security, the question is, How do we as a society make sure that they are not living in poverty as 50 percent of them were in 1935?

Some say there needs to be adjustments in Social Security and we cannot afford that. I say there will need to be some adjustments in Social Security, but it is not major surgery. It is not major adjustments. The question is, if we cannot afford that, it is a matter of priorities. We are going to afford $82 billion just like that in funding, I will hear from Secretary Rumsfeld about in a few moments. We can afford funding for the one I saw this morning that piqued my interest, Television Marti. This is unbelievable.

This morning I was looking through the budget. With Television Marti, for people who do not know it, we broadcast signals to Cuba with an aerostat blimp called Fat Albert. The purpose of using this blimp, Fat Albert, to broadcast television signals into Cuba is to tell the Cuban people how good things are in our country. Of course, they know that from listening to Miami radio stations, but they still want to send them the television signal.

The fact is, Castro jams the television signals. So we broadcast signals to no one. Cubans cannot get it. We have done that for many years. We have spent nearly $200 million, and this year, to broadcast a signal no one receives in Cuba, the President is proposing we double the funding in the budget.

We cannot afford Social Security, we cannot afford this, cannot afford that, but we can double the funding for Television Marti to broadcast signals to no one?

My point is, this is about values and priorities. I noticed in the playbook on the Social Security debate that was given out to those who are supportive of the President's position says—this is the instruction on communication: Do not say that Social Security lifts seniors out of poverty. People do not appreciate all that Social Security does.

That is what one is not supposed to say. But I said that earlier because I believe that is the fact, that Social Security lifts millions of seniors out of poverty. However, for those who support the President's program to take apart part of the Social Security system and go to a privatization system, they say do not say Social Security lifts seniors out of poverty because people do not appreciate all that Social Security does.

I do not see it right here but another piece of the playbook that I found interesting was, do not try to destroy myths. People have certain myths about Social Security. One of the myths that bounces around the Internet every day all day and talk radio is that Members of Congress do not pay Social Security taxes. In fact, that is one of myths that this playbook mentions. When one hears that from people, do not demolish that myth, let them think that. That tends to mess things up a little bit.

There was a leaked memorandum from the White House about 3 weeks ago by the architect of the Social Security plan. The person in the White House who is working on this plan had drafted this memorandum to all the stakeholders in the administration saying, here is what we are wanting to do. The key point to it was this:

> For the first time in six decades, the Social Security battle is one that we can win . . .

The implication of that is quite clear. There are some who have never liked Social Security, never wanted Social Security to exist. They have never had the opportunity to take it apart or repeal it, and this is the first time in six decades that the Social Security battle can be won.

One of the leading spokespersons on the far conservative rightwing said: Social Security is the soft underbelly of the welfare state.

It is not, of course. But that philosophy describes that there are some who simply never liked Social Security, do not believe it ought to exist, and will support any effort to begin taking it apart.

My feeling is what we ought to do is decide as a Congress that there are two responsibilities with respect to retirement security. One is to preserve, protect, and strengthen the Social Security system for the long term. According to Social Security actuaries, the Social Security program will pay full benefits from now until the year 2042.

According to the nonpartisan Congressional Budget Office, if there are no changes made, the Social Security system will pay full benefits until the year 2052.

According to the analysts, the Social Security program will need no adjustments in the next 75 years if we have the kind of economic growth that is predicted by the President and others, when they say you can get a 6 or 7 percent return in private accounts. If you have the economic growth that produces that kind of return in the private accounts, you have the economic growth that means Social Security will exist without adjustments for the next 75 years. You can't have it both ways. Either we are going to have, as the actuaries predict, dramatically lower economic growth than we have had in the past 75 years, and that is about 3.4 percent average real economic growth, or we are going to have the more pessimistic view of the Social Security actuaries in their recommendations, about 1.9 percent growth. If we have 1.9 percent growth, you would not be able to pay full benefits—you would only be able to pay 73 percent of the benefits after 2042. But if that is the case, you don't have the economic strengths to produce the corporate profits to lift the stock market to provide the return in private accounts. You can't argue both sides in the same question.

My belief, again, is we should preserve, protect, and strengthen the Social Security system. It works. We know it works. It has lifted so many millions of Americans out of poverty.

Second, yes, in retirement security we ought to do everything possible to say to all Americans who are working: You need to do more than rely on Social Security. It will be there when you are ready to retire, but you need to do more than that. We want you to invest. We want employers to offer retirement plans and we will provide incentives for them to do that for their employees. We want employees to invest in IRAs, we want employees to invest in 401(k) programs, and we are already providing significant incentives there. But I suggest we increase them because it will be a complement to keeping Social Security as the core retirement insurance.

So, as I indicated, there are small matters and big issues before this body. The question of what we do with the Social Security program, strengthen it, preserve it, and extend it as a core social insurance program, or begin to take it apart and change it from an insurance program to an investment program—is a big issue. I stand on the side of believing that Social Security works. It has enriched the lives of senior citizens in this country for decades and will continue to do so for decades.

I also stand here saying that it is in my judgment a meritorious issue for all of us to care a lot about retirement security beyond the Social Security program itself.

The one thing we should do and must do is all begin from the same set of facts. My colleague, the late Senator Moynihan, used to say everyone is entitled to their own opinion, but not everyone is entitled to their own facts. I hope as we work through and think through this great debate on Social Security that we will at least agree on the basic set of facts. Those facts, I think, if read in a manner that represents a level look, will tell us this Social Security program has been an enormous success for this country and will be in the future as well, if we have the strength and courage to do what is right to preserve it and strengthen it.

I yield the floor and I make the point of order a quorum is not present.

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

The legislative clerk proceeded to call the roll.

Mr. DURBIN. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

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

Mr. DURBIN. Mr. President, I ask unanimous consent to be recognized as if in morning business.

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

SOCIAL SECURITY

Mr. DURBIN. Mr. President, today we were visited on Capitol Hill by Alan Greenspan. Alan Greenspan is the head of the Federal Reserve and is considered the economics guru who comes to Washington periodically, to Capitol Hill, and gives us advice. Sometimes that advice is very wise and sagacious, and sometimes I think it is totally political—the same Alan Greenspan who helped President Clinton with the task of reducing the deficit, the right thing to do.

President Clinton came up with a proposal which in fact reduced the deficit, a deficit which through previous administrations of President Ronald Reagan and President George Bush finally came to an end at the end of the Clinton administration. For the first time in modern memory, we were generating surpluses in the Federal Treasury. All of that red ink finally ended. We moved into the black. Mr. Greenspan was the inspiration for this initially, saying to the Clinton administration, get serious and get real about the deficit. We were anxious to listen to Mr. Greenspan in following years about what his advice might be.

Along came the Bush administration 4 years ago proposing dramatic tax cuts. The argument for the White House was, if you have a surplus, more money in the Treasury than you need, for goodness sakes, give it back to the people who paid it. That was the argument for the tax cut.

Many of us warned that sometimes the economy turns around, and things happen you don't anticipate. If we are going to have tax cuts, we should have some sort of a safety valve there. If things go badly, the tax cuts will not continue and drive us into deficit. Mr. Greenspan didn't argue for that kind of caution at all, and the Bush White House rejected that notion.

What happened? Exactly as we anticipated—unforeseen circumstances; the surplus disappeared, the tax cuts were there. Along came a recession, followed by a war on terrorism, followed by the invasion of Iraq and Afghanistan, in addition to the tax cuts still being on the books. That grand surplus disappeared into a deficit—the biggest deficit in the history of the United States.

Now comes the President with a new plan. He says let us privatize Social Security. Let us create private and personal accounts, knowing full well that to do that you have to take money out of the Social Security trust fund so people can invest it in mutual funds. Some say that is too risky. Regardless of whether it is risky, it does take money out of the Social Security trust fund and adds to the deficit.

In comes Mr. Greenspan today for more words of advice. We welcome him to Capitol Hill, but we wait patiently and anxiously to hear that same deficit fighter of years ago comment on what we are seeing today. Where is Mr. Greenspan when it comes to these tax cuts that have driven us into this deficit? Where is Mr. Greenspan when it comes to privatizing Social Security that will make it worse? Sadly, he understands that deficits are not healthy, but Dr. Greenspan is afraid to prescribe any serious medicine.

One of the concerns we have with the Social Security trust fund is after the surplus has ended and the Bush administration's tax cuts brought us into this new era of deficits, more and more money is being pulled out of the Social Security trust fund.

The President, who tells us he is worried about the Social Security trust fund, has been the biggest problem the Social Security trust fund has run into. His tax cut plan and his privatization plan attack literally the balance in the Social Security trust fund. Congress has joined in this.

Every time Congress voted for the tax cuts, it voted to raid the Social Security trust fund. Since 2000, the Social Security trust fund surplus has lost $800 billion—$800 billion taken out of the Social Security trust fund since the year 2000 when President Bush came to office.

Now the President tells us he is worried about Social Security's future. The obvious question is, Why weren't you worried when you were taking all of this money out of the Social Security trust fund?

How much of that surplus was paid back to strengthen the Social Security trust fund since President Bush took office? Zero. The President has been taking their money out of the Social Security trust fund. That means workers have paid $800 billion more into Social Security in taxes than were necessary to pay out benefits and the Social Security trust fund turned around,

and that money was removed by the President's policies.

The Bush administration has borrowed $800 billion from the American public over the last 5 years—money that was paid to the Government for the Social Security trust fund, for their tax cuts, and to fund the war. Instead of paying it back, the Republicans have called the bonds on the Social Security trust fund ''meaningless IOUs.'' How is that for respect for the Social Security trust fund.

Now to draw attention away from the Republican idea of cutting benefits instead of paying the trust fund back, the Republican Policy Committee has come up with a document criticizing a Democratic plan on Social Security that doesn't exist. We talked about that earlier this morning. In their document, the Republican Policy Committee says the Democrats want to use the Social Security trust fund surpluses for the next 13 years for new Government programs.

We have been saying for years that we need to protect the Social Security trust fund. The Democratic position was well articulated by President Clinton in 1998. In his State of the Union Address, President Clinton said, ''What should we do with the projected budget surplus? Save Social Security first.''

That has been the Democratic position—not the Republican position.

President Clinton went on to say, ''I propose that we reserve 100 percent of the surplus—that's every penny of any surplus—until we have taken all the necessary measures to strengthen the Social Security system for the 21st Century.''

In his campaign to succeed President Clinton, former Vice President Gore—they kidded him about this—talked about a lockbox to protect the trust fund for Social Security. But since President Bush was elected in 2000, Democrats in Congress have been trying to preserve the Social Security trust fund. We have tried time after time to amend President Bush's reckless tax cuts and to protect the Social Security trust fund.

Here is a chart which goes through the variety of votes taken on the floor of the Senate since President Bush took office. Each one of these six votes was an effort by the Democrats to protect the Social Security trust fund from tax cuts and spending by President Bush.

Starting with the Bush tax cut in 2001, Senator BYRD, to forego tax cuts to extend Social Security, was defeated on a party-line vote—38 Democrats, yes; 48 Republicans, no.

The Harkin amendment to delay the tax cuts until we enact legislation that ensures the long-term solvency of Social Security and Medicare, party-line vote, defeated; 45 Democrats voted yes, Republicans voted no, 49.

The list goes on.

The point is that repeatedly we have said to the Bush administration, if you keep taking money out of the Social Security trust fund, you are going to jeopardize the future. You have to protect it. Don't give a tax cut to the wealthiest people in America and endanger Social Security.

Six different times, the Republicans in the Senate were given a chance to agree with this, and six different times they prevailed and voted ''no.'' Now they come before us today and argue it is the Democrats who want to take money out of the Social Security trust fund.

Take a look at the reality of deficits under this administration. Take a look at the surplus, the black ink, inherited by President Bush, and then look at deficits that have been created. One-half of this deficit was created by tax cuts, primarily to the wealthiest people in America.

Now look at how this deficit will grow, if the President's privatization plan on Social Security goes through.

Mr. Greenspan came to Capitol Hill. He had a chance to talk about being fiscally conservative. He had a chance to tell us that privatizing Social Security was a bad idea because of the deficits it creates for future generations. But once again, he stopped short of that kind of sound advice.

Today, Mr. Greenspan told the Senate Banking Committee the single biggest tool the Government has to increase national savings is to reduce the deficit. We all agree with that. Unfortunately, Mr. Greenspan is not candid and direct when it comes to the President's privatization plan for Social Security, which adds dramatically to the deficit.

Imagine, over 20 years we are going to add $4 or $5 trillion to the deficit so that President Bush can create the so-called private accounts. That is shortsighted. It is not going to help the country recover.

After the President submitted a budget last week showing a dramatic worsening of the Nation's fiscal outlook, the President sent Congress a request for an additional $82 billion in spending for the war in Iraq. The money to fund the war on terrorism, the money to fund this war in Iraq is not included in the President's budget. President Bush's plan to privatize Social Security was not included, either. The $2 trillion that is needed for this transition in Social Security is not there.

The Republican Policy Committee wants to criticize Democrats on Social Security instead of answering the hard questions about the President's privatization plan. Where did the money go that Americans paid into Social Security? Where will the money come from to transition to any privatization system?

Instead of criticizing the so-called Democratic bill that does not exist, the Republicans ought to produce their bill to privatize Social Security. Once the American people understand it doesn't add up, they will reject it.

We are going to go back to principles and values which say we should protect Social Security first. That is what President Clinton said. That should still be our guiding value in this debate.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. CORNYN. 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. CORNYN. Mr. President, I understand we are in morning business.

The PRESIDING OFFICER. The Senator is correct.

NOMINATIONS

Mr. CORNYN. Mr. President, I will spend a few minutes correcting the record in response to a question of press availability on Tuesday about whether Democrats were opposing as a caucus all of the renominated judges that previously were denied an opportunity for an up-or-down vote when a bipartisan majority stood ready to confirm them last year.

The Senate minority leader said, ''Renomination is not the key. I think the question is, those judges that have already been turned down in the Senate''—in other words, he said these judges, even though they commanded the support of a bipartisan majority of the Senate during the last 2 years and were not permitted to have an up-or-down vote, he characterized those judges who have now been renominated by the President as judges who have, in fact, been turned down by the Senate.

So my question is, to whom is the distinguished Democratic leader referring? None of President Bush's nominees have been turned down by the none, zero. The nominees he referred to were denied a vote altogether. In fact, all of these nominees would have been confirmed last Congress had majorities been allowed to govern as they have during the entire history of this country and the entire history of the Senate—save and except for the time when Democrats chose to deny a majority the opportunity for an up-or-down vote.

So I would say, correcting the record, it is a little difficult to turn down a nominee, as the minority leader has said, if the nominee never gets an up-or-down vote on the Senate floor.

Now, the second part I would like to correct is that when the Democratic leader was asked whether obstruction would create a 60-vote threshold for all future judicial nominees, he said:

It's always been a 60-vote for judges. There is—nothing change[d].

He said:

Go back many, many, many years. Go back decades and it's always been that way.

Well, we took his advice, and we did go back over the years. It turns out it

has not always been that way. Indeed, there has never, ever, ever been a refusal to permit an up-or-down vote with a bipartisan majority standing ready to confirm judges in the history of the Senate until these last 2 years. Many nominees have, in fact, been confirmed by a vote of less than 60 Senators. In fact, the Senate has consistently confirmed judges who enjoyed a majority but not 60-vote support, including Clinton appointees Richard Paez, William Fletcher, and Susan Oki Mollway; and Carter appointees Abner Mikva and L.T. Senter.

Specifically, the distinguished Democratic leader, yesterday, when he said this had been used by Republicans against Democratic nominees, mentioned Judge Paez. Well, obviously, that is not correct because Judge Paez, indeed, was confirmed by the Senate and sits on the Federal bench today.

So it reminds me of, perhaps, an old adage I learned when I was younger, when computers were not as common as they are now, and people marveled at this new technology, and those who wanted to chasten us a little bit would say, well, they are not the answer to all of our concerns, and they said: Garbage in, garbage out. In other words, if you do not have your facts right, it is very difficult to reach a proper conclusion.

So I thought it was very interesting—and I thought it was important—that the Democratic leader would make this claim, first of all, as I said, that these judges had been somehow turned down by the Senate when, in fact, they had been denied an opportunity for an up-or-down vote; and, secondly, that somehow there is a 60-vote requirement, and it has always been that way, because the facts demonstrate that both of those conclusions are clearly incorrect.

Finally, he said something I do more or less agree with, although I would differ a little bit on the contentious tone. He said: We're hopeful they'll bring them to the floor so there will be a fair fight. Well, I think I knew what he meant. I hope he meant a fair debate. Frankly, the American people are tired of obstruction and what they see as partisan wrangling and fighting over judicial nominees.

In the end, that is what happened during the Clinton administration when, perhaps, judges who were not necessarily favored by our side of the aisle did receive an up-or-down vote and did get confirmed. And that is, of course, what happened during the Carter administration. In fact, that is what has happened throughout American history—until our worthy adversaries on the other side of the aisle decided to obstruct the President's judicial nominees and they were denied the courtesy of that fair process, that fair debate, and an up-or-down vote.

Let me just conclude by saying this really should not be a partisan fight. Indeed, what we want is a fair process. We want a process that applies the same when a Democrat is in the White House and Democrats are in the majority in the Senate as we do when a Republican is in the White House and Republicans are in the majority in the Senate.

We want good judges. The American people deserve to have judges who will strictly interpret the law and will rule without regard to some of the political passions of the day. A judge understands that they are not supposed to take sides in a controversy. That is what Congress, the so-called political branch, is for. That is why debate is so important in this what has been called the greatest deliberative body on Earth. But we do not want judges who make political decisions. Rather, we want judges who will enforce those decisions because they are sworn to uphold the law and enforce the law as written. Members of Congress write the laws, the President signs or vetoes the laws, and judges are supposed to enforce them but not participate in the rough and tumble of politics.

So it is important that the process I have described produces a truly independent judiciary because we want judges who are going to be umpires, who are going to call balls and strikes regardless of who is up at bat. So I think the process we have seen over the last couple years, which, unfortunately, it sounds like, if what I am hearing out of the Democratic leader is any indication, is a process that has not only been unfair because it has denied bipartisan majorities an opportunity to confirm judges who have been nominated by the President, but it is one which, frankly, creates too much of a political process, one where it appears that judges who are sworn to uphold the law, and who will be that impartial umpire—it has made them part of an inherently political process.

Now, I want to be clear. It is the Senate's obligation to ask questions and to seriously undertake our obligation to perform our duty under the Constitution to provide advice and consent. But, ultimately, it is our obligation to vote, not to obstruct, particularly when we have distinguished nominees being put forward for our consideration, when they are unnecessarily besmirched and, really, tainted by a process that is beneath the dignity of the United States. Certainly none of these individuals who are offering themselves for service to our Nation's courts in the judiciary deserve to be treated this way.

So, basically, Mr. President, what we are talking about is a process that works exactly the same way when Democrats are in power as it does when Republicans are in power. That, indeed, is the only principled way we can approach this deadlock and this obstructionism. I hope the Democratic leader—who I know has a very difficult job because he, no doubt, has to deal with and reflect the views of his caucus on this issue—I hope he will encourage his caucus, the Democrats in the caucus, and we will all, as a body, look at the opportunity to perhaps view this as a chance for a fresh start, a chance for a fair process, one that is more likely to produce an independent judiciary that is going to call balls and strikes regardless of who is at bat.

Mr. President, I thank you for the opportunity. I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The Journal clerk proceeded to call the roll.

The PRESIDING OFFICER. In my capacity as a Senator from the State of South Dakota, I ask unanimous consent that the order for the quorum call be dispensed with.

Without objection, it is so ordered.

RECESS

The PRESIDING OFFICER. In my capacity as a Senator from the State of South Dakota, I ask unanimous consent that the Senate stand in recess until 4 p.m. today.

There being no objection, the Senate, at 3:02 p.m., recessed until 4 p.m. and reassembled when called to order by the Presiding Officer (Mr. COBURN).

The PRESIDING OFFICER. The Senator from Massachusetts.

THE NOMINATION PROCESS

Mr. KENNEDY. Mr. President, before going up to the 3 o'clock briefing, I heard my friend—he is a friend and colleague of mine—Senator CORNYN make comments about our leader, Senator REID, accusing him and Democratic Senators of obstruction in the judicial nomination process earlier today.

That sort of rhetoric may be good for sound bites, but it doesn't match the reality of the Senate's tradition or the Founding Fathers' vision in creating the checks and balances of our constitutional system.

In the Constitutional Convention, they considered four different times who should have the authority about naming justices. On three of those four times, it was unanimous that the Senate of the United States was named. The last important decision the Constitutional Convention made was dividing the authority between the President and the Senate of the United States. Any reading of those debates will reaffirm that.

With all respect to my colleague making comments about our leader, the Senator from Nevada, he clearly has not read carefully that Constitutional Convention. It says that we have a responsibility, a constitutional responsibility to exercise our will on these matters. Historically, the record shows more than 98 percent of the President's nominees have been approved. In fairness to my friend who can speak for himself and does that very well and does not need me here, as to these attacks on Senator REID, it is important to understand the facts and

get them correct if we are going to have those interventions in the Senate.

The PRESIDING OFFICER. The Senator from Wyoming.

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

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

GENETIC INFORMATION NONDISCRIMINATION ACT OF 2005

Mr. ENZI. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar No. 3, S. 306, the Genetic Information Nondiscrimination Act of 2005; provided that there be 90 minutes of debate equally divided between the chairman and ranking member of the HELP committee; provided further that the only amendment in order, other than the committee-reported amendment, be a substitute which is at the desk, and following the use or yielding back of time the substitute amendment be agreed to, the committee-reported amendment, as amended, be agreed to, the bill, as amended, be read a third time, and the Senate proceed to a vote on passage without any intervening action or debate at a time determined by the majority leader, after consultation with the Democratic leader.

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

The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 306) to prohibit discrimination on the basis of genetic information with respect to health insurance and employment.

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

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

S. 306

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 ''Genetic Information Nondiscrimination Act of 2005''.

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

[Sec. 1. Short title; table of contents.
[Sec. 2. Findings.
[TITLE I—GENETIC NONDISCRIMINATION IN HEALTH INSURANCE
[Sec. 101. Amendments to Employee Retirement Income Security Act of 1974.
[Sec. 102. Amendments to the Public Health Service Act.
[Sec. 103. Amendments to the Internal Revenue Code of 1986.
[Sec. 104. Amendments to title XVIII of the Social Security Act relating to medigap.
[Sec. 105. Privacy and confidentiality.
[Sec. 106. Assuring coordination.
[Sec. 107. Regulations; effective date.
[TITLE II—PROHIBITING EMPLOYMENT DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION
[Sec. 201. Definitions.
[Sec. 202. Employer practices.
[Sec. 203. Employment agency practices.
[Sec. 204. Labor organization practices.
[Sec. 205. Training programs.
[Sec. 206. Confidentiality of genetic information.
[Sec. 207. Remedies and enforcement.
[Sec. 208. Disparate impact.
[Sec. 209. Construction.
[Sec. 210. Medical information that is not genetic information.
[Sec. 211. Regulations.
[Sec. 212. Authorization of appropriations.
[Sec. 213. Effective date.
[TITLE III—MISCELLANEOUS PROVISION
[Sec. 301. Severability.

[SEC. 2. FINDINGS.

[Congress makes the following findings:

[(1) Deciphering the sequence of the human genome and other advances in genetics open major new opportunities for medical progress. New knowledge about the genetic basis of illness will allow for earlier detection of illnesses, often before symptoms have begun. Genetic testing can allow individuals to take steps to reduce the likelihood that they will contract a particular disorder. New knowledge about genetics may allow for the development of better therapies that are more effective against disease or have fewer side effects than current treatments. These advances give rise to the potential misuse of genetic information to discriminate in health insurance and employment.

[(2) The early science of genetics became the basis of State laws that provided for the sterilization of persons having presumed genetic ''defects'' such as mental retardation, mental disease, epilepsy, blindness, and hearing loss, among other conditions. The first sterilization law was enacted in the State of Indiana in 1907. By 1981, a majority of States adopted sterilization laws to ''correct'' apparent genetic traits or tendencies. Many of these State laws have since been repealed, and many have been modified to include essential constitutional requirements of due process and equal protection. However, the current explosion in the science of genetics, and the history of sterilization laws by the States based on early genetic science, compels Congressional action in this area.

[(3) Although genes are facially neutral markers, many genetic conditions and disorders are associated with particular racial and ethnic groups and gender. Because some genetic traits are most prevalent in particular groups, members of a particular group may be stigmatized or discriminated against as a result of that genetic information. This form of discrimination was evident in the 1970s, which saw the advent of programs to screen and identify carriers of sickle cell anemia, a disease which afflicts African-Americans. Once again, State legislatures began to enact discriminatory laws in the area, and in the early 1970s began mandating genetic screening of all African Americans for sickle cell anemia, leading to discrimination and unnecessary fear. To alleviate some of this stigma, Congress in 1972 passed the National Sickle Cell Anemia Control Act, which withholds Federal funding from States unless sickle cell testing is voluntary.

[(4) Congress has been informed of examples of genetic discrimination in the workplace. These include the use of pre-employment genetic screening at Lawrence Berkeley Laboratory, which led to a court decision in favor of the employees in that case *Norman-Bloodsaw v. Lawrence Berkeley Laboratory* (135 F.3d 1260, 1269 (9th Cir. 1998)). Congress clearly has a compelling public interest in relieving the fear of discrimination and in prohibiting its actual practice in employment and health insurance.

[(5) Federal law addressing genetic discrimination in health insurance and employment is incomplete in both the scope and depth of its protections. Moreover, while many States have enacted some type of genetic non-discrimination law, these laws vary widely with respect to their approach, application, and level of protection. Congress has collected substantial evidence that the American public and the medical community find the existing patchwork of State and Federal laws to be confusing and inadequate to protect them from discrimination. Therefore Federal legislation establishing a national and uniform basic standard is necessary to fully protect the public from discrimination and allay their concerns about the potential for discrimination, thereby allowing individuals to take advantage of genetic testing, technologies, research, and new therapies.

[TITLE I—GENETIC NONDISCRIMINATION IN HEALTH INSURANCE

[SEC. 101. AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

[(a) PROHIBITION OF HEALTH DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION OR GENETIC SERVICES.—

[(1) NO ENROLLMENT RESTRICTION FOR GENETIC SERVICES.—Section 702(a)(1)(F) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182(a)(1)(F)) is amended by inserting before the period the following: ''(including information about a request for or receipt of genetic services by an individual or family member of such individual)''.

[(2) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—Section 702(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182(b)) is amended—

[(A) in paragraph (2)(A), by inserting before the semicolon the following: ''except as provided in paragraph (3)''; and

[(B) by adding at the end the following:

[''(3) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—For purposes of this section, a group health plan, or a health insurance issuer offering group health insurance coverage in connection with a group health plan, shall not adjust premium or contribution amounts for a group on the basis of genetic information concerning an individual in the group or a family member of the individual (including information about a request for or receipt of genetic services by an individual or family member of such individual).''.

[(b) LIMITATIONS ON GENETIC TESTING.—Section 702 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182) is amended by adding at the end the following:

[''(c) GENETIC TESTING.—

[''(1) LIMITATION ON REQUESTING OR REQUIRING GENETIC TESTING.—A group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, shall not request or require an individual or a family member of such individual to undergo a genetic test.

[''(2) RULE OF CONSTRUCTION.—Nothing in this part shall be construed to—

[''(A) limit the authority of a health care professional who is providing health care services with respect to an individual to request that such individual or a family member of such individual undergo a genetic test;

[''(B) limit the authority of a health care professional who is employed by or affiliated with a group health plan or a health insurance issuer and who is providing health care services to an individual as part of a bona fide wellness program to notify such individual of the availability of a genetic test or to provide information to such individual regarding such genetic test; or

[''(C) authorize or permit a health care professional to require that an individual undergo a genetic test.

[''(d) APPLICATION TO ALL PLANS.—The provisions of subsections (a)(1)(F), (b)(3), and (c) shall apply to group health plans and health insurance issuers without regard to section 732(a).''.

[(c) REMEDIES AND ENFORCEMENT.—Section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132) is amended by adding at the end the following:

[''(n) ENFORCEMENT OF GENETIC NONDISCRIMINATION REQUIREMENTS.—

[''(1) INJUNCTIVE RELIEF FOR IRREPARABLE HARM.—With respect to any violation of subsection (a)(1)(F), (b)(3), or (c) of section 702, a participant or beneficiary may seek relief under subsection 502(a)(1)(B) prior to the exhaustion of available administrative remedies under section 503 if it is demonstrated to the court, by a preponderance of the evidence, that the exhaustion of such remedies would cause irreparable harm to the health of the participant or beneficiary. Any determinations that already have been made under section 503 in such case, or that are made in such case while an action under this paragraph is pending, shall be given due consideration by the court in any action under this subsection in such case.

[''(2) EQUITABLE RELIEF FOR GENETIC NONDISCRIMINATION.—

[''(A) REINSTATEMENT OF BENEFITS WHERE EQUITABLE RELIEF HAS BEEN AWARDED.—The recovery of benefits by a participant or beneficiary under a civil action under this section may include an administrative penalty under subparagraph (B) and the retroactive reinstatement of coverage under the plan involved to the date on which the participant or beneficiary was denied eligibility for coverage if—

[''(i) the civil action was commenced under subsection (a)(1)(B); and

[''(ii) the denial of coverage on which such civil action was based constitutes a violation of subsection (a)(1)(F), (b)(3), or (c) of section 702.

[''(B) ADMINISTRATIVE PENALTY.—

[''(i) IN GENERAL.—An administrator who fails to comply with the requirements of subsection (a)(1)(F), (b)(3), or (c) of section 702 with respect to a participant or beneficiary may, in an action commenced under subsection (a)(1)(B), be personally liable in the discretion of the court, for a penalty in the amount not more than $100 for each day in the noncompliance period.

[''(ii) NONCOMPLIANCE PERIOD.—For purposes of clause (i), the term 'noncompliance period' means the period—

[''(I) beginning on the date that a failure described in clause (i) occurs; and

[''(II) ending on the date that such failure is corrected.

[''(iii) PAYMENT TO PARTICIPANT OR BENEFICIARY.—A penalty collected under this subparagraph shall be paid to the participant or beneficiary involved.

[''(3) SECRETARIAL ENFORCEMENT AUTHORITY.—

[''(A) GENERAL RULE.—The Secretary has the authority to impose a penalty on any failure of a group health plan to meet the requirements of subsection (a)(1)(F), (b)(3), or (c) of section 702.

[''(B) AMOUNT.—

[''(i) IN GENERAL.—The amount of the penalty imposed by subparagraph (A) shall be $100 for each day in the noncompliance period with respect to each individual to whom such failure relates.

[''(ii) NONCOMPLIANCE PERIOD.—For purposes of this paragraph, the term 'noncompliance period' means, with respect to any failure, the period—

[''(I) beginning on the date such failure first occurs; and

[''(II) ending on the date such failure is corrected.

[''(C) MINIMUM PENALTIES WHERE FAILURE DISCOVERED.—Notwithstanding clauses (i) and (ii) of subparagraph (D):

[''(i) IN GENERAL.—In the case of 1 or more failures with respect to an individual—

[''(I) which are not corrected before the date on which the plan receives a notice from the Secretary of such violation; and

[''(II) which occurred or continued during the period involved;

the amount of penalty imposed by subparagraph (A) by reason of such failures with respect to such individual shall not be less than $2,500.

[''(ii) HIGHER MINIMUM PENALTY WHERE VIOLATIONS ARE MORE THAN DE MINIMIS.—To the extent violations for which any person is liable under this paragraph for any year are more than de minimis, clause (i) shall be applied by substituting '$15,000' for '$2,500' with respect to such person.

[''(D) LIMITATIONS.—

[''(i) PENALTY NOT TO APPLY WHERE FAILURE NOT DISCOVERED EXERCISING REASONABLE DILIGENCE.—No penalty shall be imposed by subparagraph (A) on any failure during any period for which it is established to the satisfaction of the Secretary that the person otherwise liable for such penalty did not know, and exercising reasonable diligence would not have known, that such failure existed.

[''(ii) PENALTY NOT TO APPLY TO FAILURES CORRECTED WITHIN CERTAIN PERIODS.—No penalty shall be imposed by subparagraph (A) on any failure if—

[''(I) such failure was due to reasonable cause and not to willful neglect; and

[''(II) such failure is corrected during the 30-day period beginning on the first date the person otherwise liable for such penalty knew, or exercising reasonable diligence would have known, that such failure existed.

[''(iii) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—In the case of failures which are due to reasonable cause and not to willful neglect, the penalty imposed by subparagraph (A) for failures shall not exceed the amount equal to the lesser of—

[''(I) 10 percent of the aggregate amount paid or incurred by the employer (or predecessor employer) during the preceding taxable year for group health plans; or

[''(II) $500,000.

[''(E) WAIVER BY SECRETARY.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the penalty imposed by subparagraph (A) to the extent that the payment of such penalty would be excessive relative to the failure involved.''.

[(d) DEFINITIONS.—Section 733(d) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191b(d)) is amended by adding at the end the following:

[''(5) FAMILY MEMBER.—The term 'family member' means with respect to an individual—

[''(A) the spouse of the individual;

[''(B) a dependent child of the individual, including a child who is born to or placed for adoption with the individual; and

[''(C) all other individuals related by blood to the individual or the spouse or child described in subparagraph (A) or (B).

[''(6) GENETIC INFORMATION.—

[''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'genetic information' means information about—

[''(i) an individual's genetic tests;

[''(ii) the genetic tests of family members of the individual; or

[''(iii) the occurrence of a disease or disorder in family members of the individual.

[''(B) EXCLUSIONS.—The term 'genetic information' shall not include information about the sex or age of an individual.

[''(7) GENETIC TEST.—

[''(A) IN GENERAL.—The term 'genetic test' means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

[''(B) EXCEPTIONS.—The term 'genetic test' does not mean—

[''(i) an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or

[''(ii) an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

[''(8) GENETIC SERVICES.—The term 'genetic services' means—

[''(A) a genetic test;

[''(B) genetic counseling (such as obtaining, interpreting, or assessing genetic information); or

[''(C) genetic education.''.

[(e) REGULATIONS AND EFFECTIVE DATE.—

[(1) REGULATIONS.—Not later than 1 year after the date of enactment of this title, the Secretary of Labor shall issue final regulations in an accessible format to carry out the amendments made by this section.

[(2) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to group health plans for plan years beginning after the date that is 18 months after the date of enactment of this title.

[SEC. 102. AMENDMENTS TO THE PUBLIC HEALTH SERVICE ACT.

[(a) AMENDMENTS RELATING TO THE GROUP MARKET.—

[(1) PROHIBITION OF HEALTH DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION OR GENETIC SERVICES.—

[(A) NO ENROLLMENT RESTRICTION FOR GENETIC SERVICES.—Section 2702(a)(1)(F) of the Public Health Service Act (42 U.S.C. 300gg–1(a)(1)(F)) is amended by inserting before the period the following: ''(including information about a request for or receipt of genetic services by an individual or family member of such individual)''.

[(B) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—Section 2702(b) of the Public Health Service Act (42 U.S.C. 300gg–1(b)) is amended—

[(i) in paragraph (2)(A), by inserting before the semicolon the following: '', except as provided in paragraph (3)''; and

[(ii) by adding at the end the following:

[''(3) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—For purposes of this section, a group health plan, or a health insurance issuer offering group health insurance coverage in connection with a group health plan, shall not adjust premium or contribution amounts for a group on the basis of genetic information concerning an individual in the group or a family member of the individual (including

information about a request for or receipt of genetic services by an individual or family member of such individual).''.

[(2) LIMITATIONS ON GENETIC TESTING.—Section 2702 of the Public Health Service Act (42 U.S.C. 300gg–1) is amended by adding at the end the following:

[''(c) GENETIC TESTING.—

[''(1) LIMITATION ON REQUESTING OR REQUIRING GENETIC TESTING.—A group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, shall not request or require an individual or a family member of such individual to undergo a genetic test.

[''(2) RULE OF CONSTRUCTION.—Nothing in this part shall be construed to—

[''(A) limit the authority of a health care professional who is providing health care services with respect to an individual to request that such individual or a family member of such individual undergo a genetic test;

[''(B) limit the authority of a health care professional who is employed by or affiliated with a group health plan or a health insurance issuer and who is providing health care services to an individual as part of a bona fide wellness program to notify such individual of the availability of a genetic test or to provide information to such individual regarding such genetic test; or

[''(C) authorize or permit a health care professional to require that an individual undergo a genetic test.

[''(d) APPLICATION TO ALL PLANS.—The provisions of subsections (a)(1)(F), (b)(3), and (c) shall apply to group health plans and health insurance issuers without regard to section 2721(a).''.

[(3) REMEDIES AND ENFORCEMENT.—Section 2722(b) of the Public Health Service Act (42 U.S.C. 300gg–22(b)) is amended by adding at the end the following:

[''(3) ENFORCEMENT AUTHORITY RELATING TO GENETIC DISCRIMINATION.—

[''(A) GENERAL RULE.—In the cases described in paragraph (1), notwithstanding the provisions of paragraph (2)(C), the following provisions shall apply with respect to an action under this subsection by the Secretary with respect to any failure of a health insurance issuer in connection with a group health plan, to meet the requirements of subsection (a)(1)(F), (b)(3), or (c) of section 2702.

[''(B) AMOUNT.—

[''(i) IN GENERAL.—The amount of the penalty imposed under this paragraph shall be $100 for each day in the noncompliance period with respect to each individual to whom such failure relates.

[''(ii) NONCOMPLIANCE PERIOD.—For purposes of this paragraph, the term 'noncompliance period' means, with respect to any failure, the period—

[''(I) beginning on the date such failure first occurs; and

[''(II) ending on the date such failure is corrected.

[''(C) MINIMUM PENALTIES WHERE FAILURE DISCOVERED.—Notwithstanding clauses (i) and (ii) of subparagraph (D):

[''(i) IN GENERAL.—In the case of 1 or more failures with respect to an individual—

[''(I) which are not corrected before the date on which the plan receives a notice from the Secretary of such violation; and

[''(II) which occurred or continued during the period involved;

the amount of penalty imposed by subparagraph (A) by reason of such failures with respect to such individual shall not be less than $2,500.

[''(ii) HIGHER MINIMUM PENALTY WHERE VIOLATIONS ARE MORE THAN DE MINIMIS.—To the extent violations for which any person is liable under this paragraph for any year are more than de minimis, clause (i) shall be applied by substituting '$15,000' for '$2,500' with respect to such person.

[''(D) LIMITATIONS.—

[''(i) PENALTY NOT TO APPLY WHERE FAILURE NOT DISCOVERED EXERCISING REASONABLE DILIGENCE.—No penalty shall be imposed by subparagraph (A) on any failure during any period for which it is established to the satisfaction of the Secretary that the person otherwise liable for such penalty did not know, and exercising reasonable diligence would not have known, that such failure existed.

[''(ii) PENALTY NOT TO APPLY TO FAILURES CORRECTED WITHIN CERTAIN PERIODS.—No penalty shall be imposed by subparagraph (A) on any failure if—

[''(I) such failure was due to reasonable cause and not to willful neglect; and

[''(II) such failure is corrected during the 30-day period beginning on the first date the person otherwise liable for such penalty knew, or exercising reasonable diligence would have known, that such failure existed.

[''(iii) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—In the case of failures which are due to reasonable cause and not to willful neglect, the penalty imposed by subparagraph (A) for failures shall not exceed the amount equal to the lesser of—

[''(I) 10 percent of the aggregate amount paid or incurred by the employer (or predecessor employer) during the preceding taxable year for group health plans; or

[''(II) $500,000.

[''(E) WAIVER BY SECRETARY.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the penalty imposed by subparagraph (A) to the extent that the payment of such penalty would be excessive relative to the failure involved.''.

[(4) DEFINITIONS.—Section 2791(d) of the Public Health Service Act (42 U.S.C. 300gg–91(d)) is amended by adding at the end the following:

[''(15) FAMILY MEMBER.—The term 'family member' means with respect to an individual—

[''(A) the spouse of the individual;

[''(B) a dependent child of the individual, including a child who is born to or placed for adoption with the individual; and

[''(C) all other individuals related by blood to the individual or the spouse or child described in subparagraph (A) or (B).

[''(16) GENETIC INFORMATION.—

[''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'genetic information' means information about—

[''(i) an individual's genetic tests;

[''(ii) the genetic tests of family members of the individual; or

[''(iii) the occurrence of a disease or disorder in family members of the individual.

[''(B) EXCLUSIONS.—The term 'genetic information' shall not include information about the sex or age of an individual.

[''(17) GENETIC TEST.—

[''(A) IN GENERAL.—The term 'genetic test' means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

[''(B) EXCEPTIONS.—The term 'genetic test' does not mean—

[''(i) an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or

[''(ii) an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

[''(18) GENETIC SERVICES.—The term 'genetic services' means—

[''(A) a genetic test;

[''(B) genetic counseling (such as obtaining, interpreting, or assessing genetic information); or

[''(C) genetic education.''.

[(b) AMENDMENT RELATING TO THE INDIVIDUAL MARKET.—

[(1) IN GENERAL.—The first subpart 3 of part B of title XXVII of the Public Health Service Act (42 U.S.C. 300gg–51 et seq.) (relating to other requirements) is amended—

[(A) by redesignating such subpart as subpart 2; and

[(B) by adding at the end the following:

[''SEC. 2753. PROHIBITION OF HEALTH DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION.

[''(a) PROHIBITION ON GENETIC INFORMATION AS A CONDITION OF ELIGIBILITY.—A health insurance issuer offering health insurance coverage in the individual market may not establish rules for the eligibility (including continued eligibility) of any individual to enroll in individual health insurance coverage based on genetic information (including information about a request for or receipt of genetic services by an individual or family member of such individual).

[''(b) PROHIBITION ON GENETIC INFORMATION IN SETTING PREMIUM RATES.—A health insurance issuer offering health insurance coverage in the individual market shall not adjust premium or contribution amounts for an individual on the basis of genetic information concerning the individual or a family member of the individual (including information about a request for or receipt of genetic services by an individual or family member of such individual).

[''(c) GENETIC TESTING.—

[''(1) LIMITATION ON REQUESTING OR REQUIRING GENETIC TESTING.—A health insurance issuer offering health insurance coverage in the individual market shall not request or require an individual or a family member of such individual to undergo a genetic test.

[''(2) RULE OF CONSTRUCTION.—Nothing in this part shall be construed to—

[''(A) limit the authority of a health care professional who is providing health care services with respect to an individual to request that such individual or a family member of such individual undergo a genetic test;

[''(B) limit the authority of a health care professional who is employed by or affiliated with a health insurance issuer and who is providing health care services to an individual as part of a bona fide wellness program to notify such individual of the availability of a genetic test or to provide information to such individual regarding such genetic test; or

[''(C) authorize or permit a health care professional to require that an individual undergo a genetic test.''.

[(2) REMEDIES AND ENFORCEMENT.—Section 2761(b) of the Public Health Service Act (42 U.S.C. 300gg–61)(b)) is amended to read as follows:

[''(b) SECRETARIAL ENFORCEMENT AUTHORITY.—The Secretary shall have the same authority in relation to enforcement of the provisions of this part with respect to issuers of health insurance coverage in the individual market in a State as the Secretary has under section 2722(b)(2), and section 2722(b)(3) with respect to violations of genetic nondiscrimination provisions, in relation to the enforcement of the provisions of part A with respect to issuers of health insurance coverage in the small group market in the State.''.

[(c) ELIMINATION OF OPTION OF NON-FEDERAL GOVERNMENTAL PLANS TO BE EXCEPTED FROM REQUIREMENTS CONCERNING GENETIC INFORMATION.—Section 2721(b)(2) of the Public

Health Service Act (42 U.S. C. 300gg–21(b)(2)) is amended—

[(1) in subparagraph (A), by striking ''If the plan sponsor'' and inserting ''Except as provided in subparagraph (D), if the plan sponsor''; and

[(2) by adding at the end the following:

[''(D) ELECTION NOT APPLICABLE TO REQUIREMENTS CONCERNING GENETIC INFORMATION.—The election described in subparagraph (A) shall not be available with respect to the provisions of subsections (a)(1)(F) and (c) of section 2702 and the provisions of section 2702(b) to the extent that such provisions apply to genetic information (or information about a request for or the receipt of genetic services by an individual or a family member of such individual).''.

[(d) REGULATIONS AND EFFECTIVE DATE.—

[(1) REGULATIONS.—Not later than 1 year after the date of enactment of this title, the Secretary of Labor and the Secretary of Health and Human Services (as the case may be) shall issue final regulations in an accessible format to carry out the amendments made by this section.

[(2) EFFECTIVE DATE.—The amendments made by this section shall apply—

[(A) with respect to group health plans, and health insurance coverage offered in connection with group health plans, for plan years beginning after the date that is 18 months after the date of enactment of this title; and

[(B) with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market after the date that is 18 months after the date of enactment of this title.

[SEC. 103. AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.

[(a) PROHIBITION OF HEALTH DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION OR GENETIC SERVICES.—

[(1) NO ENROLLMENT RESTRICTION FOR GENETIC SERVICES.—Section 9802(a)(1)(F) of the Internal Revenue Code of 1986 is amended by inserting before the period the following: ''(including information about a request for or receipt of genetic services by an individual or family member of such individual)''.

[(2) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—Section 9802(b) of the Internal Revenue Code of 1986 is amended—

[(A) in paragraph (2)(A), by inserting before the semicolon the following: '', except as provided in paragraph (3)''; and

[(B) by adding at the end the following:

[''(3) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—For purposes of this section, a group health plan shall not adjust premium or contribution amounts for a group on the basis of genetic information concerning an individual in the group or a family member of the individual (including information about a request for or receipt of genetic services by an individual or family member of such individual).''.

[(b) LIMITATIONS ON GENETIC TESTING.—Section 9802 of the Internal Revenue Code of 1986 is amended by adding at the end the following:

[''(d) GENETIC TESTING AND GENETIC SERVICES.—

[''(1) LIMITATION ON REQUESTING OR REQUIRING GENETIC TESTING.—A group health plan shall not request or require an individual or a family member of such individual to undergo a genetic test.

[''(2) RULE OF CONSTRUCTION.—Nothing in this part shall be construed to—

[''(A) limit the authority of a health care professional who is providing health care services with respect to an individual to request that such individual or a family member of such individual undergo a genetic test;

[''(B) limit the authority of a health care professional who is employed by or affiliated with a group health plan and who is providing health care services to an individual as part of a bona fide wellness program to notify such individual of the availability of a genetic test or to provide information to such individual regarding such genetic test; or

[''(C) authorize or permit a health care professional to require that an individual undergo a genetic test.

[''(e) APPLICATION TO ALL PLANS.—The provisions of subsections (a)(1)(F), (b)(3), and (d) shall apply to group health plans and health insurance issuers without regard to section 9831(a)(2).''.

[(c) DEFINITIONS.—Section 9832(d) of the Internal Revenue Code of 1986 is amended by adding at the end the following:

[''(6) FAMILY MEMBER.—The term 'family member' means with respect to an individual—

[''(A) the spouse of the individual;

[''(B) a dependent child of the individual, including a child who is born to or placed for adoption with the individual; and

[''(C) all other individuals related by blood to the individual or the spouse or child described in subparagraph (A) or (B).

[''(7) GENETIC SERVICES.—The term 'genetic services' means—

[''(A) a genetic test;

[''(B) genetic counseling (such as obtaining, interpreting, or assessing genetic information); or

[''(C) genetic education.

[''(8) GENETIC INFORMATION.—

[''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'genetic information' means information about—

[''(i) an individual's genetic tests;

[''(ii) the genetic tests of family members of the individual; or

[''(iii) the occurrence of a disease or disorder in family members of the individual.

[''(B) EXCLUSIONS.—The term 'genetic information' shall not include information about the sex or age of an individual.

[''(9) GENETIC TEST.—

[''(A) IN GENERAL.—The term 'genetic test' means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

[''(B) EXCEPTIONS.—The term 'genetic test' does not mean—

[''(i) an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or

[''(ii) an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.''.

[(d) REGULATIONS AND EFFECTIVE DATE.—

[(1) REGULATIONS.—Not later than 1 year after the date of enactment of this title, the Secretary of the Treasury shall issue final regulations in an accessible format to carry out the amendments made by this section.

[(2) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to group health plans for plan years beginning after the date that is 18 months after the date of enactment of this title.

[SEC. 104. AMENDMENTS TO TITLE XVIII OF THE SOCIAL SECURITY ACT RELATING TO MEDIGAP.

[(a) NONDISCRIMINATION.—

[(1) IN GENERAL.—Section 1882(s)(2) of the Social Security Act (42 U.S.C. 1395ss(s)(2)) is amended by adding at the end the following:

[''(E)(i) An issuer of a medicare supplemental policy shall not deny or condition the issuance or effectiveness of the policy, and shall not discriminate in the pricing of the policy (including the adjustment of premium rates) of an eligible individual on the basis of genetic information concerning the individual (or information about a request for, or the receipt of, genetic services by such individual or family member of such individual).

[''(ii) For purposes of clause (i), the terms 'family member', 'genetic services', and 'genetic information' shall have the meanings given such terms in subsection (v).''.

[(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to a policy for policy years beginning after the date that is 18 months after the date of enactment of this Act.

[(b) LIMITATIONS ON GENETIC TESTING.—

[(1) IN GENERAL.—Section 1882 of the Social Security Act (42 U.S.C. 1395ss) is amended by adding at the end the following:

[''(v) LIMITATIONS ON GENETIC TESTING.—

[''(1) GENETIC TESTING.—

[''(A) LIMITATION ON REQUESTING OR REQUIRING GENETIC TESTING.—An issuer of a medicare supplemental policy shall not request or require an individual or a family member of such individual to undergo a genetic test.

[''(B) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to—

[''(i) limit the authority of a health care professional who is providing health care services with respect to an individual to request that such individual or a family member of such individual undergo a genetic test;

[''(ii) limit the authority of a health care professional who is employed by or affiliated with an issuer of a medicare supplemental policy and who is providing health care services to an individual as part of a bona fide wellness program to notify such individual of the availability of a genetic test or to provide information to such individual regarding such genetic test; or

[''(iii) authorize or permit a health care professional to require that an individual undergo a genetic test.

[''(2) DEFINITIONS.—In this subsection:

[''(A) FAMILY MEMBER.—The term 'family member' means with respect to an individual—

[''(i) the spouse of the individual;

[''(ii) a dependent child of the individual, including a child who is born to or placed for adoption with the individual; or

[''(iii) any other individuals related by blood to the individual or to the spouse or child described in clause (i) or (ii).

[''(B) GENETIC INFORMATION.—

[''(i) IN GENERAL.—Except as provided in clause (ii), the term 'genetic information' means information about—

[''(I) an individual's genetic tests;

[''(II) the genetic tests of family members of the individual; or

[''(III) the occurrence of a disease or disorder in family members of the individual.

[''(ii) EXCLUSIONS.—The term 'genetic information' shall not include information about the sex or age of an individual.

[''(C) GENETIC TEST.—

[''(i) IN GENERAL.—The term 'genetic test' means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

[''(ii) EXCEPTIONS.—The term 'genetic test' does not mean—

[''(I) an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or

[''(II) an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate

training and expertise in the field of medicine involved.

[''(D) GENETIC SERVICES.—The term 'genetic services' means—

[''(i) a genetic test;

[''(ii) genetic counseling (such as obtaining, interpreting, or assessing genetic information); or

[''(iii) genetic education.

[''(E) ISSUER OF A MEDICARE SUPPLEMENTAL POLICY.—The term 'issuer of a medicare supplemental policy' includes a third-party administrator or other person acting for or on behalf of such issuer.''.

[(2) CONFORMING AMENDMENT.—Section 1882(o) of the Social Security Act (42 U.S.C. 1395ss(o)) is amended by adding at the end the following:

[''(4) The issuer of the medicare supplemental policy complies with subsection (s)(2)(E) and subsection (v).''.

[(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to an issuer of a medicare supplemental policy for policy years beginning on or after the date that is 18 months after the date of enactment of this Act.

[(c) TRANSITION PROVISIONS.—

[(1) IN GENERAL.—If the Secretary of Health and Human Services identifies a State as requiring a change to its statutes or regulations to conform its regulatory program to the changes made by this section, the State regulatory program shall not be considered to be out of compliance with the requirements of section 1882 of the Social Security Act due solely to failure to make such change until the date specified in paragraph (4).

[(2) NAIC STANDARDS.—If, not later than June 30, 2006, the National Association of Insurance Commissioners (in this subsection referred to as the ''NAIC'') modifies its NAIC Model Regulation relating to section 1882 of the Social Security Act (referred to in such section as the 1991 NAIC Model Regulation, as subsequently modified) to conform to the amendments made by this section, such revised regulation incorporating the modifications shall be considered to be the applicable NAIC model regulation (including the revised NAIC model regulation and the 1991 NAIC Model Regulation) for the purposes of such section.

[(3) SECRETARY STANDARDS.—If the NAIC does not make the modifications described in paragraph (2) within the period specified in such paragraph, the Secretary of Health and Human Services shall, not later than October 1, 2006, make the modifications described in such paragraph and such revised regulation incorporating the modifications shall be considered to be the appropriate regulation for the purposes of such section.

[(4) DATE SPECIFIED.—

[(A) IN GENERAL.—Subject to subparagraph (B), the date specified in this paragraph for a State is the earlier of—

[(i) the date the State changes its statutes or regulations to conform its regulatory program to the changes made by this section, or

[(ii) October 1, 2006.

[(B) ADDITIONAL LEGISLATIVE ACTION REQUIRED.—In the case of a State which the Secretary identifies as—

[(i) requiring State legislation (other than legislation appropriating funds) to conform its regulatory program to the changes made in this section, but

[(ii) having a legislature which is not scheduled to meet in 2006 in a legislative session in which such legislation may be considered, the date specified in this paragraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after July 1, 2006. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

[SEC. 105. PRIVACY AND CONFIDENTIALITY.

[(a) APPLICABILITY.—Except as provided in subsection (d), the provisions of this section shall apply to group health plans, health insurance issuers (including issuers in connection with group health plans or individual health coverage), and issuers of medicare supplemental policies, without regard to—

[(1) section 732(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191a(a));

[(2) section 2721(a) of the Public Health Service Act (42 U.S.C. 300gg–21(a)); and

[(3) section 9831(a)(2) of the Internal Revenue Code of 1986.

[(b) COMPLIANCE WITH CERTAIN CONFIDENTIALITY STANDARDS WITH RESPECT TO GENETIC INFORMATION.—

[(1) IN GENERAL.—The regulations promulgated by the Secretary of Health and Human Services under part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.) and section 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note) shall apply to the use or disclosure of genetic information.

[(2) PROHIBITION ON UNDERWRITING AND PREMIUM RATING.—Notwithstanding paragraph (1), a group health plan, a health insurance issuer, or issuer of a medicare supplemental policy shall not use or disclose genetic information (including information about a request for or a receipt of genetic services by an individual or family member of such individual) for purposes of underwriting, determinations of eligibility to enroll, premium rating, or the creation, renewal or replacement of a plan, contract or coverage for health insurance or health benefits.

[(c) PROHIBITION ON COLLECTION OF GENETIC INFORMATION.—

[(1) IN GENERAL.—A group health plan, health insurance issuer, or issuer of a medicare supplemental policy shall not request, require, or purchase genetic information (including information about a request for or a receipt of genetic services by an individual or family member of such individual) for purposes of underwriting, determinations of eligibility to enroll, premium rating, or the creation, renewal or replacement of a plan, contract or coverage for health insurance or health benefits.

[(2) LIMITATION RELATING TO THE COLLECTION OF GENETIC INFORMATION PRIOR TO ENROLLMENT.—A group health plan, health insurance issuer, or issuer of a medicare supplemental policy shall not request, require, or purchase genetic information (including information about a request for or a receipt of genetic services by an individual or family member of such individual) concerning a participant, beneficiary, or enrollee prior to the enrollment, and in connection with such enrollment, of such individual under the plan, coverage, or policy.

[(3) INCIDENTAL COLLECTION.—Where a group health plan, health insurance issuer, or issuer of a medicare supplemental policy obtains genetic information incidental to the requesting, requiring, or purchasing of other information concerning a participant, beneficiary, or enrollee, such request, requirement, or purchase shall not be considered a violation of this subsection if—

[(A) such request, requirement, or purchase is not in violation of paragraph (1); and

[(B) any genetic information (including information about a request for or receipt of genetic services) requested, required, or purchased is not used or disclosed in violation of subsection (b).

[(d) APPLICATION OF CONFIDENTIALITY STANDARDS.—The provisions of subsections (b) and (c) shall not apply—

[(1) to group health plans, health insurance issuers, or issuers of medicare supplemental policies that are not otherwise covered under the regulations promulgated by the Secretary of Health and Human Services under part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.) and section 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note); and

[(2) to genetic information that is not considered to be individually-identifiable health information under the regulations promulgated by the Secretary of Health and Human Services under part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.) and section 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note).

[(e) ENFORCEMENT.—A group health plan, health insurance issuer, or issuer of a medicare supplemental policy that violates a provision of this section shall be subject to the penalties described in sections 1176 and 1177 of the Social Security Act (42 U.S.C. 1320d–5 and 1320d–6) in the same manner and to the same extent that such penalties apply to violations of part C of title XI of such Act.

[(f) PREEMPTION.—

[(1) IN GENERAL.—A provision or requirement under this section or a regulation promulgated under this section shall supersede any contrary provision of State law unless such provision of State law imposes requirements, standards, or implementation specifications that are more stringent than the requirements, standards, or implementation specifications imposed under this section or such regulations. No penalty, remedy, or cause of action to enforce such a State law that is more stringent shall be preempted by this section.

[(2) RULE OF CONSTRUCTION.—Nothing in paragraph (1) shall be construed to establish a penalty, remedy, or cause of action under State law if such penalty, remedy, or cause of action is not otherwise available under such State law.

[(g) COORDINATION WITH PRIVACY REGULATIONS.—The Secretary shall implement and administer this section in a manner that is consistent with the implementation and administration by the Secretary of the regulations promulgated by the Secretary of Health and Human Services under part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.) and section 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note).

[(h) DEFINITIONS.—In this section:

[(1) GENETIC INFORMATION; GENETIC SERVICES.—The terms ''family member'', ''genetic information'', ''genetic services'', and ''genetic test'' have the meanings given such terms in section 2791 of the Public Health Service Act (42 U.S.C. 300gg–91), as amended by this Act.

[(2) GROUP HEALTH PLAN; HEALTH INSURANCE ISSUER.—The terms ''group health plan'' and ''health insurance issuer'' include only those plans and issuers that are covered under the regulations described in subsection (d)(1).

[(3) ISSUER OF A MEDICARE SUPPLEMENTAL POLICY.—The term ''issuer of a medicare supplemental policy'' means an issuer described in section 1882 of the Social Security Act (42 insert 1395ss).

[(4) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

[SEC. 106. ASSURING COORDINATION.

[(a) IN GENERAL.—Except as provided in subsection (b), the Secretary of the Treasury, the Secretary of Health and Human Services, and the Secretary of Labor shall

ensure, through the execution of an interagency memorandum of understanding among such Secretaries, that—

[(1) regulations, rulings, and interpretations issued by such Secretaries relating to the same matter over which two or more such Secretaries have responsibility under this title (and the amendments made by this title) are administered so as to have the same effect at all times; and

[(2) coordination of policies relating to enforcing the same requirements through such Secretaries in order to have a coordinated enforcement strategy that avoids duplication of enforcement efforts and assigns priorities in enforcement.

[(b) AUTHORITY OF THE SECRETARY.—The Secretary of Health and Human Services has the sole authority to promulgate regulations to implement section 105.

[SEC. 107. REGULATIONS; EFFECTIVE DATE.

[(a) REGULATIONS.—Not later than 1 year after the date of enactment of this title, the Secretary of Labor, the Secretary of Health and Human Services, and the Secretary of the Treasury shall issue final regulations in an accessible format to carry out this title.

[(b) EFFECTIVE DATE.—Except as provided in section 104, the amendments made by this title shall take effect on the date that is 18 months after the date of enactment of this Act.

[TITLE II—PROHIBITING EMPLOYMENT DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION

[SEC. 201. DEFINITIONS.

[In this title:

[(1) COMMISSION.—The term ''Commission'' means the Equal Employment Opportunity Commission as created by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4).

[(2) EMPLOYEE; EMPLOYER; EMPLOYMENT AGENCY; LABOR ORGANIZATION; MEMBER.—

[(A) IN GENERAL.—The term ''employee'' means—

[(i) an employee (including an applicant), as defined in section 701(f) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(f));

[(ii) a State employee (including an applicant) described in section 304(a) of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16c(a));

[(iii) a covered employee (including an applicant), as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301);

[(iv) a covered employee (including an applicant), as defined in section 411(c) of title 3, United States Code; or

[(v) an employee or applicant to which section 717(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16(a)) applies.

[(B) EMPLOYER.—The term ''employer'' means—

[(i) an employer (as defined in section 701(b) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(b));

[(ii) an entity employing a State employee described in section 304(a) of the Government Employee Rights Act of 1991;

[(iii) an employing office, as defined in section 101 of the Congressional Accountability Act of 1995;

[(iv) an employing office, as defined in section 411(c) of title 3, United States Code; or

[(v) an entity to which section 717(a) of the Civil Rights Act of 1964 applies.

[(C) EMPLOYMENT AGENCY; LABOR ORGANIZATION.—The terms ''employment agency'' and ''labor organization'' have the meanings given the terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

[(D) MEMBER.—The term ''member'', with respect to a labor organization, includes an applicant for membership in a labor organization.

[(3) FAMILY MEMBER.—The term ''family member'' means with respect to an individual—

[(A) the spouse of the individual;

[(B) a dependent child of the individual, including a child who is born to or placed for adoption with the individual; and

[(C) all other individuals related by blood to the individual or the spouse or child described in subparagraph (A) or (B).

[(4) GENETIC INFORMATION.—

[(A) IN GENERAL.—Except as provided in subparagraph (B), the term ''genetic information'' means information about—

[(i) an individual's genetic tests;

[(ii) the genetic tests of family members of the individual; or

[(iii) the occurrence of a disease or disorder in family members of the individual.

[(B) EXCEPTIONS.—The term ''genetic information'' shall not include information about the sex or age of an individual.

[(5) GENETIC MONITORING.—The term ''genetic monitoring'' means the periodic examination of employees to evaluate acquired modifications to their genetic material, such as chromosomal damage or evidence of increased occurrence of mutations, that may have developed in the course of employment due to exposure to toxic substances in the workplace, in order to identify, evaluate, and respond to the effects of or control adverse environmental exposures in the workplace.

[(6) GENETIC SERVICES.—The term ''genetic services'' means—

[(A) a genetic test;

[(B) genetic counseling (such as obtaining, interpreting or assessing genetic information); or

[(C) genetic education.

[(7) GENETIC TEST.—

[(A) IN GENERAL.—The term ''genetic test'' means the analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

[(B) EXCEPTION.—The term ''genetic test'' does not mean an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes.

[SEC. 202. EMPLOYER PRACTICES.

[(a) USE OF GENETIC INFORMATION.—It shall be an unlawful employment practice for an employer—

[(1) to fail or refuse to hire or to discharge any employee, or otherwise to discriminate against any employee with respect to the compensation, terms, conditions, or privileges of employment of the employee, because of genetic information with respect to the employee (or information about a request for or the receipt of genetic services by such employee or family member of such employee); or

[(2) to limit, segregate, or classify the employees of the employer in any way that would deprive or tend to deprive any employee of employment opportunities or otherwise adversely affect the status of the employee as an employee, because of genetic information with respect to the employee (or information about a request for or the receipt of genetic services by such employee or family member of such employee).

[(b) ACQUISITION OF GENETIC INFORMATION.—It shall be an unlawful employment practice for an employer to request, require, or purchase genetic information with respect to an employee or a family member of the employee (or information about a request for the receipt of genetic services by such employee or a family member of such employee) except—

[(1) where an employer inadvertently requests or requires family medical history of the employee or family member of the employee;

[(2) where—

[(A) health or genetic services are offered by the employer, including such services offered as part of a bona fide wellness program;

[(B) the employee provides prior, knowing, voluntary, and written authorization;

[(C) only the employee (or family member if the family member is receiving genetic services) and the licensed health care professional or board certified genetic counselor involved in providing such services receive individually identifiable information concerning the results of such services; and

[(D) any individually identifiable genetic information provided under subparagraph (C) in connection with the services provided under subparagraph (A) is only available for purposes of such services and shall not be disclosed to the employer except in aggregate terms that do not disclose the identity of specific employees;

[(3) where an employer requests or requires family medical history from the employee to comply with the certification provisions of section 103 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613) or such requirements under State family and medical leave laws;

[(4) where an employer purchases documents that are commercially and publicly available (including newspapers, magazines, periodicals, and books, but not including medical databases or court records) that include family medical history; or

[(5) where the information involved is to be used for genetic monitoring of the biological effects of toxic substances in the workplace, but only if—

[(A) the employer provides written notice of the genetic monitoring to the employee;

[(B)(i) the employee provides prior, knowing, voluntary, and written authorization; or

[(ii) the genetic monitoring is required by Federal or State law;

[(C) the employee is informed of individual monitoring results;

[(D) the monitoring is in compliance with—

[(i) any Federal genetic monitoring regulations, including any such regulations that may be promulgated by the Secretary of Labor pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.), or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); or

[(ii) State genetic monitoring regulations, in the case of a State that is implementing genetic monitoring regulations under the authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); and

[(E) the employer, excluding any licensed health care professional or board certified genetic counselor that is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific employees;

[(c) PRESERVATION OF PROTECTIONS.—In the case of information to which any of paragraphs (1) through (5) of subsection (b) applies, such information may not be used in violation of paragraph (1) or (2) of subsection (a) or treated or disclosed in a manner that violates section 206.

[SEC. 203. EMPLOYMENT AGENCY PRACTICES.

[(a) USE OF GENETIC INFORMATION.—It shall be an unlawful employment practice for an employment agency—

[(1) to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of genetic information with respect to the individual (or information about a request for or the receipt of genetic services by such individual or family member of such individual);

[(2) to limit, segregate, or classify individuals or fail or refuse to refer for employment

any individual in any way that would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect the status of the individual as an employee, because of genetic information with respect to the individual (or information about a request for or the receipt of genetic services by such individual or family member of such individual); or

[(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this title.

[(b) ACQUISITION OF GENETIC INFORMATION.—It shall be an unlawful employment practice for an employment agency to request, require, or purchase genetic information with respect to an individual or a family member of the individual (or information about a request for the receipt of genetic services by such individual or a family member of such individual) except—

[(1) where an employment agency inadvertently requests or requires family medical history of the individual or family member of the individual;

[(2) where—

[(A) health or genetic services are offered by the employment agency, including such services offered as part of a bona fide wellness program;

[(B) the individual provides prior, knowing, voluntary, and written authorization;

[(C) only the individual (or family member if the family member is receiving genetic services) and the licensed health care professional or board certified genetic counselor involved in providing such services receive individually identifiable information concerning the results of such services; and

[(D) any individually identifiable genetic information provided under subparagraph (C) in connection with the services provided under subparagraph (A) is only available for purposes of such services and shall not be disclosed to the employment agency except in aggregate terms that do not disclose the identity of specific individuals;

[(3) where an employment agency requests or requires family medical history from the individual to comply with the certification provisions of section 103 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613) or such requirements under State family and medical leave laws;

[(4) where an employment agency purchases documents that are commercially and publicly available (including newspapers, magazines, periodicals, and books, but not including medical databases or court records) that include family medical history; or

[(5) where the information involved is to be used for genetic monitoring of the biological effects of toxic substances in the workplace, but only if—

[(A) the employment agency provides written notice of the genetic monitoring to the individual;

[(B)(i) the individual provides prior, knowing, voluntary, and written authorization; or

[(ii) the genetic monitoring is required by Federal or State law;

[(C) the individual is informed of individual monitoring results;

[(D) the monitoring is in compliance with—

[(i) any Federal genetic monitoring regulations, including any such regulations that may be promulgated by the Secretary of Labor pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.), or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); or

[(ii) State genetic monitoring regulations, in the case of a State that is implementing genetic monitoring regulations under the authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); and

[(E) the employment agency, excluding any licensed health care professional or board certified genetic counselor that is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific individuals;

[(c) PRESERVATION OF PROTECTIONS.—In the case of information to which any of paragraphs (1) through (5) of subsection (b) applies, such information may not be used in violation of paragraph (1) or (2) of subsection (a) or treated or disclosed in a manner that violates section 206.

[SEC. 204. LABOR ORGANIZATION PRACTICES.

[(a) USE OF GENETIC INFORMATION.—It shall be an unlawful employment practice for a labor organization—

[(1) to exclude or to expel from the membership of the organization, or otherwise to discriminate against, any member because of genetic information with respect to the member (or information about a request for or the receipt of genetic services by such member or family member of such member);

[(2) to limit, segregate, or classify the members of the organization, or fail or refuse to refer for employment any member, in any way that would deprive or tend to deprive any member of employment opportunities, or otherwise adversely affect the status of the member as an employee, because of genetic information with respect to the member (or information about a request for or the receipt of genetic services by such member or family member of such member); or

[(3) to cause or attempt to cause an employer to discriminate against a member in violation of this title.

[(b) ACQUISITION OF GENETIC INFORMATION.—It shall be an unlawful employment practice for a labor organization to request, require, or purchase genetic information with respect to a member or a family member of the member (or information about a request for the receipt of genetic services by such member or a family member of such member) except—

[(1) where a labor organization inadvertently requests or requires family medical history of the member or family member of the member;

[(2) where—

[(A) health or genetic services are offered by the labor organization, including such services offered as part of a bona fide wellness program;

[(B) the member provides prior, knowing, voluntary, and written authorization;

[(C) only the member (or family member if the family member is receiving genetic services) and the licensed health care professional or board certified genetic counselor involved in providing such services receive individually identifiable information concerning the results of such services; and

[(D) any individually identifiable genetic information provided under subparagraph (C) in connection with the services provided under subparagraph (A) is only available for purposes of such services and shall not be disclosed to the labor organization except in aggregate terms that do not disclose the identity of specific members;

[(3) where a labor organization requests or requires family medical history from the members to comply with the certification provisions of section 103 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613) or such requirements under State family and medical leave laws;

[(4) where a labor organization purchases documents that are commercially and publicly available (including newspapers, magazines, periodicals, and books, but not including medical databases or court records) that include family medical history; or

[(5) where the information involved is to be used for genetic monitoring of the biological effects of toxic substances in the workplace, but only if—

[(A) the labor organization provides written notice of the genetic monitoring to the member;

[(B)(i) the member provides prior, knowing, voluntary, and written authorization; or

[(ii) the genetic monitoring is required by Federal or State law;

[(C) the member is informed of individual monitoring results;

[(D) the monitoring is in compliance with—

[(i) any Federal genetic monitoring regulations, including any such regulations that may be promulgated by the Secretary of Labor pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.), or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); or

[(ii) State genetic monitoring regulations, in the case of a State that is implementing genetic monitoring regulations under the authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); and

[(E) the labor organization, excluding any licensed health care professional or board certified genetic counselor that is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific members;

[(c) PRESERVATION OF PROTECTIONS.—In the case of information to which any of paragraphs (1) through (5) of subsection (b) applies, such information may not be used in violation of paragraph (1) or (2) of subsection (a) or treated or disclosed in a manner that violates section 206.

[SEC. 205. TRAINING PROGRAMS.

[(a) USE OF GENETIC INFORMATION.—It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs—

[(1) to discriminate against any individual because of genetic information with respect to the individual (or information about a request for or the receipt of genetic services by such individual or a family member of such individual) in admission to, or employment in, any program established to provide apprenticeship or other training or retraining;

[(2) to limit, segregate, or classify the applicants for or participants in such apprenticeship or other training or retraining, or fail or refuse to refer for employment any individual, in any way that would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect the status of the individual as an employee, because of genetic information with respect to the individual (or information about a request for or receipt of genetic services by such individual or family member of such individual); or

[(3) to cause or attempt to cause an employer to discriminate against an applicant for or a participant in such apprenticeship or other training or retraining in violation of this title.

[(b) ACQUISITION OF GENETIC INFORMATION.—It shall be an unlawful employment practice for an employer, labor organization, or joint labor-management committee described in subsection (a) to request, require, or purchase genetic information with respect to an individual or a family member of the individual (or information about a request

for the receipt of genetic services by such individual or a family member of such individual) except—

[(1) where the employer, labor organization, or joint labor-management committee inadvertently requests or requires family medical history of the individual or family member of the individual;

[(2) where—

[(A) health or genetic services are offered by the employer, labor organization, or joint labor-management committee, including such services offered as part of a bona fide wellness program;

[(B) the individual provides prior, knowing, voluntary, and written authorization;

[(C) only the individual (or family member if the family member is receiving genetic services) and the licensed health care professional or board certified genetic counselor involved in providing such services receive individually identifiable information concerning the results of such services;

[(D) any individually identifiable genetic information provided under subparagraph (C) in connection with the services provided under subparagraph (A) is only available for purposes of such services and shall not be disclosed to the employer, labor organization, or joint labor-management committee except in aggregate terms that do not disclose the identity of specific individuals;

[(3) where the employer, labor organization, or joint labor-management committee requests or requires family medical history from the individual to comply with the certification provisions of section 103 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613) or such requirements under State family and medical leave laws;

[(4) where the employer, labor organization, or joint labor-management committee purchases documents that are commercially and publicly available (including newspapers, magazines, periodicals, and books, but not including medical databases or court records) that include family medical history; or

[(5) where the information involved is to be used for genetic monitoring of the biological effects of toxic substances in the workplace, but only if—

[(A) the employer, labor organization, or joint labor-management committee provides written notice of the genetic monitoring to the individual;

[(B)(i) the individual provides prior, knowing, voluntary, and written authorization; or

[(ii) the genetic monitoring is required by Federal or State law;

[(C) the individual is informed of individual monitoring results;

[(D) the monitoring is in compliance with—

[(i) any Federal genetic monitoring regulations, including any such regulations that may be promulgated by the Secretary of Labor pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.), or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); or

[(ii) State genetic monitoring regulations, in the case of a State that is implementing genetic monitoring regulations under the authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); and

[(E) the employer, labor organization, or joint labor-management committee, excluding any licensed health care professional or board certified genetic counselor that is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific individuals;

[(c) PRESERVATION OF PROTECTIONS.—In the case of information to which any of paragraphs (1) through (5) of subsection (b) applies, such information may not be used in violation of paragraph (1) or (2) of subsection (a) or treated or disclosed in a manner that violates section 206.

[SEC. 206. CONFIDENTIALITY OF GENETIC INFORMATION.

[(a) TREATMENT OF INFORMATION AS PART OF CONFIDENTIAL MEDICAL RECORD.—If an employer, employment agency, labor organization, or joint labor-management committee possesses genetic information about an employee or member (or information about a request for or receipt of genetic services by such employee or member or family member of such employee or member), such information shall be maintained on separate forms and in separate medical files and be treated as a confidential medical record of the employee or member.

[(b) LIMITATION ON DISCLOSURE.—An employer, employment agency, labor organization, or joint labor-management committee shall not disclose genetic information concerning an employee or member (or information about a request for or receipt of genetic services by such employee or member or family member of such employee or member) except—

[(1) to the employee (or family member if the family member is receiving the genetic services) or member of a labor organization at the request of the employee or member of such organization;

[(2) to an occupational or other health researcher if the research is conducted in compliance with the regulations and protections provided for under part 46 of title 45, Code of Federal Regulations;

[(3) in response to an order of a court, except that—

[(A) the employer, employment agency, labor organization, or joint labor-management committee may disclose only the genetic information expressly authorized by such order; and

[(B) if the court order was secured without the knowledge of the employee or member to whom the information refers, the employer, employment agency, labor organization, or joint labor-management committee shall provide the employee or member with adequate notice to challenge the court order;

[(4) to government officials who are investigating compliance with this title if the information is relevant to the investigation; or

[(5) to the extent that such disclosure is made in connection with the employee's compliance with the certification provisions of section 103 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613) or such requirements under State family and medical leave laws.

[SEC. 207. REMEDIES AND ENFORCEMENT.

[(a) EMPLOYEES COVERED BY TITLE VII OF THE CIVIL RIGHTS ACT OF 1964.—

[(1) IN GENERAL.—The powers, remedies, and procedures provided in sections 705, 706, 707, 709, 710, and 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4 et seq.) to the Commission, the Attorney General, or any person, alleging a violation of title VII of that Act (42 U.S.C. 2000e et seq.) shall be the powers, remedies, and procedures this title provides to the Commission, the Attorney General, or any person, respectively, alleging an unlawful employment practice in violation of this title against an employee described in section 201(2)(A)(i), except as provided in paragraphs (2) and (3).

[(2) COSTS AND FEES.—The powers, remedies, and procedures provided in subsections (b) and (c) of section 722 of the Revised Statutes (42 U.S.C. 1988), shall be powers, remedies, and procedures this title provides to the Commission, the Attorney General, or any person, alleging such a practice.

[(3) DAMAGES.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to the Commission, the Attorney General, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

[(b) EMPLOYEES COVERED BY GOVERNMENT EMPLOYEE RIGHTS ACT OF 1991.—

[(1) IN GENERAL.—The powers, remedies, and procedures provided in sections 302 and 304 of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16b, 2000e–16c) to the Commission, or any person, alleging a violation of section 302(a)(1) of that Act (42 U.S.C. 2000e–16b(a)(1)) shall be the powers, remedies, and procedures this title provides to the Commission, or any person, respectively, alleging an unlawful employment practice in violation of this title against an employee described in section 201(2)(A)(ii), except as provided in paragraphs (2) and (3).

[(2) COSTS AND FEES.—The powers, remedies, and procedures provided in subsections (b) and (c) of section 722 of the Revised Statutes (42 U.S.C. 1988), shall be powers, remedies, and procedures this title provides to the Commission, or any person, alleging such a practice.

[(3) DAMAGES.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to the Commission, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

[(c) EMPLOYEES COVERED BY CONGRESSIONAL ACCOUNTABILITY ACT OF 1995.—

[(1) IN GENERAL.—The powers, remedies, and procedures provided in the Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.) to the Board (as defined in section 101 of that Act (2 U.S.C. 1301)), or any person, alleging a violation of section 201(a)(1) of that Act (42 U.S.C. 1311(a)(1)) shall be the powers, remedies, and procedures this title provides to that Board, or any person, alleging an unlawful employment practice in violation of this title against an employee described in section 201(2)(A)(iii), except as provided in paragraphs (2) and (3).

[(2) COSTS AND FEES.—The powers, remedies, and procedures provided in subsections (b) and (c) of section 722 of the Revised Statutes (42 U.S.C. 1988), shall be powers, remedies, and procedures this title provides to that Board, or any person, alleging such a practice.

[(3) DAMAGES.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to that Board, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

[(4) OTHER APPLICABLE PROVISIONS.—With respect to a claim alleging a practice described in paragraph (1), title III of the Congressional Accountability Act of 1995 (2 U.S.C. 1381 et seq.) shall apply in the same manner as such title applies with respect to a claim alleging a violation of section 201(a)(1) of such Act (2 U.S.C. 1311(a)(1)).

[(d) EMPLOYEES COVERED BY CHAPTER 5 OF TITLE 3, UNITED STATES CODE.—

[(1) IN GENERAL.—The powers, remedies, and procedures provided in chapter 5 of title 3, United States Code, to the President, the Commission, the Merit Systems Protection Board, or any person, alleging a violation of

section 411(a)(1) of that title, shall be the powers, remedies, and procedures this title provides to the President, the Commission, such Board, or any person, respectively, alleging an unlawful employment practice in violation of this title against an employee described in section 201(2)(A)(iv), except as provided in paragraphs (2) and (3).

[(2) COSTS AND FEES.—The powers, remedies, and procedures provided in subsections (b) and (c) of section 722 of the Revised Statutes (42 U.S.C. 1988), shall be powers, remedies, and procedures this title provides to the President, the Commission, such Board, or any person, alleging such a practice.

[(3) DAMAGES.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to the President, the Commission, such Board, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

[(e) EMPLOYEES COVERED BY SECTION 717 OF THE CIVIL RIGHTS ACT OF 1964.—

[(1) IN GENERAL.—The powers, remedies, and procedures provided in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16) to the Commission, the Attorney General, the Librarian of Congress, or any person, alleging a violation of that section shall be the powers, remedies, and procedures this title provides to the Commission, the Attorney General, the Librarian of Congress, or any person, respectively, alleging an unlawful employment practice in violation of this title against an employee or applicant described in section 201(2)(A)(v), except as provided in paragraphs (2) and (3).

[(2) COSTS AND FEES.—The powers, remedies, and procedures provided in subsections (b) and (c) of section 722 of the Revised Statutes (42 U.S.C. 1988), shall be powers, remedies, and procedures this title provides to the Commission, the Attorney General, the Librarian of Congress, or any person, alleging such a practice.

[(3) DAMAGES.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to the Commission, the Attorney General, the Librarian of Congress, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

[(f) DEFINITION.—In this section, the term ''Commission'' means the Equal Employment Opportunity Commission.

[SEC. 208. DISPARATE IMPACT.

[(a) GENERAL RULE.—Notwithstanding any other provision of this Act, ''disparate impact'', as that term is used in section 703(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–d(k)), on the basis of genetic information does not establish a cause of action under this Act.

[(b) COMMISSION.—On the date that is 6 years after the date of enactment of this Act, there shall be established a commission, to be known as the Genetic Nondiscrimination Study Commission (referred to in this section as the ''Commission'') to review the developing science of genetics and to make recommendations to Congress regarding whether to provide a disparate impact cause of action under this Act.

[(c) MEMBERSHIP.—

[(1) IN GENERAL.—The Commission shall be composed of 8 members, of which—

[(A) 1 member shall be appointed by the Majority Leader of the Senate;

[(B) 1 member shall be appointed by the Minority Leader of the Senate;

[(C) 1 member shall be appointed by the Chairman of the Committee on Health, Education, Labor, and Pensions of the Senate;

[(D) 1 member shall be appointed by the ranking minority member of the Committee on Health, Education, Labor, and Pensions of the Senate;

[(E) 1 member shall be appointed by the Speaker of the House of Representatives;

[(F) 1 member shall be appointed by the Minority Leader of the House of Representatives;

[(G) 1 member shall be appointed by the Chairman of the Committee on Education and the Workforce of the House of Representatives; and

[(H) 1 member shall be appointed by the ranking minority member of the Committee on Education and the Workforce of the House of Representatives.

[(2) COMPENSATION AND EXPENSES.—The members of the Commission shall not receive compensation for the performance of services for the Commission, but shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

[(d) ADMINISTRATIVE PROVISIONS.—

[(1) LOCATION.—The Commission shall be located in a facility maintained by the Equal Employment Opportunity Commission.

[(2) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

[(3) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out the provisions of this section. Upon request of the Commission, the head of such department or agency shall furnish such information to the Commission.

[(4) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out the objectives of this section, except that, to the extent possible, the Commission shall use existing data and research.

[(5) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

[(e) REPORT.—Not later than 1 year after all of the members are appointed to the Commission under subsection (c)(1), the Commission shall submit to Congress a report that summarizes the findings of the Commission and makes such recommendations for legislation as are consistent with this Act.

[(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Equal Employment Opportunity Commission such sums as may be necessary to carry out this section.

[SEC. 209. CONSTRUCTION.

[Nothing in this title shall be construed to—

[(1) limit the rights or protections of an individual under the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), including coverage afforded to individuals under section 102 of such Act (42 U.S.C. 12112), or under the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.);

[(2)(A) limit the rights or protections of an individual to bring an action under this title against an employer, employment agency, labor organization, or joint labor-management committee for a violation of this title; or

[(B) establish a violation under this title for an employer, employment agency, labor organization, or joint labor-management committee of a provision of the amendments made by title I;

[(3) limit the rights or protections of an individual under any other Federal or State statute that provides equal or greater protection to an individual than the rights or protections provided for under this title;

[(4) apply to the Armed Forces Repository of Specimen Samples for the Identification of Remains;

[(5) limit or expand the protections, rights, or obligations of employees or employers under applicable workers' compensation laws;

[(6) limit the authority of a Federal department or agency to conduct or sponsor occupational or other health research that is conducted in compliance with the regulations contained in part 46 of title 45, Code of Federal Regulations (or any corresponding or similar regulation or rule); and

[(7) limit the statutory or regulatory authority of the Occupational Safety and Health Administration or the Mine Safety and Health Administration to promulgate or enforce workplace safety and health laws and regulations.

[SEC. 210. MEDICAL INFORMATION THAT IS NOT GENETIC INFORMATION.

[An employer, employment agency, labor organization, or joint labor-management committee shall not be considered to be in violation of this title based on the use, acquisition, or disclosure of medical information that is not genetic information about a manifested disease, disorder, or pathological condition of an employee or member, including a manifested disease, disorder, or pathological condition that has or may have a genetic basis.

[SEC. 211. REGULATIONS.

[Not later than 1 year after the date of enactment of this title, the Commission shall issue final regulations in an accessible format to carry out this title.

[SEC. 212. AUTHORIZATION OF APPROPRIATIONS.

[There are authorized to be appropriated such sums as may be necessary to carry out this title (except for section 208).

[SEC. 213. EFFECTIVE DATE.

[This title takes effect on the date that is 18 months after the date of enactment of this Act.

TITLE III—MISCELLANEOUS PROVISION

[SEC. 301. SEVERABILITY.

[If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of such provisions to any person or circumstance shall not be affected thereby.]

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Genetic Information Nondiscrimination Act of 2005''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Findings.

TITLE I—GENETIC NONDISCRIMINATION IN HEALTH INSURANCE

Sec. 101. Amendments to Employee Retirement Income Security Act of 1974.
Sec. 102. Amendments to the Public Health Service Act.
Sec. 103. Amendments to the Internal Revenue Code of 1986.

Sec. 104. Amendments to title XVIII of the Social Security Act relating to medigap.
Sec. 105. Privacy and confidentiality.
Sec. 106. Assuring coordination.
Sec. 107. Regulations; effective date.
TITLE II—PROHIBITING EMPLOYMENT DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION
Sec. 201. Definitions.
Sec. 202. Employer practices.
Sec. 203. Employment agency practices.
Sec. 204. Labor organization practices.
Sec. 205. Training programs.
Sec. 206. Confidentiality of genetic information.
Sec. 207. Remedies and enforcement.
Sec. 208. Disparate impact.
Sec. 209. Construction.
Sec. 210. Medical information that is not genetic information.
Sec. 211. Regulations.
Sec. 212. Authorization of appropriations.
Sec. 213. Effective date.
TITLE III—MISCELLANEOUS PROVISION
Sec. 301. Severability.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Deciphering the sequence of the human genome and other advances in genetics open major new opportunities for medical progress. New knowledge about the genetic basis of illness will allow for earlier detection of illnesses, often before symptoms have begun. Genetic testing can allow individuals to take steps to reduce the likelihood that they will contract a particular disorder. New knowledge about genetics may allow for the development of better therapies that are more effective against disease or have fewer side effects than current treatments. These advances give rise to the potential misuse of genetic information to discriminate in health insurance and employment.

(2) The early science of genetics became the basis of State laws that provided for the sterilization of persons having presumed genetic ''defects'' such as mental retardation, mental disease, epilepsy, blindness, and hearing loss, among other conditions. The first sterilization law was enacted in the State of Indiana in 1907. By 1981, a majority of States adopted sterilization laws to ''correct'' apparent genetic traits or tendencies. Many of these State laws have since been repealed, and many have been modified to include essential constitutional requirements of due process and equal protection. However, the current explosion in the science of genetics, and the history of sterilization laws by the States based on early genetic science, compels Congressional action in this area.

(3) Although genes are facially neutral markers, many genetic conditions and disorders are associated with particular racial and ethnic groups and gender. Because some genetic traits are most prevalent in particular groups, members of a particular group may be stigmatized or discriminated against as a result of that genetic information. This form of discrimination was evident in the 1970s, which saw the advent of programs to screen and identify carriers of sickle cell anemia, a disease which afflicts African-Americans. Once again, State legislatures began to enact discriminatory laws in the area, and in the early 1970s began mandating genetic screening of all African Americans for sickle cell anemia, leading to discrimination and unnecessary fear. To alleviate some of this stigma, Congress in 1972 passed the National Sickle Cell Anemia Control Act, which withholds Federal funding from States unless sickle cell testing is voluntary.

(4) Congress has been informed of examples of genetic discrimination in the workplace. These include the use of pre-employment genetic screening at Lawrence Berkeley Laboratory, which led to a court decision in favor of the employees in that case Norman-Bloodsaw v. Lawrence Berkeley Laboratory (135 F.3d 1260, 1269 (9th Cir. 1998)). Congress clearly has a compelling public interest in relieving the fear of discrimination and in prohibiting its actual practice in employment and health insurance.

(5) Federal law addressing genetic discrimination in health insurance and employment is incomplete in both the scope and depth of its protections. Moreover, while many States have enacted some type of genetic non-discrimination law, these laws vary widely with respect to their approach, application, and level of protection. Congress has collected substantial evidence that the American public and the medical community find the existing patchwork of State and Federal laws to be confusing and inadequate to protect them from discrimination. Therefore Federal legislation establishing a national and uniform basic standard is necessary to fully protect the public from discrimination and allay their concerns about the potential for discrimination, thereby allowing individuals to take advantage of genetic testing, technologies, research, and new therapies.

TITLE I—GENETIC NONDISCRIMINATION IN HEALTH INSURANCE

SEC. 101. AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(a) PROHIBITION OF HEALTH DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION OR GENETIC SERVICES.—

(1) NO ENROLLMENT RESTRICTION FOR GENETIC SERVICES.—Section 702(a)(1)(F) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182(a)(1)(F)) is amended by inserting before the period the following: ''(including information about a request for or receipt of genetic services by an individual or family member of such individual)''.

(2) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—Section 702(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182(b)) is amended—

(A) in paragraph (2)(A), by inserting before the semicolon the following: ''except as provided in paragraph (3)''; and

(B) by adding at the end the following:

''(3) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—For purposes of this section, a group health plan, or a health insurance issuer offering group health insurance coverage in connection with a group health plan, shall not adjust premium or contribution amounts for a group on the basis of genetic information concerning an individual in the group or a family member of the individual (including information about a request for or receipt of genetic services by an individual or family member of such individual).''.

(b) LIMITATIONS ON GENETIC TESTING.—Section 702 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182) is amended by adding at the end the following:

''(c) GENETIC TESTING.—

''(1) LIMITATION ON REQUESTING OR REQUIRING GENETIC TESTING.—A group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, shall not request or require an individual or a family member of such individual to undergo a genetic test.

''(2) RULE OF CONSTRUCTION.—Nothing in this part shall be construed to—

''(A) limit the authority of a health care professional who is providing health care services with respect to an individual to request that such individual or a family member of such individual undergo a genetic test;

''(B) limit the authority of a health care professional who is employed by or affiliated with a group health plan or a health insurance issuer and who is providing health care services to an individual as part of a bona fide wellness program to notify such individual of the availability of a genetic test or to provide information to such individual regarding such genetic test; or

''(C) authorize or permit a health care professional to require that an individual undergo a genetic test.

''(d) APPLICATION TO ALL PLANS.—The provisions of subsections (a)(1)(F), (b)(3), and (c) shall apply to group health plans and health insurance issuers without regard to section 732(a).''.

(c) REMEDIES AND ENFORCEMENT.—Section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132) is amended by adding at the end the following:

''(n) ENFORCEMENT OF GENETIC NONDISCRIMINATION REQUIREMENTS.—

''(1) INJUNCTIVE RELIEF FOR IRREPARABLE HARM.—With respect to any violation of subsection (a)(1)(F), (b)(3), or (c) of section 702, a participant or beneficiary may seek relief under subsection 502(a)(1)(B) prior to the exhaustion of available administrative remedies under section 503 if it is demonstrated to the court, by a preponderance of the evidence, that the exhaustion of such remedies would cause irreparable harm to the health of the participant or beneficiary. Any determinations that already have been made under section 503 in such case, or that are made in such case while an action under this paragraph is pending, shall be given due consideration by the court in any action under this subsection in such case.

''(2) EQUITABLE RELIEF FOR GENETIC NONDISCRIMINATION.—

''(A) REINSTATEMENT OF BENEFITS WHERE EQUITABLE RELIEF HAS BEEN AWARDED.—The recovery of benefits by a participant or beneficiary under a civil action under this section may include an administrative penalty under subparagraph (B) and the retroactive reinstatement of coverage under the plan involved to the date on which the participant or beneficiary was denied eligibility for coverage if—

''(i) the civil action was commenced under subsection (a)(1)(B); and

''(ii) the denial of coverage on which such civil action was based constitutes a violation of subsection (a)(1)(F), (b)(3), or (c) of section 702.

''(B) ADMINISTRATIVE PENALTY.—

''(i) IN GENERAL.—An administrator who fails to comply with the requirements of subsection (a)(1)(F), (b)(3), or (c) of section 702 with respect to a participant or beneficiary may, in an action commenced under subsection (a)(1)(B), be personally liable in the discretion of the court, for a penalty in the amount not more than $100 for each day in the noncompliance period.

''(ii) NONCOMPLIANCE PERIOD.—For purposes of clause (i), the term 'noncompliance period' means the period—

''(I) beginning on the date that a failure described in clause (i) occurs; and

''(II) ending on the date that such failure is corrected.

''(iii) PAYMENT TO PARTICIPANT OR BENEFICIARY.—A penalty collected under this subparagraph shall be paid to the participant or beneficiary involved.

''(3) SECRETARIAL ENFORCEMENT AUTHORITY.—

''(A) GENERAL RULE.—The Secretary has the authority to impose a penalty on any failure of a group health plan to meet the requirements of subsection (a)(1)(F), (b)(3), or (c) of section 702.

''(B) AMOUNT.—

''(i) IN GENERAL.—The amount of the penalty imposed by subparagraph (A) shall be $100 for each day in the noncompliance period with respect to each individual to whom such failure relates.

''(ii) NONCOMPLIANCE PERIOD.—For purposes of this paragraph, the term 'noncompliance period' means, with respect to any failure, the period—

''(I) beginning on the date such failure first occurs; and

''(II) ending on the date such failure is corrected.

''(C) MINIMUM PENALTIES WHERE FAILURE DISCOVERED.—Notwithstanding clauses (i) and (ii) of subparagraph (D):

''(i) IN GENERAL.—In the case of 1 or more failures with respect to an individual—

''(I) which are not corrected before the date on which the plan receives a notice from the Secretary of such violation; and

''(II) which occurred or continued during the period involved;

the amount of penalty imposed by subparagraph (A) by reason of such failures with respect to such individual shall not be less than $2,500.

''(ii) HIGHER MINIMUM PENALTY WHERE VIOLATIONS ARE MORE THAN DE MINIMIS.—To the extent violations for which any person is liable under this paragraph for any year are more than de minimis, clause (i) shall be applied by substituting '$15,000' for '$2,500' with respect to such person.

''(D) LIMITATIONS.—

''(i) PENALTY NOT TO APPLY WHERE FAILURE NOT DISCOVERED EXERCISING REASONABLE DILIGENCE.—No penalty shall be imposed by subparagraph (A) on any failure during any period for which it is established to the satisfaction of the Secretary that the person otherwise liable for such penalty did not know, and exercising reasonable diligence would not have known, that such failure existed.

''(ii) PENALTY NOT TO APPLY TO FAILURES CORRECTED WITHIN CERTAIN PERIODS.—No penalty shall be imposed by subparagraph (A) on any failure if—

''(I) such failure was due to reasonable cause and not to willful neglect; and

''(II) such failure is corrected during the 30-day period beginning on the first date the person otherwise liable for such penalty knew, or exercising reasonable diligence would have known, that such failure existed.

''(iii) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—In the case of failures which are due to reasonable cause and not to willful neglect, the penalty imposed by subparagraph (A) for failures shall not exceed the amount equal to the lesser of—

''(I) 10 percent of the aggregate amount paid or incurred by the employer (or predecessor employer) during the preceding taxable year for group health plans; or

''(II) $500,000.

''(E) WAIVER BY SECRETARY.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the penalty imposed by subparagraph (A) to the extent that the payment of such penalty would be excessive relative to the failure involved.''.

(d) DEFINITIONS.—Section 733(d) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191b(d)) is amended by adding at the end the following:

''(5) FAMILY MEMBER.—The term 'family member' means with respect to an individual—

''(A) the spouse of the individual;

''(B) a dependent child of the individual, including a child who is born to or placed for adoption with the individual; and

''(C) all other individuals related by blood to the individual or the spouse or child described in subparagraph (A) or (B).

''(6) GENETIC INFORMATION.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'genetic information' means information about—

''(i) an individual's genetic tests;

''(ii) the genetic tests of family members of the individual; or

''(iii) the occurrence of a disease or disorder in family members of the individual.

''(B) EXCLUSIONS.—The term 'genetic information' shall not include information about the sex or age of an individual.

''(7) GENETIC TEST.—

''(A) IN GENERAL.—The term 'genetic test' means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

''(B) EXCEPTIONS.—The term 'genetic test' does not mean—

''(i) an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or

''(ii) an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

''(8) GENETIC SERVICES.—The term 'genetic services' means—

''(A) a genetic test;

''(B) genetic counseling (such as obtaining, interpreting, or assessing genetic information); or

''(C) genetic education.''.

(e) REGULATIONS AND EFFECTIVE DATE.—

(1) REGULATIONS.—Not later than 1 year after the date of enactment of this title, the Secretary of Labor shall issue final regulations in an accessible format to carry out the amendments made by this section.

(2) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to group health plans for plan years beginning after the date that is 18 months after the date of enactment of this title.

SEC. 102. AMENDMENTS TO THE PUBLIC HEALTH SERVICE ACT.

(a) AMENDMENTS RELATING TO THE GROUP MARKET.—

(1) PROHIBITION OF HEALTH DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION OR GENETIC SERVICES.—

(A) NO ENROLLMENT RESTRICTION FOR GENETIC SERVICES.—Section 2702(a)(1)(F) of the Public Health Service Act (42 U.S.C. 300gg–1(a)(1)(F)) is amended by inserting before the period the following: ''(including information about a request for or receipt of genetic services by an individual or family member of such individual)''.

(B) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—Section 2702(b) of the Public Health Service Act (42 U.S.C. 300gg–1(b)) is amended—

(i) in paragraph (2)(A), by inserting before the semicolon the following: '', except as provided in paragraph (3)''; and

(ii) by adding at the end the following:

''(3) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—For purposes of this section, a group health plan, or a health insurance issuer offering group health insurance coverage in connection with a group health plan, shall not adjust premium or contribution amounts for a group on the basis of genetic information concerning an individual in the group or a family member of the individual (including information about a request for or receipt of genetic services by an individual or family member of such individual).''.

(2) LIMITATIONS ON GENETIC TESTING.—Section 2702 of the Public Health Service Act (42 U.S.C. 300gg–1) is amended by adding at the end the following:

''(c) GENETIC TESTING.—

''(1) LIMITATION ON REQUESTING OR REQUIRING GENETIC TESTING.—A group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, shall not request or require an individual or a family member of such individual to undergo a genetic test.

''(2) RULE OF CONSTRUCTION.—Nothing in this part shall be construed to—

''(A) limit the authority of a health care professional who is providing health care services with respect to an individual to request that such individual or a family member of such individual undergo a genetic test;

''(B) limit the authority of a health care professional who is employed by or affiliated with a group health plan or a health insurance issuer and who is providing health care services to an individual as part of a bona fide wellness program to notify such individual of the availability of a genetic test or to provide information to such individual regarding such genetic test; or

''(C) authorize or permit a health care professional to require that an individual undergo a genetic test.

''(d) APPLICATION TO ALL PLANS.—The provisions of subsections (a)(1)(F), (b)(3), and (c) shall apply to group health plans and health insurance issuers without regard to section 2721(a).''.

(3) REMEDIES AND ENFORCEMENT.—Section 2722(b) of the Public Health Service Act (42 U.S.C. 300gg–22)(b)) is amended by adding at the end the following:

''(3) ENFORCEMENT AUTHORITY RELATING TO GENETIC DISCRIMINATION.—

''(A) GENERAL RULE.—In the cases described in paragraph (1), notwithstanding the provisions of paragraph (2)(C), the following provisions shall apply with respect to an action under this subsection by the Secretary with respect to any failure of a health insurance issuer in connection with a group health plan, to meet the requirements of subsection (a)(1)(F), (b)(3), or (c) of section 2702.

''(B) AMOUNT.—

''(i) IN GENERAL.—The amount of the penalty imposed under this paragraph shall be $100 for each day in the noncompliance period with respect to each individual to whom such failure relates.

''(ii) NONCOMPLIANCE PERIOD.—For purposes of this paragraph, the term 'noncompliance period' means, with respect to any failure, the period—

''(I) beginning on the date such failure first occurs; and

''(II) ending on the date such failure is corrected.

''(C) MINIMUM PENALTIES WHERE FAILURE DISCOVERED.—Notwithstanding clauses (i) and (ii) of subparagraph (D):

''(i) IN GENERAL.—In the case of 1 or more failures with respect to an individual—

''(I) which are not corrected before the date on which the plan receives a notice from the Secretary of such violation; and

''(II) which occurred or continued during the period involved;

the amount of penalty imposed by subparagraph (A) by reason of such failures with respect to such individual shall not be less than $2,500.

''(ii) HIGHER MINIMUM PENALTY WHERE VIOLATIONS ARE MORE THAN DE MINIMIS.—To the extent violations for which any person is liable under this paragraph for any year are more than de minimis, clause (i) shall be applied by substituting '$15,000' for '$2,500' with respect to such person.

''(D) LIMITATIONS.—

''(i) PENALTY NOT TO APPLY WHERE FAILURE NOT DISCOVERED EXERCISING REASONABLE DILIGENCE.—No penalty shall be imposed by subparagraph (A) on any failure during any period for which it is established to the satisfaction of the Secretary that the person otherwise liable for such penalty did not know, and exercising reasonable diligence would not have known, that such failure existed.

''(ii) PENALTY NOT TO APPLY TO FAILURES CORRECTED WITHIN CERTAIN PERIODS.—No penalty shall be imposed by subparagraph (A) on any failure if—

''(I) such failure was due to reasonable cause and not to willful neglect; and

''(II) such failure is corrected during the 30-day period beginning on the first date the person otherwise liable for such penalty knew, or exercising reasonable diligence would have known, that such failure existed.

''(iii) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—In the case of failures which are due to reasonable cause and not to willful neglect, the penalty imposed by subparagraph (A) for failures shall not exceed the amount equal to the lesser of—

''(I) 10 percent of the aggregate amount paid or incurred by the employer (or predecessor employer) during the preceding taxable year for group health plans; or

''(II) $500,000.

''(E) WAIVER BY SECRETARY.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the penalty imposed by subparagraph (A) to the extent that the payment of such penalty would be excessive relative to the failure involved.''.

(4) DEFINITIONS.—Section 2791(d) of the Public Health Service Act (42 U.S.C. 300gg–91(d)) is amended by adding at the end the following:

''(15) FAMILY MEMBER.—The term 'family member' means with respect to an individual—

''(A) the spouse of the individual;

''(B) a dependent child of the individual, including a child who is born to or placed for adoption with the individual; and

''(C) all other individuals related by blood to the individual or the spouse or child described in subparagraph (A) or (B).

''(16) GENETIC INFORMATION.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'genetic information' means information about—

''(i) an individual's genetic tests;

''(ii) the genetic tests of family members of the individual; or

''(iii) the occurrence of a disease or disorder in family members of the individual.

''(B) EXCLUSIONS.—The term 'genetic information' shall not include information about the sex or age of an individual.

''(17) GENETIC TEST.—

''(A) IN GENERAL.—The term 'genetic test' means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

''(B) EXCEPTIONS.—The term 'genetic test' does not mean—

''(i) an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or

''(ii) an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

''(18) GENETIC SERVICES.—The term 'genetic services' means—

''(A) a genetic test;

''(B) genetic counseling (such as obtaining, interpreting, or assessing genetic information); or

''(C) genetic education.''.

(b) AMENDMENT RELATING TO THE INDIVIDUAL MARKET.—

(1) IN GENERAL.—The first subpart 3 of part B of title XXVII of the Public Health Service Act (42 U.S.C. 300gg–51 et seq.) (relating to other requirements) is amended—

(A) by redesignating such subpart as subpart 2; and

(B) by adding at the end the following:

''SEC. 2753. PROHIBITION OF HEALTH DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION.

''(a) PROHIBITION ON GENETIC INFORMATION AS A CONDITION OF ELIGIBILITY.—A health insurance issuer offering health insurance coverage in the individual market may not establish rules for the eligibility (including continued eligibility) of any individual to enroll in individual health insurance coverage based on genetic information (including information about a request for or receipt of genetic services by an individual or family member of such individual).

''(b) PROHIBITION ON GENETIC INFORMATION IN SETTING PREMIUM RATES.—A health insurance issuer offering health insurance coverage in the individual market shall not adjust premium or contribution amounts for an individual on the basis of genetic information concerning the individual or a family member of the individual (including information about a request for or receipt of genetic services by an individual or family member of such individual).

''(c) GENETIC TESTING.—

''(1) LIMITATION ON REQUESTING OR REQUIRING GENETIC TESTING.—A health insurance issuer offering health insurance coverage in the individual market shall not request or require an individual or a family member of such individual to undergo a genetic test.

''(2) RULE OF CONSTRUCTION.—Nothing in this part shall be construed to—

''(A) limit the authority of a health care professional who is providing health care services with respect to an individual to request that such individual or a family member of such individual undergo a genetic test;

''(B) limit the authority of a health care professional who is employed by or affiliated with a health insurance issuer and who is providing health care services to an individual as part of a bona fide wellness program to notify such individual of the availability of a genetic test or to provide information to such individual regarding such genetic test; or

''(C) authorize or permit a health care professional to require that an individual undergo a genetic test.''.

(2) REMEDIES AND ENFORCEMENT.—Section 2761(b) of the Public Health Service Act (42 U.S.C. 300gg–61)(b)) is amended to read as follows:

''(b) SECRETARIAL ENFORCEMENT AUTHORITY.—The Secretary shall have the same authority in relation to enforcement of the provisions of this part with respect to issuers of health insurance coverage in the individual market in a State as the Secretary has under section 2722(b)(2), and section 2722(b)(3) with respect to violations of genetic nondiscrimination provisions, in relation to the enforcement of the provisions of part A with respect to issuers of health insurance coverage in the small group market in the State.''.

(c) ELIMINATION OF OPTION OF NON-FEDERAL GOVERNMENTAL PLANS TO BE EXCEPTED FROM REQUIREMENTS CONCERNING GENETIC INFORMATION.—Section 2721(b)(2) of the Public Health Service Act (42 U.S. C. 300gg–21(b)(2)) is amended—

(1) in subparagraph (A), by striking ''If the plan sponsor'' and inserting ''Except as provided in subparagraph (D), if the plan sponsor''; and

(2) by adding at the end the following:

''(D) ELECTION NOT APPLICABLE TO REQUIREMENTS CONCERNING GENETIC INFORMATION.—The election described in subparagraph (A) shall not be available with respect to the provisions of subsections (a)(1)(F) and (c) of section 2702 and the provisions of section 2702(b) to the extent that such provisions apply to genetic information (or information about a request for or the receipt of genetic services by an individual or a family member of such individual).''.

(d) REGULATIONS AND EFFECTIVE DATE.—

(1) REGULATIONS.—Not later than 1 year after the date of enactment of this title, the Secretary of Labor and the Secretary of Health and Human Services (as the case may be) shall issue final regulations in an accessible format to carry out the amendments made by this section.

(2) EFFECTIVE DATE.—The amendments made by this section shall apply—

(A) with respect to group health plans, and health insurance coverage offered in connection with group health plans, for plan years beginning after the date that is 18 months after the date of enactment of this title; and

(B) with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market after the date that is 18 months after the date of enactment of this title.

SEC. 103. AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.

(a) PROHIBITION OF HEALTH DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION OR GENETIC SERVICES.—

(1) NO ENROLLMENT RESTRICTION FOR GENETIC SERVICES.—Section 9802(a)(1)(F) of the Internal Revenue Code of 1986 is amended by inserting before the period the following: ''(including information about a request for or receipt of genetic services by an individual or family member of such individual)''.

(2) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—Section 9802(b) of the Internal Revenue Code of 1986 is amended—

(A) in paragraph (2)(A), by inserting before the semicolon the following: '', except as provided in paragraph (3)''; and

(B) by adding at the end the following:

''(3) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—For purposes of this section, a group health plan shall not adjust premium or contribution amounts for a group on the basis of genetic information concerning an individual in the group or a family member of the individual (including information about a request for or receipt of genetic services by an individual or family member of such individual).''.

(b) LIMITATIONS ON GENETIC TESTING.—Section 9802 of the Internal Revenue Code of 1986 is amended by adding at the end the following:

''(d) GENETIC TESTING AND GENETIC SERVICES.—

''(1) LIMITATION ON REQUESTING OR REQUIRING GENETIC TESTING.—A group health plan shall not request or require an individual or a family member of such individual to undergo a genetic test.

''(2) RULE OF CONSTRUCTION.—Nothing in this part shall be construed to—

''(A) limit the authority of a health care professional who is providing health care services with respect to an individual to request that such individual or a family member of such individual undergo a genetic test;

''(B) limit the authority of a health care professional who is employed by or affiliated with a group health plan and who is providing health care services to an individual as part of a bona fide wellness program to notify such individual of the availability of a genetic test or to provide information to such individual regarding such genetic test; or

''(C) authorize or permit a health care professional to require that an individual undergo a genetic test.

''(e) APPLICATION TO ALL PLANS.—The provisions of subsections (a)(1)(F), (b)(3), and (d) shall apply to group health plans and health insurance issuers without regard to section 9831(a)(2).''.

(c) DEFINITIONS.—Section 9832(d) of the Internal Revenue Code of 1986 is amended by adding at the end the following:

''(6) FAMILY MEMBER.—The term 'family member' means with respect to an individual—

''(A) the spouse of the individual;

''(B) a dependent child of the individual, including a child who is born to or placed for adoption with the individual; and

''(C) all other individuals related by blood to the individual or the spouse or child described in subparagraph (A) or (B).

''(7) GENETIC SERVICES.—The term 'genetic services' means—

''(A) a genetic test;

''(B) genetic counseling (such as obtaining, interpreting, or assessing genetic information); or

''(C) genetic education.

''(8) GENETIC INFORMATION.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'genetic information' means information about—

''(i) an individual's genetic tests;

''(ii) the genetic tests of family members of the individual; or

''(iii) the occurrence of a disease or disorder in family members of the individual.

''(B) EXCLUSIONS.—The term 'genetic information' shall not include information about the sex or age of an individual.

''(9) GENETIC TEST.—

''(A) IN GENERAL.—The term 'genetic test' means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

''(B) EXCEPTIONS.—The term 'genetic test' does not mean—

''(i) an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or

''(ii) an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.''.

(d) REGULATIONS AND EFFECTIVE DATE.—

(1) REGULATIONS.—Not later than 1 year after the date of enactment of this title, the Secretary of the Treasury shall issue final regulations in an accessible format to carry out the amendments made by this section.

(2) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to group health plans for plan years beginning after the date that is 18 months after the date of enactment of this title.

SEC. 104. AMENDMENTS TO TITLE XVIII OF THE SOCIAL SECURITY ACT RELATING TO MEDIGAP.

(a) NONDISCRIMINATION.—

(1) IN GENERAL.—Section 1882(s)(2) of the Social Security Act (42 U.S.C. 1395ss(s)(2)) is amended by adding at the end the following:

''(E)(i) An issuer of a medicare supplemental policy shall not deny or condition the issuance or effectiveness of the policy, and shall not discriminate in the pricing of the policy (including the adjustment of premium rates) of an eligible individual on the basis of genetic information concerning the individual (or information about a request for, or the receipt of, genetic services by such individual or family member of such individual).

''(ii) For purposes of clause (i), the terms 'family member', 'genetic services', and 'genetic information' shall have the meanings given such terms in subsection (x).''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to a policy for policy years beginning after the date that is 18 months after the date of enactment of this Act.

(b) LIMITATIONS ON GENETIC TESTING.—

(1) IN GENERAL.—Section 1882 of the Social Security Act (42 U.S.C. 1395ss) is amended by adding at the end the following:

''(x) LIMITATIONS ON GENETIC TESTING.—

''(1) GENETIC TESTING.—

''(A) LIMITATION ON REQUESTING OR REQUIRING GENETIC TESTING.—An issuer of a medicare supplemental policy shall not request or require an individual or a family member of such individual to undergo a genetic test.

''(B) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to—

''(i) limit the authority of a health care professional who is providing health care services with respect to an individual to request that such individual or a family member of such individual undergo a genetic test;

''(ii) limit the authority of a health care professional who is employed by or affiliated with an issuer of a medicare supplemental policy and who is providing health care services to an individual as part of a bona fide wellness program to notify such individual of the availability of a genetic test or to provide information to such individual regarding such genetic test; or

''(iii) authorize or permit a health care professional to require that an individual undergo a genetic test.

''(2) DEFINITIONS.—In this subsection:

''(A) FAMILY MEMBER.—The term 'family member' means with respect to an individual—

''(i) the spouse of the individual;

''(ii) a dependent child of the individual, including a child who is born to or placed for adoption with the individual; or

''(iii) any other individuals related by blood to the individual or to the spouse or child described in clause (i) or (ii).

''(B) GENETIC INFORMATION.—

''(i) IN GENERAL.—Except as provided in clause (ii), the term 'genetic information' means information about—

''(I) an individual's genetic tests;

''(II) the genetic tests of family members of the individual; or

''(III) the occurrence of a disease or disorder in family members of the individual.

''(ii) EXCLUSIONS.—The term 'genetic information' shall not include information about the sex or age of an individual.

''(C) GENETIC TEST.—

''(i) IN GENERAL.—The term 'genetic test' means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

''(ii) EXCEPTIONS.—The term 'genetic test' does not mean—

''(I) an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or

''(II) an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

''(D) GENETIC SERVICES.—The term 'genetic services' means—

''(i) a genetic test;

''(ii) genetic counseling (such as obtaining, interpreting, or assessing genetic information); or

''(iii) genetic education.

''(E) ISSUER OF A MEDICARE SUPPLEMENTAL POLICY.—The term 'issuer of a medicare supplemental policy' includes a third-party administrator or other person acting for or on behalf of such issuer.''.

(2) CONFORMING AMENDMENT.—Section 1882(o) of the Social Security Act (42 U.S.C. 1395ss(o)) is amended by adding at the end the following:

''(4) The issuer of the medicare supplemental policy complies with subsection (s)(2)(E) and subsection (x).''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to an issuer of a medicare supplemental policy for policy years beginning on or after the date that is 18 months after the date of enactment of this Act.

(c) TRANSITION PROVISIONS.—

(1) IN GENERAL.—If the Secretary of Health and Human Services identifies a State as requiring a change to its statutes or regulations to conform its regulatory program to the changes made by this section, the State regulatory program shall not be considered to be out of compliance with the requirements of section 1882 of the Social Security Act due solely to failure to make such change until the date specified in paragraph (4).

(2) NAIC STANDARDS.—If, not later than June 30, 2006, the National Association of Insurance Commissioners (in this subsection referred to as the ''NAIC'') modifies its NAIC Model Regulation relating to section 1882 of the Social Security Act (referred to in such section as the 1991 NAIC Model Regulation, as subsequently modified) to conform to the amendments made by this section, such revised regulation incorporating the modifications shall be considered to be the applicable NAIC model regulation (including the revised NAIC model regulation and the 1991 NAIC Model Regulation) for the purposes of such section.

(3) SECRETARY STANDARDS.—If the NAIC does not make the modifications described in paragraph (2) within the period specified in such paragraph, the Secretary of Health and Human Services shall, not later than October 1, 2006, make the modifications described in such paragraph and such revised regulation incorporating the modifications shall be considered to be the appropriate regulation for the purposes of such section.

(4) DATE SPECIFIED.—

(A) IN GENERAL.—Subject to subparagraph (B), the date specified in this paragraph for a State is the earlier of—

(i) the date the State changes its statutes or regulations to conform its regulatory program to the changes made by this section, or

(ii) October 1, 2006.

(B) ADDITIONAL LEGISLATIVE ACTION REQUIRED.—In the case of a State which the Secretary identifies as—

(i) requiring State legislation (other than legislation appropriating funds) to conform its regulatory program to the changes made in this section, but

(ii) having a legislature which is not scheduled to meet in 2006 in a legislative session in which such legislation may be considered, the date specified in this paragraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after July 1, 2006. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

SEC. 105. PRIVACY AND CONFIDENTIALITY.

(a) APPLICABILITY.—Except as provided in subsection (d), the provisions of this section shall apply to group health plans, health insurance issuers (including issuers in connection with group health plans or individual health coverage), and issuers of medicare supplemental policies, without regard to—

(1) section 732(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191a(a));

(2) section 2721(a) of the Public Health Service Act (42 U.S.C. 300gg–21(a)); and

(3) section 9831(a)(2) of the Internal Revenue Code of 1986.

(b) COMPLIANCE WITH CERTAIN CONFIDENTIALITY STANDARDS WITH RESPECT TO GENETIC INFORMATION.—

(1) IN GENERAL.—The regulations promulgated by the Secretary of Health and Human Services under part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.) and section 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note) shall apply to the use or disclosure of genetic information.

(2) PROHIBITION ON UNDERWRITING AND PREMIUM RATING.—Notwithstanding paragraph (1), a group health plan, a health insurance issuer, or issuer of a medicare supplemental policy shall not use or disclose genetic information (including information about a request for or a receipt of genetic services by an individual or family member of such individual) for purposes of underwriting, determinations of eligibility to enroll, premium rating, or the creation, renewal or replacement of a plan, contract or coverage for health insurance or health benefits.

(c) PROHIBITION ON COLLECTION OF GENETIC INFORMATION.—

(1) IN GENERAL.—A group health plan, health insurance issuer, or issuer of a medicare supplemental policy shall not request, require, or purchase genetic information (including information about a request for or a receipt of genetic services by an individual or family member of such individual) for purposes of underwriting, determinations of eligibility to enroll, premium rating, or the creation, renewal or replacement of a plan, contract or coverage for health insurance or health benefits.

(2) LIMITATION RELATING TO THE COLLECTION OF GENETIC INFORMATION PRIOR TO ENROLLMENT.—A group health plan, health insurance issuer, or issuer of a medicare supplemental policy shall not request, require, or purchase genetic information (including information about a request for or a receipt of genetic services by an individual or family member of such individual) concerning a participant, beneficiary, or enrollee prior to the enrollment, and in connection with such enrollment, of such individual under the plan, coverage, or policy.

(3) INCIDENTAL COLLECTION.—Where a group health plan, health insurance issuer, or issuer of a medicare supplemental policy obtains genetic information incidental to the requesting, requiring, or purchasing of other information concerning a participant, beneficiary, or enrollee, such request, requirement, or purchase shall not be considered a violation of this subsection if—

(A) such request, requirement, or purchase is not in violation of paragraph (1); and

(B) any genetic information (including information about a request for or receipt of genetic services) requested, required, or purchased is not used or disclosed in violation of subsection (b).

(d) APPLICATION OF CONFIDENTIALITY STANDARDS.—The provisions of subsections (b) and (c) shall not apply—

(1) to group health plans, health insurance issuers, or issuers of medicare supplemental policies that are not otherwise covered under the regulations promulgated by the Secretary of Health and Human Services under part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.) and section 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note); and

(2) to genetic information that is not considered to be individually-identifiable health information under the regulations promulgated by the Secretary of Health and Human Services under part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.) and section 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note).

(e) ENFORCEMENT.—A group health plan, health insurance issuer, or issuer of a medicare supplemental policy that violates a provision of this section shall be subject to the penalties described in sections 1176 and 1177 of the Social Security Act (42 U.S.C. 1320d–5 and 1320d–6) in the same manner and to the same extent that such penalties apply to violations of part C of title XI of such Act.

(f) PREEMPTION.—

(1) IN GENERAL.—A provision or requirement under this section or a regulation promulgated under this section shall supersede any contrary provision of State law unless such provision of State law imposes requirements, standards, or implementation specifications that are more stringent than the requirements, standards, or implementation specifications imposed under this section or such regulations. No penalty, remedy, or cause of action to enforce such a State law that is more stringent shall be preempted by this section.

(2) RULE OF CONSTRUCTION.—Nothing in paragraph (1) shall be construed to establish a penalty, remedy, or cause of action under State law if such penalty, remedy, or cause of action is not otherwise available under such State law.

(g) COORDINATION WITH PRIVACY REGULATIONS.—The Secretary shall implement and administer this section in a manner that is consistent with the implementation and administration by the Secretary of the regulations promulgated by the Secretary of Health and Human Services under part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.) and section 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note).

(h) DEFINITIONS.—In this section:

(1) GENETIC INFORMATION; GENETIC SERVICES.—The terms ''family member'', ''genetic information'', ''genetic services'', and ''genetic test'' have the meanings given such terms in section 2791 of the Public Health Service Act (42 U.S.C. 300gg–91), as amended by this Act.

(2) GROUP HEALTH PLAN; HEALTH INSURANCE ISSUER.—The terms ''group health plan'' and ''health insurance issuer'' include only those plans and issuers that are covered under the regulations described in subsection (d)(1).

(3) ISSUER OF A MEDICARE SUPPLEMENTAL POLICY.—The term ''issuer of a medicare supplemental policy'' means an issuer described in section 1882 of the Social Security Act (42 insert 1395ss).

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

SEC. 106. ASSURING COORDINATION.

(a) IN GENERAL.—Except as provided in subsection (b), the Secretary of the Treasury, the Secretary of Health and Human Services, and the Secretary of Labor shall ensure, through the execution of an interagency memorandum of understanding among such Secretaries, that—

(1) regulations, rulings, and interpretations issued by such Secretaries relating to the same matter over which two or more such Secretaries have responsibility under this title (and the amendments made by this title) are administered so as to have the same effect at all times; and

(2) coordination of policies relating to enforcing the same requirements through such Secretaries in order to have a coordinated enforcement strategy that avoids duplication of enforcement efforts and assigns priorities in enforcement.

(b) AUTHORITY OF THE SECRETARY.—The Secretary of Health and Human Services has the sole authority to promulgate regulations to implement section 105.

SEC. 107. REGULATIONS; EFFECTIVE DATE.

(a) REGULATIONS.—Not later than 1 year after the date of enactment of this title, the Secretary of Labor, the Secretary of Health and Human Services, and the Secretary of the Treasury shall issue final regulations in an accessible format to carry out this title.

(b) EFFECTIVE DATE.—Except as provided in section 104, the amendments made by this title shall take effect on the date that is 18 months after the date of enactment of this Act.

TITLE II—PROHIBITING EMPLOYMENT DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION

SEC. 201. DEFINITIONS.

In this title:

(1) COMMISSION.—The term ''Commission'' means the Equal Employment Opportunity Commission as created by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4).

(2) EMPLOYEE; EMPLOYER; EMPLOYMENT AGENCY; LABOR ORGANIZATION; MEMBER.—

(A) IN GENERAL.—The term ''employee'' means—

(i) an employee (including an applicant), as defined in section 701(f) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(f));

(ii) a State employee (including an applicant) described in section 304(a) of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16c(a));

(iii) a covered employee (including an applicant), as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301);

(iv) a covered employee (including an applicant), as defined in section 411(c) of title 3, United States Code; or

(v) an employee or applicant to which section 717(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16(a)) applies.

(B) EMPLOYER.—The term ''employer'' means—

(i) an employer (as defined in section 701(b) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(b));

(ii) an entity employing a State employee described in section 304(a) of the Government Employee Rights Act of 1991;

(iii) an employing office, as defined in section 101 of the Congressional Accountability Act of 1995;

(iv) an employing office, as defined in section 411(c) of title 3, United States Code; or

(v) an entity to which section 717(a) of the Civil Rights Act of 1964 applies.

(C) EMPLOYMENT AGENCY; LABOR ORGANIZATION.—The terms ''employment agency'' and ''labor organization'' have the meanings given the terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

(D) MEMBER.—The term ''member'', with respect to a labor organization, includes an applicant for membership in a labor organization.

(3) FAMILY MEMBER.—The term ''family member'' means with respect to an individual—

(A) the spouse of the individual;

(B) a dependent child of the individual, including a child who is born to or placed for adoption with the individual; and

(C) all other individuals related by blood to the individual or the spouse or child described in subparagraph (A) or (B).

(4) GENETIC INFORMATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term ''genetic information'' means information about—

(i) an individual's genetic tests;

(ii) the genetic tests of family members of the individual; or

(iii) the occurrence of a disease or disorder in family members of the individual.

(B) EXCEPTIONS.—The term ''genetic information'' shall not include information about the sex or age of an individual.

(5) GENETIC MONITORING.—The term ''genetic monitoring'' means the periodic examination of employees to evaluate acquired modifications to their genetic material, such as chromosomal damage or evidence of increased occurrence of mutations, that may have developed in the course of employment due to exposure to toxic substances in the workplace, in order to identify, evaluate, and respond to the effects of or control adverse environmental exposures in the workplace.

(6) GENETIC SERVICES.—The term ''genetic services'' means—

(A) a genetic test;

(B) genetic counseling (such as obtaining, interpreting or assessing genetic information); or

(C) genetic education.

(7) GENETIC TEST.—

(A) IN GENERAL.—The term ''genetic test'' means the analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

(B) EXCEPTION.—The term ''genetic test'' does not mean an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes.

SEC. 202. EMPLOYER PRACTICES.

(a) USE OF GENETIC INFORMATION.—It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any employee, or otherwise to discriminate against any employee with respect to the compensation, terms, conditions, or privileges of employment of the employee, because of genetic information with respect to the employee (or information about a request for or the receipt of genetic services by such employee or family member of such employee); or

(2) to limit, segregate, or classify the employees of the employer in any way that would deprive or tend to deprive any employee of employment opportunities or otherwise adversely affect the status of the employee as an employee, because of genetic information with respect to the employee (or information about a request for or the receipt of genetic services by such employee or family member of such employee).

(b) ACQUISITION OF GENETIC INFORMATION.—It shall be an unlawful employment practice for an employer to request, require, or purchase genetic information with respect to an employee or a family member of the employee (or information about a request for the receipt of genetic services by such employee or a family member of such employee) except—

(1) where an employer inadvertently requests or requires family medical history of the employee or family member of the employee;

(2) where—

(A) health or genetic services are offered by the employer, including such services offered as part of a bona fide wellness program;

(B) the employee provides prior, knowing, voluntary, and written authorization;

(C) only the employee (or family member if the family member is receiving genetic services) and

the licensed health care professional or board certified genetic counselor involved in providing such services receive individually identifiable information concerning the results of such services; and

(D) any individually identifiable genetic information provided under subparagraph (C) in connection with the services provided under subparagraph (A) is only available for purposes of such services and shall not be disclosed to the employer except in aggregate terms that do not disclose the identity of specific employees;

(3) where an employer requests or requires family medical history from the employee to comply with the certification provisions of section 103 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613) or such requirements under State family and medical leave laws;

(4) where an employer purchases documents that are commercially and publicly available (including newspapers, magazines, periodicals, and books, but not including medical databases or court records) that include family medical history; or

(5) where the information involved is to be used for genetic monitoring of the biological effects of toxic substances in the workplace, but only if—

(A) the employer provides written notice of the genetic monitoring to the employee;

(B)(i) the employee provides prior, knowing, voluntary, and written authorization; or

(ii) the genetic monitoring is required by Federal or State law;

(C) the employee is informed of individual monitoring results;

(D) the monitoring is in compliance with—

(i) any Federal genetic monitoring regulations, including any such regulations that may be promulgated by the Secretary of Labor pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.), or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); or

(ii) State genetic monitoring regulations, in the case of a State that is implementing genetic monitoring regulations under the authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); and

(E) the employer, excluding any licensed health care professional or board certified genetic counselor that is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific employees;

(c) PRESERVATION OF PROTECTIONS.—In the case of information to which any of paragraphs (1) through (5) of subsection (b) applies, such information may not be used in violation of paragraph (1) or (2) of subsection (a) or treated or disclosed in a manner that violates section 206.

SEC. 203. EMPLOYMENT AGENCY PRACTICES.

(a) USE OF GENETIC INFORMATION.—It shall be an unlawful employment practice for an employment agency—

(1) to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of genetic information with respect to the individual (or information about a request for or the receipt of genetic services by such individual or family member of such individual);

(2) to limit, segregate, or classify individuals or fail or refuse to refer for employment any individual in any way that would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect the status of the individual as an employee, because of genetic information with respect to the individual (or information about a request for or the receipt of genetic services by such individual or family member of such individual); or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this title.

(b) ACQUISITION OF GENETIC INFORMATION.—It shall be an unlawful employment practice for an employment agency to request, require, or purchase genetic information with respect to an individual or a family member of the individual (or information about a request for the receipt of genetic services by such individual or a family member of such individual) except—

(1) where an employment agency inadvertently requests or requires family medical history of the individual or family member of the individual;

(2) where—

(A) health or genetic services are offered by the employment agency, including such services offered as part of a bona fide wellness program;

(B) the individual provides prior, knowing, voluntary, and written authorization;

(C) only the individual (or family member if the family member is receiving genetic services) and the licensed health care professional or board certified genetic counselor involved in providing such services receive individually identifiable information concerning the results of such services; and

(D) any individually identifiable genetic information provided under subparagraph (C) in connection with the services provided under subparagraph (A) is only available for purposes of such services and shall not be disclosed to the employment agency except in aggregate terms that do not disclose the identity of specific individuals;

(3) where an employment agency requests or requires family medical history from the individual to comply with the certification provisions of section 103 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613) or such requirements under State family and medical leave laws;

(4) where an employment agency purchases documents that are commercially and publicly available (including newspapers, magazines, periodicals, and books, but not including medical databases or court records) that include family medical history; or

(5) where the information involved is to be used for genetic monitoring of the biological effects of toxic substances in the workplace, but only if—

(A) the employment agency provides written notice of the genetic monitoring to the individual;

(B)(i) the individual provides prior, knowing, voluntary, and written authorization; or

(ii) the genetic monitoring is required by Federal or State law;

(C) the individual is informed of individual monitoring results;

(D) the monitoring is in compliance with—

(i) any Federal genetic monitoring regulations, including any such regulations that may be promulgated by the Secretary of Labor pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.), or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); or

(ii) State genetic monitoring regulations, in the case of a State that is implementing genetic monitoring regulations under the authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); and

(E) the employment agency, excluding any licensed health care professional or board certified genetic counselor that is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific individuals;

(c) PRESERVATION OF PROTECTIONS.—In the case of information to which any of paragraphs (1) through (5) of subsection (b) applies, such information may not be used in violation of paragraph (1) or (2) of subsection (a) or treated or disclosed in a manner that violates section 206.

SEC. 204. LABOR ORGANIZATION PRACTICES.

(a) USE OF GENETIC INFORMATION.—It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from the membership of the organization, or otherwise to discriminate against, any member because of genetic information with respect to the member (or information about a request for or the receipt of genetic services by such member or family member of such member);

(2) to limit, segregate, or classify the members of the organization, or fail or refuse to refer for employment any member, in any way that would deprive or tend to deprive any member of employment opportunities, or otherwise adversely affect the status of the member as an employee, because of genetic information with respect to the member (or information about a request for or the receipt of genetic services by such member or family member of such member); or

(3) to cause or attempt to cause an employer to discriminate against a member in violation of this title.

(b) ACQUISITION OF GENETIC INFORMATION.—It shall be an unlawful employment practice for a labor organization to request, require, or purchase genetic information with respect to a member or a family member of the member (or information about a request for the receipt of genetic services by such member or a family member of such member) except—

(1) where a labor organization inadvertently requests or requires family medical history of the member or family member of the member;

(2) where—

(A) health or genetic services are offered by the labor organization, including such services offered as part of a bona fide wellness program;

(B) the member provides prior, knowing, voluntary, and written authorization;

(C) only the member (or family member if the family member is receiving genetic services) and the licensed health care professional or board certified genetic counselor involved in providing such services receive individually identifiable information concerning the results of such services; and

(D) any individually identifiable genetic information provided under subparagraph (C) in connection with the services provided under subparagraph (A) is only available for purposes of such services and shall not be disclosed to the labor organization except in aggregate terms that do not disclose the identity of specific members;

(3) where a labor organization requests or requires family medical history from the members to comply with the certification provisions of section 103 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613) or such requirements under State family and medical leave laws;

(4) where a labor organization purchases documents that are commercially and publicly available (including newspapers, magazines, periodicals, and books, but not including medical databases or court records) that include family medical history; or

(5) where the information involved is to be used for genetic monitoring of the biological effects of toxic substances in the workplace, but only if—

(A) the labor organization provides written notice of the genetic monitoring to the member;

(B)(i) the member provides prior, knowing, voluntary, and written authorization; or

(ii) the genetic monitoring is required by Federal or State law;

(C) the member is informed of individual monitoring results;

(D) the monitoring is in compliance with—

(i) any Federal genetic monitoring regulations, including any such regulations that may be promulgated by the Secretary of Labor pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et

seq.), or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); or

(ii) State genetic monitoring regulations, in the case of a State that is implementing genetic monitoring regulations under the authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); and

(E) the labor organization, excluding any licensed health care professional or board certified genetic counselor that is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific members;

(c) PRESERVATION OF PROTECTIONS.—In the case of information to which any of paragraphs (1) through (5) of subsection (b) applies, such information may not be used in violation of paragraph (1) or (2) of subsection (a) or treated or disclosed in a manner that violates section 206.

SEC. 205. TRAINING PROGRAMS.

(a) USE OF GENETIC INFORMATION.—It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs—

(1) to discriminate against any individual because of genetic information with respect to the individual (or information about a request for or the receipt of genetic services by such individual or a family member of such individual) in admission to, or employment in, any program established to provide apprenticeship or other training or retraining;

(2) to limit, segregate, or classify the applicants for or participants in such apprenticeship or other training or retraining, or fail or refuse to refer for employment any individual, in any way that would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect the status of the individual as an employee, because of genetic information with respect to the individual (or information about a request for or receipt of genetic services by such individual or family member of such individual); or

(3) to cause or attempt to cause an employer to discriminate against an applicant for or a participant in such apprenticeship or other training or retraining in violation of this title.

(b) ACQUISITION OF GENETIC INFORMATION.—It shall be an unlawful employment practice for an employer, labor organization, or joint labor-management committee described in subsection (a) to request, require, or purchase genetic information with respect to an individual or a family member of the individual (or information about a request for the receipt of genetic services by such individual or a family member of such individual) except—

(1) where the employer, labor organization, or joint labor-management committee inadvertently requests or requires family medical history of the individual or family member of the individual;

(2) where—

(A) health or genetic services are offered by the employer, labor organization, or joint labor-management committee, including such services offered as part of a bona fide wellness program;

(B) the individual provides prior, knowing, voluntary, and written authorization;

(C) only the individual (or family member if the family member is receiving genetic services) and the licensed health care professional or board certified genetic counselor involved in providing such services receive individually identifiable information concerning the results of such services;

(D) any individually identifiable genetic information provided under subparagraph (C) in connection with the services provided under subparagraph (A) is only available for purposes of such services and shall not be disclosed to the employer, labor organization, or joint labor-management committee except in aggregate terms that do not disclose the identity of specific individuals;

(3) where the employer, labor organization, or joint labor-management committee requests or requires family medical history from the individual to comply with the certification provisions of section 103 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613) or such requirements under State family and medical leave laws;

(4) where the employer, labor organization, or joint labor-management committee purchases documents that are commercially and publicly available (including newspapers, magazines, periodicals, and books, but not including medical databases or court records) that include family medical history; or

(5) where the information involved is to be used for genetic monitoring of the biological effects of toxic substances in the workplace, but only if—

(A) the employer, labor organization, or joint labor-management committee provides written notice of the genetic monitoring to the individual;

(B)(i) the individual provides prior, knowing, voluntary, and written authorization; or

(ii) the genetic monitoring is required by Federal or State law;

(C) the individual is informed of individual monitoring results;

(D) the monitoring is in compliance with—

(i) any Federal genetic monitoring regulations, including any such regulations that may be promulgated by the Secretary of Labor pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.), or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); or

(ii) State genetic monitoring regulations, in the case of a State that is implementing genetic monitoring regulations under the authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); and

(E) the employer, labor organization, or joint labor-management committee, excluding any licensed health care professional or board certified genetic counselor that is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific individuals;

(c) PRESERVATION OF PROTECTIONS.—In the case of information to which any of paragraphs (1) through (5) of subsection (b) applies, such information may not be used in violation of paragraph (1) or (2) of subsection (a) or treated or disclosed in a manner that violates section 206.

SEC. 206. CONFIDENTIALITY OF GENETIC INFORMATION.

(a) TREATMENT OF INFORMATION AS PART OF CONFIDENTIAL MEDICAL RECORD.—If an employer, employment agency, labor organization, or joint labor-management committee possesses genetic information about an employee or member (or information about a request for or receipt of genetic services by such employee or member or family member of such employee or member), such information shall be maintained on separate forms and in separate medical files and be treated as a confidential medical record of the employee or member.

(b) LIMITATION ON DISCLOSURE.—An employer, employment agency, labor organization, or joint labor-management committee shall not disclose genetic information concerning an employee or member (or information about a request for or receipt of genetic services by such employee or member or family member of such employee or member) except—

(1) to the employee (or family member if the family member is receiving the genetic services) or member of a labor organization at the request of the employee or member of such organization;

(2) to an occupational or other health researcher if the research is conducted in compliance with the regulations and protections provided for under part 46 of title 45, Code of Federal Regulations;

(3) in response to an order of a court, except that—

(A) the employer, employment agency, labor organization, or joint labor-management committee may disclose only the genetic information expressly authorized by such order; and

(B) if the court order was secured without the knowledge of the employee or member to whom the information refers, the employer, employment agency, labor organization, or joint labor-management committee shall provide the employee or member with adequate notice to challenge the court order;

(4) to government officials who are investigating compliance with this title if the information is relevant to the investigation; or

(5) to the extent that such disclosure is made in connection with the employee's compliance with the certification provisions of section 103 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613) or such requirements under State family and medical leave laws.

SEC. 207. REMEDIES AND ENFORCEMENT.

(a) EMPLOYEES COVERED BY TITLE VII OF THE CIVIL RIGHTS ACT OF 1964.—

(1) IN GENERAL.—The powers, remedies, and procedures provided in sections 705, 706, 707, 709, 710, and 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4 et seq.) to the Commission, the Attorney General, or any person, alleging a violation of title VII of that Act (42 U.S.C. 2000e et seq.) shall be the powers, remedies, and procedures this title provides to the Commission, the Attorney General, or any person, respectively, alleging an unlawful employment practice in violation of this title against an employee described in section 201(2)(A)(i), except as provided in paragraphs (2) and (3).

(2) COSTS AND FEES.—The powers, remedies, and procedures provided in subsections (b) and (c) of section 722 of the Revised Statutes (42 U.S.C. 1988), shall be powers, remedies, and procedures this title provides to the Commission, the Attorney General, or any person, alleging such a practice.

(3) DAMAGES.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to the Commission, the Attorney General, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

(b) EMPLOYEES COVERED BY GOVERNMENT EMPLOYEE RIGHTS ACT OF 1991.—

(1) IN GENERAL.—The powers, remedies, and procedures provided in sections 302 and 304 of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16b, 2000e–16c) to the Commission, or any person, alleging a violation of section 302(a)(1) of that Act (42 U.S.C. 2000e–16b(a)(1)) shall be the powers, remedies, and procedures this title provides to the Commission, or any person, respectively, alleging an unlawful employment practice in violation of this title against an employee described in section 201(2)(A)(ii), except as provided in paragraphs (2) and (3).

(2) COSTS AND FEES.—The powers, remedies, and procedures provided in subsections (b) and (c) of section 722 of the Revised Statutes (42 U.S.C. 1988), shall be powers, remedies, and procedures this title provides to the Commission, or any person, alleging such a practice.

(3) DAMAGES.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to the Commission, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

(c) EMPLOYEES COVERED BY CONGRESSIONAL ACCOUNTABILITY ACT OF 1995.—

(1) IN GENERAL.—The powers, remedies, and procedures provided in the Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.) to the Board (as defined in section 101 of that Act (2 U.S.C. 1301)), or any person, alleging a violation of section 201(a)(1) of that Act (42 U.S.C. 1311(a)(1)) shall be the powers, remedies, and procedures this title provides to that Board, or any person, alleging an unlawful employment practice in violation of this title against an employee described in section 201(2)(A)(iii), except as provided in paragraphs (2) and (3).

(2) COSTS AND FEES.—The powers, remedies, and procedures provided in subsections (b) and (c) of section 722 of the Revised Statutes (42 U.S.C. 1988), shall be powers, remedies, and procedures this title provides to that Board, or any person, alleging such a practice.

(3) DAMAGES.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to that Board, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

(4) OTHER APPLICABLE PROVISIONS.—With respect to a claim alleging a practice described in paragraph (1), title III of the Congressional Accountability Act of 1995 (2 U.S.C. 1381 et seq.) shall apply in the same manner as such title applies with respect to a claim alleging a violation of section 201(a)(1) of such Act (2 U.S.C. 1311(a)(1)).

(d) EMPLOYEES COVERED BY CHAPTER 5 OF TITLE 3, UNITED STATES CODE.—

(1) IN GENERAL.—The powers, remedies, and procedures provided in chapter 5 of title 3, United States Code, to the President, the Commission, the Merit Systems Protection Board, or any person, alleging a violation of section 411(a)(1) of that title, shall be the powers, remedies, and procedures this title provides to the President, the Commission, such Board, or any person, respectively, alleging an unlawful employment practice in violation of this title against an employee described in section 201(2)(A)(iv), except as provided in paragraphs (2) and (3).

(2) COSTS AND FEES.—The powers, remedies, and procedures provided in subsections (b) and (c) of section 722 of the Revised Statutes (42 U.S.C. 1988), shall be powers, remedies, and procedures this title provides to the President, the Commission, such Board, or any person, alleging such a practice.

(3) DAMAGES.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to the President, the Commission, such Board, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

(e) EMPLOYEES COVERED BY SECTION 717 OF THE CIVIL RIGHTS ACT OF 1964.—

(1) IN GENERAL.—The powers, remedies, and procedures provided in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16) to the Commission, the Attorney General, the Librarian of Congress, or any person, alleging a violation of that section shall be the powers, remedies, and procedures this title provides to the Commission, the Attorney General, the Librarian of Congress, or any person, respectively, alleging an unlawful employment practice in violation of this title against an employee or applicant described in section 201(2)(A)(v), except as provided in paragraphs (2) and (3).

(2) COSTS AND FEES.—The powers, remedies, and procedures provided in subsections (b) and (c) of section 722 of the Revised Statutes (42 U.S.C. 1988), shall be powers, remedies, and procedures this title provides to the Commission, the Attorney General, the Librarian of Congress, or any person, alleging such a practice.

(3) DAMAGES.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to the Commission, the Attorney General, the Librarian of Congress, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

(f) DEFINITION.—In this section, the term ''Commission'' means the Equal Employment Opportunity Commission.

SEC. 208. DISPARATE IMPACT.

(a) GENERAL RULE.—Notwithstanding any other provision of this Act, ''disparate impact'', as that term is used in section 703(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–d(k)), on the basis of genetic information does not establish a cause of action under this Act.

(b) COMMISSION.—On the date that is 6 years after the date of enactment of this Act, there shall be established a commission, to be known as the Genetic Nondiscrimination Study Commission (referred to in this section as the ''Commission'') to review the developing science of genetics and to make recommendations to Congress regarding whether to provide a disparate impact cause of action under this Act.

(c) MEMBERSHIP.—

(1) IN GENERAL.—The Commission shall be composed of 8 members, of which—

(A) 1 member shall be appointed by the Majority Leader of the Senate;

(B) 1 member shall be appointed by the Minority Leader of the Senate;

(C) 1 member shall be appointed by the Chairman of the Committee on Health, Education, Labor, and Pensions of the Senate;

(D) 1 member shall be appointed by the ranking minority member of the Committee on Health, Education, Labor, and Pensions of the Senate;

(E) 1 member shall be appointed by the Speaker of the House of Representatives;

(F) 1 member shall be appointed by the Minority Leader of the House of Representatives;

(G) 1 member shall be appointed by the Chairman of the Committee on Education and the Workforce of the House of Representatives; and

(H) 1 member shall be appointed by the ranking minority member of the Committee on Education and the Workforce of the House of Representatives.

(2) COMPENSATION AND EXPENSES.—The members of the Commission shall not receive compensation for the performance of services for the Commission, but shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(d) ADMINISTRATIVE PROVISIONS.—

(1) LOCATION.—The Commission shall be located in a facility maintained by the Equal Employment Opportunity Commission.

(2) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(3) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out the provisions of this section. Upon request of the Commission, the head of such department or agency shall furnish such information to the Commission.

(4) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out the objectives of this section, except that, to the extent possible, the Commission shall use existing data and research.

(5) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(e) REPORT.—Not later than 1 year after all of the members are appointed to the Commission under subsection (c)(1), the Commission shall submit to Congress a report that summarizes the findings of the Commission and makes such recommendations for legislation as are consistent with this Act.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Equal Employment Opportunity Commission such sums as may be necessary to carry out this section.

SEC. 209. CONSTRUCTION.

Nothing in this title shall be construed to—

(1) limit the rights or protections of an individual under the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), including coverage afforded to individuals under section 102 of such Act (42 U.S.C. 12112), or under the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.);

(2)(A) limit the rights or protections of an individual to bring an action under this title against an employer, employment agency, labor organization, or joint labor-management committee for a violation of this title; or

(B) establish a violation under this title for an employer, employment agency, labor organization, or joint labor-management committee of a provision of the amendments made by title I;

(3) limit the rights or protections of an individual under any other Federal or State statute that provides equal or greater protection to an individual than the rights or protections provided for under this title;

(4) apply to the Armed Forces Repository of Specimen Samples for the Identification of Remains;

(5) limit or expand the protections, rights, or obligations of employees or employers under applicable workers' compensation laws;

(6) limit the authority of a Federal department or agency to conduct or sponsor occupational or other health research that is conducted in compliance with the regulations contained in part 46 of title 45, Code of Federal Regulations (or any corresponding or similar regulation or rule); and

(7) limit the statutory or regulatory authority of the Occupational Safety and Health Administration or the Mine Safety and Health Administration to promulgate or enforce workplace safety and health laws and regulations.

SEC. 210. MEDICAL INFORMATION THAT IS NOT GENETIC INFORMATION.

An employer, employment agency, labor organization, or joint labor-management committee shall not be considered to be in violation of this title based on the use, acquisition, or disclosure of medical information that is not genetic information about a manifested disease, disorder, or pathological condition of an employee or member, including a manifested disease, disorder, or pathological condition that has or may have a genetic basis.

SEC. 211. REGULATIONS.

Not later than 1 year after the date of enactment of this title, the Commission shall issue final regulations in an accessible format to carry out this title.

SEC. 212. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this title (except for section 208).

SEC. 213. EFFECTIVE DATE.

This title takes effect on the date that is 18 months after the date of enactment of this Act.

TITLE III—MISCELLANEOUS PROVISION

SEC. 301. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of such provisions to any person or circumstance shall not be affected thereby.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, this is a bill that has been about 5 years in the works. It was introduced by Senator SNOWE, who was joined by Senators FRIST, GREGG, KENNEDY, myself, and others. It has been introduced a number of times, but in 2003 this bill was passed by a vote of 95 to nothing. The only difference between that bill and the one before you today is deletion of a provision that makes conforming changes to the Internal Revenue Code to ensure that a small number of health insurance plans, known as church plans, do not discriminate on the basis of genetic information.

We are removing the church plan provision because at the last minute yesterday a concern was raised that the language caused what is called a blue slip problem, which relates to the constitutional requirement that revenue measures originate in the House. There is considerable disagreement as to whether the church plan provision has a revenue impact and whether there is, in fact, a blue slip problem. In my opinion, there is no jurisdictional or constitutional problem with this simple conforming amendment.

The Health, Education, Labor, and Pensions Committee in the Senate took great pains to draft the bill within its own jurisdiction and was disappointed that these concerns were raised at this late date. In the interest of moving this bill and creating the important protections that it guarantees, we are removing the questioned language.

It is my understanding and hope that the House of Representatives will address the question of church plans when it takes up genetic information nondiscrimination legislation. Certainly no one believes that health insurance plans run by churches and other religious organizations should discriminate against individuals on the basis of genetic information. I am confident that when Congress has worked its will and delivered a genetic information bill to President Bush, which he requested, church plans will be treated the same as employer group health plans and individual health plans.

I am pleased that this bill is finally here for debate and we will be able to take it through the process. Again, it is an important step toward eliminating discrimination based on genetic information in both health insurance and employment decisions.

This bill was reported unanimously last week by the Health, Education, Labor, and Pensions Committee. It is identical to S. 2283 in the last Congress, which passed 95 to nothing with strong administration support. The purpose of this legislation is to protect individuals from discrimination in health insurance and employment on the basis of genetic information. It would accomplish this by preventing health insurers and employers from taking any action that would affect an employee's health or employment benefits based on genetic information an employer might discover.

Establishing these protections will allay concerns about the potential for discrimination, and it will encourage individuals to participate in genetic research and to take advantage of genetic testing, new technologies, and new therapies. The legislation will provide substantial protections to those individuals who may suffer from actual genetic discrimination now, or may have some reason to be concerned about it in the future. These steps are essential to fulfilling the tremendous promise of genetic research and science.

The science of genetic technology has seen an explosion of progress in the past few years.

Just 2 years ago, for example, scientists at the National Institutes of Health and elsewhere finally completed assembly of the human genome. What had seemed impossible for so long came to pass. Suddenly, with great fanfare and the attention of the international scientific community, the announcement was made. The human genetic code had been broken.

Among other effects, the work of the Human Genome Project and sister efforts elsewhere has accelerated the ability of scientists to discover genetic ''markers'' for many serious and significant diseases that we may be able to avoid with the proper care and preventive treatment.

Unfortunately, great change such as this sometimes carries with it not only great promise, but also a potential for misuse. That occurs when what should be an exciting breakthrough becomes at the same time a source of fear. For example, some individuals who should have welcomed the new ability to test for markers of inherited diseases instead encountered fear that such information might also be used to deny them insurance coverage or employment security.

Ironically, for some, what could have been a life-saving tool became instead a means to harm the very people it was designed to protect. For too many, it was simply better not to know. Allow me to recount just a few real-life examples, drawn from testimony before NIH panels investigating this issue:

One woman, who suffers from a rare liver disorder, found that both she and her children were rejected by a major insurance company, even though both children were only passive carriers of the disease and would never suffer from it. Only after a news organization contacted the insurer was the denial reversed.

In another example, a woman with a family history of breast cancer found that she, too, carried the genetic marker for that disease—and as a result chose to have a precautionary mastectomy and hysterectomy. After that, her employer received a $13,000 annual increase in his small company's health insurance bill.

As a result, this woman's employer asked her to switch to her husband's insurance and told her that if she did so she would get a raise. Fearing that a switch in coverage would jeopardize her ability to be covered at all, she refused. The employer then raised the premium amounts charged to all his employees.

These accounts, and others like them, make the point very strongly for the need for us to act. Simply put, we need to act now to save lives.

We have before us today an important bill that will address the fault in the system and correct it. It was carefully crafted to alleviate the problems faced by people like those I have mentioned. It was designed to calm the fears of those who are hesitant to subject themselves to genetic tests, knowing that what safeguards are in place may prove to be inadequate. It is a bill to restore their confidence in the system and their faith that the process is fair.

Only if we pass this legislation now will we truly be able to encourage the scientific progress in this field. The science of genetics may well hold our best hope for combating many of our worst afflictions. However, genetics, like the rest of science, will progress best when ideas and information are freely exchanged.

As a former small businessman, I am sensitive to the concerns raised by some in the business community that this legislation might impose new liabilities on employers. I am confident, however, that after they become familiar with the provisions of this bill, such critics will see that it has been carefully written such that its enactment will reduce the risk that an employer will ever be dragged into court to face a claim of genetic discrimination.

It will not do this by letting employers and insurers off the hook. Far from it. Rather, what this bill will do is reduce litigation because its rules are clear, the exceptions are responsible, and the procedure is fair.

Simply put, neither will employees become victims of discrimination nor will employers be sued unreasonably. Why? Because this bill sets a standard for conduct that is easy to understand and easy to follow. We are far better off setting the rules of the road clearly and ''up front,'' rather than allowing them to be set piecemeal through litigation.

We also must act now to ensure legal uniformity and consistency nationwide. About half the States today have laws governing genetic information. However, these laws differ significantly from one another and do not always fully address the problem.

Once this legislation is signed into law we will have a clear, concise and uniform policy on genetic information that will make clear what is and is not an acceptable use for genetic information.

Over the course of the last Congress, I had the pleasure of working on this legislation with colleagues on both sides of the aisle. I thank the majority leader and Senators SNOWE, GREGG, KENNEDY, JEFFORDS, and others for their good efforts to reach a bipartisan agreement on this bill. It will make a difference in more lives than we will ever know.

If we pass this legislation, and pass it we must, we will have taken a great step forward and ensured that the initial breakthroughs of Dr. Watson and Dr. Crick, and the more recent ones by the National Genome Project, will continue to reap benefits for generations to come.

We will finally have a uniform policy in place to ensure that information retrieved from genetic testing will remain confidential and off limits to those who would be tempted to use it to discriminate.

As genetic technology continues to develop in the years to come, the beneficial impact on the public health and our individual lifestyles promises to be enormous. Enactment of the bill before us today will help America secure the realization of that promise.

I yield the floor and reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator is recognized.

Mr. KENNEDY. Mr. President, first I commend my friend and chairman of the Health, Education, Labor, and Pensions Committee, Senator ENZI, for his leadership in reporting out this legislation. As he has outlined, and as I will speak to in a moment, it is a matter of enormous importance to millions of Americans. He has outlined the reasons for that.

When we think back to the time Senator SNOWE and others introduced this legislation a number of years ago, there was a great deal of apprehension, a great deal of concern, and a good deal of opposition to this over that period of time. Due to a good deal of very hard, diligent work by the chairman here, by our staffs, and by many others on our committees, especially Senator JEFFORDS and Senator GREGG, Senator DODD, Senator HARKIN, Senator CLINTON, as well as Senator OLYMPIA SNOWE, we are about to successfully pass this legislation in a very strong bipartisan way, and they deserve great commendation at this time. I hope that with very strong bipartisan support it will send a good message to the House of Representatives that it is worthy to be done, necessary to be done, and has the great and overwhelming support of the American people. I hope we will see action.

I also thank the majority leader for scheduling this bill and giving it priority. As all of us know, BILL FRIST, a physician, knows the extraordinary potential of genetic research and its importance in improving the quality of medical care and in preventing, treating, and curing disease. I want to express our great appreciation to him for giving us the opportunity to speak this afternoon, with the completion of this bill either this evening or tomorrow. We thank him as well.

Throughout our history, the Nation has moved toward a more fair and more just society, often with great difficulty. Along the way, we had setbacks, even some failures. But we have had significant triumphs, too, especially in this past half century.

In 1964 the Congress enacted the Civil Rights Act to end one of the great evils of our time, discrimination against millions of our fellow citizens based on their race, color, religion, sex, or national origin. In 1965 we passed the Voting Rights Act to end discrimination in the right to vote.

In 1967, we passed another important law prohibiting age discrimination in employment.

In 1990, we passed the Americans with Disabilities Act to end discrimination against citizens with mental or physical handicaps.

In 1991, we strengthened the vital protections against job discrimination established in the 1964 Act.

Today we take another step in our national journey to a fairer and more just America by approving important legislation to end another insidious form of bias—discrimination based on the most personal aspect of any individuals, their unique genetic code.

Four years ago, we celebrated an accomplishment that once seemed unimaginable—deciphering the entire sequence of the human DNA code. This amazing accomplishment may well affect the 21st century as profoundly as the invention of the computer or the splitting of the atom affected the 20th century.

I personally believe this is the century of the life sciences with the greatest kind of hope and opportunity for progress in the life science area.

To cite but one example of why this legislation is so important, it was this new knowledge that enabled scientists to decipher the DNA sequence of the SARS virus only weeks after it was first identified.

The extraordinary promise of science to improve health and relieve suffering is in jeopardy, however, if our laws fail to provide adequate protections against abuse and misuse of genetic information.

The bipartisan bill the Senate considers today prohibits health insurers from using genetic information to deny health coverage or raise premiums.

It bars employers from using genetic information to make employment decisions. It prohibits insurers and employers from seeking genetic information, or requesting or requiring individuals to take genetic tests. It bars disclosure of genetic information by an insurer or employer, and provides effective remedies so that anyone who has suffered genetic discrimination can obtain relief.

Congress took an initial step in the right direction when we passed the Health Insurance Portability and Accountability Act. That landmark law established important protections to ensure that those who change their job or lose their job would not also lose their health insurance. It included also a prohibition on genetic discrimination in group health insurance.

The pending bill extends that prohibition to many other types of genetic discrimination, and I commend our colleague from Maine, Senator SNOWE, has been a principal leader on this vital issue for many years.

I also commend our distinguished chairman of the HELP Committee, Senator ENZI, for his impressive commitment to enacting this needed legislation by making it one of the very first items for committee action under his leadership. Other members of our committee have given time, energy and ideas to this important issue, especially Senator JEFFORDS, Senator GREGG, Senator DODD, and Senator HARKIN.

Our majority leader deserves great credit as well. As a physician, he knows the extraordinary potential of genetic research to improve the quality of medical care and prevent, treat, and cure disease. Hopefully, the bipartisan momentum will lead to an enactment of legislation this year.

Few kinds of information are more personal or more private than a person's genetic makeup. This information should not be shared by insurers or employers, or be used in decisions about health coverage or a job. It should only be used by patients and their doctors to make the best possible decisions on diagnosis and treatment.

I hope we can all agree that discrimination on the basis of a person's genetic traits is as unacceptable as discrimination on the basis of race or religion. No American should be denied health insurance or fired from a job because of a genetic test.

Last fall, witnesses on a panel of the National Institutes of Health testified about their first hand accounts of genetic discrimination. Even though they will never develop the disease, Heidi Williams' children were denied health insurance coverage because they are carriers for a genetic disorder. Phil Hardt's children feared discrimination so much that they sought genetic tests in secret, paying out of their own pockets and not using their real names.

During hearings in the House, Gary Avary told how his employer, the Burlington Northern Santa Fe Railroad, required any employee with carpal tunnel syndrome to have a genetic test. Employees who refused were threatened with penalties, or even the loss of their jobs.

Terri Seargent was discharged from her job at a private firm in North Carolina in 1999, 2 months after beginning very expensive treatment for a disease that was covered by her employer's health insurance plan. Since joining her employer in 1996, she had received positive annual performance ratings and generous annual raises. Yet she lost her job soon after the special treatment began.

Fear of genetic discrimination also prevents people from having genetic tests for hereditary cancer, which would provide them with life-saving information to help them prevent the onset of cancer or increase the likelihood of early diagnosis. In a recent study, only 57 percent of women decided to undergo testing for mutations in the breast cancer genes and only 43 percent of those at risk for colon cancer chose to have genetic testing. People fear cancer, but many also fear losing their jobs or their health insurance even more.

Experts in genetics are united in calling for strong protections to prevent this misuse and abuse of science.

The HHS advisory panel on genetic testing—with experts in law, science, medicine and business—has recommended unambiguously that federal legislation is needed to prohibit discrimination in employment or health insurance based on genetic information.

Francis Collins, the leader of the NIH project to sequence the human genome, said:

Genetic information and genetic technology can be used in ways that are fundamentally unjust . . . Already, people have lost their jobs, lost their health insurance, and lost their economic well-being because of the misuse of genetic information.

Genetic tests are becoming even cheaper today and more widely available. If we don't ban discrimination now, it may soon be routine for employers to use genetic tests to deny jobs to employees, based on their risk for disease.

When Congress enacts clear protections against genetic discrimination in employment and health insurance, all Americans will be able to enjoy the benefits of genetic research, free from the fear that their personal genetic information will be used against them.

If Congress fails to guarantee that genetic information is used only for legitimate purposes, we will squander the vast potential of genetic research to improve the nation's health.

Effective enforcement of the ban will also be essential. It makes no sense to enact legislation giving the American people the promise of protection against this form of discrimination, and then deny them the reality of that protection.

President Bush recognizes the seriousness of this problem, and supports a ban on genetic discrimination. As he said on June 26, 2001, ''genetic information should be an opportunity to prevent and treat disease, not an excuse for discrimination. Just as our nation addressed discrimination based on race, we must now prevent discrimination based on genetic information.''

I commend the President for his support, and I look forward to working with the administration to see that a strong bill on genetic discrimination is signed into law this year.

It is time for Congress to act, and I urge the Senate to pass this bipartisan bill with the broadest possible support.

I ask unanimous consent to have printed in the RECORD the strong statement of the American Academy of Pediatrics. They are concerned that discrimination will deny families access to health insurance for their children.

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

AMERICAN ACADEMY OF PEDIATRICS,
Elk Grove Village, IL, February 14, 2005.

Hon. EDWARD KENNEDY,
Ranking Member, Committee on Health, Education, Labor and Pensions, Washington, DC.

DEAR SENATOR KENNEDY: The American Academy of Pediatrics, an organization of 60,000 primary care pediatricians, pediatric medical subspecialists and pediatric surgical specialists dedicated to the health and well being of all infants, children, adolescents, and young adults, would like to express its strong support for S. 306, the Genetic Information Nondiscrimination Act.

The American Academy of Pediatrics strongly supports efforts to enhance, improve and expand the ability to provide newborn screening, counseling and health care services. Advances in genetic research promise great strides in the diagnosis and treatment of many childhood diseases, detected as early as the newborn period or later in childhood. With early identification and timely intervention, we have the ability to significantly reduce morbidity, mortality and associated disabilities in infants and children affected with certain genetic, metabolic and infectious conditions.

With these opportunities, however, we also have a responsibility to ensure that careful consideration is given to the testing and screening of children so that emerging technologies are used in ways that promote the best interest of patients and their families. Potential benefits of genetic screening and testing are limited by the risks of harm that may be done by gaining certain genetic information, including potential for discrimination by insurers and employers. Furthermore, the American Academy of Pediatrics is concerned that genetic discrimination is a barrier for families to access health insurance for their children. More than 9 million children are currently uninsured in this country, and millions more are underinsured. We will never achieve our goal of ensuring that every child has health insurance coverage if genetic discrimination is permitted.

For these reasons, the American Academy of Pediatrics supports passage of S. 306, which would protect children and families from genetic discrimination in health insurance and employment. The American Academy of Pediatrics commends you for your timely action on this legislation, and looks forward to working with you toward its passage into law.

Sincerely,

CAROL BERKOWITZ, M.D.,
President.

Mr. KENNEDY. Mr. President, the American Cancer Society supports our legislation. The American Osteopathic Association says access to health care should not be restricted on the basis of genetic testing. The American Society for Human Genetics; the biotechnology industry—all have made very important statements in support of this legislation, along with other organizations.

We suggest, for those who are following this debate, to refer to a July 2004 report titled ''Faces of Genetic Discrimination'' from the Coalition for Genetic Fairness. This is a wonderful document that I think has so much information. It lists the wide range of groups supporting this legislation, including the American Academy of Pediatrics, the American Cancer Society, the American Medical Association, the American Osteopathic Association, the American Society for Human Genetics, the Biotechnology Industry Organization, Hadassah, the Juvenile Diabetes Research Foundation, the National Organizations of Rare Disorders, the National Workrights Institute, and the Society for Women's Health Research. It is a wonderful document that outlines the history and the opportunity of genetic research and technology.

Mr. ENZI. I yield 10 minutes to the Senator from Maine, Ms. SNOWE.

The PRESIDING OFFICER. The Senator from Maine.

Ms. SNOWE. Mr. President, I thank, first and foremost, the chairman of the Health, Education, Labor, and Pensions Committee, the HELP Committee, Senator ENZI, for his commitment and for moving this legislation out of the committee as the first of a group of health-related bills to be referred out of his committee as the new leader, the chair of this committee this year. I thank the chairman for doing so and I express my gratitude to him. This sends a very significant message to the House of Representatives of the importance and the value of this initiative. Senator ENZI not only as chair of this committee but previously was instrumental for participating in negotiations for more than 16 months to help fashion a consensus on the legislation now before the Senate and that was enacted through his committee, as well. I thank him for his leadership that made it possible to bring this legislation to the Senate.

I also express my appreciation to my colleague on the other side of the aisle, Senator KENNEDY, as ranking member of the HELP Committee, who has been a longtime champion of protection for an individual's private health information, dedicating himself over the past year and a half toward forging a bipartisan solution to this issue.

Also, as a result of the considerable yeoman efforts of the Senate majority leader, a major breakthrough occurred on this legislative initiative. The Senate majority leader agreed to the necessity of this legislation the last few years in making it possible. It was due in large measure to his stalwart efforts in working with me and others such as

Senator ENZI and Senator KENNEDY, and Senator JEFFORDS, who has been a collaborator on this issue for 8 years, which made it possible to forge this bipartisan effort. I thank the Senate majority leader because he, obviously, was pivotal in ensuring we could pave the way for the passage of this legislation as we did last fall in October with unanimous support. Hopefully, we will receive the same support for this initiative today, as well. I thank the leader for giving his support and vital efforts to making this possible. I thank him for his vision and tireless support.

Also, I thank Senator GREGG who last year dedicated significant time and staff resources when he was the previous chair of the committee and for helping to make it a priority of his committee last year when he chaired the HELP Committee.

Also, Senator DODD has been deeply committed to fighting to ensure that consumers have the strongest possible protections afforded to them with the passage of this legislation.

Since April of 1996 when I first introduced the Genetic Information Nondiscrimination Health Insurance Act, along with my colleague, Senator JEFFORDS, science has continued to hurtle forward, further opening the door to early detection and medical intervention through the discovery and identification of specific genes linked to diseases such as breast cancer, Huntington's disease, glaucoma, colon cancer, and cystic fibrosis.

We recognized in 1996 with progress in the field of genetics accelerating at a breathtaking pace that we must ensure the fast arriving scientific advances in treatment and prevention of diseases do not advance a new basis for discrimination. As with countless scientific breakthroughs in history, the eventual completion of the genome project not only brought the prospects of medical advances such as improved detection and earlier intervention but also the potential for harm and abuse.

Every day since that breakthrough, the American people have been vulnerable to this type of discrimination. The everyday risk of discrimination has inhibited the full use of this vast, still untapped reservoir of knowledge.

As I have said previously, the fear of repercussions from one's genetic makeup was brought home to me through the real-life experience of one of my constituents, Bonnie Lee Tucker. In 1997, Bonnie Lee wrote to me and told me she was too afraid to have the BRCA test for breast cancer, even though nine women in her immediate family were diagnosed with breast cancer and she herself was a survivor. She was worried that knowledge might damage her daughter's ability to obtain insurance in the future.

Bonnie Lee was not alone in her fear. When the National Institutes of Health offered women genetic testing, nearly 32 percent of those who were offered a test for breast cancer risk declined to take it, citing concerns about health insurance discrimination.

What value is scientific progress if it cannot be applied to those who would most benefit?

I recall the testimony before Congress of Dr. Francis Collins, the Director of the National Human Genome Research Institute, without whom we would not have reached this day. In speaking of the next step for those involved in the genome project, he explained the project scientists were engaged in a major endeavor to ''uncover the connections between particular genes and particular diseases,'' to apply the knowledge they just unlocked. In order to accomplish this, he said:

> We need a vigorous research enterprise with the involvement of large numbers of individuals, so that we can draw more precise connections between a particular spelling of a gene and a particular outcome.

With all this tremendous potential, this effort cannot reach its full promise if patients have a reason to feel repercussions of genetic test results. Given the advances in science, there are two distinct concerns at hand. The first, of course, is discrimination by health insurance. The second is employment discrimination based simply upon an individual's genetic information. This legislation addresses both of these issues based on the firm foundation of current law.

With regard to health insurance, these are clear and familiar issues which the Senate has previously debated in the context of larger patient privacy issues. Indeed, as Congress considered what now is known as the Health Insurance Portability and Accountability Act of 1996, we also addressed medical information privacy. Moreover, any legislation that seeks to fully address these issues must consider the interaction of the new protections with the privacy rule which was mandated by HIPAA and our legislation which accomplishes just that.

Specifically, we clarify the protections of genetic information as well as the request to receive a genetic test from being used by the insurer against the patient. The fact is, genetic information only detects the potential for genetically linked disease or disorder. And potential does not equal a diagnosis of disease.

It is critical this information be available to health care professionals to diagnosis or treat an illness. Without the protection which this bill offers, patients will not be able to take advantage of our ever-increasing knowledge of genetics.

On the subject of employment discrimination, unlike our legislative history in debating health privacy matters, the issue surrounding protecting genetic information from workplace discrimination is not as extensive.

To that end, our bipartisan bill institutes these protections in the workplace. There should be no question of this necessity. Indeed, it is an imperative. The threat of employment discrimination is not hypothetical, and therefore it is essential that we take this information off the table, so to speak, before such abuse becomes widespread. While Congress has not yet debated this specific type of employment discrimination, we have considerable case law and legislative history on which to build.

Indeed, as we considered the necessity for this type of protection, we agreed that we must extend current discrimination protections to genetic information. We reviewed current employment discrimination law and possible remedies for instances of genetic discrimination and whether they should differ from existing remedies under current law, such as the American Disabilities Act or the EEOC. This bill creates new protections by paralleling current law and clarifying the remedies available to victims of discrimination. So regardless of their religion, race, or DNA, people will all receive the same protections under the law. There will be an across-the-board Federal standard which becomes so critical to fundamental protections under the law.

It has been more than 4 years since the completion of the working draft of the human genome. Like a book that sits unopened, the wonders of the human genome are useless if it is compromised by the fear of discrimination. This legislation is a shining example of what can be accomplished when we set aside partisan differences in order to address the challenges facing the American people.

I urge my colleagues to support this legislation. Again, I thank the chair of the committee for his instrumental and pivotal leadership to bring this legislation to the floor.

Mr. President, I yield the floor.

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

The Senator from Wyoming.

Mr. ENZI. Mr. President, I thank the Senator from Maine for her persistence, her enthusiasm, her perseverance, and particularly her reasonableness in dealing with this issue, recognizing how important it is and how important it is to get it done now.

I say to the Senator, you have just done tremendous work at pulling everybody together. I recognize that effort. Without your efforts, this would not have been possible. So I thank you for bringing it to this point.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I yield myself 4 minutes.

I had mentioned earlier the great leadership that the Senator from Maine has been providing. She has been a noble soul since the very cold winter when she first introduced this legislation. Now she deserves great credit that we are at point.

Just on that point, I wish to recognize Representative SLAUGHTER in the House of Representatives. She has been a great advocate over a long period of

time. I want the Senate Record to reflect that.

I also want the Record to reflect the fact that President Clinton issued an Executive order banning genetic discrimination against Federal employees in the year 2000. It was limited, obviously, with his authority and power, to just Federal employees but, nonetheless, it was a significant step at that time.

I also draw attention to the strong support President Bush has given to this undertaking. In a radio broadcast, actually in 2001, he stated:

Genetic discrimination is unfair to workers and their families.

In that same radio broadcast he also stated:

To deny employment or insurance to a healthy person based only on predisposition violates our country's belief in equal treatment and individual merit.

We also have the strong letter of support from the Secretary of HHS, Tommy Thompson, from last year. There is also the statement from the administration, this year, in support.

I just mention one final point. Out at the National Institutes of Health, where they really do the best of the research—it is really the gold standard of research—they have important genetic research out there. In their information sheet, they have what we call the consent form. This is the consent form that any individual who wants to participate in genetic research at NIH signs. It says:

We will not release any information about you or your family to your insurance company or employer without your permission. However, instances are known in which genetic information has been obtained through legal means by third parties. This may affect you or your family's ability to get health insurance and/or a job.

Here is the premier workplace in the world doing the most significant, important research in genetics, which is so incredibly important, just raising this as a very real potential danger. It will not be a danger when we get this legislation passed into law.

Finally, I also commend my friend, and our former leader, Senator Daschle, who had introduced important legislation in 1997 on this very subject matter. He was one of the early leaders in this battle.

Mr. President, I think we have speakers who are on their way. 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. ENZI. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Ms. SNOWE). Without objection, it is so ordered.

Mr. ENZI. Madam President, I yield 3 minutes for purposes of a colloquy with my friend, the Senator from Oklahoma.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. COBURN. Madam President, I thank Senator ENZI and all those who have worked hard on this bill. I have a few questions in terms of my concern about prenatal testing.

Do I understand from the remarks of the Senator from Wyoming that this legislation is directed against a wide range of cases with which individuals of families may be discriminated against in health insurance coverage based on the results of genetic tests conducted on any family member?

Mr. ENZI. Yes, that is correct.

Mr. COBURN. One example of such discrimination cited in the past is based on prenatal testing. A 1996 report by the National Academy of Sciences cited a case in which a California HMO threatened to deny health care coverage to a child because that child, before being born, antenatal, tested positive for a genetic defect associated with cystic fibrosis. Would this legislation protect against this type of discrimination?

Mr. ENZI. Madam President, yes. In the type of situation described, the legislation would prohibit the insurer from discriminating against both the mother and the child because of the result of the genetic test of the child. It is the intent of the legislation to prohibit insurers from denying coverage to either a child or the child's family members based on the results of prenatal testing.

Mr. COBURN. I thank the Senator. Based on that interpretation and my understanding that the Senator will ensure the conference report includes language that makes clear that a dependent child will be protected from discrimination under this legislation regardless of when the genetic information was acquired, including any information gained from ante- and prenatal testing, I will support the bill. I congratulate Senator ENZI and thank him for his hard work and for the colloquy.

Mr. ENZI. Madam President, I thank the Senator from Oklahoma for his careful concern and the depth with which he has been into the bill and the vast knowledge he has as a doctor which helps to get all those different perspectives that bring bills together. We thank him for his efforts.

I yield myself 6 minutes.

Answering the question of ''why do this bill now'' is very important. The most persistent question from the business community about this bill, and the most reasonable, is why now? Why should we create a new basis for lawsuits for a subject area where there is no record of abuse, on information that employers do not want or need, to prevent fear over hypothetical situations? Let me address this critical question head on because I asked it myself at the onset, and I have answered it to my satisfaction.

First, we are not legislating in the area of the unknown but in the area of hope. Genetic information holds the key to better diagnosis, better cures, better lives for all of the world's population. We have determined that a serious impediment to this progress is fear, fear that the information derived from the genetic tests will be used to harm the individual, fear that the usage of the information is creating reluctance and that it is leading to refusal to take tests. Every refused test is progress delayed for all mankind because it is only through testing that scientists will amass the knowledge to find the diagnostic tools and cures we so desperately desire. Considering the potential for discovery and the employer protections we have built into this legislation, I am confident we have struck the right balance. But the question remains, why now? Why not wait for greater proof of fear and abuse?

There are several reasons. For well over half the States, it is not too early to take action. We are seeing developed a hodgepodge of State laws that address the handling of genetic information and the banning of its use in the workplace and in insurance. There are patterns to these laws, but there are enormous inconsistencies. Likewise, Federal law is inconsistent. The Americans with Disabilities Act covers genetic matters if they are ''regarded as'' a disability, but the determination is subjective and likely to evolve on a case-by-case basis. The Civil Rights Acts of 1964, as amended in 1991, are also implicated.

In short, many questions remain over what is and what is not covered by existing Federal and State law. And history has taught us that unanswered questions breed lawsuits. With this legislation, we seek to answer questions and prevent litigation. We have the opportunity to write a clearly defined set of rules for the collection and preservation of genetic information and carefully proscribe its usage. That will prevent mistakes and abuse. Before anyone develops the desire or reason to harm our fellow citizens, a clear-cut set of rules established at the infancy of this amazing field of science will do greater good for businesses and insurers and the public than waiting for common law to develop.

I remind my colleagues and my friends in the private sector that lawyers are already looking for opportunities to sue for genetic discrimination under State laws, under the Americans With Disabilities Act, and under many other laws written for other purposes—hoping to cash in on this developing area of the law. This is one area where it is not appropriate to let nature take its course. I am not willing to abdicate this policymaking function and wait for the courts to decide on how laws should apply to a field of science that didn't exist when the laws we are talking about were written. That is the job of Congress.

It is also important to observe that there are few victims as of yet in this field of science and law, and that is a good thing. We want to keep it that way. The rules established in the Genetic Information Nondiscrimination

Act are clear and fair. We distinguish between the legitimate and illegitimate use of genetic information in the workplace. We ensure confidentiality and make it clear how employers are to do that. And from my perspective, most importantly, we have included every essential safeguard and exception to prevent this law from becoming a litigation nightmare for businesses.

In conclusion, let me state that it is no coincidence that the first major civil rights bill of this new Congress deals with a truly 21st century issue. While genetic discrimination may not be widespread at this time, this legislation ensures that discriminatory practices will never become common practice.

From the past, we have learned from employees, employers, insurers, and others all work best together when the rules are clear and opportunities for personal achievement and health are available. This legislation tells everyone what is expected of them and avoids the trip wires and uncertainty of some of our existing laws.

I reserve the remainder of my time. I suggest the absence of a quorum and ask unanimous consent that the time be equally divided.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ENZI. 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. ENZI. Mr. President, I have here a copy of the Genetic Information Nondiscrimination Act 2003, which was submitted by Senator GREGG, who was chairman at that time. We did not do a new report this time. The reason we did not is because the bill has not changed between then and now.

I strongly urge my colleagues to consult this report, Senate Committee Report 108–122, not only because of its excellent background and analysis, but also because it clearly illustrates much of the thinking and work behind why this bill was drafted as it was.

Mr. President, I ask unanimous consent that a Statement of Administration Policy, issued today, regarding genetic information be printed in the RECORD. The administration favors enactment of the statement this legislation and this statement gives some explanation.

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

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF MANAGEMENT AND BUDGET,
Washington, DC, February 16, 2005.

STATEMENT OF ADMINISTRATION POLICY, S. 306—GENETIC INFORMATION NONDISCRIMINATION ACT OF 2005

The administration favors enactment of legislation to prohibit the improper use of genetic information in health insurance and employment. The administration supports Senate passage of S. 306 as reported, which would prohibit group health plans and health insurers from denying coverage to a healthy individual or charging that person higher premiums based solely on a genetic predisposition to developing a disease in the future. The legislation also would bar employers from using individuals' genetic information when making hiring, firing, job placement, or promotion decisions.

The mapping of the human genome has led to more information about diseases and a better understanding of our genetic code. Scientists are pursuing new diagnostics, treatments, and cures based on this information, but the potential misuse of this information raises serious moral and legal issues. Concern about unwarranted use of genetic information threatens access to utilization of existing genetic tests as well as the ability to conduct further research. The administration wants to work with Congress to make genetic discrimination illegal and provide individuals with fair, reasonable protections against improper use of their genetic information.

Mr. ENZI. Mr. President, I yield the floor, reserve the remainder of the time, and suggest the absence of a quorum, and ask that the time be equally divided.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. GREGG. Mr. President, I ask unanimous consent I be allowed to speak for up to 10 minutes on the bill.

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

Mr. GREGG. Mr. President, first I rise to congratulate the Senator from Wyoming for assuming the chairmanship of the HELP Committee and moving forward on this exceptionally important piece of information, the Genetic Information Nondiscrimination Act of 2005. Quickly moving this legislation forward shows the priority the Senator from Wyoming places on straightening out our medical situation in this country, making delivery of health care more affordable, more thoughtful, and in this case free of discrimination.

This is the first civil rights act, really, of this century, for all intents and purposes. It is a major commitment to people of our country that they will not be discriminated against on the basis of their genetic code. Last year we celebrated the discovery by Dr. Watson and Dr. Crick of the double helix. Then we also celebrated the fact that NIH had mapped the human genome, that the DNA project was completed. Those were huge milestones which have had an exceptional impact on the quality of health care in this country. They will continue to have an expanding impact; the breadth and depth of influence on how we deliver health care and how people's health care is affected within our Nation cannot even be predicted. That is because, if you can define what your genetic code is, you can obviously make huge strides toward curing diseases which might potentially afflict anyone.

But this new science also created issues for us, public policy issues. One of the big public policy issues it created is the issue of discrimination based on your genetic code. Everybody has this problem—or has this benefit—or has this situation. We all have genes. This is a universal issue. It is something that impacts everyone.

So Congress has taken a long and in-depth look at how we should address this from a public health policy standpoint, working in a very bipartisan way under the leadership of Senator ENZI. Prior to that, I was chairman of this committee and we worked on this very aggressively with help across the aisle, of course, of Senator KENNEDY and members of the Democratic leadership on the committee.

Then, outside the committee itself, Senator FRIST and Senator SNOWE and others have played a major role in making sure that what we did in this area was thoughtful and had a purpose and accomplished the goal. The goal was to make sure that discrimination did not occur in the science of the human genome and that the science of the use of this information that genetics was going to produce could be best implemented so we didn't end up retarding the development and implementation of new cures. The goal was to address the concerns of people relative to their genetic history and the potential it has for them as they move forward in their lives so they are not impacted negatively by acts of discrimination which might chill people's willingness to use this genetic information or even obtain this genetic information in their interfacing with the health community.

This act is an effort, after a tremendous amount of work, to thoughtfully and intelligently address the issue of how we effectively promote the use of genetic information. It actually encouraged people to take advantage of this new science rather than have an atmosphere where people are limited or are discouraged from taking advantage of this new science.

We know, unfortunately, that the potential is there, and it has actually occurred. We have instances—a few, I admit, but there are specific instances—of discrimination occurring as a result of the person's genetic history or potential genetic history in the area of employment and in the area of health insurance. This is where this bill addresses those concerns.

It specifically addresses the issue of health insurance underwriting, and it specifically addresses the issue of employment. Its impact is that health insurance plans will not be able to deny eligibility for an employee into a health plan based on genetic information, and it prohibits health insurance

plans from charging higher premiums based on an individual's, or his or her family's, genetic information. It is very important.

It also does not allow an individual health insurance employer to request genetic information or to use a person's genetic information in their decisions on the hiring and firing of an individual.

It recognizes that all individuals, whether they are healthy or sick, and all medical information, whether genetic or otherwise, should be afforded the same protection under the law. And that is a critical point.

The practical implication of it is, if you have a family history where you sense or may think there may be a problem that you have because of your genetic makeup and you are not going forward and being tested, your willingness to see a doctor to see if that genetic problem may actually exist for you is not going to be limited because you are not going to be concerned with the fact, if that information comes forward or is obtained that it might be used to limit your ability to get a job, keep a job, or get health insurance, or keep health insurance, or, alternatively, that your children or children's children might also, if the genetic information is confirmed, be subject to discrimination for work or for obtaining insurance.

It will allow people to be much more aggressive in using this brand new science to assist them in getting their health in order and making sure that people and their children are properly screened for what can be produced from genetic information.

This is going to be such a hugely valuable tool for our society and for people. There should be nothing in our society which says to people you really can't afford to do this, because if you take this type of test, you see this doctor, if you have this type of review, you are going to find out something that might lead to your quality of life being dramatically reduced because you lose your job or you lose your insurance.

The legislation is appropriate. Those who questions its need, do so out of legitimate concern that it is a new Government law, new Federal legislation, and they do not see that the problem exists, I guess, in many instances or, if it does exist, they don't think it is significant enough to address. To those folks, I would simply say this: Yes, the problem does exist. Yes, we have instances of discrimination occurring both in the workplace and in the insurance industry. They have been limited but, more importantly than that, this is a science which holds such tremendous potential for dramatically improving the way we deliver health care as a society that we do not want anything to stand in its way to chill its use or to undermine the willingness of Americans to participate in studies of themselves or their families or their genealogy which might undermine the advantage which this new science gives them in getting better health care.

It is an appropriate piece of legislation. I think it puts the emphasis in the right place, which is reasoned and appropriate in how we handle genetic information and we avoid discrimination in the use of that information.

Again, I congratulate Senator ENZI for setting this out as the first item he has moved out of the HELP Committee under his chairmanship. It reflects his commitment to making sure health care in this country is not only of a better quality, but that the science that backs up health care continues to be robust as it pursues cures for all Americans.

I yield the floor.

Mr. ENZI. Mr. President, I thank and congratulate the Senator from New Hampshire, Mr. GREGG, for his efforts on this bill. He was actually the committee chairman who made sure that all the parties came together, which around here is no small task, and came up with this package that does what our purpose was. He did it with such diligence, care, and completeness.

Rather than take the time to put out a new committee book about the bill, we used his book. It gives an explanation, and it also shows that the bill didn't need to be changed from what he had. So it is actually Senator GREGG's efforts that brought this bill to the floor and brought it in this complete fashion and moved it along so quickly. We thank him for all of his information and help.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, we are now considering a bill that I am pleased to have cosponsored and which I worked on with my colleagues for a number of years, the Genetic Information Nondiscrimination Act of 2005.

I thank our chairman, Senator ENZI, for expeditiously bringing this to the floor and guiding it, hopefully, to early passage tomorrow.

I also compliment Senator SNOWE on being the chief sponsor of this bill, and for being in the forefront of this fight to protect people who want to understand perhaps the predispositions they might have for any illnesses because of their genetic history.

As we know, the bill makes it illegal for an employer or health insurer to discriminate against an individual based on genetic information.

The good news is that advances in genetics have opened major opportunities for medical programs. We are now able to diagnose and treat diseases earlier and more efficiently than ever before.

Again, my deepest thanks to Francis Collins for his great leadership at the National Human Genome Institute, for guiding and directing the mapping and the sequencing of the human gene. He has provided great leadership. I have followed it since Dr. Collins first took over, I think back in 1993, if I am not mistaken. It has just been amazing to watch this happen.

Some people said it was going to take 15 to 20 years to get this done, but thanks to Dr. Collins and his leadership and the great staff that he assembled at the National Human Genome Institute, we completed the entire mapping and sequencing by April of 2003.

We have this great information. You can go right on the Internet and you can find it all right there. It is all out there for the entire world to use. Quite frankly, they are using this genetic information on the human gene to understand and to do more research into the background of many of our illnesses that have genetic markers for them.

As a result, we are now able to diagnose and treat diseases earlier and more efficiently than ever before. I can daresay that in the years to come we are going to have more and more breakthroughs by scientists who are using this toolbox—as I have often called it—of genetic information that we have derived from the mapping and sequencing of the human genome.

That is the good news. The bad news is that this same genetic information could be used by employers or insurance companies to discriminate in hiring or in insurance decisions. Health insurers could charge higher copayments or deny coverage altogether to individuals who have a genetic predisposition for certain diseases.

When we passed the Americans With Disabilities Act in 1990, we had little understanding of the range of genetic information that could be used by employers and health insurers to discriminate.

The problem is that the ADA does not expressly address genetic discrimination. What is more, the Supreme Court has made it more difficult to apply the ADA to discrimination based on the genetic information.

I think there have been mistaken decisions of the Supreme Court, but, nonetheless, they have spoken.

It is incumbent upon us to pass legislation to clarify this. That is what this bill is all about—prohibiting enrollment restrictions and premium adjustments based on an insurer's ability to determine someone's genetic makeup. The bill prohibits employers from discriminating and hiring discrimination.

We want people to access the diagnostic tools scientists and researchers have and will come up with in the future so they can take steps to protect themselves to prevent perhaps the onset of an illness that can be caused by a genetic predisposition. For example, there could be a genetic marker, as we know, for breast cancer. Both of my sisters passed away from breast cancer at too early an age. They had families and their children are grown up; now they have children who are growing up. Of course, there is a great concern among them about the genetic background of their mother, or grandmother in this case. They should, if they want to, be able to access information to better protect themselves. They should know if they get early screening, early mammograms, and

whether they might want to control their diet so they would be more acutely aware the earlier they detected this, if, God forbid, it should happen to one of them, that they would be able to address that and to live full and meaningful lives.

We know if breast cancer is addressed early, the chances of someone surviving and living a whole, full life is great. So many people do not detect it early is the problem. We want people to access the diagnostic tools and not be afraid that if they get this information, they might lose their job, their health care premiums would go up, that sort of thing. That is what this bill is about.

I thank my colleague and my friend from Wyoming, the chairman of our committee, for bringing this expeditiously to the Senate floor. Hopefully, the House will take steps also to pass it very soon, and we can send it to the President. It is incumbent upon the House to take prompt action and get it to the President's desk as soon as possible.

WELLNESS

While I am here, I diverge a little bit, but not a lot, to briefly mention an issue that does not relate directly to the provisions of the bill but does relate to the issue of prevention and the issue of health and how much money we are spending in this country. I will talk about the issue of wellness and the role that Government can play in promoting wellness and prevention in order to help address a crisis in our health care system, the crisis of exploding costs.

As the Senate takes important bipartisan steps forward to prohibit discrimination based on genetic information, as we are doing here today, we can and must take bipartisan steps forward to promote wellness. We have heard a lot recently about the projected shortfall in Social Security over the next 75 years of $3.7 trillion. That is a lot of money in anyone's book. That is over the next 75 years. That pales compared to the shortfall in Medicare, which is estimated to be $17 trillion. That is the real crisis. Social Security is not a crisis; the real crisis is Medicare.

It is not only the Federal budget that is being eaten alive, it is State budgets, family budgets, it is corporate budgets. Look at the numbers: Some 75 percent of health care costs in the United States are accounted for by chronic conditions and diseases, many of which are preventable. Last year, nationally, we spent more than $100 billion on obesity alone. Medicare and Medicaid picked up almost half that tab. There was an address the other day by the chairman of General Motors talking about what it is doing to their company: $1,500 of the cost of every car they produce is now because of health care insurance costs.

It is unwise uneconomic and totally unsustainable. If we are going to control Medicare and Medicaid costs and private sector health care costs as well, we need a significant, even a radical change of course in our country. We need a fundamental paradigm shift away from a sick care system. That is what we have now. In other words, if you get sick, you get care, but there is precious little out there now that encourages and gives incentives to stay healthy in the first place. We need a paradigm shift toward preventing disease, promoting good nutrition, encouraging fitness and wellness. This will be good for the physical health of the American people, and it will be good for the fiscal health of government, corporations, private businesses, and family budgets.

I believe strongly in personal responsibility. I believe people should take charge of their own health. I also believe in corporate responsibility, community responsibility, and government responsibility. I make no bones about it: It is past time for the Federal Government to step to the plate in a very robust way.

To that end, I introduced the HELP America Act last year, otherwise known as the Healthier Lifestyle and Prevention Act. This legislation takes a comprehensive approach to wellness and prevention. It provides tools and incentives to schools, employers, and communities. It aims to create better nutrition, physical activity, and mental health opportunities for kids in schools. I saw some data recently that said that 80 percent of elementary school kids in America today get less than 1 hour of physical exercise a week in school. That is unconscionable. We have to have better physical activity and nutrition for our kids in school.

The bill creates better nutrition, physical activity, and mental health opportunities for kids in school. It gives the Federal Trade Commission authority to regulate unfair marketing to children, especially junk food. It provides incentives to build paths, safe sidewalks and bike paths. It requires nutrition labeling on menus in chain restaurants. It does a lot more than that.

The HELP America Act is comprehensive. It is ambitious. But it is only at the beginning of a long legislative process. I am confident over time we can build a bipartisan consensus to move the Federal Government toward wellness, prevention, away from sickness, more in keeping people healthy. We have already made some progress.

Several elements of the HELP America Act passed late last year. For example, we secured $440 million for research at the National Institutes of Health into the causes and cures of obesity. We sent more than $50 million in grants to States to fund programs to address nutrition, physical activity, and obesity. We secured some $114 million for tobacco prevention and cessation activities at the Centers for Disease Control and Prevention. We also expanded the fresh fruit and vegetable program.

Three years ago when we passed the farm bill, I put a provision in there to test a theory. My theory was if we gave kids in school free fresh fruits and vegetables—not just at lunch but anytime during the day—they would eat them, they would like them, they would not be putting money in the vending machine to buy junk food, they would study better, they would be better behaved, and everyone would benefit. So we tried out the theory. We got a small amount of money in the farm bill. We took 4 States, 25 schools in each State, 100 schools, and 1 Indian reservation in Arizona. We provided enough money to bring free fresh fruits and vegetables into these schools. What has happened? In each one of those schools, it has been a resounding success. Not one of those schools has asked to be taken off the program. In fact, every single one of them has asked, please, don't take this away.

We have now gone from four States to nine States. We have gone from 100 schools to a little over 200 schools. It is growing. Visit one of these schools where these kids get the free fresh fruits and vegetables.

These little kids in school, at about 9:30 in the morning, get the ''growlies,'' they get a little antsy. If they have an apple to eat or an orange or a clementine or kiwi fruit or a banana or grapes, or they get fresh broccoli in the afternoon or cauliflower or carrot sticks, you would be amazed how much they eat of these fruits and vegetables.

As I said, the teachers love it. The principals find it is a great system. Even parents now are weighing in. Parents love it. Kids are even going home and asking their parents to buy these at grocery stores. Again, I mention that because this is getting to the early part, getting kids to eat the proper foods, getting them tuned in to fresh fruits and vegetables at an early age. But there is so much we have to do. It is time for the Federal Government to start moving in that direction. If we do not, we are never going to be able to save Medicare and Medicaid, we are never going to be able to pay for it. It is going to bust us.

So we have to start preventing, we have to start keeping people healthy in the first place. That is what this is all about—so that we have taken some positive steps forward. They are small steps, kind of baby steps, but I am convinced there is a solid, bipartisan consensus to pursue this course of wellness and prevention. I know that Senator FRIST has been one of the great leaders in this area of prevention and wellness. I look forward to working on this agenda with my colleagues of both parties in the months ahead. I hope we can get a strong, bipartisan effort.

I hope the President, who, by the way, is a great example of physical fitness—though I may have some disagreements with the President on some things, that is one thing I agree with him on. He is good at physical fitness. He does not smoke. He does not drink.

As far as I know, he eats well and exercises well.

WISHING SENATOR SPECTER WELL

Mr. President, I understand this is now on the news wires, so I want to comment on something that has just come to my attention this afternoon. I received a call from one of the best friends I have ever had, a close friend here in the Senate, someone whom I have admired for his personal qualities as well as for his senatorial qualities for so many years. I have been privileged to work with him side by side now going back almost 20 years.

I received a call a little while ago from Senator SPECTER of Pennsylvania, who informed me that doctors at the University of Pennsylvania Hospital had diagnosed him with Hodgkin's disease. Well, it kind of took my breath away. There is no one for whom I have a higher regard than Senator ARLEN SPECTER. I think how hard he has worked to double the funding for NIH for basic research, and then to have this happen. But he assured me that it is at an early stage. The doctors have said he has an excellent chance of full recovery and will be back here very soon after our break next week. He will have to undergo some treatments, but I understand the doctors say that ARLEN SPECTER has an excellent chance of full recovery.

I know all of my colleagues wish him the best. Our prayers are with him. We know he is a strong person. He has a strong will. He is a person of strong faith. And we know that his will and his faith will carry him through. I know we will have Senator SPECTER back here with us leading the charge to make sure we address the real needs of health care and biomedical research, to make sure we fulfill our obligations in education in this country, where he has been a great leader.

Again, Mr. President, we wish Senator SPECTER well, a full and speedy recovery, and look forward to having him back here as soon as possible.

With that, Mr. President, I yield the floor.

TITLE XVIII

Mr. GRASSLEY. Mr. President, it has come to my attention that S. 306 includes a provision to amend title XVIII of the Social Security Act. As chairman of the committee, I am obligated to point out that the Finance Committee has primary jurisdiction over title XVIII, as amended. The provision in S. 306 that is within the jurisdiction of the Finance Committee amends title XVIII relating to Medicare supplemental policies. I ask Chairman ENZI to acknowledge that the Senate Finance Committee has jurisdiction over title XVIII of the Social Security Act and ask that he endeavor to consult on matters before the Health, Education, Labor & Pensions Committee that touch on the Senate Finance Committee's jurisdiction.

In order to avoid unnecessary confusion as to the jurisdiction of the Finance Committee or further delay in the consideration of this bill, I would agree to accommodate your request to withhold any objection to the Senate's consideration of S. 306 with the acknowledgment that this provision and title XVIII generally are in the jurisdiction of the Finance Committee. This does not represent any waiver of jurisdiction on the part of the Finance Committee on this subject.

I ask the chairman of the HELP Committee, Senator ENZI, whether he would agree to this request.

Mr. ENZI. Mr. President, I tell my friend that I do acknowledge that title XVIII of the Social Security Act is within the jurisdiction of the Senate Finance Committee. The matter before the Senate makes amendments to the Employee Retirement and Income Security Act and the Public Health Service Act. The section to which you have raised concerns was included as a conforming amendment to ensure consistency in Federal policy. I want to reassure my friend that I have every intention of respecting the jurisdiction of all Senate committees and will endeavor to consult with him on all matters before my committee that touch on the jurisdiction of the Senate Finance Committee. I ask my friend to provide me the same courtesy.

Mr. GRASSLEY. I agree and will also endeavor to consult with the Senator on matters before the Senate Finance Committee that are in the jurisdiction of the HELP Committee.

Mr. JEFFORDS. Mr. President, all of us are privileged to be living in an era of unprecedented scientific discovery in the biological sciences. Since 1953, when James Watson and Francis Crick first identified the structure of DNA or the double helix we have relentlessly increased our ability to decipher an individual's hereditary information. At the time of their discovery, Watson and Crick said that they had ''found the secret of life'' and to be certain, life, as we know it, has not been the same since.

Today, we have the entire genetic map—the human genome—that is revealing a greater understanding of a range of diseases and their treatment. We also have a much greater capacity to know an individual's biological destiny as it is encoded in their DNA, which is essentially a personal genetic blueprint of their current biology as well as a predictor of their biological future. The benefit of knowing this information cannot be overstated. It can save countless lives. Part of the challenge of having this information is to ensure that it not be used unfairly to influence an individual's sociological destiny.

This is the reason I am joining with Senator SNOWE and our other colleagues in support of S. 306, the Genetic Information Nondiscrimination Act of 2005. S. 306 will prohibit discrimination against individuals based on their genetic makeup in both health insurance and employment. This legislation represents a major contribution to civil rights law. It is a victory for consumers, health insurers and health care providers; and it is a victory for employees and employers. It is the result of almost seven years of effort and it is identical to a measure that passed the Senate during the 108th Congress by a vote of 95 to 0.

Together with the much-deserved excitement over the potential of genetic research, there have also been longstanding concerns that genetic information, in the wrong hands, could be misused. Many people have argued that an individual's genetic information which may indicate a predisposition to a particular disease could be used to deny that individual health insurance or employment opportunities. The promise of better health would instead become a potential for greater discrimination and disadvantage. The Genetic Information Nondiscrimination Act of 2005 is designed to address those concerns.

Existing antidiscrimination law has been enacted over the years as a means of correcting longstanding abuses in voter rights, employment, housing and education. However, under current law a person who has suffered employment or health insurance discrimination because of their genetic makeup has very little, if any, recourse to legal remedies. This legislation addresses this problem by creating new enforceable rights for individuals similar to those available under existing civil rights, education and fair employment law.

It is important to note that to date, there has not been a pattern or clear prevalence of genetic discrimination. However, there is anecdotal evidence that people have refused to take genetic tests because of their fear that the predictive information would lead to discrimination. We know the science is rapidly moving forward and we are learning more every day about the ''predictive'' correlation between genetic markers and certain diseases. It is not difficult to imagine such discrimination occurring in the near future. So in a sense, we can take that rare opportunity to be ahead of the curve and enact legislation to preempt discriminatory practices and prevent them from ever happening.

I believe the compromise legislation we consider today will be successful in preventing abuses in the insuring of health services and employment. However, it is extremely important that we remain vigilant against this type of discrimination from ever getting a foothold in our society and if this measure proves insufficient and needs to be strengthened, then we will be back to correct the problems and that effort will have my support.

As I mentioned earlier, the genesis of this legislation links to many years of effort on the part of several of our colleagues. My friend, Senator SNOWE, has for many years been the leader of one

effort in which I was proud to join, together with Senators FRIST, ENZI, COLLINS and HAGEL. In another keystone effort, the previous minority leader, Senator Daschle, joined with Senators KENNEDY, DODD and HARKIN to delineate the need for employment protections. All have contributed extensively to a better understanding of the many critical and complex definitions that are the heart of this legislation. We could not have been successful last Congress in weaving an agreement between these bills without the commitment of Senator GREGG, who as chairman of the HELP Committee during the 108th Congress, devoted his energies to finding a middle ground that made today's bipartisan agreements possible. Finally, I commend Senator ENZI, the current chairman of the HELP Committee, not only because he elevated the importance of this bill by moving it to the front of the legislative calendar, but also for the many years of effort he has dedicated to seeing this measure enacted. It is wholly appropriate that he is there as chairman to see it cross the legislative finish line.

Mr. President, I am pleased at the willingness both sides have shown to work through the many difficult aspects of this key issue. Through many meetings and discussions, we have been able to reach agreements on an array of important issues that have improved and strengthened the legislation. I look forward to continuing this cooperative approach as we move to enact this important and landmark initiative and I urge our colleagues in the House to pass it in the near. The President supports this legislation, and it is my hope that we can enact it into law before the end of this Congress. I urge all of my colleagues to vote in its favor.

Mrs. CLINTON. I rise today to express my support for S. 306, the Genetic Nondiscrimination Act. I am proud to be an original cosponsor of this bill, and I thank Senator SNOWE for her leadership on this issue. I urge my colleagues to vote for passage of this important legislation.

The Genetic Nondiscrimination Act is a crucial first step to protecting individuals and families from genetic discrimination. This legislation prevents insurers from denying coverage or raising premiums based upon the results of genetic tests. It prohibits insurance companies and employers from requiring individuals to undergo genetic testing. And finally, this legislation protects workers from employment discrimination based on their genetic information.

Genetic testing holds great promise for medicine. Knowing you are prone to cancer or heart disease or Lou Gehrig's disease may give you a fighting chance. But just try, with that information in hand, to get health insurance in a system without strong protections against discrimination for pre-existing or genetic conditions. As genetic information allows us to predict illness with greater certainty, these tests threaten to turn the most susceptible patients into the most vulnerable.

Each vaunted scientific breakthrough brings with it new challenges to our health system and this legislation will help maximize advancing technology's benefits while protecting Americans from the use of genetic information as a tool for discrimination. With this bill, we can help patients access the latest advances in science without sacrificing their personal privacy.

Genetic discrimination has many victims: those who are denied health coverage, those who lose job opportunities, and those who forego important tests out of fear that they will be victimized. We should encourage people to learn more about their health so that they can make informed decisions about treatment and care, not discourage them from seeking information with threats of unemployment or loss of insurance.

By passing the Genetic Nondiscrimination Act into law, we will address at the Federal level an issue that has been recognized by a majority of states. More than 40 States have enacted genetic nondiscrimination provisions, and I believe that it is far past the time for Congress to follow suit.

I would also like to note that the Genetic Nondiscrimination Act, while a good first step, is only the beginning of our work in this area. Many who have long championed genetic nondiscrimination support stronger protections and tough enforcement provisions.

Passing the Genetic Nondiscrimination Act will help to put a necessary framework in place and we will need the same commitment to action in the future to reinforce this framework, and provide strong, reliable enforcement for the important civil right that we are defending today.

Again, I would urge my colleagues to support the passage of the Genetic Nondiscrimination Act. I also urge the House to take up this matter as quickly as possible, to protect the millions of patients that might benefit from genetic testing.

Mr. CORZINE. Mr. President, I am pleased that today the Senate is considering legislation designed to prohibit discrimination in health insurance and employment based on genetic information.

In the last decade, biomedical researchers have made great strides in genetic research. While these discoveries are critical to researching treatments and, ultimately, discovering cures for many diseases, this information also has the potential to be used to deny health care insurance or employment to an individual who has a genetic predisposition to an illness. That is why we must make it illegal for employers and health insurers to discriminate against individuals on the basis of their genetic information.

S. 306 is an important step, but it is only a first step. Any legislation addressing this issue must include strong enforcement and deterrence mechanisms. As this legislation moves forward, I hope its enforcement provisions will be strengthened. Without strong accountability provisions, there is little to deter employers and health insurers from using genetic information inappropriately.

In addition, I hope that when this legislation is conferenced, the conferees will find ways to strengthen the privacy provisions. It is essential that our laws keep pace with technological advances and that we continue to protect the privacy of our citizens. Advances in technology cannot place fundamental American rights at risk.

Despite my concerns about the enforcement and privacy provisions, I believe this legislation is a critical first step and look forward to working with my colleagues to continue addressing the important issue of genetic discrimination.

Mr. DODD. Mr. President, I rise today to speak in support of S. 306, the Genetic Information Nondiscrimination Act. Before I talk about why this bill is so crucial, I want to thank the chairman and ranking member of the HELP Committee, Senator ENZI and Senator KENNEDY, for their efforts on this bill, and for making it one of their first priorities in the 109th Congress. Their action sends a strong signal about the importance of this legislation.

I would be remiss if I did not also mention the dedication to this issue shown by our former Democratic leader, Senator Tom Daschle. We are in a position to pass this bill today as a direct result of the work done by Senator Daschle.

Many of us, on both sides of the aisle, saw the need several years ago for legally enforceable rules to maximize the potential benefits of genetic information—and minimize its potential dangers. I have worked on this issue with many of my colleagues since the 105th Congress. I have chaired a hearing in the HELP Committee, and I have introduced legislation with several of my colleagues, notably Senator Daschle, Senator KENNEDY, and Senator HARKIN, going back to the 106th Congress.

The legislation that we will consider today is a bipartisan compromise between our bill, and a similar bill introduced by Senator SNOWE and others. It represents a culmination of the efforts of many of us to establish such rules. It is an enormous step forward, and I would like to acknowledge the hard work of everyone who was involved in crafting this legislation.

Over the past decade, the science of genetics has developed at an astonishing pace. The mapping of the human genome is undoubtedly one of the greatest scientific achievements of this generation. We have not even completely grasped the wide array of potential benefits that may come from our newfound genetic knowledge.

Certainly, the impact on our health will be profound. Doctors will be able

to read our unique genetic blueprints and predict the likelihood of developing diseases such as cancer, Alzheimer's, or Parkinson's. They will also be able to use an individual's genetic information to develop treatments for these same diseases, and target individuals with the treatment that will work best for them. This is not science fiction. It is already beginning to happen.

For all the promise of the genetic age, there is also an inherent threat. Science has outpaced the law and Americans are worried, and rightly so, that their genetic information will be used—not to improve their health—but to deny them health insurance or employment. There is no information more personal and private than genetic information—and no information more worthy of special protection. Our genetic code is the very blueprint of our selves. It is with us from birth, and to some extent it determines who we will become. What an incredibly powerful tool, with its vast potential to help us live healthier lives. But the nature of genetic information also makes it dangerous to the individual if used incorrectly.

This bill provides significant new protections against the misuse of genetic information. It ensures that Americans who are genetically predisposed to health conditions will not lose or be denied health insurance, jobs, or promotions based on their genetic makeup. Reaching an agreement on this legislation means that our laws dealing with genetic information can begin to catch up to the reality of our technological capability in the field.

With these protections in place, individuals need not feel reluctant to get the tests that may save or improve their lives. Although the Americans with Disabilities Act, ADA, and the Health Insurance Portability and Accountability Act, HIPAA, took important steps towards preventing genetic discrimination, this legislation is more specifically tailored to prohibiting its misuse. Health plans and health insurance issuers will not be allowed to underwrite, determine premiums, or decide on eligibility for enrollment based on genetic information. Employers will not be allowed to alter hiring practices based on genetic information. The American public can feel secure in the knowledge that their genetic blueprint will not be used to harm them, that a genetic marker indicating a possible illness later in life will not cause them to lose a job or health insurance.

Like any compromise, this bill is not perfect. In particular, while it poses some important limitations on the collection of personal genetic information by insurance companies, it would allow them to collect this information, without consent, once an individual is enrolled in a health plan. While insurers are expressly prohibited from using this information for the purposes of underwriting, I am concerned that once they have this information, it may be difficult to control how it is used and who has access to it. We all know from experience that the difficulty of protecting information increases exponentially with each additional person who has access to that information. As this bill becomes law—and I sincerely hope it will—I will monitor closely how it is implemented, and the extent to which privacy is protected. We may need to revisit this issue in the future.

Mr. President, despite this shortcoming, I support this bill, as it represents a vast improvement over current law in many ways. I hope that it will become law in the very near future. This Chamber passed a similar bill last year by a vote of 95 to 0. Unfortunately, the House did not take up this important legislation. I urge them to do so as soon as possible. We all should feel free to make our health care decisions based on our health care needs, not based on fear. Today, we are close to making that goal a reality.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I ask unanimous consent for an additional 2 minutes to finish this up.

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

Mr. ENZI. Mr. President, I thank the Senator from Iowa and all others who have spoken today. It has been a very positive day. I thank the Presiding Officer for the care with which he reviewed this bill and the issues he brought up and the resolution that I am sure we have gotten.

I would be very remiss if I did not thank the staffs of all of those people who help us dig into these issues to be sure we are doing the right thing. They bring some different perspectives that add to coming up with the right solution.

I particularly thank those people from the committee on both sides of the aisle for their efforts. I thank Kim Monk, David Thompson, Bill Pewen, David Bowen, Holly Fechner, Sean Donohue, Ilyse Schuman, Andrew Patzman, David Nexon, Adam Gluck, Carolyn Holmes, Kate Leone, Ben Berwick, Jennifer Duck, and Steve Northrup.

I particularly mention Katherine McGuire, who is the new staff director, who was able to put together all of the personnel we needed and then a committee retreat, as well as coordinating and moving all these things along, so we could be at this point this soon.

We thank all those people for their individual efforts as well as the team efforts they put in.

At this point, I think we are ready to move on. I yield the floor and thank everybody for their participation.

AMENDMENT NO. 13

(Purpose: To provide a complete substitute)

The PRESIDING OFFICER. Under the previous order, amendment No. 13 is agreed to.

The amendment (No. 13) was agreed to.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

The PRESIDING OFFICER. The substitute, as amended, is agreed to.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The PRESIDING OFFICER. The clerk will read the bill for the third time.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. FRIST. Mr. President, I ask unanimous consent that 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.

NOTICE OF PROPOSED RULEMAKING

Mr. STEVENS. Mr. President, I ask unanimous consent that the attached statement from the Office of Compliance be printed in the RECORD today pursuant to section 304(b)(1) of the Congressional Accountability Act of 1995 (2 U.S.C. 1384(b)(1)).

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

FROM THE BOARD OF DIRECTORS OF THE OFFICE OF COMPLIANCE

Notice of Proposed Rulemaking, and Request for Comments From Interested Parties

NEW PROPOSED REGULATIONS IMPLEMENTING CERTAIN SUBSTANTIVE EMPLOYMENT RIGHTS AND PROTECTIONS FOR VETERANS, AS REQUIRED BY 2 U.S.C. 1316a, THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995, AS AMENDED (CAA).

Background

The purpose of this Notice is to issue proposed substantive regulations which will implement the 1998 amendment to the CAA which applies certain veterans' employment rights and protections to employing offices and employees covered by the CAA.

What is the authority under the CAA for these proposed substantive regulations? In 1998, the CAA was amended through addition of 2 U.S.C. 1316a, a provision of the Veterans' Employment Opportunities Act of 1998 (VEOA), which states in relevant part: ''The rights and protections established under section 2108, sections 3309 through 3312, and subchapter I of chapter 35 of Title 5, shall apply to covered employees.'' As will be described in greater detail below, these sections of Title 5 accord certain hiring and retention rights to veterans of the uniformed services. Section 1316a(4)(B) states that ''The regulations issued . . . shall be the same as the most relevant substantive regulations (applicable with respect to the Executive Branch)

promulgated to implement the statutory provisions . . . except insofar as the Board may determine for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section.''

Will these regulations, if approved, apply to all employees otherwise covered by the CAA? No. Subsection (5) of 2 U.S.C. 1316a, states that, for the purpose of application of these veterans' employment rights, the term ''covered employee'' shall not apply to any employee of an employing office: (A) whose appointment is made by the President with the advice and consent of the Senate; (B) whose appointment is made by a Member of Congress or by a committee or subcommittee of either House of Congress; or (C) who is appointed to a position, the duties of which are equivalent to those of a Senior Executive Service position. . . .'' These regulations would apply to all other covered employees.

Do other veterans' employment rights apply via the CAA to Legislative Branch employing offices and covered employees? Yes. Another statutory scheme regarding veterans' and armed forces members' employment rights is incorporated in part through section 206 of the Congressional Accountability Act of 1995 (CAA). Section 206 of the CAA, 2 U.S.C. 1316, applies certain provisions of Title 38 of the U.S. Code regarding ''Employment and Reemployment Rights of Members of the Uniformed Services.'' Section 206 of the CAA also requires the Board of Directors to issue substantive regulations patterned upon the regulations promulgated by the Secretary of Labor to implement the Title 38 rights of members of the uniformed services. As of this date, the Secretary of Labor has not finally promulgated any such regulations. Therefore, regulations implementing CAA section 206 rights will not be proposed by the Board until the Labor Department regulations have been promulgated. The proposed regulations in this Notice are not based on section 206 of the CAA, but solely on the other veterans' rights referenced in 2 U.S.C. 1316a.

What are the veterans' employment rights applied to covered employees and employing offices in 2 U.S.C. 1316a? In recognition of their duty to country, sacrifice, and exceptional capabilities and skills, the United States government has accorded veterans a preference in federal employment through a series of statutes and Executive Orders, beginning as the Civil War drew to a close. While interpreting regulations have been modified over time, many of the current core statutory protections have remained largely unchanged since they were first codified in the historic Veterans' Preference Act of 1944, Act of June 27, 1944, ch. 287, 58 Stat. 387, amended and codified in various provisions of Title 5, U.S.C. In 1998, Congress passed the Veterans Employment Opportunities Act (''VEOA''), Pub. L. 105–339, 112 Stat. 3186 (October 31, 1998), which ''strengthen[s] and broadens''(Sen. Rept. 105–340, 105 Cong., 2d Sess. at 19 (Sept. 21, 1998)) the rights and remedies available to military veterans who are entitled to preferred consideration in hiring and in retention during reductions in force (''RIFs''). Among other provisions of the VEOA, Congress clearly stated, in the law itself, that henceforth the ''rights and protections'' of certain veterans' preference law provisions, originally drafted to cover certain Executive Branch employees, ''shall apply'' to certain ''covered employees'' in the Legislative Branch. VEOA §§4(c)(1) and (5) (emphasis added).

The selected statutory sections which Congress determined ''shall apply'' to covered employees in the Legislative Branch include, first, a definitional section describing the categories of military veterans who are entitled to preference (''preference eligibles''). 5 U.S.C. §2108. Generally, a veteran must be disabled or have served on active duty in the Armed Forces during certain specified time periods or in specified military campaigns to be entitled to preference. In addition, certain family members (mainly spouses, widow[er]s, and mothers) of preference eligible veterans are entitled to the same rights and protections.

The VEOA also makes applicable to the Legislative Branch certain statutory preferences in hiring. In the hiring process, a preference eligible individual who is tested or otherwise numerically evaluated for a position is entitled to have either 5 or 10 points added to his/her score, depending on his/her military service, or disabling condition. 5 U.S.C. §3309. Where experience is a qualifying element for a job, a preference eligible individual is entitled to credit for having relevant experience in the military or in various civil activities. 5 U.S.C. §3311. Where physical requirements (age, height, weight) are a qualifying element for a position, preference eligible individuals (including those who are disabled) may obtain a waiver of such requirements in certain circumstances. 5 U.S.C. §3512.

For certain positions (guards, elevator operators, messengers, custodians), only preference eligible individuals may be considered for hiring so long as such individuals are available. 5 U.S.C. §3310. (These statutory provisions on hiring in the Executive Branch apply specifically to the competitive service; this point will be discussed further below.)

Finally, in prescribing retention rights during Reductions In Force for Executive Branch positions (in both the competitive and in the excepted service), the sections in subchapter I of chapter 35 of Title 5, U.S.C., with a slightly modified definition of ''preference eligible,'' require that employing agencies retain an employee with retention preference in preference to other competing employees, provided that the employee's performance has not been rated unacceptable. 5 U.S.C. §3502(c) (emphasis added).

Along with this explicit command to retain qualifying employees with retention preference, agencies are to follow regulations governing the release of competing employees, giving ''due effect'' to the following factors: (a) employment tenure (i.e., type of appointment); (b) veterans' preference; (c) length of service; and, (d) performance ratings. 5 U.S.C. §3502(a). 5 U.S.C. §3502 also requires certain notification procedures, providing, inter alia, that an employing agency must provide an employee with 60 days written notice (the period may be reduced in certain circumstances) prior to being released during a RIF. 5 U.S.C. §3502(d)(1). Certain protections also apply in connection with a transfer of agency functions from one agency to another. 5 U.S.C. §3503. In addition, where physical requirements (age, height, weight) are a qualifying element for retention, preference eligible individuals (including those with disabilities) may obtain a waiver of such requirements in certain circumstances. 5 U.S.C. §3504.

Are there veterans' employment regulations already in force under the CAA? No.

Procedurals Summary

How are substantive regulations proposed and approved under the CAA? Pursuant to section 304 of the CAA, 2 U.S.C. 1384, the procedure for promulgating such substantive regulations requires that: (1) the Board of Directors adopt proposed substantive regulations and publish a general notice of proposed rulemaking in the *Congressional Record*; (2) there be a comment period of at least 30 days after the date of publication of the general notice of proposed rulemaking; (3) after consideration of comments by the Board of Directors, that the Board adopt regulations and transmit notice of such action together with the regulations and a recommendation regarding the method for Congressional approval of the regulations to the Speaker of the House and President pro tempore of the Senate for publication in the *Congressional Record*; (4) committee referral and action on the proposed regulations by resolution in each House, concurrent resolution, or by joint resolution; and (5) final publication of the approved regulations in the *Congressional Record*, with an effective date prescribed in the final publication. For more detail, please reference the text of 2 U.S.C. 1384. This Notice of Proposed Rulemaking is step (1) of the outline set forth above.

Are these proposed regulations also recommended by the Office of Compliance's Executive Director, the Deputy Executive Director for the House of Representatives, and the Deputy Executive Director for the Senate? As required by section 304(b)(1) of the CAA, 2 U.S.C. 1384(b)(1), the substance of these regulations is also recommended by the Executive Director, the Deputy Executive Director for the House of Representatives and the Acting Deputy Executive Director for the Senate.

Has the Board of Directors previously proposed substantive regulations implementing these veterans' employment rights and benefits pursuant to 2 U.S.C. 1316a? Yes. On February 28, 2000, and March 9, 2000, the Office published an Advanced Notice of Proposed Rulemaking (''ANPR'') in the *Congressional Record* (144 Cong. Rec. S862 (daily ed., Feb. 28, 2000), H916 (daily ed., March 9, 2000)). On December 6, 2001, upon consideration of the comments to the ANPR, the Office published a Notice of Proposed Rulemaking (''NPR'') in the *Congressional Record* (147 Cong. Rec. S12539 (daily ed. Dec. 6, 2001), H9065 (daily ed. Dec. 6, 2001)). The Board has not acted further on those earlier Notices, and has decided to issue this Notice as the first step in a new effort to promulgate implementing regulations.

As noted above, 2 U.S.C. 1316a mandates application to the Legislative Branch of certain statutory provisions originally drafted for the Executive Branch. In its initial proposed rules, the Board noted that this statutory command raised the quandary of determining which Legislative Branch employees should be covered by which statutory provisions. There are longstanding and significant differences between the personnel policies and practices within these two branches. For instance, the Executive Branch distinguishes between employees in the ''competitive service'' and the ''excepted service,'' often with differing personnel rules applying to these two services. The Legislative Branch has no such dichotomy.

When Congress directed in the VEOA that certain veterans' employment rights and protections currently applicable to Executive Branch employees shall be made applicable to Legislative Branch employees, the Board took note of a central distinction made in the underlying statute: certain veterans' preference protections (regarding hiring) applied only to Executive Branch employees in the ''competitive'' service, while others (governing reductions in force and transfers) applied both to the ''competitive'' and ''excepted'' service.

The Board's initial approach in 2000 was to maintain this distinction by attempting to discern which Legislative Branch employees should be considered as working in positions equivalent to the ''competitive'' service, and

which should be considered equivalent to the ''excepted'' service. At that point, the Board concluded that all Legislative Branch employees, with certain possible exceptions (such as those of the Office of the Architect of the Capitol) should be considered excepted service employees. The Board therefore issued regulations, closely following Office of Personnel Management (''OPM'') regulations for the various statutory provisions, with the caveat that the regulations governing hiring would apply only to those employees whom the Board currently deemed working at jobs equivalent to the competitive service (e.g. the Office of the Architect of the Capitol). The NPR acknowledged: ''The Board recognizes that the adoption of these definitions (e.g., competitive and excepted services], consistent with the mandate of section 225 [of the CAA], yields an unusual result in that no ''covered employee'' in the Legislative Branch currently satisfies the definition of ''competitive service.'' Moreover, as the substantive protections of veterans'' preference in Legislative Branch appointment apply only to ''competitive service' positions, the regulations which the Board proposes regarding preference in appointment would with one noted exception [employees appointed under the Architect of the Capitol Human Resources Act], currently apply to no one. . . .'' This left the Board in the position of drafting intricate regulations that may have applied to only a minority of ''covered employees,'' or perhaps even to no ''covered employees'' at all—a result in obvious tension with the VEOA's statutory mandate that these veterans' protections ''shall apply'' to ''covered employees'' in the Legislative Branch.

The Board received Comments to its initial proposed regulations from the Office of the Architect of the Capitol, the Office of House Employment Counsel, and the Office of the Senate Chief Counsel for Employment, all finding fault with the initial approach. The Comments generally included the following observations. First, commenting offices noted that the Board's approach of drafting intricate regulations that may not apply to any covered employees creates more problems than it solves. This approach was seen as ''impracticable,'' ''obfuscating'' the true sense of the VEOA and what requirements in fact must apply to employing offices; it was seen, in effect, as an attempt to ''place a square peg in a round hole.'' Others charged that the adoption of such regulations went beyond the Board's statutory authorization, and would require, without basis in law, the employing offices to adopt complicated procedures, some governing employment decisions that affected only non-veteran applicants or employees. A commenting office also complained about the application of terms ''foreign and inapplicable'' to its personnel system. Employing offices also submitted that statutes drafted for the Executive Branch competitive service should not apply at all to any Legislative Branch employee.

Furthermore, one employing office commented that such modification of OPM regulations does not constitute an adoption of the ''most relevant regulations,'' as regulations that apply to no covered employees can not possibly be the most relevant regulations applicable. As another commenting office aptly put it, ''Unfortunately, the unintended result could very well be that the underlying principles of the veterans' preference laws would lie fallow while the affected legislative branch entities struggle with the task of adopting civil-service type personnel management systems.'' Comments of the Office of House Employment Counsel, Feb. 6, 2002 at 9. Additionally, all three employing offices argued that the Board should issue three individual sets of regulations (to pertain to the Senate, House, and covered Congressional instrumentalities), rather than one set. Finally, the Office of the Architect of the Capitol also argued that the Architect of the Capitol Human Resources Act did not create a competitive service in the sense of the veterans' preference laws.

How are the regulations being proposed in this Notice different from those regulations which the Board previously proposed? In the period since the initial proposed regulations were issued by the Board of Directors and commented upon by various stakeholders, the Office of Compliance has engaged in extensive informal discussions with various stakeholders across Congress and the Legislative Branch, in an effort to ascertain how best to effect the basic purposes of veterans' employment rights in the Legislative Branch.

After careful consultation and deliberation, the Board is issuing new proposed regulations which differ in many respects from the initial proposed regulations. The new approach is responsive to the clear statutory mandate contained in the VEOA, and to various Comments regarding the initial proposed regulations. This approach also applies insights gained from the informal discussions with stakeholders.

The Board has decided to apply the plain language of the statutory provisions to all covered employees in the Legislative Branch. By doing so, the Board avoids what commenting employing offices styled as the ''anomaly'' of complicated regulations which would practically apply to no employees, an anomaly which not only poorly served the clear Congressional intent that protections ''shall apply to covered employees,'' but which also created confusion for the employing offices.

Not only is application of these rights to all covered employees compelled by the plain language of the statute, the legislative history of the VEOA also clearly indicates that the principles of veterans' preference protections must be applied in the Legislative Branch. The authoritative report of the Senate Committee on Veterans' Affairs (Senate Report 105–340, pages 15 & 17), recognized that the competitive service did not exist in the Legislative Branch, and that 2 U.S.C. 1316a did not require the establishment of such a competitive service. Nonetheless, the Committee noted that veterans' preference principles should be incorporated into the Legislative Branch personnel systems.

For these reasons, the Board is persuaded that Congress, in enacting the VEOA's extension of veterans' employment rights to the Legislative Branch, intended a broad application to all CAA covered employees, except for the staff of those employing offices in the House of Representatives and the Senate which Congress specifically excluded from coverage in section 206a(5) of the CAA (2 U.S.C. §1316a(5)).This result is faithful to the statutory language. Furthermore, the Board has concluded, for the reasons stated above, that the most relevant substantive Executive Branch OPM regulations are at times inapposite to a meaningful implementation of the VEOA in the Legislative Branch, such that a modification of the regulations is necessary for the effective implementation of the rights and protections under the VEOA. As a result, the Office is proposing regulations that reflect the principles of the veterans' preference laws, as discussed by the Senate Committee on Veterans Affairs, without linking such coverage to employees or positions with competitive service status.

Furthermore, the Board has also taken note of the legislative history suggesting that employing offices with employees covered by the VEOA should create systems incorporating these veterans' preference principles: ''The Committee notes that the requirement that veterans' preference principles be extended to the legislative and judicial branches does not mandate the creation of civil service-type evaluation or scoring systems by these hiring entities. It does require, however, that they create systems that are consistent with the underlying principles of veterans' preference laws.'' Sen. Comm. Report at 17. The implementation of that provision in the Senate Report can only be accomplished by the employing offices.

In their Comments, employing offices strongly expressed their need to preserve their autonomy in determining and administering their respective personnel systems. For example, the Office of the Architect of the Capitol commented that it was incumbent upon the employing offices to create ''systems that are consistent with the underlying principles of veterans'' preference laws,'' pursuant to the Senate Committee Report. The Board agrees, and the newly proposed regulations allow employing offices to do so. What the regulations also do is clearly define the ''underlying principles of veterans'' preference laws'' made applicable to these employing offices, so as to provide a benchmark for the employing offices, applicants, and covered employees, as to whether the systems developed are consistent with these principles.

What is the approach taken by these revamped proposed substantive regulations? The Board has taken great heed to avoid the intricate, OPM-like regulations that formed the basis for its first proposed regulations. Under the current proposed regulations, employing offices will retain their wide latitude, not similarly enjoyed by many employing agencies in the Executive Branch, to devise and administer their own unique and often flexible personnel systems. However, employing offices with covered employees must incorporate into these individual personnel systems the basic veterans' preference protections under the specific statutory mandate that Congress issued in the VEOA, and they must carry out the administration of these veterans' preference provisions in a manner consistent with the Board's commitment to promoting administrative transparency and accountability.

Under this approach, employing offices with the specified covered employees must meet the requirements contained in the statutory mandate of the VEOA, but need not necessarily adopt any of the trappings of an OPM-like personnel system. Thus, should such an employing office choose to administer numeric evaluations of applicants for a position, it must add to a preference eligible's evaluation the points called for in the veterans' preference statutes. If it does not numerically evaluate applicants, it must determine how it will factor veterans' preference status into its employee evaluations and hiring decisions at a level commensurate with the statutory directive. Similarly, should an employing office currently have a policy of placing covered employees who may be potentially subject to a reduction in force on a retention register, it must rank said employees taking into account the directives of the veterans' preference statute. Should an employing office elect not to keep formal retention registers, nothing in these regulations requires it to start doing so. It still must, however, follow the statutory mandate to provide certain veterans' preferences in the course of a reduction in force that affects employees covered by the VEOA.

The goal of preserving employing office autonomy in fashioning personnel systems has

further compelled the Board to minimize the impact of these proposed regulations on employment decisions not directly involving preference eligibles. Thus, unlike the initial proposed regulations, should an employing office properly determine that no preference eligibles are qualified applicants, or that no preference eligibles are subject to a RIF, these proposed regulations are designed so as not to govern the employment decisions taken by the employing office. By allowing for such employing office autonomy, the Board hopes to allay the concerns of some of the employing offices, expressed in the initial Comments, that a ''morass'' of intricate regulations would apply to decisions that did not affect preference eligibles. (One isolated, but necessary exception to this approach limiting the effect of the regulations to personnel actions involving preference eligibles is proposed §1.115, governing the transfer of functions between one employing office and another, and the replacement of one employing office by another. This section provides protections for all covered employees, as the term is defined and limited in the VEOA, including non-preference eligibles. The clear statutory language of 5 U.S.C. §3503 (applying to both the competitive and excepted services) commands this result. Congress chose to include this broad statutory provision in the set of provisions made applicable to the Legislative Branch in the VEOA.)

The overall discretion and autonomy reserved to employing offices to administer veterans' preference protections within the context of their personnel systems comes with a responsibility on the part of the employing offices to provide all applicants for covered positions and all covered employees with certain notice and informational rights, as discussed below. This is to ensure that employing offices are equipped with all information necessary to determine and administer veterans' preference eligibility and that such applicants and employees are properly informed of how their employing office has chosen to give life to the veterans' preference protections.

In sum, should an employing offices already use personnel policies and procedures similar to those in the competitive service, it must factor in the various veterans' preference protections with respect to applicants for covered positions and covered employees. If an employing office chooses to follow more flexible, or merely different, personnel policies from those referenced in the competitive service, it may do so—but may not refuse to apply the veterans' preferences called for in the statute. This would contravene the clear statutory directive to affirmatively apply the veterans' preference protections to the specified covered employees in the Legislative Branch.

In proposing these regulations, the Board has sought to remain faithful to the explicit statutory language of the VEOA. In some cases, we have been guided by OPM veterans' preference implementing regulations. In many cases, ''for good cause shown,'' we have not adopted the OPM regulations so as to tailor simpler and more streamlined regulations. We have issued proposed regulations based on the direct statutory language whenever possible, reserving implementation to the individual employing offices, who then are charged with crafting their own processes and procedures for integrating veterans' preference protections within their personnel systems.

Therefore, in accord with 2 U.S.C.1316a(4)(B), which mandates that ''the Board may determine, for good cause shown and stated . . . a modification of such regulations would be more effective for the implementation of the rights and protections under this section,'' these proposed regulations may not track the most relevant substantive regulations applicable with respect to the Executive Branch. However, the proposed regulations endeavor, to the maximum practical extent, to effect the veterans' preference principles that Congress made applicable to the Legislative Branch through section 206a(2) of the CAA, 2 U.S.C. §1316a(2).

What responsibilities would employing offices have in effectively implementing these regulations? The Board is charging the employing offices with the responsibility of duly factoring the veterans' preference principles into their individualized hiring and retention processes. We will require that such measures be substantive and verifiable. Otherwise, VEOA implementation would be illusory and the Office's remedial responsibility under 2 U.S.C.1316a(3) might be compromised.

Therefore, the proposed regulations would require that all employing offices with covered employees or seeking applicants for covered positions develop a written program, within 120 days of the Congressional approval of the regulations, setting forth each employing office's modality for effecting the veterans' preference principles in its hiring and retention systems. These programs would demonstrate each employing office's efforts to comply with the VEOA. However, technical promulgation of such procedures does not per se relieve an employing office of substantive compliance with the VEOA.

Similarly, Subpart E of the proposed regulations contains various important provisions governing recordkeeping, dissemination of VEOA policies, written notice prior to a RIF, and informational requirements regarding veterans' preference determinations. Certain of these provisions (notably that requiring written notice prior to a RIF) derive directly from statutory provisions made applicable to covered employees by the VEOA. The Board has adopted others so as to ensure that the employing offices, which have significant autonomy and discretion in integrating the veterans' preference requirements into their personnel systems, administer the preferences in a way that promotes accountability and transparency. In response to the earlier Comments of the employing offices, however, the Board has refrained from adopting more burdensome procedural requirements, such as keeping formal retention registers (see 5 CFR §351.505).

Are there substantive differences in the proposed regulations for the House of Representatives, the Senate, and the other employing offices? No. The Board of Directors has identified no ''good cause'' for varying the text of these regulations. Therefore, if these proposed regulations are approved as proposed, there will be one text applicable to all employing offices and covered employees.

Are these proposed substantive regulations available to persons with disabilities in an alternate format? This Notice of Proposed Regulations is available on the Office of Compliance web site, www.compliance.gov, which is compliant with section 508 of the Rehabilitation Act of 1973 as amended, 29 U.S.C. 794d. This Notice can also be made available in large print or Braille. Requests for this Notice in an alternative format should be made to: Alma Candelaria, Deputy Executive Director, Office of Compliance, 110 2nd Street, S.E., Room LA–200, Washington, D.C. 20540; 202–724–9226; TDD: 202–426–1912; FAX: 202–426–1913.

30 Day Comment Period Regarding the Proposed Regulations

How can I submit comments regarding the proposed regulations? Comments regarding the proposed new regulations of the Office of Compliance set forth in this NOTICE are invited for **a period of thirty (30) days** following the date of the appearance of this NOTICE in the *Congressional Record*. In addition to being posted on the Office of Compliance's section 508 compliant web site (www.compliance.gov) this NOTICE is also available in the following alternative formats: Large Print, Braille. Requests for this NOTICE in an alternative format should be made to: Bill Thompson, Executive Director, or Alma Candelaria, Deputy Executive Director, Office of Compliance, at 202–724–9250 (voice) or 202–426–1912 (TDD).

Submission of comments must be made in writing to the Executive Director, Office of Compliance, 110 Second Street, S.E., Room LA–200, Washington, D.C. 20540–1999. It is requested, but not required, that an electronic version of any comments be provided on an accompanying computer disk. Comments may also be submitted by facsimile to the Executive Director at 202–426–1913 (a non-toll-free number.) Those wishing to receive confirmation of the receipt of their comments must provide a self-addressed, stamped post card with their submission.

Copies of submitted comments will be available for review on the Office's web site at www.compliance.gov, and at the Office of Compliance, 110 Second Street, S.E., Washington, D.C. 20540–1999, on Monday through Friday (non-Federal holidays) between the hours of 9:30 a.m. and 4:30 p.m.

Supplementary Information: The Congressional Accountability Act of 1995 (CAA), PL 104–1, was enacted into law on January 23, 1995. The CAA applies the rights and protections of 11 federal labor and employment statutes to covered employees and employing offices within the Legislative Branch of Government. The CAA was amended by adding 2 U.S.C. 1316a as part of the enactment of the Veterans' Employment Opportunities Act of 1998 (VEOA), PL 105–339, section 4(c), to provide additional substantive employment rights for veterans. Those additional rights are the subject of these regulations. Section 301 of the CAA (2 U.S.C. 1381) establishes the Office of Compliance as an independent office within the Legislative Branch.

More Detailed Discussion of the Text of the Proposed Regulations

SUBPART A—MATTERS OF GENERAL APPLICABILITY TO ALL REGULATIONS PROMULGATED UNDER SECTION 4 OF THE VEOA

1.101 Purpose and scope. This section clarifies that the purpose of these regulations is to ensure that the principles of the veterans' preference laws are integrated into the employing offices' existing employment and retention policies and processes, as per the explicit statutory mandate contained in the VEOA. Additionally, through these regulations, the Board seeks to fulfill its goal of achieving transparency in the application of veterans' preference in covered appointment and retention decisions.

Finally, it is noted that nothing in these regulations shall be construed to require an employing office to reduce any existing veterans' preference rights and protections that it may currently afford to preference eligible individuals. Any employing agencies that currently provide greater veterans' preferences than required by these regulations may retain them. Note also that, while the VEOA does not directly cover the GAO, GPO, or Library of Congress, should Congress extend Board jurisdiction over any of these entities in the future, it should take their existing veterans' preference policies into account, which may be based on independent statutory mandates. Note, for example, that 31 U.S.C. §732(h)(1) already mandates that the GAO must afford veterans' preferences

(largely similar to those in subchapter I of chapter 35 of title 5 U.S.C.).

1.102 General definitions. This section provides straightforward definitions of key terms referred to in the regulations. Several of the definitions are derived from the statutory provisions made applicable via the VEOA, including ''veteran,'' from 5 U.S.C. §2108(1), ''disabled veteran'' from 5 U.S.C. §2108(2), and ''preference eligible'' from 5 U.S.C. §2108(3). It also contains several other definitions included for explanatory purposes.

The term ''appointment'' is defined as an individual's appointment to employment in a covered position. Consistent with the OPM regulations in 5 C.F.R. §211.102(c), the term excludes inservice placement actions such as promotions. The term ''covered employee'' follows the language of section 101(3) of the CAA, as limited by section 4(c)(5) of the VEOA. Section 4(c)(5) of the VEOA excludes employees whose appointment is made by a committee or subcommittee of either House of Congress. The Board believes this statutory exclusion extends to joint committees and has expressly excluded such employees from the definition of ''covered employee''.

The term ''qualified applicant,'' while not directly originating in the text of U.S.C. Title V, is used to capture the principle in 5 U.S.C. §3309 that only a preference eligible applicant who has received a passing grade in an examination or evaluation for entrance into the competitive service need receive additional points accorded to his or her application (except for certain ''restricted'' positions, discussed below). ''Qualified applicant'' is borrowed from the Americans with Disabilities Act (''ADA,'' 42 U.S.C. §12101 et seq.) as applied by section 102(a)(3) of the CAA, 2 U.S.C. §1302(a)(3). The ADA's reference to ''requisite skill, experience, education and other minimum job-related requirements'' has been shortened to ''requisite minimum job-related requirements,'' as not every job may require a particular level of acquired skill, experience, or education.

As will be discussed further, we are not requiring an employing office to establish any particular prerequisites or type of evaluation or examination system for applicants. Instead, the term ''qualified applicant'' serves as a means of implementing the statutory mandate that only preference eligible applicants with ''passing scores'' receive preference in the hiring process in the context of appointment processes that do not involve ''scoring'' or similar numeric evaluation.

Where the employing office does not use a numerically scored entrance examination or evaluation, we have authorized the employing office to make the determination of whether the applicant is minimally ''qualified'' for a covered position. In doing so, the employing office may rely on any job-related requirements or on any evaluation system, formal or otherwise, which it chooses to employ in assessing and rating applicants for covered positions, provided that the employing office in no way seeks to create or manipulate a standard as to whether an applicant is ''qualified'' so as to avoid obligations imposed upon it by the VEOA.

If, however, the employing office uses an entrance examination or evaluation that is numerically scored, the term ''qualified applicant'' shall mean that the applicant has obtained a passing score on the examination or evaluation. The Board notes that it expects the level of ''passing scores'' to be roughly comparable to that in the OPM regulations (70 points on a 100 point scale; 5 CFR §337.101). We are not requiring employing offices to administer entrance exams at all, or to model an exam or the grading thereof after OPM's models. However, employing offices may not set the bar on a scored entrance examination or evaluation for a covered position so high that minimally qualified preference eligible applicants cannot pass. Moreover, the determination of what will constitute a ''passing score'' should be made and communicated to applicants before they are evaluated or sit for the entrance examination.

1.103 Adoption of regulations. This section details the process by which the regulations shall be adopted. It also clarifies that, as discussed extensively in the prefatory comments, supra, the Board has at times deviated from the regulations which otherwise were most applicable, i.e. the regulations issued by OPM implementing these selected provisions of U.S.C. Title V. When the Board has so deviated from the OPM regulations, it has done so in an effort to implement the statutory language of the VEOA in a way that respects the autonomy of employing offices' personnel systems and avoids placing undue administrative burdens upon these offices, and that otherwise respects the legislative intent of the VEOA.

1.104 Coordination with section 225 of the Congressional Accountability Act. This section notes that the VEOA requires that regulations promulgated are consistent with section 225 of the CAA. These proposed regulations are consistent with section 225; the regulations follow CAA principles contained therein, including applying CAA definitions and exemptions, and reserving enforcement through CAA procedures, rather than through recourse to the Executive Branch.

SUBPART B—VETERANS' PREFERENCE—GENERAL PROVISIONS

1.105 Responsibility for administration of veterans' preference. This section clarifies that employing offices have responsibility for administering veterans' preference, within the parameters of the VEOA and these regulations.

1.106 Procedures for bringing claims under the VEOA. This section establishes the procedures for contesting an adverse determination.

SUBPART C—VETERANS' PREFERENCE IN APPOINTMENTS

1.107 Veterans' preference in appointments to restricted covered positions. The VEOA makes 5 U.S.C. §3310 applicable to the Legislative Branch, thereby extending an absolute preference to veterans who apply for the positions of guard, elevator operator, messenger and custodian. Despite concerns raised by certain employing offices regarding the singling out of these particular positions, the Board may not ignore the statutory requirement that veterans who apply for them be afforded an absolute preference over non-veteran applicants.

We have based our definitions of the restricted position terms ''guards,'' ''elevator operators,'' ''custodians,'' and ''messengers,'' upon the definitions employed in the veterans'' preference context by the U.S. Office of Personnel Management in its ''Delegated Examining Operations Handbook.'' See http://www.opm.gov/deu/Handbook_2003. The definitions of custodian and messenger have been modified to include a ''primary duty'' requirement, to allow the performance of some custodial or messenger duties in positions having other primary duties without transforming those positions into restricted positions.

1.108 Veterans' preference in appointments to non-restricted covered positions. This section clarifies that preference eligible status is an affirmative factor in the hiring process for covered positions. The requirement that preference eligible status be applied as an ''affirmative factor'' is derived from the directive of the VEOA that the underlying principles of the veterans' preference laws be applied within the Legislative Branch.

Where an employing office assigns points to applicants competing for appointment to a covered position, it should add commensurate points for veterans' preference eligible applicants consistent with 5 U.S.C. §3309, one of the sections made applicable to the Legislative Branch by the VEOA. Should the office choose not to conduct formal evaluations on a point scale, it must apply veterans' preference as an affirmative factor, to a degree consistent with the level of preference applied in 5 U.S.C. §3309.

In no way does this require the creation of any particular type of system of examining or evaluating applicants, and an employing office may properly choose to not assign points at all to applications for covered positions. Rather, this regulation merely states that, whatever system the employing office uses to choose among qualified applicants for a covered position, it must accord a level of preference to preference eligible qualified applicants consistent with the point system indicated in the statute. Thus, the preference must be comparable to affording an additional 5 or 10 points (depending on the status of the preference eligible) on a 100 point scale to qualified applicants, while understanding that under such a point system the applicant must have attained at least 70 points to be considered qualified. (OPM provides a scale for converting other point scales (5 point, 10 point, 25 point, etc.) to a 100-point scale.)

Section 1.108 applies to both restricted and non-restricted positions. While restricted positions are limited to preference eligibles (should there be preference eligible applicants), in the event that more than one preference eligible applies, the employing office should apply the requirement in this section to provide a higher preference to a disabled preference eligible. Thus, 5 U.S.C. §3310, while restricting certain positions to preference eligibles (so long as preference eligibles are available), does not except these positions from this requirement in 5 U.S.C. §3309 to provide higher preference to a disabled preference eligible applicant.

1.109 Crediting experience in appointments to covered positions. This language is taken from 5 CFR §337.101(c), which interprets 5 U.S.C. §3311, one of the sections made applicable to the Legislative Branch by the VEOA. We have elected to use the regulatory language as it is more clearly written, and serves to better guide employing offices than does the direct statutory text. The statutory and regulatory provisions are laid out below for an easy comparison:

SEC. 3311. PREFERENCE ELIGIBLES; EXAMINATIONS; CREDITING EXPERIENCE

In examinations for the competitive service in which experience is an element of qualification, a preference eligible is entitled to credit—

(1) for service in the armed forces when his employment in a similar vocation to that for which examined was interrupted by the service; and

(2) for all experience material to the position for which examined, including experience gained in religious, civic, welfare, service, and organizational activities, regardless of whether he received pay therefor.

5 U.S.C. §3311

(c) When experience is a factor in determining eligibility, OPM shall credit a preference eligible with:

(1) Time spent in the military service (i) as an extension of time spent in the position in which he was employed immediately before his entrance into the military service, or (ii) on the basis of actual duties performed in

the military service, or (iii) as a combination of both methods. OPM shall credit time spent in the military service according to the method that will be of most benefit to the preference eligible.

(2) All valuable experience, including experience gained in religious, civic, welfare, service, and organizational activities, regardless of whether pay was received therefor.

5 CFR §337.101(c). Section 1.109 does not require an employing office to consider experience as an element of qualification, but only requires that preference eligibles be afforded credit for certain experience if the employing office chooses to do so. Also, section 1.109 does not preclude an employing office from granting credit for experience to non-preference eligibles, so long as the credit afforded preference eligibles complies with the VEOA. Note also that section 1.109 of these proposed regulations applies equally to restricted and non-restricted positions.

Section 1.110 Waiver of physical requirements in appointments to covered positions. This section contains language derived directly from 5 U.S.C. §3312, one of the sections made applicable to the Legislative Branch by the VEOA. It requires an employing office to waive physical requirements for a position if it determines, after considering any recommendations of an accredited physician that may be submitted by such an applicant, that he or she is physically able to perform efficiently the duties of the position. Note that OPM has chosen to promulgate regulations interpreting 5 U.S.C. §3312 which make clear that: ''[A]gencies must waive a medical standard or physical requirement established under this part when there is sufficient evidence that an applicant or employee, with or without reasonable accommodation, can perform the essential duties of the position without endangering the health and safety of the individual or others.''

5 CFR 339.204. The Board does not believe that these proposed regulations are the proper vehicle for issuing regulations concerning the Americans with Disabilities Act (''ADA,'' 42 U.S.C. §12101 et seq.) as applied by section 102(a)(3) of the CAA, 2 U.S.C. §1302(a)(3). Therefore, section 1.110(a)(2) tracks the statutory language rather than the OPM regulation. It also clarifies that the employing office need consider a recommendation of an accredited physician only if such a recommendation is submitted by the preference eligible.

The Board does note, however, that Congress passed the ADA subsequent to the veterans' preference protections contained in 5 U.S.C. §3312, and that, under the ADA as applied by the CAA, employing offices may have obligations towards applicants that may in some circumstances be greater than the protections accorded preference eligible applicants in 5 U.S.C. §3312. For example, these regulations do not relieve employing offices from complying with the restrictions imposed on disability-based inquiries under the ADA but, as is discussed in the comments to section 1.118, recognize that an employing office may use information obtained through voluntary self-identification of one's disabled status. Accordingly, the Board has made clear in section 1.110 that nothing in this section shall relieve an employing office of any greater obligation it may have pursuant to the ADA.

SUBPART D—VETERAN'S PREFERENCE IN REDUCTIONS IN FORCE

1.111 Definitions applicable in reductions in force. This section provides definitions of several terms used in the regulations applying veterans' preference principles in the context of reductions in force. Unless clearly stated otherwise, the general definitions in proposed regulation 1.102 continue to apply in the context of reductions in force. For example, as used in the proposed reduction in force regulations, the term ''covered employee'' excludes employees whose appointment is made by a Member of Congress or by a committee or subcommittee of either House of Congress or a joint committee of the House of Representatives and the Senate and other employees excluded under the proposed regulation 1.202(f). The term ''reduction in force'' has been defined to encompass actions that result in termination of employment, reductions in grade or demotions expected to continue for more than 30 days. This definition derives from OPM regulations, which clearly interpret 5 U.S.C. §3502 to include demotions and include the requirement that the personnel action be for more than 30 days [5 CFR §351.201 (a)(2)], and from the statutory provisions of the VEOA that charge the Board to follow OPM's regulations except where the Board may determine that a modification of those regulations would be more effective for the implementation of the rights and protections under the VEOA. Caselaw interpreting the veterans' preference laws also indicates that the inclusion of demotions in what constitutes a reduction in force stems from statutory, not just regulatory, language. (See, e.g., AFGE Local 1904 v. Resor, 442 F. 2d 993, 994 (3rd Cir. 1971); Alder v. U.S., 129 Ct. Cl. 150 (1954).)

5 U.S.C. §3501, which has been included in the CAA through Section (c)(2) of the VEOA, contains special definitions for determining whether an employee is a ''preference eligible'' for purposes of applying veterans' preference in reductions in force. The definitions that appear in section 1.111(b) of the regulations are taken directly from the statutory language in 5 U.S.C. §3501. Note, however, that these definitions do not apply to the application of the provisions of 5 U.S.C. §3504 (and section 1.114 of these regulations) regarding the waiver of physical requirements in determining qualifications for retention. In that context, the definition of ''preference eligible'' set forth in 5 U.S.C. §2108 (and section 1.102(o) of the Board's regulations) shall apply.

As discussed below, 5 U.S.C. §3502(c) provides that preference eligibles are entitled to retention over other ''competing employees''. In the Executive Branch, the question of who are ''competing employees'' is answered by reference to detailed and rather complex retention registers that Executive Branch agencies are required to maintain. (See, e.g., 5 CFR §351.203, 5 CFR §351.404 and 5 CFR §351.501.) The Comments to our initial proposed regulations noted that few if any employing offices in the Legislative Branch maintain retention registers, and that many of the OPM regulations regarding retention registers rely on personnel practices and systems that do not exist in the Legislative Branch.

In keeping with our new approach to the implementation of the VEOA, these regulations do not impose a requirement that an employing office create or maintain OPM-like retention registers but instead provide a framework for determining groups of ''competing employees'' for purposes of applying retention preferences as mandated by 5 U.S.C. §3502(c). In this respect, the Board has determined that several of the terms in the OPM regulations may be used to implement the concept of ''competing employees'' in the Legislative Branch without imposing Executive Branch personnel practices or systems: generally, ''competing covered employees'' are the covered employees within a particular ''position classification or job classification,'' at or within a particular ''competitive area''.

The definition of ''position classification or job classification'' is derived from OPM's basic definition of ''competitive level'' in 5 CFR §351.403(a)(1). The remaining regulations in 5 CFR §351.403(a)(2)–(4), (b)(1)–(5) and (c)(1)–(4) prescribe the manner in which an Executive Branch agency may determine a covered employee's competitive level. While some of these rules could be adopted in the Legislative Branch, others are clearly inapplicable. The Board has decided not to adopt these portions of the OPM regulations in order to provide employing offices with a great amount of flexibility in determining an employee's ''position classification or job classification''. This is in keeping with our understanding that the personnel systems used by employing offices within the Legislative Branch vary significantly from those used in the Executive Branch. This flexibility is, of course, subject to the understanding that such determinations may not be manipulated in order to avoid the employing office's obligations under the VEOA.

The definition of ''competitive area'' more closely tracks OPM's definition of the same term in 5 CFR §351.402. We note that the OPM regulations define ''competitive area'' in terms of an agency's ''organizational units'' and ''geographical locations''. The Board is not adopting OPM definitions or descriptions of these terms, but will allow employing offices flexibility in applying these concepts to their own organizational structure. The Board has retained the OPM requirement that the minimum competitive area be a department or subdivision ''under separate administration''. In this respect, ''separate administration'' is not considered to require that the administration of a proposed competitive area has final authority to hire and fire but that it has the authority to administer the day to day operations of the department or subdivision in question.

The OPM regulations incorporate the term ''tenure'' in their definition of ''competitive group.'' We have used the term in our definition of ''position classification or job classification'' because the statutory language in 5 U.S.C. §3502 identifies ''tenure'' as a factor that will override veterans' preference in determining employee retention in a reduction in force. However, we have not adopted OPM's definition of tenure, as it is tied to Executive Branch service classifications that do not exist in the Legislative Branch. See 5 CFR 351.501. Instead, the use of the term ''tenure'' in these definitions refers only to the type of appointment. For example, an employing office may choose to make ''tenure'' distinctions between permanent and temporary employees, probationary and non-probationary employees, etc. By referring to ''permanent'' positions, we are referring to jobs that are not limited in advance to a specific temporal duration. Nothing in these Comments and Regulations is intended to address the ''at-will'' status of any covered position.

The Chief Counsel for the Senate noted, in her Comments to the prior proposed regulations, that the Senate does not employ the concept of ''tenure''. If an employing office chooses not to make such distinctions, nothing in these regulations requires it to do so. If the office does, that is one of the factors in the constitution of the ''position classifications or job classifications''. Again, the Board notes that an employing office should not manipulate the creation of tenure so as to avoid its obligations under the VEOA.

We have also included a definition of ''undue interruption'' that is taken directly from the definition of the same term in the OPM regulations, 5 CFR §351.203. The term is used in determining whether various jobs should be included within the same ''position classification'' or ''job classification,'' and is

meant to strike a balance between the interests of employing offices in retaining employees who will be able to perform the jobs remaining after a reduction in force, and the interests of preference eligibles whose jobs are being eliminated in remaining employed. OPM struck this balance by generally suggesting that an employee should be able to perform or ''complete'' required work within 90 days of being placed in the position, and the Board considers this time period to be appropriate in the Legislative Branch as well. For example, this protection against ''undue interruption'' would apply if a preference eligible would have to complete a training program of more than 90 days in order to safely and efficiently perform the covered position to which he or she would otherwise be transferred as a result of a RIF. Finally, we note that, since ''undue interruption'' is an affirmative defense, an employing office has the burden of raising it and proving that an employee may not perform work without ''undue interruption'' by objectively quantifiable evidence.

1.112 Application of reductions in force to veterans' preference eligibles. The crux of this regulation derives from 5 U.S.C. §3502(c), which provides:

An employee who is entitled to retention preference and whose performance has not been rated unacceptable under a performance appraisal system implemented under chapter 43 of this title is entitled to be retained in preference to other competing employees. (Emphasis added.)

This provision is the statutory lynchpin underlying veterans' preferences in RIF's. The statutory language in section 3502(c) above in effect requires the employing office to terminate covered employees subject to a RIF in inverse order of their veterans' preference status, within the appropriate group of covered employees with similar jobs, so long as the employees' performance has not been rated unacceptable. Under section 3502(c), a preference eligible covered employee (without an unacceptable performance appraisal) must be retained in preference to non-preference eligibles—even if the other covered employees in the group in fact have greater length of service or more favorable performance evaluations.

A separate provision in 5 U.S.C. §3502(a) requires Executive Branch agencies to give ''due effect'' to four factors: tenure, veterans'' preference, length of service, and performance or efficiency evaluations. OPM has promulgated regulations addressing these four factors, but which also incorporate the concept that, within the group of employees competing for retention, appropriate veteran's preference status is a factor that may override other factors such as length of service and performance or efficiency evaluations. (''Tenure,'' as discussed below, is factored in to the group of employees within which employees compete for retention during a RIF.)

Case law has also made abundantly clear that section 3502(c) requires that this preference eligible status ''trumps'' the ''due effect'' given to length of service and performance. Courts have interpreted the separate requirement under section 3502(a) to give ''due effect'' to these four enumerated factors as being relevant to retention determinations between two preference eligibles, or between two non-preference eligibles—and *not* relevant to retention determinations between a preference eligible and a non-preference eligible. *Hilton v. Sullivan*, 334 U.S. 323, 335, 336 (1948). The Board has chosen not to explicitly require that length of service or performance or efficiency evaluations be taken into account during RIF's—only that, if they are, veterans' preference remains the controlling factor in making retention decisions within ''position or job classifications'' in a competitive area (assuming other appropriate requirements are also met).

Federal courts have interpreted the present statutory language of section 3502(c) as providing preference eligible employees with an ''absolute preference,'' although only within the confines of their competing group. *Dodd v. TWA*, 770 F. 2d 1038, 1041 (Fed. Cir. 1985); see also *McKee v. TWA*, 1999 LEXIS 25663 at *5 (Fed. Cir. 1999) (unpublished). Additionally, the source of this key language in §3502(c), the Veterans' Preference Act of 1944 (in turn deriving from a series of historical statutes and executive orders, commencing in 1865), and the legislative history of this Act indicate that the section 3502(c) predecessor language was considered the ''heart of the section''. *Hilton v. Sullivan*, 334 U.S. 323, 338 (1948). To this effect, courts have interpreted §3502(c) (or its predecessor under the Veterans' Preference Act of 1944) as overriding such factors as length of service when considering retention standing. *Hilton v. Sullivan*, 334 U.S. at 335, 336, 339 (noting that ''Congress passed the bill with full knowledge that the long standing absolute retention preference of veterans would be embodied in the Act;'' *Elder v. Brannan*, 341 U.S. 277, 285 (1951). Thus, courts have interpreted section 3502(c) as requiring preference to be given to a minimally qualified preference eligible, within his or her competing group, regardless of the preference eligible's length of service or performance in comparison to non-preference eligibles.

To follow this clear statutory directive, the Board has decided that veterans' preference shall be the ''controlling'' factor (provided that the covered employee's performance was not rated unacceptable), in an employment decision taken within ''position or job classifications'' in ''competitive areas,'' as discussed in the Comments to section 1.111 of these proposed regulations, regardless of such factors as length of service or performance or efficiency ratings. Restricting the veterans' preference to RIF's taken within ''position or job classifications'' in ''competitive areas'' provides important limitations on the scope of the preference accorded. As noted above, the preference eligible does not normally compete for retention against all covered employees of an employing office; the definitional terms in section 1.111 restrict the scope of competition only to covered employees in similar occupational groupings (with the further qualification that the preference eligible must perform the position in question without ''undue interruption''(see discussion regarding section 1.111 of these proposed regulations)); in certain facilities involved; and with similar ''tenure,'' or employment status (such as, for example, whether the employee is a permanent or probationary employee). Note that OPM regulations incorporate the concept of ''tenure'' into the definition of ''competing group''; covered employees only compete for retention against co-workers of the same tenure type. As noted in the Comments to section 1.111 of these proposed regulations, employing offices may or may not incorporate the concept of ''tenure,'' and may choose not to make such distinctions as permanent, temporary, or probationary employees. Nothing in these proposed regulations requires employing offices to adopt such distinctions.

Another qualification on the veterans' preference as a ''controlling factor'' is that the preference eligible employee's performance must not have been rated ''unacceptable.'' While 5 U.S.C. §3502(c) contains a reference to performance appraisal systems implemented under 5 U.S.C. §4301 et seq., we are not requiring employing offices to implement a performance appraisal system following 5 U.S.C. §4301 et seq. An employing office may continue to use its own methods for evaluating covered employees and appraising performance, and need not adopt any formal policy regarding performance appraisal. However, the Board notes that employing offices should not manipulate performance appraisals or evaluations so as to avoid obligations under the VEOA.

Another significant qualification on this regulation is that it only governs retention decisions in so far as they affect preference eligible covered employees. In no way does it govern decisions that do not affect preference eligible covered employees; in such cases, an employing office is free to make whatever determinations it so chooses, provided that these determinations are consistent with any other applicable law, and are not used to avoid responsibilities imposed by the VEOA. (Of course, an employing office with covered employees must disseminate information regarding its VEOA policy to covered employees, so as to allow for self-identification of preference eligibles. Furthermore, the notice required by section 1.120 of these regulations will allow covered employees who have not been identified as preference eligibles to assert that status before the RIF becomes effective.) Nor does the regulation require the keeping of formal retention registers, as OPM (and these regulations, as initially proposed) generally requires. However, an employing office must preserve any records kept or made regarding these retention decisions, as detailed in Subpart E of these proposed regulations.

Note also that the Board has included the provision that a preference eligible covered employee who is a ''disabled veteran'' under section 1.102(h) above, who has a compensable service-connected disability of 30 percent or more, and whose performance has not been rated unacceptable by an employing office is entitled to be retained in preference to other preference eligibles. This provision derives from 5 U.S.C. §3502(b), which provides a higher level of preference to certain disabled preference eligibles with regard to other preference eligibles.

Finally, the Board notes that this section does not relieve an employing office of any greater obligation it may be subject to pursuant to the Worker Adjustment and Retraining Notification Act (29 U.S.C. §2101 et seq.) as applied by section 102(a)(9) of the CAA, 2 U.S.C. §1302(a)(9), which would of course apply to all employees covered by the CAA, not only to preference eligible employees covered by the VEOA.

1.113 Crediting experience in reductions in force. This section closely follows 5 U.S.C. §3502(a), one of the sections made applicable to the Legislative Branch by the VEOA, requiring the employing office to provide preference eligible covered employees with credit for certain specified forms of prior service as the office calculates ''length of service'' in the context of a RIF. This provision in no way requires an employing office to utilize ''length of service'' as a factor in its retention decisions regarding employees in the event that the RIF decision does not impact any preference eligible covered employees.

1.114 Waiver of physical requirements—retention. This provision closely follows 5 U.S.C. §3504, one of the sections made applicable to the Legislative Branch by the VEOA, requiring that, when making decisions regarding employee retention during a RIF, an employing office must waive physical requirements for a job for preference eligibles in certain specified circumstances. As discussed in the Comments to section 1.110, nothing in this regulation relieves an employing office of any greater obligation it may have pursuant to the Americans with

Disabilities Act (42 U.S.C. §12101 et seq.) as applied by section 102(a)(3) of the CAA, 2 U.S.C. §1302(a)(3).

1.116 Transfer of functions. The language in this section derives from 5 U.S.C. §3503, one of the sections made applicable to the Legislative Branch by the VEOA, requiring covered employees to be transferred to another employing office in the event of a transfer of functions from one employing office to the other, or in the event of the replacement of one employing office by another employing office. The Board expects that employing offices shall coordinate any such transfers in a way that respects both the requirements of this regulation and, to the greatest extent possible, the employing offices' own personnel systems and policies. This section is one of the rare instances where an employing office must follow the regulation even in the event that the personnel action taken does not involve any preference eligible covered employees; however, the clear statutory language of 5 U.S.C. §3503 requires such a result.

Employees and employing offices are reminded that the definition of ''covered employee'' in these proposed regulations does not include employees appointed by a Member of Congress, a committee or subcommittee of either House of Congress, or a joint committee of the House of Representatives and the Senate. *See* proposed regulation 1.102(f)(bb). Therefore, proposed regulation 1.116 will not apply to any such employees affected by the election of new Members of Congress or the transfer of jurisdiction from one committee to another.

SUBPART E: ADOPTION OF VETERANS' PREFERENCE POLICIES, RECORDKEEPING & INFORMATIONAL REQUIREMENTS

We note that, of the six sections in this Subpart, only section 1.120 derives directly from statutory language. The other sections are borrowed from various other employment statutes, and are promulgated pursuant to the authority granted the Board by section 4(c)(4)(A) of the VEOA because they are considered necessary to the implementation of the VEOA. For example, the informational regulations in sections 1.120 and 1.121 are derived from informational regulations promulgated under the Family and Medical Leave Act, which provides employers with some flexibility in determining how the FMLA will be implemented within their own workforce. The Board is strongly committed to transparency as a policy matter. Moreover, for the VEOA rights to become meaningful, applicants for covered positions and covered employees will have to participate in ensuring that this system works properly, since employing offices are permitted to have flexibility in determining their policies, and the Board will not be taking the same active role in policing the veterans' preference requirements that OPM takes in the Executive Branch.

We also note that while this approach differs from OPM's, it reflects the far greater flexibility that employing offices have to tailor substantive requirements to their existing personnel systems and imposes less burdensome obligations on employing offices than that which is imposed on executive agencies: under our regulatory approach, employing offices will have reduced procedural burdens in that they will not be subject to the more detailed requirements of keeping formal retention registers, to the more highly regulated requirements regarding employee access to files (see e.g., 5 CFR §293.101 et seq., 5 CFR §297.101 et seq., and 5 CFR §351.505(b)), or to examining or evaluating applicants on a 100-point scale, seeking prior OPM approval of RIF's, etc.

Section 1.116 Adoption of veterans' preference policy. As noted at the outset of these Comments, the regulations will require each employing office that employs one or more covered employees or seeks applicants for covered positions to develop, within 120 days of the Congressional approval of the regulations, a written program or policy setting forth that employing office's methods for implementing the VEOA's veterans' preference principles in the employing office's hiring and retention systems. Employing offices that have no employees covered by the VEOA are not required to adopt such a policy or program.

Because these regulations afford the employing offices a great amount of flexibility in determining how to implement veterans' preference within their own personnel systems, it is imperative that the methods chosen by the employing offices be reduced to writing and disseminated to covered applicants and employees. This will further the goals of accountability and transparency, as well as consistency in the application of the employing office's veterans' preference procedures. An existing policy may be amended or replaced by the employing office from time to time, as it deems necessary or appropriate to meet changing personnel practices and needs. We note, however, that the employing office's policy or program will at all times remain subject to the requirements of the VEOA and these regulations. Accordingly, while the adoption of a policy or program will demonstrate the employing office's efforts to comply with the VEOA, it will not relieve an employing office of substantive compliance with the VEOA.

Sections 1.117 Preservation of records kept or made. The requirements set forth in this section are derived from OPM regulations regarding retention of RIF records, 5 CFR §351.505, and EEOC regulations regarding the preservation of personnel and employment records kept or made by employers, 29 CFR §1602.14. This section requires that relevant records be retained for one year from the date of the making of the record or the date of the personnel action involved or, if later, one year from the date on which the applicant or employee is notified of the personnel action. In addition, where a claim has been brought under section 401 of the CAA against an employing office under the VEOA, the respondent employing office must preserve all personnel records relevant to the claim until final disposition of the claim.

Section 1.118 Dissemination of veterans' preference policies to applicants for covered positions. Section 1.118 requires that employing offices must furnish information to applicants for covered positions before appointment decisions are made. Before these decisions are made, it is important that applicants be given the opportunity to self-identify themselves as preference eligibles, and that they receive information regarding the employing office's policies and procedures for implementing the VEOA, in order to ensure that they are aware of the VEOA obligations that may apply to their situation. Accordingly, the regulations require that information regarding the employing office's policies and procedures for implementing the VEOA in appointments be furnished to applicants at various stages when the employing office is hiring into covered positions. We note that inviting applicants to voluntarily self-identify as a disabled veteran for purposes of the application of an employing office's veterans' preference policies, as outlined in the proposed regulation, is consistent with the EEOC's ADA *Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations* (EEOC Oct. 10, 1995).

This requirement does not prevent an employing office from appropriately modifying its veterans' preference policies when it sees fit to do so, but is intended to ensure that applicants will be made aware of the employing office's then-current policies and procedures. The requirement that an employing office allow applicants a ''reasonable time'' to provide information regarding their veterans' preference status is intentionally flexible. If an employing office must fill a covered position within a matter of days, one working day may be a ''reasonable time'' for submission of the information. However, if the employing office's appointment process is more prolonged, more time should be allowed.

Sections 1.119 and 1.120 Dissemination of information of veterans' preference policies to covered employees, and notice requirements applicable in RIFs. It is also important that covered employees receive information regarding the employing office's policies and procedures for implementing the VEOA in connection with RIFs, in order to ensure that they are aware of the VEOA obligations that may apply to that situation. Accordingly, section 1.119 requires that information regarding the employing office's policies and procedures for implementing the VEOA in appointments be disseminated through employee handbooks, if the employing office has covered employees and ordinarily distributes such handbooks to those employees, or through any other written policy or manual that the employing office may distribute to covered employees concerning their employee rights or reductions in force.

The notice requirements attendant to a RIF are set out separately in section 1.120 of the regulations. These regulations derive from the express statutory language in 5 USC §3502(d) and (e), which have been applied to the Legislative Branch by the VEOA. The language of section 3502(d) and (e) has been modified in section 1.120 to be consistent with the terms and approach used in the rest of these regulations. Among other changes, section 1.120 refers to ''covered employees'' and the provision in 5 U.S.C. §3502(e) that the ''President'' may shorten the 60 day advance notice period to 30 days has been changed to the ''director of the employing agency.'' Additionally, the provision regarding Job Training Partnership Act notice has been omitted. The requirement to inform the employee of the place where he or she may inspect regulations and records pertaining to this case derives from 5 CFR §351.802(a)(3).

The statutory language requiring notice of ''the employee's ranking relative to other competing employees, and how that ranking was determined'' has been modified to require that the notice state whether the covered employee is preference eligible and that the notice separately state the ''retention status'' (i.e., whether the employee will be retained or not) and preference eligibility of the other covered employees in the same job or position classification within the covered employee's competitive area. The Board is not requiring the keeping of retention registers or the ranking of employees within a job or position classification affected by a RIF. However, the statutory language clearly compels employing offices to provide employees who will be adversely affected by a reduction in force with advance notice of how and why the agency decided to subject that particular employee to the reduction in force. At a minimum, this includes whether the affected employee has preference eligible status, and an objective indication why the employee was not retained in relation to other employees in the affected position classifications or job classifications.

Section 1.121 Informational requirements regarding veterans' preference determinations. Once an appointment or reduction in force decision has been made, it is important that applicants for covered positions and

covered employees receive information regarding the employing office's decision, in order to ensure that the rights and obligations created by the VEOA may be effectively enforced under the CAA as contemplated by section 4(c)(3)(B) of the VEOA. Accordingly, section 1.121 of the regulations requires that certain limited information regarding the employing office's decision be made available to applicants for covered positions and to covered employees, upon request.

Proposed Substantive Regulations

PART 1—Extension of Rights and Protections Relating to Veterans' Preference Under Title 5, United States Code, to Covered Employees of the Legislative Branch (section 4(c) of the Veterans Employment Opportunities Act of 1998)

SUBPART A—MATTERS OF GENERAL APPLICABILITY TO ALL REGULATIONS PROMULGATED UNDER SECTION 4 OF THE VEOA

Sec.
1.101 Purpose and scope.
1.102 Definitions.
1.103 Adoption of regulations.
1.105 Coordination with section 225 of the Congressional Accountability Act.

SEC. 1.101 PURPOSE AND SCOPE

(a) Section 4(c) of the VEOA. The Veterans Employment Opportunities Act (VEOA) applies the rights and protections of sections 2108, 3309 through 3312, and subchapter I of chapter 35 of title 5 U.S.C., to certain covered employees within the Legislative Branch.

(b) Purpose and scope of regulations. The regulations set forth herein are the substantive regulations that the Board of Directors of the Office of Compliance has promulgated pursuant to section 4(c)(4) of the VEOA, in accordance with the rulemaking procedure set forth in section 304 of the CAA (2 U.S.C. §1384). The purpose of subparts B, C and D of these regulations is to define veterans' preference and the administration of veterans' preference as applicable to Federal employment in the Legislative Branch. (5 U.S.C. §2108, as applied by the VEOA). The purpose of subpart E of these regulations is to ensure that the principles of the veterans' preference laws are integrated into the existing employment and retention policies and processes of those employing offices with employees covered by the VEOA, and to provide for transparency in the application of veterans' preference in covered appointment and retention decisions. Provided, nothing in these regulations shall be construed so as to require an employing office to reduce any existing veterans' preference rights and protections that it may afford to preference eligible individuals.

SEC. 1.102 DEFINITIONS

Except as otherwise provided in these regulations, as used in these regulations:

(a) Act or CAA means the Congressional Accountability Act of 1995, as amended (Pub. L. 104–1, 109 Stat. 3, 2 U.S.C. §§1301–1438).

(b) Active duty or active military duty means full-time duty with military pay and allowances in the armed forces, except (1) for training or for determining physical fitness and (2) for service in the Reserves or National Guard.

(c) Appointment means an individual's appointment to employment in a covered position, but does not include inservice placement actions such as promotions.

(d) Armed forces means the United States Army, Navy, Air Force, Marine Corps, and Coast Guard.

(e) Board means the Board of Directors of the Office of Compliance.

(f) Covered employee means any employee of (1) the House of Representatives; (2) the Senate; (3) the Capitol Guide Board; (4) the Capitol Police Board; (5) the Congressional Budget Office; (6) the Office of the Architect of the Capitol; (7) the Office of the Attending Physician; and (8) the Office of Compliance, but does not include an employee (aa) whose appointment is made by the President with the advice and consent of the Senate; (bb) whose appointment is made by a Member of Congress or by a committee or subcommittee of either House of Congress or a joint committee of the House of Representatives and the Senate; or (cc) who is appointed to a position, the duties of which are equivalent to those of a Senior Executive Service position (within the meaning of section 3132(a)(2) of title 5, United States Code). The term covered employee includes an applicant for employment in a covered position and a former covered employee.

(g) Covered position means any position that is or will be held by a covered employee.

(h) Disabled veteran means a person who was separated under honorable conditions from active duty in the armed forces performed at any time and who has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits, or pensions because of a public statute administered by the Department of Veterans Affairs or a military department.

(i) Employee of the Office of the Architect of the Capitol includes any employee of the Office of the Architect of the Capitol, the Botanic Gardens, or the Senate Restaurants.

(j) Employee of the Capitol Police Board includes any member or officer of the Capitol police.

(k) Employee of the House of Representatives includes an individual occupying a position the pay of which is disbursed by the Clerk of the House of Representatives, or another official designated by the House of Representatives, or any employment position in an entity that is paid with funds derived from the clerk-hire allowance of the House of Representatives but not any such individual employed by any entity listed in subparagraphs (3) through (8) of paragraph (f) above nor any individual described in subparagraphs (aa) through (cc) of paragraph (f) above.

(l) Employee of the Senate includes any employee whose pay is disbursed by the Secretary of the Senate, but not any such individual employed by any entity listed in subparagraphs (3) through (8) of paragraph (f) above nor any individual described in subparagraphs (aa) through (cc) of paragraph (f) above.

(m) Employing office means: (1) the personal office of a Member of the House of Representatives or of a Senator; (2) a committee of the House of Representatives or the Senate or a joint committee; (3) any other office headed by a person with the final authority to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the House of Representatives or the Senate; or (4) the Capitol Guide Board, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, and the Office of Compliance.

(n) Office means the Office of Compliance.

(o) Preference eligible means veterans, spouses, widows, widowers or mothers who meet the definition of ''preference eligible'' in 5 U.S.C. §2108(3)(A)–(G).

(p) Qualified applicant means an applicant for a covered position whom an employing office deems to satisfy the requisite minimum job-related requirements of the position. Where the employing office uses an entrance examination or evaluation for a covered position that is numerically scored, the term ''qualified applicant'' shall mean that the applicant has received a passing score on the examination or evaluation.

(q) Separated under honorable conditions means either an honorable or a general discharge from the armed forces. The Department of Defense is responsible for administering and defining military discharges.

(r) Uniformed services means the armed forces, the commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration.

(s) VEOA means the Veterans Employment Opportunities Act of 1998 (Pub. L. 105–339, 112 Stat. 3182).

(t) Veteran means persons as defined in 5 U.S.C. §2108, or any superseding legislation.

SEC. 1.103 ADOPTION OF REGULATIONS

(a) Adoption of regulations. Section 4(c)(4)(A) of the VEOA generally authorizes the Board to issue regulations to implement section 4(c). In addition, section 4(c)(4)(B) of the VEOA directs the Board to promulgate regulations that are ''the same as the most relevant substantive regulations (applicable with respect to the Executive Branch) promulgated to implement the statutory provisions referred to in paragraph (3)'' of section 4(c) of the VEOA. Those statutory provisions are section 2108, sections 3309 through 3312, and subchapter I of chapter 35, of title 5, United States Code. The regulations issued by the Board herein are on all matters for which section 4(c)(4)(B) of the VEOA requires a regulation to be issued. Specifically, it is the Board's considered judgment based on the information available to it at the time of promulgation of these regulations, that, with the exception of the regulations adopted and set forth herein, there are no other ''substantive regulations (applicable with respect to the Executive Branch) promulgated to implement the statutory provisions referred to in paragraph (3)'' of section 4(c) of the VEOA that need be adopted.

(b) Modification of substantive regulations. As a qualification to the statutory obligation to issue regulations that are ''the same as the most substantive regulations (applicable with respect to the Executive Branch),'' section 4(c)(4)(B) of the VEOA authorizes the Board to ''determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under'' section 4(c) of the VEOA.

(c) Rationale for Departure from the Most Relevant Executive Branch Regulations. The Board concludes that it must promulgate regulations accommodating the human resource systems existing in the Legislative Branch; and that such regulations must take into account the fact that the Board does not possess the statutory and Executive Order based government-wide policy making authority underlying OPM's counterpart VEOA regulations governing the Executive Branch. OPM's regulations are designed for the competitive service (defined in 5 U.S.C. §2102(a)(2)), which does not exist in the employing offices subject to this regulation. Therefore, to follow the OPM regulations would create detailed and complex rules and procedures for a workforce that does not exist in the Legislative Branch, while providing no VEOA protections to the covered Legislative Branch employees. We have chosen to propose specially tailored regulations, rather than simply to adopt those promulgated by OPM, so that we may effectuate Congress' intent in extending the principles of the veterans' preference laws to the Legislative Branch through the VEOA.

SEC. 1.104 COORDINATION WITH SECTION 225 OF THE CONGRESSIONAL ACCOUNTABILITY ACT

Statutory directive. Section 4(c)(4)(D) of the VEOA requires that promulgated regulations must be consistent with section 225 of

the CAA. Among the relevant provisions of section 225 are subsection (f)(1), which prescribes as a rule of construction that definitions and exemptions in the laws made applicable by the CAA shall apply under the CAA, and subsection (f)(3), which states that the CAA shall not be considered to authorize enforcement of the CAA by the Executive Branch.

SUBPART B—VETERANS' PREFERENCE—GENERAL PROVISIONS

Sec.
1.105 Responsibility for administration of veterans' preference.
1.106 Procedures for bringing claims under the VEOA.

SEC. 1.105 RESPONSIBILITY FOR ADMINISTRATION OF VETERANS' PREFERENCE

Subject to Section 1.106, employing offices are responsible for making all veterans' preference determinations, consistent with the VEOA.

SEC. 1.106 PROCEDURES FOR BRINGING CLAIMS UNDER THE VEOA

Applicants for appointment to a covered position and covered employees may contest adverse veterans' preference determinations, including any determination that a preference eligible is not a qualified applicant, pursuant to sections 401–416 of the CAA, 2 U.S.C. §§1401–1416, and provisions of law referred to therein; 206a(3) of the CAA, 2 U.S.C. §§1401, 1316a(3); and the Office's Procedural Rules.

SUBPART C—VETERANS' PREFERENCE IN APPOINTMENTS

Sec.
1.107 Veterans' preference in appointments to restricted covered positions.
1.108 Veterans' preference in appointments to non-restricted covered positions.
1.109 Crediting experience in appointments to covered positions.
1.110 waiver of physical requirements in appointments to covered positions

SEC. 1.107 VETERANS' PREFERENCE IN APPOINTMENTS TO RESTRICTED POSITIONS

In each appointment action for the positions of custodian, elevator operator, guard, and messenger (as defined below and collectively referred to in these regulations as restricted covered positions) employing offices shall restrict competition to preference eligibles as long as preference eligibles are available. The provisions of sections 1.109 and 1.110 below shall apply to the appointment of a preference eligible to a restricted covered position. The provisions of section 1.108 shall apply to the appointment of a preference eligible to a restricted covered position, in the event that there is more than one preference eligible applicant for the position.

Custodian—One whose primary duty is the performance of cleaning or other ordinary routine maintenance duties in or about a government building or a building under Federal control, park, monument, or other Federal reservation.

Elevator operator—One whose primary duty is the running of freight or passenger elevators. The work includes opening and closing elevator gates and doors, working elevator controls, loading and unloading the elevator, giving information and directions to passengers such as on the location of offices, and reporting problems in running the elevator.

Guard—One who is assigned to a station, beat, or patrol area in a Federal building or a building under Federal control to prevent illegal entry of persons or property; or required to stand watch at or to patrol a Federal reservation, industrial area, or other area designated by Federal authority, in order to protect life and property; make observations for detection of fire, trespass, unauthorized removal of public property or hazards to Federal personnel or property. The term guard does not include law enforcement officer positions of the U.S. Capitol Police Board.

Messenger—One whose primary duty is the supervision or performance of general messenger work (such as running errands, delivering messages, and answering call bells).

SEC. 1.108 VETERANS' PREFERENCE IN APPOINTMENTS TO NON-RESTRICTED COVERED POSITIONS

(a) Where employing offices opt to examine and rate applicants for covered positions on a numerical basis they shall add points to the earned ratings of those preference eligibles who receive passing scores in an entrance examination, in a manner that is proportionately comparable to the points prescribed in 5 U.S.C. §3309.

(b) In all other situations involving appointment to a covered position, employing offices shall consider veterans' preference eligibility as an affirmative factor that is given weight in a manner that is proportionately comparable to the points prescribed in 5 U.S.C. §3309 in the employing office's determination of who will be appointed from among qualified applicants.

SEC. 1.109 CREDITING EXPERIENCE IN APPOINTMENTS TO COVERED POSITIONS

When considering applicants for covered positions in which experience is an element of qualification, employing offices shall provide preference eligibles with credit:

(a) for time spent in the military service (1) as an extension of time spent in the position in which the applicant was employed immediately before his/her entrance into the military service, or (2) on the basis of actual duties performed in the military service, or (3) as a combination of both methods. Employing offices shall credit time spent in the military service according to the method that will be of most benefit to the preference eligible.

(b) for all experience material to the position for which the applicant is being considered, including experience gained in religious, civic, welfare, service, and organizational activities, regardless of whether he/she received pay therefor.

SEC. 1.110 WAIVER OF PHYSICAL REQUIREMENTS IN APPOINTMENTS TO COVERED POSITIONS

(a) Subject to (c) below, if an employing office determines, on the basis of evidence before it, that an applicant for a covered position is preference eligible, the employing office shall waive in determining whether the preference eligible applicant is qualified for appointment to the position:

(1) requirements as to age, height, and weight, unless the requirement is essential to the performance of the duties of the position; and

(2) physical requirements if, in the opinion of the employing office, on the basis of evidence before it, including any recommendation of an accredited physician submitted by the preference eligible, the preference eligible is physically able to perform efficiently the duties of the position;

(b) Subject to (c) below, if an employing office determines that, on the basis of evidence before it, an otherwise qualified applicant who is a preference eligible described in 5 U.S.C. §2108(3)(c) who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of the covered position, the employing office shall notify the preference eligible of the reasons for the determination and of the right to respond and to submit additional information to the employing office, within 15 days of the date of the notification. Should the preference eligible make a timely response the employing office, at the highest level within the employing office, shall render a final determination of the physical ability of the preference eligible to perform the duties of the position, taking into account the response and any additional information provided by the preference eligible. When the employing office has completed its review of the proposed disqualification on the basis of physical disability, it shall send its findings to the preference eligible.

(c) Nothing in this section shall relieve an employing office of any greater obligation it may have pursuant to the Americans with Disabilities Act (42 U.S.C. §12101 et seq.) as applied by section 102(a)(3) of the CAA, 2 U.S.C. §1302(a)(3).

SUBPART D—VETERAN'S PREFERENCE IN REDUCTIONS IN FORCE

Sec.
1.111 Definitions applicable in reductions in force.
1.112 Application of preference in reductions in force.
1.113 Crediting experience in reductions in force.
1.114 Waiver of physical requirements in reductions in force.
1.115 Transfer of functions.

SEC. 1.111 DEFINITIONS APPLICABLE IN REDUCTIONS IN FORCE

(a) Competing covered employees are the covered employees within a particular position or job classification, at or within a particular competitive area, as those terms are defined below.

(b) Competitive area is that portion of the employing office's organizational structure, as determined by the employing office, in which covered employees compete for retention. A competitive area must be defined solely in terms of the employing office's organizational unit(s) and geographical location, and it must include all employees within the competitive area so defined. A competitive area may consist of all or part of an employing office. The minimum competitive area is a department or subdivision of the employing office under separate administration within the local commuting area.

(c) Position classifications or job classifications are determined by the employing office, and shall refer to all covered positions within a competitive area that are in the same grade, occupational level or classification, and which are similar enough in duties, qualification requirements, pay schedules, tenure (type of appointment) and working conditions so that an employing office may reassign the incumbent of one position to any of the other positions in the position classification without undue interruption.

(d) Preference Eligibles. For the purpose of applying veterans' preference in reductions in force, except with respect to the application of section 1.114 of these regulations regarding the waiver of physical requirements, the following shall apply:

(1) ''active service'' has the meaning given it by section 101 of title 37;

(2) ''a retired member of a uniformed service'' means a member or former member of a uniformed service who is entitled, under statute, to retired, retirement, or retainer pay on account of his/her service as such a member; and

(3) a preference eligible covered employee who is a retired member of a uniformed service is considered a preference eligible only if—

(A) his/her retirement was based on disability—

(i) resulting from injury or disease received in line of duty as a direct result of armed conflict; or

(ii) caused by an instrumentality of war and incurred in the line of duty during a period of war as defined by sections 101 and 1101 of title 38;

(B) his/her service does not include twenty or more years of full-time active service, regardless of when performed but not including periods of active duty for training; or

(C) on November 30, 1964, he/she was employed in a position to which this subchapter applies and thereafter he/she continued to be so employed without a break in service of more than 30 days.

The definition of ''preference eligible'' as set forth in 5 U.S.C §2108 and section 1.102(o) of these regulations shall apply to waivers of physical requirements in determining an employee's qualifications for retention under section 1.114 of these regulations.

(e) Reduction in force is any termination of a covered employee's employment or the reduction in pay and/or position grade of a covered employee for more than 30 days and that may be required for budgetary or workload reasons, changes resulting from reorganization, or the need to make room for an employee with reemployment or restoration rights. This does not encompass terminations or other personnel actions predicated upon performance, conduct or other grounds attributable to an employee.

(f) Undue interruption is a degree of interruption that would prevent the completion of required work by a covered employee 90 days after the employee has been placed in a different position under this part. The 90-day standard should be considered within the allowable limits of time and quality, taking into account the pressures of priorities, deadlines, and other demands. However, a work program would generally not be unduly interrupted even if a covered employee needed more than 90 days after the reduction in force to perform the optimum quality or quantity of work. The 90-day standard may be extended if placement is made under this part to a program accorded low priority by the employing office, or to a vacant position. An employing office has the burden of proving ''undue interruption'' by objectively quantifiable evidence.

SEC. 1.112 APPLICATION OF PREFERENCE IN REDUCTIONS IN FORCE

Prior to carrying out a reduction in force that will affect covered employees, employing offices shall determine which, if any, covered employees within a particular group of competing covered employees are entitled to veterans' preference eligibility status in accordance with these regulations. In determining which covered employees will be retained, employing offices will treat veterans' preference as the controlling factor in retention decisions among such competing covered employees, regardless of length of service or performance, provided that the preference eligible employee's performance has not been rated unacceptable. Provided, a preference eligible who is a ''disabled veteran'' under section 1.102(h) above who has a compensable service-connected disability of 30 percent or more and whose performance has not been rated unacceptable by an employing office is entitled to be retained in preference to other preference eligibles. Provided, this section does not relieve an employing office of any greater obligation it may be subject to pursuant to the Worker Adjustment and Retraining Notification Act (29 U.S.C. §2101 et seq.) as applied by section 102(a)(9) of the CAA, 2 U.S.C. § 1302(a)(9).

SEC. 1.113 CREDITING EXPERIENCE IN REDUCTIONS IN FORCE

In computing length of service in connection with a reduction in force, the employing office shall provide credit to preference eligible covered employees as follows:

(a) a preference eligible covered employee who is not a retired member of a uniformed service is entitled to credit for the total length of time in active service in the armed forces;

(b) a preference eligible covered employee who is a retired member of a uniformed service is entitled to credit for:

(1) the length of time in active service in the armed forces during a war, or in a campaign or expedition for which a campaign badge has been authorized; or

(2) the total length of time in active service in the armed forces if he is included under 5 U.S.C. §3501(a)(3)(A), (B), or (C); and

(c) a preference eligible covered employee is entitled to credit for:

(1) service rendered as an employee of a county committee established pursuant to section 8(b) of the Soil Conservation and Allotment Act or of a committee or association of producers described in section 10(b) of the Agricultural Adjustment Act; and

(2) service rendered as an employee described in 5 U.S.C. §2105(c) if such employee moves or has moved, on or after January 1, 1966, without a break in service of more than 3 days, from a position in a nonappropriated fund instrumentality of the Department of Defense or the Coast Guard to a position in the Department of Defense or the Coast Guard, respectively, that is not described in 5 U.S.C. §2105(c).

SEC. 1.114 WAIVER OF PHYSICAL REQUIREMENTS IN REDUCTIONS IN FORCE

(a) If an employing office determines, on the basis of evidence before it, that a covered employee is preference eligible, the employing office shall waive:

(1) requirements as to age, height, and weight, unless the requirement is essential to the performance of the duties of the position; and

(2) physical requirements if, in the opinion of the employing office, on the basis of evidence before it, including any recommendation of an accredited physician submitted by the preference eligible, the preference eligible is physically able to perform efficiently the duties of the position.

(b) If an employing office determines that, on the basis of evidence before it, a preference eligible described in 5 U.S.C. §2108(3)(c) who has a compensable service-connected disability of 30 percent or more is not able to fulfill the physical requirements of the covered position, the employing office shall notify the preference eligible of the reasons for the determination and of the right to respond and to submit additional information to the employing office within 15 days of the date of the notification. Should the preference eligible make a timely response the employing office, at the highest level within the employing office, shall render a final determination of the physical ability of the preference eligible to perform the duties of the covered position, taking into account the evidence before it, including the response and any additional information provided by the preference eligible. When the employing office has completed its review of the proposed disqualification on the basis of physical disability, it shall send its findings to the preference eligible.

(c) Nothing in this section shall relieve an employing office of any greater obligation it may have pursuant to the Americans with Disabilities Act (42 U.S.C. §12101 et seq.) as applied by section 102(a)(3) of the CAA, 2 U.S.C. §1302(a)(3).

SEC. 1.115 TRANSFER OF FUNCTIONS

(a) When a function is transferred from one employing office to another employing office, each covered employee in the affected position classifications or job classifications in the function that is to be transferred shall be transferred to the receiving employing office for employment in a covered position for which he/she is qualified before the receiving employing office may make an appointment from another source to that position.

(b) When one employing office is replaced by another employing office, each covered employee in the affected position classifications or job classifications in the employing office to be replaced shall be transferred to the replacing employing office for employment in a covered position for which he/she is qualified before the replacing employing office may make an appointment from another source to that position.

SUBPART E—ADOPTION OF VETERANS' PREFERENCE POLICIES, RECORDKEEPING & INFORMATIONAL REQUIREMENTS

Sec.
1.116 Adoption of veterans' preference policy.
1.117 Preservation of records made or kept.
1.118 Dissemination of veterans' preference policies to applicants for covered positions.
1.119 Dissemination of veterans' preference policies to covered employees.
1.120 Written notice prior to a reduction in force.
1.121 Informational requirements regarding veterans' preference determinations.

SEC. 1.116 ADOPTION OF VETERANS' PREFERENCE POLICY

No later than 120 calendar days following Congressional approval of this regulation, each employing office that employs one or more covered employees or that seeks applicants for a covered position shall adopt its written policy specifying how it has integrated the veterans' preference requirements of the Veterans Employment Opportunities Act of 1998 and these regulations into its employment and retention processes. Upon timely request and the demonstration of good cause, the Executive Director, in his/her discretion, may grant such an employing office additional time for preparing its policy. Each such employing office will make its policies available to applicants for appointment to a covered position and to covered employees in accordance with these regulations and to the public upon request. The act of adopting a veterans' preference policy shall not relieve any employing office of any other responsibility or requirement of the Veterans Employment Opportunity Act of 1998 or these regulations. An employing office may amend or replace its veterans' preference policies as it deems necessary or appropriate, so long as the resulting policies are consistent with the VEOA and these regulations.

SEC. 1.117 PRESERVATION OF RECORDS MADE OR KEPT

An employing office that employs one or more covered employees or that seeks applicants for a covered position shall maintain any records relating to the application of its veterans' preference policy to applicants for covered positions and to workforce adjustment decisions affecting covered employees for a period of at least one year from the date of the making of the record or the date of the personnel action involved or, if later, one year from the date on which the applicant or covered employee is notified of the personnel action. Where a claim has been brought under section 401 of the CAA against an employing office under the VEOA, the respondent employing office shall preserve all personnel records relevant to the claim until final disposition of the claim. The term ''personnel records relevant to the claim,'' for example, would include records relating to the veterans' preference determination regarding the person bringing the claim and

records relating to any veterans' preference determinations regarding other applicants for the covered position the person sought, or records relating to the veterans' preference determinations regarding other covered employees in the person's position or job classification. The date of final disposition of the charge or the action means the latest of the date of expiration of the statutory period within which the aggrieved person may file a complaint with the Office or in a U.S. District Court or, where an action is brought against an employing office by the aggrieved person, the date on which such litigation is terminated.

1.118 DISSEMINATION OF VETERANS' PREFERENCE POLICIES TO APPLICANTS FOR COVERED POSITIONS

(a) An employing office shall state in any announcements and advertisements it makes concerning vacancies in covered positions that the staffing action is governed by the VEOA.

(b) An employing office shall invite applicants for a covered position to identify themselves as veterans' preference eligibles, provided that in doing so:

(1) the employing office shall state clearly on any written application or questionnaire used for this purpose or make clear orally, if a written application or questionnaire is not used, that the requested information is intended for use solely in connection with the employing office's obligations and efforts to provide veterans' preference to preference eligibles in accordance with the VEOA; and

(2) the employing office shall state clearly that disabled veteran status is requested on a voluntary basis, that it will be kept confidential in accordance with the Americans with Disabilities Act (42 U.S.C. §12101 et seq.) as applied by section 102(a)(3) of the CAA, 2 U.S.C. §1302(a)(3), that refusal to provide it will not subject the individual to any adverse treatment except the possibility of an adverse determination regarding the individual's status as a preference eligible as a disabled veteran under the VEOA, and that any information obtained in accordance with this section concerning the medical condition or history of an individual will be collected, maintained and used only in accordance with the Americans with Disabilities Act (42 U.S.C. §12101 et seq.) as applied by section 102(a)(3) of the CAA, 2 U.S.C. §1302(a)(3).

(c) An employing office shall provide the following information in writing to all qualified applicants for a covered position:

(1) the VEOA definition of veterans' ''preference eligible'' as set forth in 5 U.S.C. §2108 or any superseding legislation, providing the actual, current definition in a manner designed to be understood by applicants, along with the statutory citation;

(2) the employing office's veterans' preference policy or a summary description of the employing office's veterans' preference policy as it relates to appointments to covered positions, including any procedures the employing office shall use to identify preference eligible employees;

(3) the employing office may provide other information to applicants, but is not required to do so by these regulations.

(d) Except as provided in this subparagraph, the written information required by paragraph (c) must be provided to all qualified applicants for a covered position so as to allow those applicants a reasonable time to respond regarding their veterans' preference status.

(e) Employing offices are also expected to answer applicant questions concerning the employing office's veterans' preference policies and practices.

SEC. 1.119 DISSEMINATION OF VETERANS' PREFERENCE POLICIES TO COVERED EMPLOYEES

(a) If an employing office that employs one or more covered employees or that seeks applicants for a covered position provides any written guidance to such employees concerning employee rights generally or reductions in force more specifically, such as in a written employee policy, manual or handbook, such guidance must include information concerning veterans' preference entitlements under the VEOA and employee obligations under the employing office's veterans' preference policy, as set forth in subsection (b) of this regulation.

(b) Written guidances and notices to covered employees required by subsection (a) above shall include, at a minimum:

(1) the VEOA definition of veterans' ''preference eligible'' as set forth in 5 U.S.C. §2108 or any superseding legislation, providing the actual, current definition along with the statutory citation;

(2) the employing office's veterans' preference policy or a summary description of the employing office's veterans' preference policy as it relates to workforce adjustments; and the procedures the employing office shall take to identify preference eligible employees.

(3) The employing office may include other information in the notice or in its guidances, but is not required to do so by these regulations.

(c) Employing offices are also expected to answer covered employee questions concerning the employing office's veterans' preference policies and practices.

1.120 WRITTEN NOTICE PRIOR TO A REDUCTION IN FORCE

(a) Except as provided under subsection (b), a covered employee may not be released, due to a reduction in force, unless the covered employee and the covered employee's exclusive representative for collective-bargaining purposes (if any) are given written notice, in conformance with the requirements of paragraph (b), at least 60 days before the covered employee is so released.

(b) Any notice under paragraph (a) shall include—

(1) the personnel action to be taken with respect to the covered employee involved;

(2) the effective date of the action;

(3) a description of the procedures applicable in identifying employees for release;

(4) the covered employee's competitive area;

(5) the covered employee's eligibility for veterans' preference in retention and how that preference eligibility was determined;

(6) the retention status and preference eligibility of the other employees in the affected position classifications or job classifications within the covered employee's competitive area;

(7) the place where the covered employee may inspect the regulations and records pertinent to him/her, as detailed in section 1.121(b) below; and

(8) a description of any appeal or other rights which may be available.

(c) (1) The director of the employing office may, in writing, shorten the period of advance notice required under subsection (a), with respect to a particular reduction in force, if necessary because of circumstances not reasonably foreseeable.

(2) No notice period may be shortened to less than 30 days under this subsection.

SEC. 1.121 INFORMATIONAL REQUIREMENTS REGARDING VETERANS' PREFERENCE DETERMINATIONS

(a) Upon written request by an applicant for a covered position, the employing office shall promptly provide a written explanation of the manner in which veterans' preference was applied in the employing office's appointment decision regarding that applicant. Such explanation shall state at a minimum:

(1) Whether the applicant is preference eligible and, if not, a brief statement of the reasons for the employing office's determination that the applicant is not preference eligible. If the applicant is not considered preference eligible, the explanation need not address the remaining matters described in subparagraphs (2) and (3).

(2) If the applicant is preference eligible, whether he/she is a qualified applicant and, if not, a brief statement of the reasons for the employing office's determination that the applicant is not a qualified applicant. If the applicant is not considered a qualified applicant, the explanation need not address the remaining matters described in subparagraph (3).

(3) If the applicant is preference eligible and a qualified applicant, the employing office's explanation shall advise whether the person appointed to the covered position for which the applicant was applying is preference eligible.

(b) Upon written request by a covered employee who has received a notice of reduction in force under section 1.120 above (or his/her representative), the employing office shall promptly provide a written explanation of the manner in which veterans' preference was applied in the employing office's retention decision regarding that covered employee. Such explanation shall state:

(1) Whether the covered employee is preference eligible and, if not, the reasons for the employing office's determination that the covered employee is not preference eligible.

(2) If the covered employee is preference eligible, the employing office's explanation shall include:

(A) a list of all covered employee(s) in the requesting employee's position classification or job classification and competitive area who were retained by the employing office, identifying those employees by job title only and stating whether each such employee is preference eligible,

(B) a list of all covered employee(s) in the requesting employee's position classification or job classification and competitive area who were not retained by the employing office, identifying those employees by job title only and stating whether each such employee is preference eligible, and

(C) a brief statement of the reason(s) for the employing office's decision not to retain the covered employee.

END OF PROPOSED REGULATIONS

HONORING OUR ARMED FORCES

LANCE CORPORAL RICHARD CHAD CLIFTON

Mr. CARPER. Mr. President, I set aside a few moments today to reflect on the life of Marine LCpl Richard Chad Clifton. Chad epitomized the best of our country' s brave men and women who fought to free Iraq and to secure a new democracy in the Middle East. He exhibited unwavering courage, dutiful service to his country, and above all else, honor. In the way he lived his life, and how we remember him, Chad reminds each of us how good we can be.

A resident of Milton, Chad's passing has deeply affected the community. A 2003 graduate of Cape Henlopen High School. Chad was the son of Richard C. and Terri Clifton. Friends, family, and school officials recalled Chad Clifton as smart, funny, laid back, and carefree; an all-around good person. He viewed the Marine Corps as an opportunity to gain life experience. An aspiring writer, Chad said being overseas was providing a reservoir of experiences to write about.

Chad always had a strong interest in the military. He spent more than 3 years as a member of the Cape Henlopen High School Junior ROTC program. His participation in that program enabled me to meet him last year and talk about his interest in serving the United States of America. His interest also came from his grandfather, a Korean War veteran, who earned the Purple Heart. That medal will be buried with Richard Chad Clifton.

After graduating from high school, Chad underwent basic training at Parris Island, SC before being stationed at Camp Pendleton, CA. Chad became a member of the 2nd Battalion, 5th Marine Regiment. He died in combat in the Al Anbar province in western Iraq.

Chad was a remarkable and well-respected young soldier. His friends and family remember him as an officer and gentleman with an acid wit and an appreciation for music and art. He enjoyed writing, listening to heavy metal, and watching television sitcom reruns. As his mother remembers, ''He was pure potential with a good heart.''

Today, commemorate Chad, celebrate his life, and offer his family our support and our deepest sympathy on their tragic loss.

KYOTO PROTOCOL AND CLIMATE CHANGE

Mr. JEFFORDS. Mr. President, I rise today to acknowledge that the international global warming pact known as the Kyoto Protocol has entered into force. This happens only 7 years after it was negotiated.

The Protocol imposes limits on emissions of greenhouse gases that scientists blame for increasing world temperatures. As my colleagues know, President Bush decided to abandon the Protocol and any serious international negotiations on the matter in March 2001. That unilateral abandonment leaves the world to wonder why the Nation that contributes the most greenhouse gas emissions to the world atmosphere refuses to accept responsibility for these emissions and refuses to cooperate with the international community to curb the global warming threat.

I assume it was no coincidence that the Committee on Environment and Public Works, on which I serve as ranking member, was supposed to consider legislation today called the Clear Skies Act. If passed, this legislation will create anything but clear skies.

The bill rolls back steady progress under the Clean Air Act and actually would increase this country's greenhouse gas emissions more than no legislation. The chairman of the committee has decided to take more time to craft this measure, due in no small part to the fact that the bill lacks the support in committee to be approved and reported to the Senate today. I commend the chairman for making that decision today—the same day the Kyoto Protocol has taken effect—to more carefully consider this important measure.

In the coming weeks as we discuss this legislation, I hope that we can reach agreement on a bill that truly does clear our skies. To me, that means a bill that not only improves upon the Clean Air Act, but that also addresses our Nation's greenhouse gas emissions.

Yesterday, on the eve of the Kyoto Protocol entering into force, a White House spokesman stated that the United States has made an unprecedented commitment to reduce the growth of greenhouse gas emissions in a way that continues to grow our economy. Mr. President, I have seen no evidence of this commitment.

For my part, I have already introduced the Clean Power Act of 2005. I also intend to introduce the Renewable Portfolio Standard Act of 2005 and the Electric Reliability Security Act of 2005, two bills designed to use our resources more efficiently.

If President Bush signed into law a measure that caps or truly required reductions in the emissions of greenhouse gases, evidence of a real commitment would be apparent, not just to me but to the entire world. I call upon my Senate and House colleagues to mark the occasion of the Kyoto Protocol's entering into force by embarking upon serious work to craft legislation that imposes credible deadlines to achieve caps and significant reductions to our Nation's sizeable and growing contribution of greenhouse gases to the atmosphere.

THE DOHA DECLARATION AND THE TRADE PROMOTION AUTHORITY ACT OF 2002

Mr. KENNEDY. Mr. President, the Trade Promotion Authority Act of 2002 gives the President and the U.S. Trade Representative the power to negotiate bilateral and multilateral trade agreements that must be given expedited consideration by Congress. The Doha Declaration was adopted by the World Trade Organization at the Fourth Ministerial Conference at Doha, Qatar, on November 14, 2001, and addresses the need for access to medicines for all and how to reconcile that need with intellectual property protections.

When the Trade Act came to the floor of the Senate, Senator FEINSTEIN and I offered an amendment to the section on the negotiating objectives of the United States in trade negotiations. Our amendment made it a principal objective of the United States to respect the Doha Declaration in all trade negotiations. Regrettably, in several trade agreements since then, administration has refused to fulfill this obligation.

The basic issue was the interpretation of the so-called TRIPS agreement on intellectual property protections such as patents and copyright. The Doha Declaration specifically states that the TRIPS agreement ''does not and should not prevent members from taking measures to protect public health.'' It recognized the need to interpret and implement TRIPS in a way that supports a nation's ''right to protect public health and, in particular, to promote access to medicines for all.''

The Doha Declaration went on to specify that ''[e]ach member country has the right to grant compulsory licenses and the freedom to determine the grounds upon which such licenses are granted.'' It stated that each member nation is ''free to establish its own regime'' on whether a sale of a patented product by the patent owner or licensee exhausts the patent, so that it cannot be asserted against subsequent purchasers or users of the product.

The Doha Declaration recognized a basic principle—poor people in the developing nations often cannot afford many patented drugs, even though the drugs are their only hope for surviving AIDS and other serious and life-threatening diseases.

The Doha Declaration is clearly intended to prevent patents from blocking access to life-saving drugs. Developing nations obviously do not have the capacity to manufacture drugs themselves, and they must be free to purchase these drugs from another country.

Our amendment to the Trade Promotion Authority Act reinforces the Doha Declaration. The Bush administration should be using it to negotiate trade agreements that allow urgently needed access to medicines. Instead, the administration has used trade agreements to promote the interests of the pharmaceutical industry at the expense of access to drugs in developing nations.

Again and again, the administration has defied the Doha Declaration and imposed unjustified restrictions on the availability of patented drugs. They've done it on trade agreements with Australia, with Jordan, with Morocco, with Singapore, and other nations. In these agreements, the Bush administration has undermined the very core of the Doha Declaration. They're trying to do it now in the Central American Free Trade Agreement.

They block the approval and use of generic version of drugs. They prevent new treatments for HIV/AIDS from getting to the people of the developing world.

It's an outrageous policy. The administration has made it U.S. policy to block affordable, life-saving drugs for AIDS for the people of Central America, because they feel it's more important to protect the profits of brand name drug companies..

The administration is defying the statutory requirement of the Doha Declaration, that our objective in these agreements must be to guarantee access to essential drugs for the sick and the poor in the developing nations of the world.

They use countless legal tactics to cause delays in the approval of generic drugs in developing countries, even

when patents are invalid or are not infringed at all by the generic drug. In essence, the administration has set up a bottleneck to prevent approval of generic drugs in many countries of the developing world. That's completely at odds with the Doha Declaration.

U.S. law allows a generic drug company to use a patented drug to develop a generic version of the drug before the patent has expired. It takes time to develop a drug, test it, and have it reviewed by the FDA.

The theory of the law is that a generic drug company should be able to complete this approval process before the patent expires, so that developing countries can get generic versions of drugs as quickly as possible.

That process is permitted by TRIPS, which means it is permitted by the trade agreements the administration has negotiated. It is not required by those agreements, however, and the administration has not tried to include it. In fact, they give brand name drug companies the opportunity to block that process in each of these developing countries. It's another example of the administration cynically protecting the interests of the brand name drug companies in violation of the law.

The administration claims that its tactics are consistent with another objective of the Trade Act, which is to seek standards for intellectual property protection and enforcement in other countries. That's true, but it's in the same provision in the act as the Doha Declaration.

The administration has a good track record in protecting the brand name drug industry, but it has never gotten even one provision that respects the Doha Declaration. Selectively interpreting laws to apply one provision and ignore another is unacceptable.

It's no secret that the brand name drug companies want better patents and longer exclusivities in the United States. But it's wrong for the administration to side with them in trade agreements that defy the Doha Declaration.

The administration has systematically blocked Congress from changing intellectual property protections except in ways that benefit brand name drug companies. It gets even worse. When brand name drug companies successfully lobby for protections under the laws of our trading partners that are greater than those under U.S. law, the industry then argues that the United States should ''harmonize'' its intellectual property protections with those of our trading partners. That's a slap in the face to Congress and the American people. They should not be forced by the Bush administration to endure even higher drug prices than they do today.

The question is: What should be done to put real teeth in Doha Declaration in trade negotiations?

First, the administration should follow U.S. law and respect the declaration in future negotiations, such as those about to begin with the nations of the Andes. It should immediately stop seeking intellectual property protections that prevent access to medicines for all and should start to seek those that promote greater access to medicines for all.

Second, the negotiators for countries of the developed and developing world should stop every time the U.S. Trade Representative asks for an intellectual property provision, especially one directed specifically at drug patents or drug data exclusivity, and ask how that provision affects access to needed drugs.

The U.S. Trade Representative should not be surprised if negotiators from developing nations refuse to accept restrictive provisions that violate the Doha Declaration. They should challenge our Trade Representative to obey the rule of law.

And here in Congress, we have to do a better job of insisting that our trade agreements comply with the letter and the spirit of the Doha Declaration. It's the law of the land, and it's a matter of life and death for hundreds of millions of people in other lands. The tactics we are so shamefully using against them can only breed greater resentment and greater hatred of the United States. And we can't afford to let that happen at this critical time in our role in the world.

I ask unanimous consent that a brief description of provisions in trade agreements that violate the Doha Declaration be printed in the RECORD as a technical appendix.

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

TECHNICAL APPENDIX TO STATEMENT OF SENATOR EDWARD M. KENNEDY ON THE DOHA DECLARATION AND THE TRADE PROMOTION AUTHORITY ACT OF 2002

COMPULSORY LICENSING AND PARALLEL TRADE

The Administration has successfully imposed restrictions on the right to compulsory license medicines in the trade agreements with Australia, Jordan, and Singapore. The Administration has obtained provisions that can block parallel imports in trade agreements with both developed and developing nations, such as Australia, Morocco, and Singapore. For the Doha Declaration to work, both developed and developing countries must be able to issue compulsory licenses and then engage in parallel importation of the drug from the developed country that can manufacture the drug to the developing country whose people need the drug, yet these agreements undermine both compulsory licensing and parallel importation.

DATA EXCLUSIVITIES

The Administration has also pursued data exclusivities to protect brand name drugs in trade agreements with Australia, Bahrain, Chile, Jordan, Morocco, and Singapore, and now seeks them in the Central American Free Trade Agreement. To receive authorization to market a drug, many countries, like the United States, require the drug manufacturer to present data to show that the drug is safe and effective for its intended use. The clinical trials to produce these data can be quite expensive, and protecting these data for a period of years—meaning that the data may not be used to approve another, similar product—can create an incentive for and protect the investment in producing them.

In the developing world, however, data exclusivities prohibit a country from approving even a compulsory licensed version of a patented drug. The trade agreements that require exclusivities provide no mechanism to allow for distribution of compulsory licensed products notwithstanding the exclusivities. The exclusivities therefore will block compulsory licensed versions of the new treatments for HIV/AIDS and other serious diseases from getting to the people of the developing world, at least until the data exclusivities have expired.

LINKAGE BETWEEN PATENTS AND DRUG APPROVAL

Most recently, the Administration has also negotiated for provisions in trade agreements with the countries of Central America that link approval of generic drug products to the status of patents on the pioneer drug product. In other words, approval of generic drugs is blocked if there are patents and the government approval agency has not ascertained whether the generic product infringes a brand name drug patent.

In the United States, approval of a generic drug is blocked because of a patent only if the brand name company sues to defend the patent. The obligation is not on the Food and Drug Administration, which has repeatedly stated that it has no capacity to assess or evaluate patents. The Administration's trade agreements place the responsibility to defend brand name drug patents on the FDA's of the developing nations, which we can only assume are more overburdened than our own FDA and similarly lack the expertise to assess and evaluate patents. The inevitable result will be delays in the approval of generic drugs in developing countries caused by patents that are invalid or that are not infringed by the generic drug.

THE BOLAR AMENDMENT

In the United States, the Bolar Amendment allows a generic drug company to use a patented invention to develop a generic version of a drug before the patent has expired because it takes time to develop and test a drug and have it reviewed by the FDA and a generic drug company should be able to complete this process before the patent has expired.

Without a Bolar provision, a drug patent is arbitrarily extended because of the time needed for drug formulation and approval. The Bolar Amendment in a developing country will improve timely access to medicines for the sick and poor. The Administration has not sought to mandate the Bolar provision in trade agreements, however.

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.

Last summer, a gay man was attacked outside of a club in Seattle, WA. Micah Painter was leaving for the night when he was beaten and stabbed with a broken bottle. His attackers

shouted anti-gay slurs at him and demanded to know if he was gay. The incident is being investigated as a hate crime.

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.

ANIMAL FIGHTING PROHIBITION ENFORCEMENT ACT

Mr. ENSIGN. Mr. President, I rise to reintroduce the Animal Fighting Prohibition Enforcement Act, legislation that garnered the support of 51 Senate cosponsors and 201 House cosponsors in the 108th Congress but didn't quite make it over the finish line. I thank my colleagues for their support in this endeavor to protect the welfare of animals and express my hope that we will get the job done early in this session. This legislation targets the troubling, widespread, and often underground activities of dogfighting and cockfighting where dogs and birds are bred and trained to fight to the death. This is done for the sheer enjoyment and illegal wagering of the animals' handlers and spectators.

These activities are reprehensible and despicable. Our States' laws reflect this sentiment. All 50 States have prohibited dogfighting. It is considered a felony in 48 States. Cockfighting is illegal in 48 States, and it is a felony in 31 States. In my home State of Nevada, both dogfighting and cockfighting are considered felonies. In fact, it is a felony to even attend a dogfighting or cockfighting match.

Unfortunately, in spite of public opposition to extreme animal suffering, these animal fighting industries thrive. There are 11 underground dogfighting publications and several above-ground cockfighting magazines. These national magazines advertise and sell animals and the materials associated with animal fighting. They also seek to legitimize this shocking practice.

During the consideration of the farm bill in 2001, a provision was included that closed loopholes in the Federal animal fighting law. Both the House and the Senate also increased the maximum jail time for individuals who violate this law from 1 year to 2 years, making any violation a Federal felony. However, during the conference, the jail time increase was removed.

Then in 2003, I offered an amendment to the Healthy Forests bill that would have had the same effect as the bill I am introducing today. The Senate agreed to this amendment by unanimous consent, but it was again taken out in conference.

Now, I am hoping the third time is the charm. In the form that is being introduced today, this legislation passed the House Judiciary Committee in September 2004. It is ripe for enactment early in the 109th Congress. This legislation has been endorsed by the USDA, the American Veterinary Medical Association, more than 150 State and local police and sheriffs departments across the country, and a host of others. The only groups opposing it are the cockfighters and the dogfighters.

The bill seeks to do two things. First, it increases the penalty to the felony level—up to 2 years jail time for offenders. I am informed by U.S. attorneys that they are hesitant to pursue animal fighting cases with merely a misdemeanor penalty. The USDA has received innumerable tips from informants and requests to assist with State and local prosecutions but has only been able to help in a handful of cases since Congress first passed the Federal animal fighting law in 1976. For example, in my own State last year, law enforcement authorities raided an ongoing cockfight involving about 200 people from Nevada and other States. The USDA wanted to pursue Federal charges, to complement the local effort, but the U.S. Attorney's Office declined to prosecute because the Federal crime was only a misdemeanor. Increased penalties will provide a greater incentive for Federal authorities to pursue animal fighting cases.

Second, the bill prohibits the interstate shipment of cockfighting implements, such as razor-sharp knives and gaffs. The specific knives are commonly known as ''slashers.'' The slashers and icepick-like gaffs are attached to the legs of birds to make the cockfights more violent and to induce bleeding of the animals. These weapons are used only in cockfights. Since Congress has restricted shipment of birds for fighting, it should also restrict implements designed specifically for fights.

This is commonsense, long-overdue legislation. It does not expand the Federal Government's reach into a new area but simply aims to make current law more effective. It is explicitly limited to interstate and foreign commerce, so it protects States rights in the two States, Louisiana and New Mexico, where cockfighting is still allowed. Further, it protects States rights in the other 48 States where weak Federal law is compromising their ability to keep animal fighting outside their borders.

Mr. President, this legislation is needed for humane reasons. But it is also urgently needed to protect poultry health and public health. In 2002 to 2003, we had an outbreak of exotic Newcastle disease among poultry in my home State of Nevada, as well as in California, Arizona, and Texas. According to the USDA, this deadly disease was spread in large part by illegal cockfighters. It cost taxpayers about $200 million to contain and cost the poultry industry many millions more in lost export markets. In Asia, at least four children died last year due to exposure to bird flu from cockfighting activity, according to news reports. One Malaysian news agency noted that surveys by the ''Veterinary Department show that irresponsible cockfighting enthusiasts are the main 'culprits' for bringing the avian influenza virus into the state.'' Fortunately, bird flu has not yet jumped the species barrier in this country, but we ought to do all we can to minimize the risk. One of the ways to ensure greater protection against the spread of these dangerous avian diseases is to enforce the ban on interstate and foreign shipment of birds for the purpose of fighting. Our bill ensures that penalties are in place to encourage meaningful enforcement of this ban.

I appreciate the strong support of Senators SPECTER, CANTWELL, FEINSTEIN, DEWINE, KENNEDY, KYL, KOHL, LUGAR, VITTER, LEAHY, and SANTORUM in this effort and look forward to the overwhelming support of my other colleagues in the Senate. I also wish to recognize Representative MARK GREEN for his leadership in reintroducing an identical bill in the House today. Surely, this is an issue that must be addressed as soon as possible. We cannot allow this barbaric practice to continue in our civilized society.

REDUCING CRIME AT AMERICA'S SEAPORTS ACT OF 2005

Mrs. FEINSTEIN. Mr. President, yesterday I introduced legislation to improve our Nation's ability to use the criminal law to guard against and respond to terrorist attacks at our seaports—the Reducing Crime at America's Seaports Act of 2005.

I am pleased to join my colleagues Senators BIDEN, SPECTER, KYL, and ALLEN, who have co-sponsored this bill, in moving forward with this initiative.

The Nation's seaports are a tremendous asset to our economy. They also represent a significant vulnerability to a possible terrorist attack.

Much of our national commerce travels through these ports. Ninety percent of all cargo tonnage moves through the 50 biggest ports. Just 25 of those ports account for 98 percent of the Nation's container traffic—two of the largest such ports, Oakland and Los Angeles/Long Beach, are in my home State of California.

A modern port, which handles huge ships laden with thousands of containers, and vast amounts of critical bulk cargo, is complex and sprawling. It is also extremely vulnerable to a terrorist attack.

The very complexity and size of our ports make them an obvious and attractive target for a terrorist. With hundreds of miles of wharves and piers, a vast volume of boat, truck and car traffic, lengthy perimeters, ports can be the perfect target.

Not only are they vulnerable to attack, the consequences of even a small attack could be overwhelming. Commerce would be devastated, not only at

and around the port, but all around the Nation, because the goods moving through ports are the lifeblood of industry and commerce throughout the Nation. The human cost would also be terrible, because ports not only employ thousands of workers; they are without exception located near large metropolitan population centers.

My concern is not just theoretical. The available intelligence analysis supports the conclusion that seaports are a critical vulnerability. Our terrorist enemies are well aware of the vulnerability of these ports, and are well equipped to do terrible damage.

This problem is heightened by two critical factors: the first is the growing importance of containers in maritime commerce. Since their introduction in the late 1960s, container traffic has grown. It now accounts for 66 percent of dollar value of all U.S. maritime traffic. In some ports, such as Los Angeles/Long Beach, it constitutes most of the trade. The problem with containers is that they are, by definition, a potential delivery device for a terrorist weapon. Whether conventional explosives, biological agents, or a nuclear device, such as a so-called ''dirty bomb,'' containers complicate the problem of securing our ports. The second factor is the increasing possibility that terrorists have, or will soon acquire, the ability to mount unconventional attacks, such as nuclear, radiological or biological attacks. In such a case our ports provide both a method for bringing such things into the country for an attack inland, and can be the target itself.

There is a lot to do to secure our ports. Some of it requires long term investment in capital improvements. But we can accomplish much simply by fine-tuning the tools we already have. Among those tools is the criminal law. These laws are vital to those on the front line—the Coast Guard, the FBI, Customs Agents, and the State, local and private authorities who protect our ports every day.

This bill will improve the criminal law applicable to ports in the following ways: it would clarify that the law prohibiting fraudulent access to transport facilities includes seaports and waterfronts within its scope, as well as increase the maximum term of imprisonment for a violation from 5 years to 10 years. According to the Report of the Interagency Commission on Crime and Security at U.S. Seaports: ''[c]ontrol of access to the seaport or sensitive areas within the seaports is often lacking.'' Such unauthorized access is especially problematic, since inappropriate controls may result in the theft of cargo and, more dangerously, undetected admission of terrorists.

It would amend the U.S. Code to make it a crime: One, for a vessel operator knowingly to fail to slow or stop a ship once ordered to do so by a Federal law enforcement officer, including the Coast Guard; two, for any person on board a vessel to impede boarding or other law enforcement action authorized by federal law; or three, for any person on board a vessel to provide false information to a federal law enforcement officer. Any violation of this section would be punishable by a fine and/or imprisonment for a maximum term of 5 years. A core function of the Coast Guard is law enforcement at sea, especially in the aftermath of the tragic events of September 11. While the Coast Guard has authority to use whatever force is reasonably necessary to force a vessel to stop or be boarded, ''refusal to stop,'' by itself, is not currently a crime.

It creates a new criminal provision to make it a crime to willfully use a dangerous weapon, including chemical, biological, radiological or nuclear materials, or explosive, with intent to cause death or serious bodily injury to any person on board a passenger vessel. Any violation of this section, including attempts and conspiracies, would be punishable by a fine and/or imprisonment for a maximum term of 20 years and, if death results, for a term of imprisonment up to life. This section would close a potential gap in existing law by making it clear that ''passenger vessels'' like cruise ships are included within the scope of transportation vehicles covered by the provision.

The bill would amend existing law which covers violence against maritime navigation to make it a crime to intentionally damage or tamper with any maritime navigational aid maintained by the Coast Guard or under its authority, if such act endangers the safe navigation of a ship. The Coast Guard maintains over 50,000 navigational aids on more than 25,000 miles of waterways. These aids, which are relied upon by all commercial, military and recreational mariners, are essential for safe navigation and are, therefore, inviting targets for terrorists.

The bill would make it a crime to: One, knowingly place in waters any device or substance which is likely to damage a vessel or its cargo, interfere with a vessel's safe navigation, or interfere with maritime commerce; or two, knowingly discharge a hazardous substance into U.S. waters, with the intent to endanger human life or welfare. Any violation of these provisions would be punishable by a fine and/or a term of imprisonment up to life; if death results, the offense could be punishable by a sentence of death. This addresses the vulnerability of our shorelines and ports to such a terrorist attack the results could be economically and environmentally devastating.

The law would make it a crime to knowingly and willfully transport aboard any vessel an explosive, biological agent, chemical weapon, or radiological or nuclear materials, knowing that the item is intended to be used to commit a terrorist act. Any violation of this provision would be punishable by a fine and/or a term of imprisonment up to life; if death results, the offense could be punished by a sentence of death. It would also make it a crime to knowingly and willfully transport aboard any vessel any person who intends to commit, or is avoiding apprehension after having committed, a terrorist act.

The law creates a set of crimes involving attacks on sea vessels. Modeled upon the existing criminal sanctions for destruction or interference with aircraft or aircraft facilities, updating them in the maritime area to harmonize them with coverage in the aviation context. Specifically, this section would make it a crime to: One, damage or destroy a vessel or its parts, a maritime facility, or any apparatus used to store, load or unload cargo and passengers; two, perform an act of violence against or incapacitate any individual on a vessel or at or near a facility; or three, knowingly communicate false information that endangers the safety of a vessel.

The law would also subject any individual who knowingly conveys false information about the offenses described above, or other named offenses, to a civil penalty up to $5,000. In addition, an individual who willfully and maliciously or recklessly conveys false information would be punishable by a fine and/or imprisonment for a maximum term of 5 years.

The law would amend the U.S. Code to prohibit the carrying of a dangerous weapon, including a firearm or explosive, at a seaport or on board a vessel. Any violation of this section, and conspiracies, would be punishable by a fine and/or imprisonment for a maximum term of 10 years; an individual who willfully or recklessly violates this section would be punishable by a fine and/or imprisonment for a maximum term of 15 years; if death results, the offense would be punishable by a term of imprisonment up to life. According to the Interagency Commission Report, ''[a]t many seaports, the carrying of firearms is not restricted, and thus internal conspirators and other criminals are allowed armed access to cargo vessels and cruise line terminals.''

The bill expands the scope of section 659 of title 18, theft of interstate or foreign shipments, to include theft of goods from additional transportation facilities or instruments, including trailers, cargo containers, and warehouses. In addition, it would increase the maximum term of imprisonment for low-level thefts from 1 year to 3 years and clarify that the determination of whether goods are ''moving as an interstate or foreign shipment'' is made by considering the entire cargo route, regardless of any temporary stop between the point of origin and final destination.

In addition to making changes to the criminal law, the bill creates mechanisms to permit the government to efficiently acquire data necessary to target scarce enforcement resources. Recognizing that cargo theft is not only a significant economic problem in its own right, but an indicator of porous

security, and thus of terrorist vulnerability, the law creates meaningful reporting requirements.

This bill would require the Attorney General to one, mandate the reporting of cargo theft offenses; and two, create a database containing the reported information, which would be appropriately integrated with other agencies' information-collection efforts and made available to governmental officials. Despite the fact that cargo theft is a well-known problem, there exists no national data collection and reporting systems that capture the magnitude of serious crime at seaports.

The bill increases the penalties for noncompliance with certain manifest reporting and record-keeping requirements, including information regarding the content of cargo containers and the country from which the shipments originated. The effectiveness of Federal, State and local efforts to secure ports is compromised by criminals' ability to evade detection by underreporting and misreporting the content of cargo—with little more than a slap on the wrist, if that. The existing statutes simply do not provide adequate sanctions to deter criminal or civil violations. As a consequence, vessel manifest information is often wrong or incomplete—and our ability to assess risks, make decisions about which containers to inspect more closely, or simply control the movement of cargo is made virtually impossible.

Our Nation's ports represent a critical vulnerability point in our Nation's defenses. It is critical that we take steps to reduce this vulnerability, develop defenses, and, unfortunately, plan for mitigation should there be an attack. There is much to do, including providing additional funding. This bill addresses one aspect of the problem by improving and adding to the criminal justice tools which can protect our ports. It is a relatively narrow bill, with a precise focus on the problem at hand.

I urge my colleagues to join in supporting this much-needed improvement to our law.

MILK INCOME LOSS CONTRACT EXTENSION BILL

Mr. COLEMAN. Mr. President, Senator TALENT asked me on the date of introduction, February 3, 2005, to be a cosponsor of S. 273. Unfortunately, by the time we got the message to the floor that day, the Senate had adjourned.

Senator TALENT is not only a great friend of mine, but a great friend of America's farmers and ranchers, including our dairy farm families. He is a valuable member of the Senate Agriculture, Nutrition, and Forestry Committee, a cochairman with me of the Senate Biofuels Caucus. We work very closely on issues of importance to our farm families.

I am pleased that Senator TALENT and I will be working together to extend MILC, legislation extremely important to Missouri and Minnesota dairy farmers and dairy farmers across our country.

TRIBUTE TO THE LATE FREDERICK DOUGLASS

Mr. INOUYE. Mr. President, on February, 14, 2005, one of our greatest Americans, Frederick Douglass, was honored at a celebration at the historic Ford's Theatre that was sponsored by the Caring Institute and the National Park Service. These two organizations play major roles in ensuring that the life and legacy of Mr. Douglass are not forgotten—the Institute through its establishment of The Frederick Douglass Museum and the Hall of Fame for Caring Americans on Capitol Hill, and the National Park Service through its management of the Frederick Douglass National Historic Site at Cedar Hill in Anacostia. As you know, Cedar Hill was his home in Washington, DC.

Frederick Douglass was one of the most important intellectual voices in American life in the 19th century. He was a forceful and persuasive writer and orator against slavery and for equal rights for African-Americans. His experiences as a slave were central to exposing the injustices of slavery. His first autobiographical work, Narrative of the Life of Frederick Douglass, was published in 1845 when he was a runaway slave. His second autobiography, My Bondage and My Freedom, was published in 1855, 9 years after friends and supporters in Great Britain bought his freedom. He frequently lectured about his experiences as a slave, and on what freedom meant to him.

During the Civil War, Douglass served as a recruiter of African-American soldiers for the North, and several times discussed with President Lincoln the problems of slavery. In the early 1870s, Douglass moved from Rochester, NY, where he had established the anti-slavery newspaper, the North Star, to Washington, DC, where he served as the District's Marshal, 1877–1881, and Recorder of Deeds, 1881–1886. Douglass later served our Nation as Minister to Haiti, 1889–1891.

Even when he was serving in governmental capacities, Douglass continued to deliver speeches on the meaning of abolition and emancipation. Just as he fought for the rights of African-Americans, he also worked to expand women's rights. On the day he died, February 20, 1895, he had attended a women's suffrage meeting.

Mr. President, I ask my colleagues to join me in paying tribute to one of our greatest Americans, Frederick Douglass. He would have celebrated his 187th birthday this month.

THE LIFE OF PATRICK OKURA

Mr. INOUYE. Mr. President, Patrick Okura was an extraordinary man who contributed much to our Nation, the Asian American community, and the fields of mental health and psychology. I was privileged to have him as a great friend and mentor. During my life in the Nation's Capital, Pat was always ready to help and advise me.

At Pat's memorial service on February 11, 2005, at Bradley Hills Presbyterian Church in Bethesda, MD, the Honorable Norman Y. Mineta, U.S. Secretary of Transportation, spoke of Pat and his remarkable life that had an enormous and positive impact on many.

I ask unanimous consent that Secretary Mineta's remarks be printed in the RECORD.

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

We are here today to celebrate the life of an extraordinary man one of the great leaders of our community, of our great nation, and a valued and trusted friend.

It is almost impossible to count the number of contributions that Kiyoshi Patrick Okura made to all of us.

His national presidency of the Japanese American Citizens League came during one of the most critical periods of the civil rights movement, and his active involvement in the JACL throughout its history helped win unprecedented victories for our community.

His advocacy on behalf of mental health was a passion that continued through his service as the staff psychologist for Father Flanagan's Boy's Town, his work at the National Institute of Mental Health, his founding of the National Asian Pacific American Families Against Substance Abuse, and the work that he and Lily have done together at the Okura Mental Health Foundation.

But most important of all, Pat had a passion to help others whether through his profession as a psychologist or through his endless personal drive to develop leaders for our community.

As a mentor, a friend, a guide and a counselor, he was second to none. I had the good fortune of knowing Pat for over 50 years and he was all of those things to me throughout my life and career.

There are so many of us here today who would not have achieved the successes we have without the foundation of opportunity that he laid for all of us, or without the support and the encouragement that he provided every day.

Lily, Deni's heart and my heart go out to you today. Pat's loss is a bitter blow to all of us.

But his life, and the things he achieved for all of us, will live forever as a testament to a life well-lived.''

IN RECOGNITION OF STU AND BETHEL DOPF

Mr. CRAIG. Mr. President, I speak about some people who, through the way they lived their lives, have been very important, not only to me, but to their entire community. I am talking about Stu and Bethel Dopf of Cambridge, ID.

Stu Dopf passed away in 2001, and just recently, on January 17, 2005, he was joined in Heaven by his wife of 63 years. When I read of Mrs. Dopf's passing, fond memories flooded my mind from my time growing up in Washington County, where Cambridge is located. I have only good things to remember about Mr. and Mrs. Dopf and

the family they raised from my very first experiences with them.

For more than 40 years, the Dopfs worked together to publish a small weekly newspaper known as the Upper Country News-Reporter. It was printed on newsprint, but I have no doubt in my mind that this paper represented and still does the very fabric of that community. The paper plays that role because the Dopfs wanted it that way, and made sure it happened.

I believe my first experience with Stu Dopf was almost 50 years ago at the Washington County Fair in Cambridge. I was in 4–H and had entered fat calves to be judged at the fair. Now, to some reporters or newspaper editors, livestock judging at a county fair may not seem like much of an assignment. But Stu understood the community in which he lived, and the farm and ranch families that made it a closely-knit community. People were interested in the activities and accomplishments of their neighbors, and no achievement was too small to report.

After that, any time I had some news or any stories about my 4–H or FFA activities, or public speaking contests, I knew I could stop by the News-Reporter office, where the Dopfs would be certain to listen. More often than not, those stories would show up somewhere on the pages of the next issue. Later, when I made my decision to run for office for the first time, for a seat in the Idaho State Senate, I went to the Dopfs to ask if they would print the pocket brochure for my campaign. Their sons, Alan and Don, had just started a printing business the year before, so it was an easy choice for me to go there.

Throughout my life, whether in the activities of my younger days, my endeavors in the legislature, or my time in the U.S. House and Senate, Stu Dopf always provided a fair, unbiased account in the News-Reporter. He always gave me a fair opportunity to make my point. Continuing Stu's example, the editors generously include each weekly column I write in the paper, and I am truly grateful.

Even after they retired, the influence of Mr. and Mrs. Dopf remained at the News-Reporter. Their children have carried on the same brand of community reporting, and this is why I continue to subscribe to the paper and read and enjoy it every week.

The Dopfs took pride in Cambridge and Washington County, and they loved it down to the smallest details. They took a special interest in the youth of the area, including articles and pictures of local high school sporting events, essay contest winners, invitations to baby showers, and as I mentioned, 4–H and FFA news.

They were great community people, and they were great people in their community. The Dopfs were a big reason I had such a positive experience growing up in rural Washington County. It is people like them who make Cambridge, Midvale, Weiser, and other small towns across Idaho great places to live. I'm sure they are resting peacefully in Heaven.

TRIBUTE TO WALLACE RUSTAD

Mr. CONRAD. Mr. President, I rise today to pay tribute to a member of my staff who will be retiring from his position in the U.S. Senate. Wally Rustad is a man who is recognized by his colleagues and myself as an extremely dedicated, hard-working, and joyful public servant.

Mr. Rustad has had a remarkable career in public service, spanning close to half a century. He joined the Army in 1955, where he served in Germany until 1958 and in the Reserves until 1961. Following that, he taught high school history and literature in Williston, ND. In 1965, he pursued his interest in politics with a move to Washington, D.C. to become a legislative assistant for the Honorable Rolland Redlin in the U.S. House of Representatives. After 2 years, he returned to North Dakota to work for Basin Electric Cooperative. But in 1970, he was drawn back to Washington, D.C. to work for Congressman Arthur Link in the U.S. House of Representatives as chief of staff and senior spokesperson.

With experience gained from his time on Capitol Hill, Mr. Rustad went on to a position with the National Rural Electric Cooperative Association, where he soon became the director of Government Relations. His work at the NRECA was recognized and praised by many. Under his direction, the NRECA saw the strength of its political influence grow substantially, prompting the Wall Street Journal to call the co-op lobby the second most powerful in Washington. He spent his years on the political front lines defending against attacks on the rural electric program. On February 17, 2004, Wally was presented with the prestigious Clyde T. Ellis Award, which honors an individual for contributions clearly above the routine call of duty in furthering the principles and progress of rural electrification and the development and utilization of national resources.

For the past 5½ years, I have been honored to have Wally serve on my staff. He brought with him his extensive experience in the energy industry and rural economic development and a tremendous dedication to our home State of North Dakota. During his tenure in my office, he has worked on economic development issues for North Dakota and in outreach to numerous individuals and groups throughout the State. As my State liaison, he has built strong rapport and stayed in close contact with constituents, responding to needs and monitoring priority issues to make sure that the views of North Dakotans are represented in Washington.

A native of Grenora, ND, population 261, Wally is a tremendous advocate for our home State. He and his family still own a farm near Grenora. Last summer, Wally and his wife, Marlys, organized a trip for a group of 38 of their friends to tour the State. They visited the Lewis & Clark Interpretive Center and trails along the Missouri River, toured the Theodore Roosevelt National Park, attended the musical and pitch fork fondue in Medora, and did a lot of golfing. His tour group was awed by the history and beauty of the State and, of course, its golf courses. As Wally put it, it was ''one small thing'' he could do to help promote economic development and tourism in North Dakota.

Wally and his wife of 43 years, Marlys Rustad nee Jacobson, live in Leesburg, VA. Their daughter Kimberly and her husband, Clark Kelly, and their children, Avery, Kate and William, live in Mobile, AL. Their daughter Jill and her husband Jonathan Adler, and their children, Julia, Jami and Jessica, live in Leesburg, VA. Jon, their son, lives in Los Angeles, CA.

Wally is a man with great dedication to public service. He arrives at work each day shortly after 6 a.m., after commuting for 2 hours, and brews the first pot of coffee. He greets his colleagues with a smile on his face and the news of the day as they arrive into work. As the late North Dakota Senator Quentin Burdick once said, ''Wally Rustad is a small-town North Dakotan who has made it big in Washington. He has a genuine commitment to serving the people of rural America.''

As Wally goes forward in his life, I hope that he proudly looks back from time to time and knows what a difference he has made in the lives of so many people. He is a good friend and a wonderful American whom I am honored to have had the pleasure to work with. I commend him for his accomplishments and outstanding service and wish him well.

ADDITIONAL STATEMENTS

TRIBUTE TO RUSS DONDERO

• Mr. SMITH. Mr. President, I rise today to pay tribute to Professor Russ Dondero of Pacific University in Forest Grove, OR. Professor Dondero is retiring from a full-time teaching load in the Department of Politics and Government at the end of this school year. He is being honored this week by his current and former students and friends during events leading up to the annual Pacific University Tom McCall Forum in Portland, OR on February 17.

The Tom McCall Forum may be Professor Dondero's most visible accomplishment. Now in its 23rd year, the forum has become the premier public affairs event in the Pacific Northwest, drawing national political figures each year for a spirited debate between a liberal and a conservative of national interest. The driving force throughout the Forum's history has been Professor Dondero. He has taken the event from the small confines of a basement room on campus to an event that attracts over 1,000 people and the cameras of C–SPAN.

While the forum gives a public face to Professor Dondero's work, his ties to and influence on our State of Oregon runs much deeper. A 1960 graduate of Roseburg High School, Professor Dondero left Oregon to pursue his academic calling at Whitman College, the University of Minnesota and Dickinson College. He returned home with his wife, Ann, to raise their sons, Tony and Jason.

During his 31 years of teaching at Pacific, Professor Dondero acted as teacher, mentor and friend to students past and present. Like a successful coach, Professor Dondero has always known which lever to pull to draw the best possible performance out of those with whom he worked. He has an instinct that can't be taught—how to inspire his students to succeed by deploying the appropriate tactic at the right moment.

Outside of the classroom, Professor Dondero has been relentless in seeking out opportunities for his students so they could apply in the field the lessons they learned. I have been proud to put some of his students to work in my office.

It is fitting that many of his former students and Pacific University have established the Russell A. Dondero Fellowship. In the future, fellowship recipients at Pacific will receive a small stipend to offset the cost of living while pursuing an internship as part of their academic program—which will certainly make it possible for more students to take advantage of this important experience.

His academic work is only part of Russ Dondero's story. It would be hard to locate a more passionate, talented and effective advocate for affordable housing in the State of Oregon. I am confident he will continue to use his talents and energies for this important cause, and that he and Ann will continue to shape the lives of his students and his community.

W. B. Yeats once wrote, ''Education is not the filling of a bucket, but the lighting of a fire.'' I am proud to join with the Pacific University community in thanking Russ Dondero for lighting fires that will continue to burn for many years to come.●

TRANSMITTING AS AMENDED, AND 12947 OF 01–23–95, AS AMENDED WITH A NEW EXECUTIVE ORDER CLARIFYING CERTAIN EXECUTIVE ORDERS BLOCKING PROPERTY AND PROHIBITING CERTAIN TRANSACTIONS—PM 5

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Banking, Housing, and Urban Affairs:

To the Congress of the United States:

Pursuant to, inter alia, section 203(a) of the International Emergency Economic Powers Act, (50 U.S.C. 1702 (a)) (IEEPA) and section 201(a) of the National Emergencies Act (50 U.S.C. 1621 (a)) (NEA), I exercised my statutory authority to declare national emergencies in Executive Orders 13224 of September 23, 2001, as amended, and 12947 of January 23, 1995, as amended. I have issued a new Executive Order that clarifies certain measures taken to address those national emergencies. This new Executive Order relates to powers conferred to me by section 203(b)(2) of IEEPA and clarifies that the Executive Orders at issue prohibit a blocked United States person from making humanitarian donations.

The amendments made to those Executive Orders by the new Executive Order take effect as of the date of the new order, and specific licenses issued pursuant to the prior Executive Orders continue in effect, unless revoked or amended by the Secretary of the Treasury. General licenses, regulations, orders, and directives issued pursuant to the prior Executive Orders continue in effect, except to the extent inconsistent with this order or otherwise revoked or modified by the Secretary of the Treasury.

GEORGE W. BUSH.

THE WHITE HOUSE, *February 16, 2005*.

MESSAGE FROM THE HOUSE

At 2:45 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 310. An act to increase the penalties for violations by television and radio broadcasters of the prohibitions against transmission of obscene, indecent, and profane material, and for other purposes.

H.R. 324. An act to designate the facility of the United States Postal Service located at 321 Montgomery Road in Altamonte Springs, Florida, as the ''Arthur Stacey Mastrapa Post Office Building''.

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 25. A concurrent resolution recognizing the contributions of Jibreel Khazan (Ezell Blair, Jr.), David Richmond, Joseph McNeil, and Franklin McCain, the ''Greensboro Four'', to the civil rights movement.

MEASURES REFERRED

The following bill was read the first and the second times by unanimous consent, and referred as indicated:

H.R. 324. An act to designate the facility of the United States Postal Service located at 321 Montgomery Road in Altamonte Springs, Florida, as the ''Arthur Stacey Mastrapa Post Office Building''; to the Committee on Homeland Security and Governmental Affairs.

The following concurrent resolution was read, and referred as indicated:

H. Con. Res. 25. Concurrent resolution recognizing the contributions of Jibreel Khazan (Ezell Blair, Jr.), David Richmond, Joseph McNeil, and Franklin McCain, the ''Greensboro Four'', to the civil rights movement; to the Committee on the Judiciary.

MEASURES READ THE FIRST TIME

The following bills were read the first time:

S. 403. 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. 397. A bill to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others.

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–763. A communication from The Acting Under Secretary of Defense, Department of Defense, transmitting, pursuant to law, the Defense Advanced Research Projects Agency's (DAR PA) biennial strategic plan, received February 8, 2005; to the Committee on Armed Services.

EC–764. A communication from the Under Secretary of Defense, transmitting, pursuant to law, a General Officer Frocking Request, received February 8, 2005; to the Committee on Armed Services.

EC–765. A communication from the Assistant Secretary of Defense, Health Affairs, Department of Defense, transmitting, pursuant to law, a report entitled ''DoD/VA Pilot Program-Separation Physicals'', received February 7, 2005; to the Committee on Armed Services.

EC–766. A communication from the Under Secretary of Defense, Department of Defense, transmitting, pursuant to law, a report on the mobilization of reserve component personnel, received on February 7, 2005; to the Committee on Armed Services.

EC–767. A communication from the Vice Admiral, Deputy Chief of Naval Operations, Department of the Navy, Department of Defense, providing notification of a decision to convert to performance by the private sector Public Works Center Environmental Services in San Diego, CA (initiative number NC20020796) received January 25, 2005; to the Committee on Armed Services.

EC–768. A communication from the Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''Free Trade Agreements—Australia and Morocco'' (DFARS Case 2004–DO13) received on February 7, 2005; to the Committee on Armed Services.

EC–769. A communication from the Inspector General, Department of Defense, transmitting, pursuant to law, a report entitled ''DoD Workforce Employed to Conduct Public-Private Competitions Under the DoD Competitive Sourcing Program (D–2005–028)'', received February 8, 2005; to the Committee on Armed Services.

EC–770. A communication from the Legal Advisor to the Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Weatherford, Blanchard, Elmore City, and Wynnewood, Oklahoma)'' (Doc. No. 03–181)

received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–771. A communication from the Legal Advisor to the Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Corydon and Lanesville, Indiana)'' (Doc. No. 04–380) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–772. A communication from the Legal Advisor to the Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Security and Genoa, Colorado)'' (Doc. No. 04–367) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–773. A communication from the Legal Advisor to the Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.622(b), Table of Allotments, DTV Broadcast Stations; Appleton, WI'' (Doc. No. 04–185) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–774. A communication from the Legal Advisor to the Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.622(b), Table of Allotments, DTV Broadcast Stations; Thief River Fallls, MN'' (Doc. No. 00–163) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–775. A communication from the Legal Advisor to the Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations; Benton and Yazoo City, Mississippi'' (Doc. No. 04–249) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–776. A communication from the Legal Advisor to the Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations; Grayville, Illinois and Alamogordo, New Mexico'' (Doc. No. 04–368 and 04–369) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–777. A communication from the Legal Advisor to the Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.622(b), Table of Allotments, DTV Broadcast Stations; El Dorado, AR'' (Doc. No. 04–282) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–778. A communication from the Legal Advisor to the Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Center Hall, Mount Union, and Huntingdon, Pennsylvania)'' (Doc. No. 03–231) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–779. A communication from the Legal Advisor to the Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotment, FM Broadcast Stations (Clayton and Raton, New Mexico)'' (Doc. No. 04–220) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–780. A communication from the Legal Advisor to the Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Children's Television Obligations of Digital Television Broadcasters'' (Doc. No. 00–167) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–781. A communication from the Legal Advisor to the Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.622(b), Table of Allotments, DTV Broadcast Stations (Medical Lake, WA)'' (Doc. No. 04–250) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–782. A communication from the Legal Advisor to the Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.622(b), Table of Allotments, DTV Broadcast Stations (Great Falls, Montana)'' (Doc. No. 04–182) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–783. A communication from the Legal Advisor to the Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.606(b), Table of Allotments, TV Broadcast Stations (Gainesville, Florida)'' (Doc. No. 04–31) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–784. A communication from the Legal Advisor to the Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Crosbyton, Texas and Union Gap, Washington)'' (Doc. No. 04–340) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–785. A communication from the Legal Advisor to the Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Pittsfield and Easthampton, Massachusetts, and Malta, New York)'' (Doc. No. 04–67) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–786. A communication from the Legal Advisor to the Chief, Media Bureau, Federal Communication Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations (Nevada City, California)'' (Doc. No. 04–338) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–787. 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 747–200B, 200C, 200F, 300, 400, 400D, and 400F Series Airplanes and Model 747SP Series Airplanes'' ((RIN2120–AA64)(2005–0016)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–788. 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 Aeronautica SA Model EMB 135 and EMB 145 Series Airplanes'' ((RIN2120–AA64)(2005–0017)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–789. 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 A300B2, and B4 Series Airplanes, and Model A300 B4–600, 600R, and F4 600R Series Airplanes, and Model C4-605R Variant F Airplanes'' ((RIN2120–AA64)(2005–0018)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–790. 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'' ((RIN2120–AA64)(2005–0019)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–791. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Operating Requirements: Domestic, Flag, and Supplemental Operations—Correction'' (RIN2120–ZZ62) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–792. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Pyrotechnic Signaling Device Requirements'' (RIN2120–AI42) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–793. 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 Canada PW206B, PW206C, PW206E, PW207D, and PW207E Turboshaft Engines'' ((RIN2120–AA64)(2005–0012)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–794. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: CFM International, SA CFM56–2–C, 3 Series, and 5 Series'' ((RIN2120–AA64)(2005–0013)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–795. 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 Astra SPX and 1125 Westwind Astra Series Airplanes; and Model Gulfstream 100 Airplanes'' ((RIN2120–AA64)(2005–0014)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–796. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directive: Fokker Model F-28 Mark 0070 and 0100 Series Airplanes'' ((RIN2120–AA64)(2005–0015)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–797. 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)(2005–0007)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–798. 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 737–600, 700, 700C, 800, and 900 Series Airplanes'' ((RIN2120–AA64)(2005–0008)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–799. 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 A330, 340–200 and A340–300 Series Airplanes'' ((RIN2120–AA64)(2005–0009)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–800. 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 707 and 720 Series Airplanes'' ((RIN2120–AA64)(2005–0010)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–801. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Glaslugel Ing. E. Hanle Model GLASFLUGEL Kestrel Sailplanes'' ((RIN2120–AA64)(2005–0011)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–802. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Lexington, OR'' ((RIN2120–AA66)(2005–0035)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–803. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification to Class E Airspace; Mean, AR'' ((RIN2120–AA66)(2005–0033)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–804. 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 A330, A340–200, and A340–300 Series Airplanes'' ((RIN2120–AA64)(2005–0551)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–805. 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, Inc. Model DHC3AM Luton Electrical Systems'' ((RIN2120–AA64)(2005–0002)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–806. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Great Lakes Aircraft Company, LLC Models 2T–1A–1 and 2T–1A–2 Airplanes'' ((RIN2120–AA64)(2005–0003)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–807. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Eurocopter Deutschland GmbH Model EC135 P1, Pe, T1, and T2 Helicopters'' ((RIN2120–AA64)(2005–0004)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–808. 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 700 Series Turbofan Engines'' ((RIN2120–AA64)(2005–0005)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–809. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Hamilton Sundstrand Power Systems T 62T Series Auxiliary Power Units'' ((RIN2120–AA64)(2005–0006)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–810. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Mount Vernon, TX'' ((RIN2120–AA66)(2005–0031) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–811. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Melbourne, AR'' ((RIN2120–AA66)(2005–0032)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–812. 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; Cozad, NE'' ((RIN2120–AA66)(2005–0037)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–813. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification of Restricted Areas 5103A, 5103B, and 5103C, and Revocation of Restricted Area 5103D; McGregor, NM'' ((RIN2120–AA66)(2005–0030)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–814. 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; Hastings, NE; Confirmation of Effective Date'' ((RIN2120–AA66)(2005–0025)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–815. 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; Harvard, NE'' ((RIN2120–AA66)(2005–0026)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–816. 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; Warrensburg, MO'' ((RIN2120–AA66)(2005–0027)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–817. 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; Imperial, NE'' ((RIN2120–AA66)(2005–0028)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–818. 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; Scribner, NE'' ((RIN2120–AA66)(2005–0029)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–819. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Revision of Class E Airspace; Sunriver, OR'' ((RIN2120–AA66)(2005–0020)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–820. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment to Restricted Areas 2932, 2933, 2934, 2935; Cape Canaveral, FL'' ((RIN2120–AA66)(2005–0021)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–821. 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; Dodge City, KS'' ((RIN2120–AA66)(2005–0022)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–822. 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; Hartington, NE'' ((RIN2120–AA66)(2005–0024)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–823. 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; South Haven, MI; Correction'' ((RIN2120–AA66)(2005–0015)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–824. 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 D Airspace and Modification of Class E Airspace; Joplin, MO'' ((RIN2120–AA66)(2005–0016)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–825. 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; Kennett, MO; Correction'' ((RIN2120–AA66)(2005–0017)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–826. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Modification on Class E Airspace; Harrisonville, MO'' ((RIN2120–AA66) (2005–0018)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–827. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class D Airspace; Provo, UT'' ((RIN2120–AA66) (2005–0019)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–828. 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 CL 600 1A11, 2A12, 2B16, Series Airplanes'' ((RIN2120–AA64) (2005–0054)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–829. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Saab Model SAAB 200 Series Airplanes'' ((RIN2120–AA64) (2005–0055)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–830. 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 SA Model EMB 135 and 145 Series Airplanes'' ((RIN2120–AA64) (2005–0056)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–831. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Sabb Model SAAB SF340A and SAAB 340B Series Airplanes'' ((RIN2120–AA64) (2005–0058)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–832. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Northwood, ND; Correction'' ((RIN2120–AA66) (2005–0013)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–833. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: General Electric Company CF34–3A and CF34–3B Series Turbofan Engines'' ((RIN2120–AA66) (2005–0053)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–834. 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 Series Airplanes'' ((2120–AA64 (2005–0052)), received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–835. 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 DC9–81, –82, –83, and –87 and Model MD 88 Airplanes'' ((RIN2120–AA64) (2005–0047)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–836. 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 A300B2, B4, B4–600, and B4–600R Series Airplanes; and Model A300–C4 605R Variant F and A300 F4 605R Airplanes'' ((RIN2120–AA64) (2005–0048)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–837. 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 Ltd and Co KG Models Spey 555–15, 555–15H, 555–15N, and 555–15P Turbojest Engines'' ((RIN2120–AA64) (2005–0049)) received on February 1, 2005 ; to the Committee on Commerce, Science, and Transportation.

EC–838. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Mooney Airplane Company, Inc. Model M20M Airplanes'' ((RIN2120–AA64) (2005–0050)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–839. 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 D Airspace; Camp Douglas, WI; Correction'' ((RIN2120–AA66) (2005–0014)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–840. 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 Series Turbofan Engines'' ((RIN2120–AA64) (2005–0051)) received on February 1, 2005 ; to the Committee on Commerce, Science, and Transportation.

EC–841. 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, 320, 321 Series Airplanes'' ((RIN2120–AA64) (2005–0046)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–842. 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 Brasileir de Aeronautica SA Model EB135 and 145 Series Airplanes'' ((RIN2120–AA64) (2005–0045)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–843. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Ostmecklnburgische Flugzeugbau GmbH Model OMF 100–160, Fuselage Tubing'' ((RIN2120–AA64) (2005–0044)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–844. 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 Corp Models 250 C30R/1, C30R/3M, C47B and C47M Turboshaft Engines'' ((RIN2120–AA64) (2005–0043)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–845. 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 Models 737 600, 700, 700C, 800, and 900 Series Airplanes'' ((RIN2120–AA64) (2005–0042)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–846. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Short Brothers Model SD3–60, SD3SHERPA, and SD3–060SHERPA Series Airplanes'' ((RIN2120–AA64) (2005–0041)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–847. 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 Model GV and GV–SP Series Airplanes'' ((RIN2120–AA64) (2005–0040)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–848. 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 SA Model ERJ 170 Series Airplanes'' ((RIN2120–AA64) (2005–0039)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–849. 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 DC 9 14, DC 9 15, and DC 9 15F Airplanes; DC 9 20, DC 9 30, DC 9 40, DC 9 50 Series Airplanes; DC 9 81, DC 9 82, DC 9 87 Airplanes, and Model MD 88 Airplanes'' ((RIN2120–AA64) (2005–0038)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–850. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: LETECKE ZAVODY Model L 23 Super Blanik Sailplanes'' ((RIN2120–AA64) (2005–0037)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–851. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Kelly Aerospace Power Systems Part Number 14D11, A14D11, B14D11, C14D11, 23D04, A23D04, B23D04, 23D04, or P23D04 Fuel Regulator Shutoff Valves'' ((RIN2120–AA64) (2005–0036)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–852. 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 Canada PT6A–60A and PT6A–65B Turboprop Engines'' ((RIN2120–AA64) (2005–0035)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–853. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Cessna Aircraft Company 120, 140, 140A, 150, F150, 170, 172, F172, FR172, P172D, 175, 177, 180, 182, 185, A185E, 190, 195, 206, P206, U206, TP206, TU206, 207, T207, 210, T210, 336, 337, and T337 Series Airplanes; Correction'' ((RIN2120–AA64) (2005–0028)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–854. 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 Models 45 (YT–34), A45 (T–34A, B–45), and D45 (T–34B)

Airplanes'' ((RIN2120–AA64) (2005–0033)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–855. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Eagle Aircraft Sdn Bhd Model Eagle 150B Airplanes'' ((RIN2120–AA64) (2005–0032)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–856. 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 A300 B2 and B4 Series Airplanes; Model A300 B4 600, A300 B4 600R, A300 F4 600R Series Airplanes and A300 C4 605R Variant F Airplanes and Model A310 Series Airplanes'' ((RIN2120–AA64) (2005–0031)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–857. 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 Helicotpers Textron Canada Model 206A, B, L, L1, L3, and L4 Helicopters'' ((RIN2120–AA64) (2005–0030)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–858. 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 Corp. 250B and 250C Series Turboshaft and Turboprop Engines'' ((RIN2120–AA64) (2005–0029)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–859. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Pilatus Aircraft Ltd Model PC 7 Airplanes; Correction'' ((RIN2120–AA64) (2005–0034)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–860. 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 11 and MD 11F Airplanes'' ((RIN2120–AA64) (2005–0021)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–861. 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) (2005–0020)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–862. 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 Inc. Model DHC–3 Airplanes; Servo Tabs Viking Air'' ((RIN2120–AA64) (2005–0027)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–863. 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 A300 Series Airplanes and Model A300 B4 600, A300 B4 600R, and A300 F4 600R'' ((RIN2120–AA64) (2005–0026)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–864. 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) (2005–0025)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–865. 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 Model 390, MLG Wire Harness Assemblies'' ((RIN2120–AA64) (2005–0024)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–866. 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 DC 9 14 and DC 9 15 Airplanes; and Model DC 9 20, DC 9 30, DC 9 40 and DC 9 50 Series Airplanes'' ((RIN2120–AA64) (2005–0023)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–867. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: McCauley Propeller Systems Five-Blade Propeller Assemblies'' ((RIN2120–AA64) (2005–0022)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–868. 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 C Airspace; Des Moines International Airport, Des Moines, IA'' ((RIN2120–AA66) (2005–0010)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–869. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Establishment of Class E Airspace; Southeast, AK'' ((RIN2120–AA66) (2005–0011)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–870. 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 D Airspace; Mount Clemens, MI; Correction'' ((RIN2120–AA64) (2005–0012)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–871. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''IFR Altitudes; Miscellaneous Amendments (6)'' ((RIN2120–AA63) (2005–0001)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–872. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures: Miscellaneous Amendments (53)'' ((RIN2120–AA65) (2005–0001)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–873. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures; Miscellaneous Amendments (7)'' ((RIN2120–AA65) (2005–0002)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–874. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Standard Instrument Approach Procedures; Miscellaneous Amendments (34)'' ((RIN2120–AA65) (2005–0003)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–875. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Amendment to Class D Airspace; Springfield/Chicopee, MA'' ((RIN2120–AA66) (2005–0001)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–876. 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; Hastings, NE'' ((RIN2120–AA66) (2005–0023)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–877. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Regulated Navigation Area: [CGD09–05–001], Chicago Sanitary and Ship Canal, Romeoville, IL'' (RIN1625–AA11), received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–878. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Operation Regulations (including 6 regulations)'' (RIN1625–AA09), received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–879. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Security Zone: [COTP San Francisco Bay 04–007], Suisun Bay, Concord California'' (RIN1625–AA87), received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–880. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone (including 2 regulations)'' (RIN1625–AA00), received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–881. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Security Zone Regulations (including 4 regulations)'' (RIN1625–AA87), received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–882. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Regulated

Navigation Areas, Security Zones, and Temporary Anchorage Areas: [CGD07–04–090], St. Johns River, Jacksonville, FL'' (RIN1625–AA11), received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–883. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Safety Zone; [CGD09–04–140], Captain of the Port Buffalo Zone'' (RIN1625–AA00), received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–884. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Operation Regulations (including 2 regulations)'' (RIN1625–AA09), received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–885. A communication from the Chief, Regulations and Administrative Law, United States Coast Guard, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Special Local Regulation: [CGD07–05–001] Annual Gasparilla Marine Parade, Hillsborough Bay, Tampa, FL'' (RIN1625–AA11), received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–886. A communication from the Senior Legal Advisor, International Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''In the Matter of Procedures to Govern the Use of Satellite Earth Stations on Board Vessels in the 5925–6425 MHz/3700–4200 MHz Bands and 14.0–14.5 GHz/11.7–12.2 GHz Bands'' (IB Docket No. 02–10 , FCC 04–286) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–887. A communication from the Director, Bureau of Economic Analysis, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Direct Investment Surveys: BE–10, Benchmark Survey of U.S. Direct Investment Abroad—2004'' (RIN0691–AA52) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–888. A communication from the Chief, Policy and Rules Division, Office of Engineering and Technology, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Review of Part 15 of the Commission's Rules Regarding Ultra-Wideband Transmission Systems'' (ET Docket No. 98–153, FCC 04–285) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–889. A communication from the Legal Advisor, Wireless Telecommunications Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''In the Matter of Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02–55, Supplemental Order and Order on Reconsideration, FCC 04–294 (Dec. 22, 2004). This Order revises 47 C.F.R. Sections 90.175, 90.613, 90.614, 90.615, 90.617, 90.621, 90.676, 90.685 and 90.693 to implement the new 800 MHz band plan to resolve interference to public safety'' (FCC 04–294, WT 02–55, ET 00–258) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–890. A communication from the Assistant Chief, Wireline Competition Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''In the Matter of Rural Health Care Support Mechanism in WC Docket No . 02–60; FCC 04–289'' (FCC 04–289) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–891. A communication from the Secretary of Commerce, Department of Commerce, transmitting, pursuant to law, the Department's annual report on the Emergency Oil and Gas Guaranteed Loan Program, received February 11, 2005; to the Committee on Commerce, Science, and Transportation.

EC–892. A communication from the Secretary of Commerce, Department of Commerce, transmitting, pursuant to law, the Department's annual report on the Emergency Steel Loan Guarantee Program, received February 11, 2005; to the Committee on Commerce, Science, and Transportation.

EC–893. A communication from the Director, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting pursuant to law, the report of a rule entitled ''Closure of Area 610 Pollock in the Gulf of Alaska'', received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–894. A communication from the Special Counsel, Wireline Competition Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''In the Matter of Unbundled Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers in WC Docket No. 04–313, CC Docket No. 01–338; FCC 04–290'' (FCC 04–290, WC 04–313, CC 01–338) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–895. A communication from the Attorney-Advisor, National Highway Traffic Safety Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''FMVSS No. 105—Rollbar'' (RIN2127–AI63) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–896. A communication from the Deputy Bureau Chief, Consumer and Governmental Affairs Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991'' (FCC 04–204; CG 02–278) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–897. A communication from the Attorney Advisor, Wireless Telecommunications Bureau, Federal Communications Commission, transmitting, pursuant to law, the report of a rule entitled ''Amendment of Part 80 of the Commission's Rules Concerning Use of Frequency 156.575 MHz for Port Operations Communications in Puget Sound'' (DA No. 04–3408) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–898. A communication from the Deputy Chief Counsel for Regulations, Transportation Security Administration, Department of Homeland Security, transmitting, pursuant to law, the report of a rule entitled ''Maryland Three Airports: Enhanced Security Procedures for Operations at Certain Airports in the Washington, DC, Metropolitan Area Flight Restricted Zone'' (RIN1652–AA39) received on February 8, 2005; to the Committee on Commerce, Science, and Transportation.

EC–899. A communication from the Regulation Officer, Federal Highway Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled '' Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally–Assisted Programs'' (2125–AE97) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–900. A communication from an Attorney, Research and Special Programs Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Hazardous Materials; Incorporation of Exemptions into Regulations'' (RIN2137–AD84 (Docket No. RSPA–03–16370)) received on February 1, 2005; to the Committee on Commerce, Science, and Transportation.

EC–901. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–749, ''Department of Youth Rehabilitation Services Establishment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–902. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–750, ''Douglass Knoll, Golden Rule, 1728 W Street, and Wagner Gainesville Real Property Tax Exemption Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–903. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–753, ''National Park Trust Equitable Real Property Tax Relief Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–904. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–754, ''Appointment of the Chief Medical Examiner Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–905. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–572, ''Distracted Driving Safety Revised Temporary Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–906. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–571, ''Contract No. DCFJ–2004–B–0031 (Delivery of Electoral Power and Ancillary Services) Exemption Temporary Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–907. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–570, ''Low-Income Housing Tax Credit Fund Temporary Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–908. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-578, ''Property Management Reform Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–909. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-569, ''Public Assistance Confidentiality of Information Temporary Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–910. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-566, ''Prevention of Premature

Release of Mentally Incompetent Defendants Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–911. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-567, ''Retail Natural Gas Supplier Licensing and Consumer Protection Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–912. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-568, ''Historic Preservation Process for Public Safety Facilities Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–913. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-565, ''District of Columbia Statehood Delegation Fund Commission Establishment and Tax Check-Off Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–914. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-564, ''Miscellaneous Vehicles Helmet Safety Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–915. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-563, ''Pedestrian Protection Right-of-Way at Crosswalks Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–916. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-532, ''Juvenile Justice Temporary Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–917. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-531, ''Unemployment Compensation Pension Offset Reduction Temporary Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–918. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-530, ''Gallery Place Project Graphics Temporary Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–919. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-529, ''Alcoholic Beverages Penalty Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–920. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-528, ''Fleeing Law Enforcement Prohibition Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–921. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-576, ''Housing and Community Development Reform Advisory Commission Extension Temporary Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–922. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-574, ''Fiscal Year 2004 Year-End State Aid Re-Allocation Temporary Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–923. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-573, ''Unclaimed Property Demutualization Proceeds Technical Correction Amendment Temporary Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–924. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-662, ''Arts, Cultural, and Educational Facilities Support Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–925. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-663, ''Equity in Real Property Tax Assessment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–926. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-664, ''Parking Meter Fee Moratorium Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–927. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-684, ''Non-Traditional Motor Vehicles Safety Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–928. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-682, ''District of Columbia Emancipation Day Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–929. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-717, ''Ballpark Omnibus Financing and Revenue Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–930. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-707, ''Dedication and Designation of Portions of New Jersey Avenue, S.E., 4th Street, S.E., and Tingey Street, S.E., S.O. 03-1420, Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–931. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-703, ''Closing of a Public Alley in Square 317, S.O. 04-7832, Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–932. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-715, ''School Safety and Security Contracting Procedures Temporary Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–933. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-701, ''Distracted Driving Safety Revised Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–934. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-699, ''Skyland Site Acquisition Support Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–935. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-700, ''Multiple Dwelling Residence Water Lead Level Test Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–936. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-680, ''Use of Fraudulent Temporary Identification Tags and Automobile Forfeiture Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–937. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-679, ''National Capital Revitalization Corporation Eminent Domain Clarification and Skyland Eminent Domain Approval Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–938. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-678, ''Disposal of District-owned Surplus Real Property in Ward 8 Amendment Act of 2004'' received on February 11 , 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–939. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-677, ''Capitol Hill Community Garden Land Trust Real Property Tax Exemption and Equitable Real Property Tax Relief Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–940. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-676, ''Bread for the City Community Garden Equitable Real Property Tax Relief Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–941. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-674, ''Unemployment Compensation Pension Offset Reduction Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–942. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-673, ''Energy Star Efficiency Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–943. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on

D.C. Act 15-671, ''Unemployment Compensation Funds Appropriation Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–944. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-670, ''Towing Regulations and Enforcement Authority Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–945. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-669, ''Gallery Place Project Graphics Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–946. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-648, ''Human Rights Genetic Information Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–947. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-649, ''Southeast Neighborhood House Real Property Tax Exemption and Equitable Real Property Tax Relief Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–948. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-650, ''Carefirst Economic Assistance Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–949. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-652, ''Kings Court Community Garden Equitable Real Property Tax Relief Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–950. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-633, ''Veterans of Foreign Wars Real Property Tax Exemption and Equitable Real Property Tax Relief Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–951. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-654, ''Lincoln Square Theater Sales and Use Tax Exemption Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–952. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-661, ''Continuing Care Retirement Communities Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–953. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-705, ''Restaurant Candles Permission Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–954. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-706, ''Domestic Partnership Protection Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–955. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15-708, ''Studio Theatre, Inc. Economic Assistance Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–956. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–709, ''Certificate of Title Excise Tax Exemption Temporary Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–957. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–737, ''Operation Enduring Freedom and Operation Iraqi Freedom Active Duty Pay Differential Extension Second Temporary Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–958. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–736, ''Depreciation Allowance for Small Business De-Coupling from the Internal Revenue Code Second Temporary Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–959. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–735, ''Water Pollution Control Temporary Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–960. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–690, ''Jenkins Row Economic Development Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–961. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–691, ''Apprenticeship Requirements Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–962. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–692, ''Minimum Wage Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–963. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–693, ''Retail Service Station Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–964. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–694, ''Free Clinic Assistance Program Extension Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–965. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–696, ''Low-Income Housing Tax Credit Fund Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–966. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–697, ''Retirement Reform Act Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–967. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–698, ''Closing of a Portion of Public Alley in Square 5196, S.O. 02–2763, Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–968. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–702, ''Closing of a Portion of a Public Alley in Square 2032, S.O. 02–5133, Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–969. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–704, ''Department of Motor Vehicles Reform Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–970. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–710, ''Real Property Disposition Economic Analysis Second Temporary Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–971. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–711, ''Public Congestion and Venue Protection Temporary Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–972. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–712, ''Estate and Inheritance Tax Clarification Temporary Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–973. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–713, ''Bonus Depreciation De-Coupling Temporary Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–974. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–714, ''District Government Reemployed Annuitant Offset Alternative Temporary Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–975. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–716, ''Child and Youth, Safety and Health Omnibus Second Temporary Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–976. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on

D.C. Act 15–668, ''Charity Auction Sales Tax Exemption Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–977. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–667, ''National Guard Association of the United States Real Property Tax Exemption Reconfirmation and Modification Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–978. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–666, ''Public Charter School Real Property Tax Rebate Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–979. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–665, ''Director of the Office of Latino Affairs Salary Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–980. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–651, ''Freedom Forum, Inc. Real Property Tax Exemption and Equitable Real Property Tax Relief Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–981. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–689, ''Payment In Lieu of Taxes Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–982. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–688, ''Fire and Casualty Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–983. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–686, ''Cancer Prevention Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–984. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–685, ''Disability Compensation Effective Administration Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–985. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–760, ''Omnibus Utility Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–986. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–763, ''Nonprofit Housing Organizations Tax Exemption Temporary Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–987. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–761, ''Anacostia Waterfront Corporation Board Expansion Temporary Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–988. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–762, ''Fiscal Year 2005 Southeast Veteran's Access Housing Inc., Budget Support Temporary Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–989. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–768, ''Carver 2000 Low-Income and Senior Housing Project Amendment Temporary Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–990. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–675, ''Unemployment Compensation Weekly Benefits Amount Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–991. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–681, ''District of Columbia Government Purchase Card Program Reporting Requirements Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–992. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–683, ''Debarment Procedures Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–993. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–687, ''Procedures for the Voluntary Withdrawal from the Market by Carriers Licensed in the District of Columbia to Sell Health Benefit Plans Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–994. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–769, ''Lead-Base Paint Abatement and Control Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–995. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–738, ''Tax Abatement Adjustment for Housing Priority Area Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–996. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–739, ''Long-Term Care Insurance Tax Deduction Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–997. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–741, ''Rehabilitation Services Program Establishment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–998. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–672, ''Heating Oil Clarification Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–999. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–755, ''Renewable Energy Portfolio Standard Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–1000. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–752, ''District of Columbia Housing Authority Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–1001. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–758, ''Child in Need of Protection Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–1002. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–740, ''Health Care Ombudsman Program Establishment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–1003. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–744, ''Omnibus Public Safety Ex-Offender Self-Sufficiency Reform Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–1004. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–746, ''Lot 878 Square 456 Tax Exemption Clarification Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–1005. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–747, ''Labor Relations and Collective Bargaining Amendment Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–1006. A communication from the Chairman, Council of the District of Columbia, transmitting, pursuant to law, a report on D.C. Act 15–748, ''Incompetent Defendants Criminal Committee Act of 2004'' received on February 11, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC–1007. A communication from the Director, Office of Surface Mining, Department of the Interior, transmitting, pursuant to law , the report of a rule entitled ''West Virginia Regulatory Program'' (WV–102–FOR) received on February 8, 2005; to the Committee on Energy and Natural Resources.

EC–1008. A communication from the Assistant General Counsel for Legislative and Regulatory Law, Office of Energy Efficiency and Renewable Energy, Department of Energy, transmitting, pursuant to law, the report of a rule entitled '' Energy Efficiency Program for Certain Commercial and Industrial Equipment: Test Procedures and Efficiency Standards for Commercial Packaged Boilers'' (RIN1904–AB02) received on February 11, 2005; to the Committee on Energy and Natural Resources.

EC–1009. A communication from the Assistant Secretary, Land and Minerals Management, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Oil and Gas and Sulphur Operations

in the Outer Continental Shelf (OCS)—Document Incorporated by Reference—American Petroleum Institute (API) 510'' (RIN 1010–AC95) received on February 8, 2005; to the Committee on Energy and Natural Resources.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. DOMENICI, from the Committee on Energy and Natural Resources, with amendments:

S. 63. A bill to establish the Northern Rio Grande National Heritage Area in the State of New Mexico, and for other purposes (Rept. No. 109–1).

By Mr. DOMENICI, from the Committee on Energy and Natural Resources, with amendments and an amendment to the title:

S. 163. A bill to establish the National Mormon Pioneer Heritage Area in the State of Utah, and for other purposes (Rept. No. 109–2).

By Mr. DOMENICI, from the Committee on Energy and Natural Resources, with an amendment:

S. 200. A bill to establish the Arabia Mountain National Heritage Area in the State of Georgia, and for other purposes (Rept. No. 109–3).

By Mr. DOMENICI, from the Committee on Energy and Natural Resources, without amendment:

S. 203. A bill to reduce temporarily the royalty required to be paid for sodium produced on Federal lands, and for other purposes (Rept. No. 109–4).

S. 204. A bill to establish the Atchafalaya National Heritage Area in the State of Louisiana (Rept. No. 109–5).

S. 249. A bill to establish the Great Basin National Heritage Route in the States of Nevada and Utah (Rept. No. 109–6).

By Mr. INHOFE, from the Committee on Environment and Public Works, without amendment:

S. 125. A bill to designate the United States courthouse located at 501 I Street in Sacramento, California, as the ''Robert T. Matsui United States Courthouse''.

EXECUTIVE REPORT OF COMMITTEE

The following executive report of committee was submitted:

By Mr. LUGAR for the Committee on Foreign relations.

*Robert B. Zoellick, of Virginia, to be Deputy Secretary of State.

*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. LAUTENBERG (for himself, Mr. KERRY, Mrs. BOXER, and Mrs. CLINTON):

S. 391. A bill to amend the Federal Election Campaign Act of 1971 to prohibit certain State election administration officials from actively participating in electoral campaigns; to the Committee on Rules and Administration.

By Mr. LEVIN (for himself, Mr. MCCAIN, Ms. STABENOW, Mrs. DOLE, Mr. OBAMA, Mr. GRAHAM, Mr. PRYOR, Mr. KENNEDY, Mr. ROCKEFELLER, Mr. NELSON of Florida, Ms. LANDRIEU, and Mr. KERRY):

S. 392. A bill to authorize the President to award a gold medal on behalf of Congress, collectively, to the Tuskegee Airmen in recognition of their unique military record, which inspired revolutionary reform in the Armed Forces; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. AKAKA (for himself, Mr. DURBIN, Mr. LEAHY, Mr. SARBANES, and Mr. SCHUMER):

S. 393. A bill to require enhanced disclosure to consumers regarding the consequences of making only minimum required payments in the repayment of credit card debt, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. CORNYN (for himself and Mr. LEAHY):

S. 394. A bill to promote accessibility, accountability, and openness in Government by strengthening section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act), and for other purposes; to the Committee on the Judiciary.

By Mr. FEINGOLD:

S. 395. A bill to amend the Buy American Act to increase the requirement for American-made content, and to tighten the waiver provisions, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mr. ENSIGN:

S. 396. 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; to the Committee on the Judiciary.

By Mr. CRAIG (for himself, Mr. BAUCUS, Mr. ALEXANDER, Mr. BUNNING, Mr. BURNS, Mr. CHAMBLISS, Mr. COBURN, Ms. COLLINS, Mr. CORNYN, Mr. CRAPO, Mr. DOMENICI, Mr. ENSIGN, Mr. ENZI, Mrs. HUTCHISON, Mr. INHOFE, Mr. ISAKSON, Mr. JOHNSON, Mr. KYL, Mrs. LINCOLN, Ms. MURKOWSKI, Mr. NELSON of Nebraska, Mr. SANTORUM, Mr. SESSIONS, Ms. SNOWE, Mr. STEVENS, Mr. THOMAS, Mr. THUNE, and Mr. SUNUNU):

S. 397. A bill to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others; read the first time.

By Mr. SANTORUM (for himself and Mr. BAYH):

S. 398. A bill to amend the Internal Revenue Code of 1986 to expand the expensing of environmental remediation costs; to the Committee on Finance.

By Mr. COLEMAN (for himself and Mrs. FEINSTEIN):

S. 399. A bill to amend the Federal Food, Drug, and Cosmetic Act with respect to the sale of prescription drugs through the Internet, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. COLEMAN:

S. 400. A bill to prevent the illegal importation of controlled substances; to the Committee on the Judiciary.

By Mr. HARKIN (for himself, Mr. SPECTER, Mr. KENNEDY, Mr. KERRY, Mr. BIDEN, Mr. DAYTON, Ms. LANDRIEU, Mr. SCHUMER, Mr. CORZINE, Mr. LAUTENBERG, Mr. LIEBERMAN, and Mr. DODD):

S. 401. A bill to amend title XIX of the Social Security Act to provide individuals with disabilities and older Americans with equal access to community-based attendant services and supports, and for other purposes; to the Committee on Finance.

By Mr. NELSON of Florida (for himself and Mr. MARTINEZ):

S. 402. A bill to authorize ecosystem restoration projects for the Indian River Lagoon and the Picayune Strand, Collier County, in the State of Florida; to the Committee on Environment and Public Works.

By Mr. ENSIGN (for himself, Mr. HAGEL, Mr. BROWNBACK, Mr. SANTORUM, Mr. KYL, Mr. FRIST, Mrs. DOLE, Mr. SESSIONS, Mr. GRASSLEY, Mr. ALLEN, Mr. BUNNING, Mr. COBURN, Mr. DEMINT, and Mr. MCCONNELL):

S. 403. 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; read the first time.

By Mr. REID:

S. 404. A bill to make a technical correction relating to the land conveyance authorized by Public Law 108-67; to the Committee on Energy and Natural Resources.

By Mr. REID (for himself and Mr. ENSIGN):

S. 405. A bill to provide for the conveyance of certain public land in Clark County, Nevada, for use as a heliport; to the Committee on Energy and Natural Resources.

By Ms. SNOWE (for herself, Mr. TALENT, Mr. BOND, Mr. BYRD, Mrs. DOLE, Mr. MCCAIN, Mrs. HUTCHISON, Mr. COLEMAN, Mr. VITTER, and Mr. MARTINEZ):

S. 406. A bill to amend title I of the Employee Retirement Security Act of 1974 to improve access and choice for entrepreneurs with small businesses with respect to medical care for their employees; to the Committee on Health, Education, Labor, and Pensions.

By Mr. JOHNSON:

S. 407. A bill to restore health care coverage to retired members of the uniformed services, and for other purposes; to the Committee on Armed Services.

By Mr. DEWINE (for himself, Mr. DODD, Mr. HAGEL, Mr. WARNER, Mr. CORZINE, Mr. LIEBERMAN, Mr. LAUTENBERG, Ms. LANDRIEU, Mr. JEFFORDS, and Mr. SALAZAR):

S. 408. A bill to provide for programs and activities with respect to the prevention of underage drinking; to the Committee on Health, Education, Labor, and Pensions.

By Mr. COLEMAN (for himself, Mr. DEWINE, and Mr. ALEXANDER):

S. 409. A bill to establish a Federal Youth Development Council to improve the administration and coordination of Federal programs serving youth, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. MCCAIN:

S. 410. A bill to authorize the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of Ukraine; to the Committee on Finance.

By Mrs. MURRAY (for herself and Ms. CANTWELL):

S. 411. A bill to amend title XVIII of the Social Security Act to improve the provisions of items and services provided to Medicare beneficiaries residing in States with more cost-effective health care delivery systems; to the Committee on Finance.

By Mr. DORGAN (for himself and Mr. INOUYE):

S. 412. A bill to reauthorize the Native American Programs Act of 1974; to the Committee on Indian Affairs.

By Mrs. FEINSTEIN (for herself, Ms. SNOWE, Mr. MCCAIN, Mr. CHAFEE, Mrs. MURRAY, Mr. JEFFORDS, Mr. DURBIN, Mr. LIEBERMAN, Mr. LEAHY, Mr. LAUTENBERG, Mrs. BOXER, Ms. CANTWELL, Mr. AKAKA, and Mr. REED):

S.J. Res. 5. A joint resolution expressing the sense of Congress that the United States should act to reduce greenhouse gas emissions; to the Committee on Foreign Relations.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. GRAHAM (for himself, Mr. LUGAR, Mr. BIDEN, Mr. BROWNBACK, and Mr. DORGAN):

S. Res. 55. A resolution recognizing the contributions of the late Zhao Ziyang to the people of China; to the Committee on Foreign Relations.

By Mr. SPECTER:

S. Res. 56. A resolution designating the month of March as Deep-Vein Thrombosis Awareness Month, in memory of journalist David Bloom; to the Committee on the Judiciary.

By Mr. GRAHAM (for himself, Mr. SPECTER, Mr. BROWNBACK, Mr. KOHL, Mr. HATCH, Mr. FEINGOLD, Ms. CANTWELL, Mr. CHAMBLISS, Mrs. MURRAY, Mrs. DOLE, Mr. SANTORUM, and Mr. JEFFORDS):

S. Res. 57. A resolution designating February 25, 2005, as ''National MPS Awareness Day''; considered and agreed to.

ADDITIONAL COSPONSORS

S. 17

At the request of Mr. DODD, the names of the Senator from Nevada (Mr. REID) and the Senator from New Jersey (Mr. CORZINE) were added as cosponsors of S. 17, a bill to amend the Help America Vote Act of 2002 to protect voting rights and to improve the administration of Federal elections, and for other purposes.

S. 37

At the request of Mrs. FEINSTEIN, the names of the Senator from Oregon (Mr. WYDEN) and the Senator from Arizona (Mr. MCCAIN) were added as cosponsors of S. 37, a bill to extend the special postage stamp for breast cancer research for 2 years.

S. 147

At the request of Mr. AKAKA, the name of the Senator from Oregon (Mr. SMITH) was added as a cosponsor of S. 147, a bill to express the policy of the United States regarding the United States relationship with Native Hawaiians and to provide a process for the recognition by the United States of the Native Hawaiian governing entity.

S. 183

At the request of Mr. GRASSLEY, the name of the Senator from Kentucky (Mr. BUNNING) was added as a cosponsor 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. 189

At the request of Mr. INHOFE, the name of the Senator from Louisiana (Mr. VITTER) was added as a cosponsor of S. 189, a bill to amend the Head Start Act to require parental consent for nonemergency intrusive physical examinations.

S. 236

At the request of Mr. NELSON of Nebraska, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 236, a bill to amend title XVIII of the Social Security Act to clarify the treatment of payment under the medicare program for clinical laboratory tests furnished by critical access hospitals.

S. 256

At the request of Mr. GRASSLEY, the name of the Senator from Louisiana (Mr. VITTER) was added as a cosponsor of S. 256, a bill to amend title 11 of the United States Code, and for other purposes.

S. 262

At the request of Mrs. FEINSTEIN, the name of the Senator from Hawaii (Mr. INOUYE) was added as a cosponsor of S. 262, a bill to authorize appropriations to the Secretary of the Interior for the restoration of the Angel Island Immigration Station in the State of California.

S. 273

At the request of Mr. COLEMAN, the name of the Senator from Missouri (Mr. TALENT) was added as a cosponsor of S. 273, a bill to amend the Farm Security and Rural Investment Act of 2002 to extend and improve national dairy market loss payments.

S. 277

At the request of Mr. JOHNSON, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 277, a bill to amend title XVIII of the Social Security Act to provide for direct access to audiologists for Medicare beneficiaries, and for other purposes.

S. 285

At the request of Mr. BOND, the name of the Senator from Minnesota (Mr. DAYTON) was added as a cosponsor of S. 285, a bill to reauthorize the Children's Hospitals Graduate Medical Education Program.

S. 286

At the request of Mr. DODD, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 286, a bill to amend section 401(b)(2) of the Higher Education Act of 1965 regarding the Federal Pell Grant maximum amount.

S. 296

At the request of Mr. KOHL, the names of the Senator from New York (Mrs. CLINTON) and the Senator from Connecticut (Mr. DODD) were added as cosponsors of S. 296, a bill to authorize appropriations for the Hollings Manufacturing Extension Partnership Program, and for other purposes.

S. 306

At the request of Ms. CANTWELL, her name was added as a cosponsor of S. 306, a bill to prohibit discrimination on the basis of genetic information with respect to health insurance and employment.

At the request of Ms. SNOWE, the names of the Senator from Delaware (Mr. BIDEN), the Senator from Minnesota (Mr. DAYTON), the Senator from New Jersey (Mr. CORZINE) and the Senator from Texas (Mr. CORNYN) were added as cosponsors of S. 306, supra.

S. 311

At the request of Mr. SMITH, the names of the Senator from Arkansas (Mr. PRYOR) and the Senator from California (Mrs. BOXER) were added as cosponsors of S. 311, a bill to amend title XIX of the Social Security Act to permit States the option to provide medicaid coverage for low-income individuals infected with HIV.

S. 330

At the request of Mr. ENSIGN, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. 330, a bill to amend the Help America Vote Act of 2002 to require a voter-verified permanent record or hardcopy under title III of such Act, and for other purposes.

S. 334

At the request of Mr. DORGAN, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of S. 334, a bill to amend the Federal Food, Drug, and Cosmetic Act with respect to the importation of prescription drugs, and for other purposes.

S. 342

At the request of Mr. MCCAIN, the names of the Senator from Vermont (Mr. LEAHY) and the Senator from Vermont (Mr. JEFFORDS) were added as cosponsors of 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.

S. 352

At the request of Ms. MIKULSKI, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of 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.

S. 360

At the request of Ms. SNOWE, the name of the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 360, a bill to amend the Coastal Zone Management Act.

S. 361

At the request of Ms. SNOWE, the name of the Senator from Mississippi

(Mr. LOTT) was added as a cosponsor of 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.

S. 379

At the request of Ms. MIKULSKI, the names of the Senator from Hawaii (Mr. INOUYE) and the Senator from Massachusetts (Mr. KENNEDY) were added as cosponsors of S. 379, a bill to build capacity at community colleges in order to meet increased demand for community college education while maintaining the affordable tuition rates and the open-door policy that are the hallmarks of the community college system.

S. 380

At the request of Ms. COLLINS, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 380, a bill to amend the Public Health Service Act to establish a State family support grant program to end the practice of parents giving legal custody of their seriously emotionally disturbed children to State agencies for the purpose of obtaining mental health services for those children.

S. 384

At the request of Mr. DEWINE, the names of the Senator from Minnesota (Mr. COLEMAN), the Senator from Maine (Ms. COLLINS), the Senator from Pennsylvania (Mr. SANTORUM), the Senator from Vermont (Mr. LEAHY), the Senator from South Carolina (Mr. GRAHAM), the Senator from Virginia (Mr. ALLEN) and the Senator from Rhode Island (Mr. CHAFEE) were added as cosponsors of S. 384, a bill to extend the existence of the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group for 2 years.

S.J. RES. 1

At the request of Mr. ALLARD, the name of the Senator from Virginia (Mr. ALLEN) was added as a cosponsor of S.J. Res. 1, a joint resolution proposing an amendment to the Constitution of the United States relating to marriage.

S. RES. 20

At the request of Mr. KENNEDY, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. Res. 20, a resolution designating January 2005 as ''National Mentoring Month''.

S. RES. 28

At the request of Mr. SARBANES, his name was added as a cosponsor of S. Res. 28, a resolution designating the year 2005 as the ''Year of Foreign Language Study''.

S. RES. 40

At the request of Ms. LANDRIEU, the name of the Senator from Indiana (Mr. BAYH) was added as a cosponsor of S. Res. 40, a resolution supporting the goals and ideas of National Time Out Day to promote the adoption of the Joint Commission on Accreditation of Healthcare Organizations' universal protocol for preventing errors in the operating room.

S. RES. 44

At the request of Mr. ALEXANDER, the names of the Senator from Nevada (Mr. REID), the Senator from Washington (Ms. CANTWELL), the Senator from Kentucky (Mr. MCCONNELL), the Senator from Colorado (Mr. ALLARD) and the Senator from Missouri (Mr. TALENT) were added as cosponsors of S. Res. 44, a resolution celebrating Black History Month.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LAUTENBERG (for himself, Mr. KERRY, Mrs. BOXER, and Mrs. CLINTON):

S. 391. A bill to amend the Federal Election Campaign Act of 1971 to prohibit certain State election administration officials from actively participating in electoral campaigns; to the Committee on Rules and Administration.

Mr. LAUTENBERG. Mr. President, I rise to introduce the Federal Election Integrity Act on behalf of myself and Senators KERRY, BOXER and CLINTON. This bill creates a direct prohibition on chief State election officials from taking part in political campaigns by amending the Federal Campaign Act of 1971.

Legislation is very much needed to eliminate an inherent conflict of interest that exists when a State's chief election administration official—the Secretary of State, the State Attorney General, or the Lieutenant Governor—is responsible for monitoring, supervising and certifying the results of a Federal election, while actively involved in the campaign of one of the candidates in that election.

I know that this is a practice engaged in by both Democratic and Republican State officials on behalf of Federal candidates, but those officials in charge of certifying Federal elections must not allowed to serve two masters—the voters and the Federal candidate. It is not right and it undermines the faith and confidence that Americans in this Nation's election system, and impugns the integrity of the State election official and the Federal candidate. The will of voters must come before the personal partisan politics.

In 2000 and again in 2004, we have witnessed two Secretaries of State capturing national press attention because of their involvement in elections where, literally, every single vote mattered.

In the 2004 presidential election, Ohio Secretary of State Ken Blackwell was co-chairman of President Bush's re-election campaign in Ohio. On December 6th, 2004, Secretary of State Blackwell certified President Bush as the winner in Ohio with an 118,775–vote lead—closer than unofficial election night results, but not close enough to trigger a mandatory recount. Recount advocates have cited numerous Election Day problems in Ohio, including long lines, a shortage of voting machines in predominantly minority neighborhoods, and suspicious vote totals for candidates in scattered precincts.

In the 2000 election, Florida Secretary of State Katherine Harris served as co-chair of President Bush's Florida campaign. President Bush's narrow victory in Florida gave him the State's 25 electoral votes necessary to win the presidency. A recount of thousands of Florida ballots and resulting court battles held up a resolution to the election for five weeks. There were reports of improprieties by Secretary of State Harris, including ballot tampering and the tampering of office computer files with Bush talking points and other supportive material.

Just recently, California Secretary of State Kevin Shelley—a Democrat—resigned due to allegations that he improperly used Federal election funds for partisan activities.

In all these cases, I am sure that the Secretaries of State were honorable public servants who made some very unpopular, difficult decisions under intense public scrutiny. But as far as the voters are considered, the Secretaries engaged in partisan political activity that tainted the results of the elections. This legislation fixes that.

Secretaries of State and other State election officials with supervisory authority over the administration of Federal elections should not be actively involved in the political campaign or management of a candidate running for Federal office in their State. The Secretary of State is the primary election administration official in 39 States; despite that, history has shown numerous Secretaries of State chairing the political campaigns of Federal candidates in their State.

There is a direct conflict of interest when an election official charged with supervising the administration of Federal elections and ensuring the fairness and accuracy of the results of Federal elections has a direct role in a Federal candidate's campaign.

Again, this is not an issue of Democrats versus Republicans. Rather, this is an issue of preserving the American people's faith and confidence in the election process. Simply put, election officials responsible for ensuring fair and accurate Federal elections should not be actively cheering for and aiding a candidate in those elections.

I ask unanimous consent that the text of the ''Federal Election Integrity Act'' be printed in the RECORD.

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

S. 391

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 ''Federal Election Integrity Act of 2005''.

SEC. 2. FINDINGS.

Congress finds that—

(1) chief State election administration officials have served on political campaigns for Federal candidates whose elections those officials will supervise;

(2) such partisan activity by the chief State election administration official, an individual charged with certifying the validity of an election, represents a fundamental conflict of interest that may prevent the official from ensuring a fair and accurate election;

(3) this conflict impedes the legal duty of chief State election administration officials to supervise Federal elections, undermines the integrity of Federal elections, and diminishes the people's confidence in our electoral system by casting doubt on the results of Federal elections;

(4) the Supreme Court has long recognized that Congress's power to regulate Congressional elections under Article I, Section 4, Clause 1 of the Constitution is both plenary and powerful; and

(5) the Supreme Court and numerous appellate courts have recognized that the broad power given to Congress over Congressional elections extends to Presidential elections.

SEC. 3. PROHIBITION ON CAMPAIGN ACTIVITIES BY ELECTION ADMINISTRATION OFFICIALS.

(a) IN GENERAL.—Title III of the Federal Election Campaign Act of 1971 (2 U.S.C. 431 et seq.) is amended by inserting after section 319 the following new section:

''CAMPAIGN ACTIVITIES BY ELECTION OFFICIALS

''SEC. 319A. (a) PROHIBITION.—It shall be unlawful for a chief State election administration official to take an active part in political management or in a political campaign with respect to any election for Federal office over which such official has supervisory authority.

''(b) CHIEF STATE ELECTION ADMINISTRATION OFFICIAL.—The term 'chief State election administration official' means the highest State official with responsibility for the administration of Federal elections under State law.

''(c) ACTIVE PART IN POLITICAL MANAGEMENT OR IN A POLITICAL CAMPAIGN.—The term 'active part in political management or in a political campaign' means—

''(1) serving as a member of an authorized committee of candidate for Federal office;

''(2) the use of official authority or influence for the purpose of interfering with or affecting the result of an election for Federal office;

''(3) the solicitation, acceptance, or receipt of political contributions from any person on behalf of a candidate for Federal office;

''(4) the solicitation or discouragement of the participation in any political activity of any person;

''(5) engaging in partisan political activity on behalf of a candidate for Federal office; and

''(6) any other act prohibited under section 7323(b)(4) of title 5, United States Code (other than any prohibition on running for public office).''.

(b) ENFORCEMENT.—Section 309 of the Federal Election Campaign Act of 1971 (42 U.S.C. 437g) is amended by adding at the end the following new subsection:

''(d)(1) Notwithstanding paragraphs (1) through (5) of subsection (a), any person who has knowledge of a violation of section 319A has occurred may file a complaint with the Commission. Such complaint shall be in writing, signed and sworn to by the person filing such complaint, shall be notarized, and shall be made under penalty of perjury subject to the provisions of section 1001 of title 18, United States Code. The Commission shall promptly notify any person alleged in the complaint and the candidate with respect to whom a violation is alleged, and shall give such person and such candidate an opportunity to respond. Not later than 14 days after the date on which such a complaint is filed, the Commission shall make a determination on such complaint.

''(2)(A) If the Commission determines by an affirmative vote of a majority of the members voting that a person has committed a violation of section 319A, the Commission shall require the person to pay a civil money penalty in an amount determined under a schedule of penalties which is established and published by the Commission.

''(B) If the Commission determines by an affirmative vote of a majority of the members voting that a person has committed a violation of section 319A under subparagraph (A) and that the candidate knew of the violation at the time such violation occurred, the Commission may require such candidate to pay a civil money penalty in an amount determined under a schedule of penalties which is established and published by the Commission.''.

By Mr. LEVIN (for himself Mr. MCCAIN, Ms. STABENOW, Mrs. DOLE, Mr. OBAMA, Mr. GRAHAM, Mr. PRYOR, Mr. KENNEDY, Mr. ROCKEFELLER, Mr. NELSON of Florida, Ms. LANDRIEU, and Mr. KERRY):

S. 392. A bill to authorize the President to award a gold medal on behalf of Congress, collectively, to the Tuskegee Airmen in recognition of their unique military record, which inspired revolutionary reform in the Armed Forces; to the Committee on Banking, Housing, and Urban Affairs.

Mr. LEVIN. Mr. President, during the last Session of the 108th Congress, I informed my colleagues of my intention to introduce bipartisan legislation in the 109th Congress, to authorize the awarding of the Congressional Gold Medal, collectively, to the ''Tuskegee Airmen.''

Congress has commissioned the gold medal as its highest expression of national appreciation for distinguished achievements and contributions. Today, I am pleased to be joined by Senators MCCAIN, STABENOW, DOLE, OBAMA, GRAHAM, ROCKEFELLER, PRYOR, BEN NELSON, LANDRIEU and KERRY in introducing legislation, S. 392, that would bestow this great honor on the Tuskegee Airmen, in recognition of their extraordinary courage and unwavering determination to become America's first black military airmen.

The Tuskegee Airmen were not only unique in their military record, but they inspired revolutionary reform in the armed forces, paving the way for integration of the Armed Services in the U.S. The largely college educated Tuskegee Airmen overcame the enormous challenges of prejudice and discrimination, succeeding, despite obstacles that threatened failure. What made these men exceptional was their willingness to leave their families and put their lives on the line to defend rights that were denied them here at home. Congresswoman Helen Gahagan Douglas of California, in remarks on the floor of the U.S. House of Representatives on February 1, 1946 summed it up this way:

> The Negro soldier made his contribution in World War II . . . he has met the test of patriotism and heroism. We should be especially mindful . . . remembering that he fought and shed his blood for a freedom which he has not as yet been permitted fully to share. I wish to pay him the respect and to express the gratitude of the American people for his contribution in the greatest battle of all time the battle which decided whether or not we were to remain a free people. The names of Negro heroes in this war are everlastingly recorded among the living and the dead . . . in every combat area, on land, on sea, in the air.

Former Senator Bill Cohen, in remarks on the floor of the Senate decades later, in July of 1995, said: ''. . . I listened to the stories of the Tuskegee airmen and . . . the turmoil they experienced fighting in World War II, feeling they had to fight two enemies: one called Hitler, the other called racism in this country.''

The superior record of the Tuskegee Airmen in World War II was accomplished by individuals who accepted the challenge and proudly displayed their skill and determination in the face of racism and bigotry at home, despite their distinguished war records. Prior to the 1940s, many in the military held the sadly, mistaken view that black servicemen were unfit for most leadership roles and mentally incapable of combat aviation. Between 1924 and 1939, the Army War College commissioned a number of studies aimed at increasing the military role of blacks. According to The Air Force Magazine , Journal of the Air Force Association, March 1996, ''. . . these studies asserted that blacks possessed brains significantly smaller than those of white troops and were predisposed to lack physical courage. The reports maintained that the Army should increase opportunities for blacks to help meet manpower requirements but claimed that they should always be commanded by whites and should always serve in segregated units.''

Overruling his top generals and to his credit, President Franklin Roosevelt in 1941 ordered the creation of an all black flight training program at Tuskegee Institute. He did so one day after Howard University student Yancy Williams filed suit in Federal Court to force the Department of Defense to accept black pilot trainees. Yancy Williams had a civilian pilot's license, and received an engineering degree. Years later, ''Major Yancy Williams,'' participated in an air surveillance project created by President Eisenhower.

''We proved that the antidote to racism is excellence in performance,'' said retired Lt. Col. Herbert Carter, who started his military career as a pilot and maintenance officer with the 99th Fighter Squadron. ''Can you imagine . . . with the war clouds as heavy as they were over Europe, a citizen of the

United States having to sue his government to be accepted to training so he could fly and fight and die for his country?'' The government expected the experiment to fail and end the issue, said Carter. The mistake they made was that they forgot to tell us . . .''

The first class of cadets began in July of 1941 with thirteen men, all of whom had college degrees, some with PhD's and all had pilot's licenses. Based on the aforementioned studies, the training of the Tuskegee Airmen was an experiment established to prove that ''coloreds'' were incapable of operating expensive and complex combat aircraft.

By 1943, the first of contingent of black airmen were sent to North Africa, Sicily and Europe. Their performance far exceeded anyone's expectation. They shot down six German aircraft on their first mission, and were also the first squad to sink a battleship with only machine guns. Overall, nearly 1000 black pilots graduated from Tuskegee, 450 of whom served in combat with the last class finishing in June of 1946,. Sixty-six of the aviators died in combat, while another 33 were shot down and captured as prisoners of war. The Tuskegee Airmen were credited with 261 aircraft destroyed, 148 aircraft damaged, 15,553 combat sorties and 1,578 missions over Italy and North Africa. They destroyed or damaged over 950 units of ground transportation and escorted more than 200 bombing missions. Clearly, the experiment, as it was called, was an unqualified success. Black men could not only fly, they excelled at it, and were equal partners in America's victory.

A number of Tuskegee Airmen have lived in Michigan, including Alexander Jefferson, Washington Ross, Wardell Polk, and Walter Downs, among others. Tuskegee Airmen also trained at Michigan's Selfridge and Oscoda air fields in the early 40's. In the early 1970's, the Airmen established their first chapter in Detroit. Today there are 42 chapters located in major cities of the U.S. The chapters support young people through scholarships, sponsorships to the military academies, and flight training programs. Detroit is also the location of The Tuskegee Airmen National Museum, which is on the grounds of historic Fort Wayne. The late Coleman Young, former Mayor of the City of Detroit was trained as a navigator bombardier for the 477th bombardment group of the Tuskegee Airmen. This group was still in training when WWII ended so they never saw combat. However, the important fact is that all of those receiving flight related training—nearly 1,000—were instrumental in breaking the segregation barrier. They all had a willingness to see combat, and committed themselves to the segregated training with a purpose to defend their country.

The Tuskegee Airmen were awarded three Presidential Unit Citations,150 Distinguished Flying Crosses and Legions of Merit, along with The Red Star of Yugoslavia, 9 Purple Hearts, 14 Bronze Stars and more than 700 Air medals and clusters. It goes without question that the Tuskegee Airmen are deserving of the Congressional Gold Medal. According to existing records, I am proud to say that 155 Tuskegee Airmen originated from my State of Michigan.

In closing, I urge my colleagues in the Senate to swiftly act on this legislation, a most deserving honor and tribute to the Tuskegee Airmen. I also ask unanimous consent that the text of the legislation be printed in the RECORD.

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

S. 392

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

SECTION 1. FINDINGS.

Congress finds the following:

(1) In 1941, President Franklin D. Roosevelt overruled his top generals and ordered the creation of an all Black flight training program. President Roosevelt took this action one day after the NAACP filed suit on behalf of Howard University student Yancy Williams and others in Federal court to force the Department of War to accept Black pilot trainees. Yancy Williams had a civilian pilot's license and had earned an engineering degree. Years later, Major Yancy Williams participated in an air surveillance project created by President Dwight D. Eisenhower.

(2) Due to the rigid system of racial segregation that prevailed in the United States during World War II, Black military pilots were trained at a separate airfield built near Tuskegee, Alabama. They became known as the ''Tuskegee Airmen''.

(3) The Tuskegee Airmen inspired revolutionary reform in the Armed Forces, paving the way for full racial integration in the Armed Forces. They overcame the enormous challenges of prejudice and discrimination, succeeding, despite obstacles that threatened failure.

(4) From all accounts, the training of the Tuskegee Airmen was an experiment established to prove that so-called ''coloreds'' were incapable of operating expensive and complex combat aircraft. Studies commissioned by the Army War College between 1924 and 1939 concluded that Blacks were unfit for leadership roles and incapable of aviation. Instead, the Tuskegee Airmen excelled.

(5) Overall, some 992 Black pilots graduated from the pilot training program of the Tuskegee Army Air Field, with the last class finishing in June 1946, 450 of whom served in combat. The first class of cadets began in July 1941 with 13 airmen, all of whom had college degrees, some with Ph.D.'s, and all of whom had pilot's licenses. One of the graduates was Captain Benjamin O. Davis Jr., a United States Military Academy graduate. Four aviation cadets were commissioned as second lieutenants, and 5 received Army Air Corps silver pilot wings.

(6) That the experiment achieved success rather than the expected failure is further evidenced by the eventual promotion of 3 of these pioneers through the commissioned officer ranks to flag rank, including the late General Benjamin O. Davis, Jr., United States Air Force, the late General Daniel ''Chappie'' James, United States Air Force, our Nation's first Black 4-star general, and Major General Lucius Theus, United States Air Force (retired).

(7) Four hundred fifty Black fighter pilots under the command of then Colonel Benjamin O. Davis, Jr., fought in World War II aerial battles over North Africa, Sicily, and Europe, flying, in succession, P-40, P-39, P-47, and P-51 aircraft. These gallant men flew 15,553 sorties and 1,578 missions with the 12th Tactical Air Force and the 15th Strategic Air Force.

(8) Colonel Davis later became the first Black flag officer of the United States Air Force, retired as a 3-star general, and was honored with a 4th star in retirement by President William J. Clinton.

(9) German pilots, who both feared and respected the Tuskegee Airmen, called them the ''Schwartze Vogelmenshen'' (or ''Black Birdmen''). White American bomber crews reverently referred to them as the ''Black Redtail Angels'', because of the bright red painted on the tail assemblies of their fighter aircraft and because of their reputation for not losing bombers to enemy fighters as they provided close escort for bombing missions over strategic targets in Europe.

(10) The 99th Fighter Squadron, after having distinguished itself over North Africa, Sicily, and Italy, joined 3 other Black squadrons, the 100th, the 301st, and the 302nd, designated as the 332nd Fighter Group. They then comprised the largest fighter unit in the 15th Air Force. From Italian bases, they destroyed many enemy targets on the ground and at sea, including a German destroyer in strafing attacks, and they destroyed numerous enemy aircraft in the air and on the ground.

(11) Sixty-six of these pilots were killed in combat, while another 32 were either forced down or shot down and captured to become prisoners of war. These Black airmen came home with 150 Distinguished Flying Crosses, Bronze Stars, Silver Stars, and Legions of Merit, one Presidential Unit Citation, and the Red Star of Yugoslavia.

(12) Other Black pilots, navigators, bombardiers and crewman who were trained for medium bombardment duty as the 477th Bomber Group (Medium) were joined by veterans of the 332nd Fighter Group to form the 477th Composite Group, flying the B-25 and P-47 aircraft. The demands of the members of the 477th Composite Group for parity in treatment and for recognition as competent military professionals, combined with the magnificent wartime records of the 99th Fighter Squadron and the 332nd Fighter Group, led to a review of the racial policies of the Department of War.

(13) In September 1947, the United States Air Force, as a separate service, reactivated the 332d Fighter Group under the Tactical Air command. Members of the 332d Fighter Group were ''Top Guns'' in the 1st annual Air Force Gunnery Meet in 1949.

(14) For every Black pilot there were 12 other civilian or military Black men and women performing ground support duties. Many of these men and women remained in the military service during the post-World War II era and spearheaded the integration of the Armed Forces of the United States.

(15) Major achievements are attributed to many of those who returned to civilian life and earned leadership positions and respect as businessmen, corporate executives, religious leaders, lawyers, doctors, educators, bankers, and political leaders.

(16) A period of nearly 30 years of anonymity for the Tuskegee Airmen was ended in 1972 with the founding of Tuskegee Airmen, Inc., in Detroit, Michigan. Organized as a non-military and nonprofit entity, Tuskegee Airmen, Inc., exists primarily to motivate and inspire young Americans to become participants in our Nation's society and its democratic process, and to preserve the history of their legacy.

(17) The Tuskegee Airmen have several memorials in place to perpetuate the memory of who they were and what they accomplished, including—

(A) the Tuskegee Airmen, Inc., National Scholarship Fund for high school seniors who excel in mathematics, but need financial assistance to begin a college program;

(B) a museum in historic Fort Wayne in Detroit, Michigan;

(C) Memorial Park at the Air Force Museum at Wright-Patterson Air Force Base in Dayton, Ohio;

(D) a statue of a Tuskegee Airman in the Honor Park at the United States Air Force Academy in Colorado Springs, Colorado; and

(E) a National Historic Site at Moton Field, where primary flight training was performed under contract with the Tuskegee Institute.

SEC. 2. CONGRESSIONAL GOLD MEDAL.

(a) PRESENTATION AUTHORIZED.—The President is authorized to award to the Tuskegee Airmen, on behalf of Congress, a gold medal of appropriate design honoring the Tuskegee Airmen in recognition of their unique military record, which inspired revolutionary reform in the Armed Forces.

(b) DESIGN AND STRIKING.—For the purposes of the award referred to in subsection (a), the Secretary of the Treasury (hereafter in this Act referred to as the ''Secretary'') shall strike a gold medal with suitable emblems, devices, and inscriptions, to be determined by the Secretary.

SEC. 3. DUPLICATE MEDALS.

Under such regulations as the Secretary may prescribe, the Secretary may strike and sell duplicates in bronze of the gold medal struck under section 2, at a price sufficient to cover the costs of the medals, including labor, materials, dies, use of machinery, and overhead expenses.

SEC. 4. NATIONAL MEDALS.

Medals struck pursuant to this Act are national medals for purposes of chapter 51 of title 31, United States Code.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS; PROCEEDS OF SALE.

(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be charged against the United States Mint Public Enterprise Fund, an amount not to exceed $30,000 to pay for the cost of the medals authorized under section 2.

(b) PROCEEDS OF SALE.—Amounts received from the sale of duplicate bronze medals under section 3 shall be deposited in the United States Mint Public Enterprise Fund.

By Mr. AKAKA (for himself, Mr. DURBIN, Mr. LEAHY, Mr. SARBANES, and Mr. SCHUMER):

S. 393. A bill to require enhanced disclosure to consumers regarding the consequences of making only minimum required payments in the repayment of credit card debt, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. AKAKA. Mr. President, I rise to introduce the Credit Card Minimum Payment Warning Act. I thank Senators DURBIN, LEAHY, SARBANES, and SCHUMER for working with me on this legislation and for cosponsoring this bill.

I am deeply concerned about the enormous debt burdens that Americans are currently carrying. I share the concern on debts we expect from the Social Security program. Revolving Debt, mostly comprised of credit card debt, has increased from $54 billion in January 1980 to more than $780 billion in November 2004. A U.S. Public Interest Research Group and Consumer Federation of America analysis of Federal Reserve data indicates that the average household with debt carries approximately $10,000 to $12,000 in total revolving debt and has nine credit cards.

During all of 1980, only 287,570 consumers filed for bankruptcy. As consumer debt burdens have ballooned, the number of bankruptcies have increased significantly. From January through September of 2004, approximately 1.2 million consumers filed for bankruptcy, keeping pace with last year's record level.

It is imperative that we make consumers more aware of the long-term effects of their financial decisions, particularly in managing their credit card debt, so that they can avoid financial pitfalls that may lead to bankruptcy.

While it is relatively easy to obtain credit, not enough is done to ensure that credit is properly managed. Currently, credit card statements fail to include all of the information necessary to allow individuals to make fully informed financial decisions. Additional disclosure is needed to ensure that individuals completely understand the implications of their credit card use and costs of only making the minimum payments required by credit card companies.

Our legislation will provide a wake up call for consumers. It will make it very clear what costs consumers will incur if they make only the minimum payments on their credit cards. The personalized information they will receive for each of their accounts will help them to make informed choices about the payments that they choose to make towards reducing their balance.

This bill requires a minimum payment warning notification on monthly statements stating that making the minimum payment will increase the amount of interest that will be paid and extend the amount of time it will take to repay the outstanding balance. The bill also requires informing consumers of how many years and months it will take to repay their entire balance if they make only the minimum payments. In addition, the total cost in interest and principal, if the consumer pays only the minimum payment, would have to be disclosed. These provisions will make individuals much more aware of the true costs of their credit card debts. The bill also requires that credit card companies provide useful information so that people can develop strategies to free themselves of credit card debt. Consumers would have to be provided with the amount they need to pay to eliminate their outstanding balance within 36 months.

Finally, the legislation would require that creditors establish a toll-free number so that consumers can access trustworthy credit counselors. In order to ensure that consumers are referred from the toll-free number to only trustworthy organizations, the agencies for referral would have to be approved by the Federal Trade Commission and the Federal Reserve Board as having met comprehensive quality standards. These standards are necessary because certain credit counseling agencies have abused their nonprofit, tax-exempt status and have taken advantage of people seeking assistance in managing their debts. Many people believe, sometimes mistakenly, that they can place blind trust in nonprofit organizations and that their fees will be lower than those of other credit counseling organizations. Too many individuals may not realize that the credit counseling industry does not deserve the trust that consumers often place in it.

The Credit Card Minimum Payment Warning Act has been endorsed by the Consumer Federation of America, Consumers Union, U.S. Public Interest Research Group, and Consumer Action.

I urge my colleagues to support this legislation that will empower consumers by providing them with detailed personalized information to assist them in making informed choices about their credit card use and repayment. This bill makes clear the adverse consequences of uninformed choices such as making only minimum payments and provides opportunities to locate assistance to eliminate credit card debts.

I ask unanimous consent that a letter of support and fact sheet from organizations in support of the legislation be printed in the RECORD.

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

JANUARY 28, 2005.

Hon. DANIEL K. AKAKA,
U.S. Senate,
Washington, DC.
Hon. PAUL S. SARBANES,
U.S. Senate,
Washington, DC.
Hon. RICHARD J. DURBIN
U.S. Senate,
Washington, DC.

DEAR SENATORS AKAKA, DURBIN AND SARBANES: The undersigned national consumer organizations write to strongly support the Credit Card Minimum Payment Warning Act. The Act would require credit card issuers to disclose more information to consumers about the costs associated with paying their bills at ever-declining minimum payment rates. The Act provides a personalized ''price tag'' so consumers can understand what are the real costs of credit card debt and avoid financial problems in the future.

Undisputed evidence links the rise in bankruptcy in recent years to the increase in consumer credit outstanding. These numbers have moved in lockstep for more than 20 years. Revolving credit, for example (most of which is credit card debt) ballooned from $214 billion in January 1990 to over $780 billion currently. As family debt increases, debt service payments on items such as interest and late fees take an ever-increasing piece of their budget. For some families, this contributes to the collapse of their budget. Bankruptcy becomes the only way out. (See the attached fact sheet for more information about the scope and impact of credit card debt.)

Credit card issuers have exacerbated the financial problems that many families have faced by lowering minimum payment amounts, from around 4 percent of the balance owed, to about 2 percent currently. This decline in the typical minimum payment is a significant reason for the rise in consumer bankruptcies in recent years. A low minimum payment often barely covers interest obligations. It convinces many borrowers that they are financially sound as long as they can meet all of their minimum payment obligations. However, those that cannot afford to make these payments often carry so much debt that bankruptcy is usually the only viable option.

This bill will provide consumers several crucial pieces of information on their monthly credit card statement:

A ''minimum payment warning'' that paying at the minimum rate will increase the amount of interest that is owed and the time it will take to repay the balance.

The number of years and months that it will take the consumer to payoff the balance at the minimum rate.

The total costs in interest and principal if the consumer pays at the minimum rate.

The monthly payment that would be required to pay the balance off in three years.

The bill also requires that credit card companies provide a toll-free number that consumers can call to receive information about credit counseling and debt management assistance. In order to assure that consumers are referred to honest, legitimate non-profit credit counselors, the bill requires the Federal Reserve to screen these agencies to ensure that they meet rigorous quality standards.

Our groups commend you for offering this very important and long-overdue piece of legislation. It provides the kind of personalized, timely disclosure information that will help debt-choked families make informed decisions and start to work their way back to financial health.

Sincerely,

TRAVIS B. PLUNKETT,
Legislative Director, Consumer Federation of America.
SUSANNA MONTEZEMOLO,
Policy Analyst, Consumers Union.
EDMUND MIERZWINSKI,
Consumer Programs Director, U.S. Public Interest Research Group.
LINDA SHERRY,
Editorial Director, Consumer Action.

FACTS ABOUT CREDIT CARD DEBT

Revolving debt (most of which is credit card debt) has ballooned from $54 billion in January 1980 to over $780 billion currently.

	Billion
January 1980	$54
January 1984	79
January 1990	214
January 1994	313
November 2004	780.1

Source: http://www.federalreserve.gov/Releases/G19/hist/cc hist sa.html.

About one-twelfth of this debt is paid off before it incurs interest, so Americans pay interest on an annual load of about $690 billion in revolving debt.

According to the Federal Reserve, the most recent average credit card interest rate is 12.4% APR. At simple interest, with no compounding, then, consumers pay at least $85 billion annually in interest on credit card and other revolving debt.

Just about 55 percent of consumers carry debt. The rest are convenience users.

From PIRG/CFA analysis of Federal Reserve data, the average household with debt carries approximately $10,000–12,000 in total revolving debt and has approximately nine cards.

FACTS ABOUT THE EFFECT OF MINIMUM MONTHLY PAYMENTS

A household making the monthly minimum required payments on this debt (usually the greater of 2 percent of the unpaid balance or $20) at the very low average 12.4% APR (many consumers pay much higher penalty rates than this FRB-reported average) would pay $1,175 in interest just in the first year, even if these cards are cut up and not used again.

This household would pay a total of over $9,800 in interest over a period of 25 years and three months. That fact is not disclosed.

A household or consumer who merely doubled their minimum payment and paid 4% of the amount due would fare better. A household or consumer that paid 10% of the balance each month would fare much better. Here is a comparison.

Minimum payment warnings would encourage larger payments and save consumers thousands of dollars in high-priced credit card debt.

Credit card debt of $10,000 at Modest 12.4% APR	Monthly Payment (% of unpaid balance)		
	2%	4%	10%
First Year Interest =	$1,175	$1,054	$775
Total Interest Owed =	$9,834	$3,345	$1,129
Months To Pay	303	127	52
Years To Pay	25.3	10.6	4.3

Calculations by U.S. PIRG. Also see http://www.truthaboutcredit.org/lowerapr.htm for additional comparisons and amortization tables.

Giving consumers a minimum payment warning on their credit card statements is the most powerful action Congress could take to increase consumer understanding of the cost of credit card debt.

FACTS ABOUT WHO OWES CREDIT CARD DEBT

Credit card debt has risen fastest among lower-income Americans. These families saw the largest increase—a 184 percent rise in their debt—but even very high-income families had 28 percent more credit card debt in 2001 than they did in 1989. Source: Demos.

Thirty-nine percent of student loan borrowers now graduate with unmanageable levels of debt, meaning that their monthly payments are more than 8% of their monthly incomes. According to PIRG analysis of the 1999–2000 NPSAS data, in 2001, 41% of the graduating seniors carried a credit card balance, with an average balance of $3,071. Student loan borrowers were even more likely to carry credit card debt, with 48% of borrowers carrying an average credit card balance of $3,176. See ''The Burden of Borrowing,'' 2002, Tracey King, the State PIRGs, http://www.pirg.org/highered/BurdenofBorrowing.pdf.

While less likely to have credit cards than white families, data show that African-American and Hispanic families are more likely to carry debt.

	% with credit cards 2001	Cardholding % with debt 2001	Average credit card debt 2001
All families	76	55	$4,126
White families	82	51	4,381
Black families	59	84	2,950
Hispanic families	53	75	3,691

Demos calculations using 2001 Survey of Consumer Finances. See Borrowing To Make Ends Meet. Demos, http://www.demosusa.org/pubs/borrowing_tomake_ends_meet.pdf.

SENIORS (OVER AGE 65)

Credit card debt among older Americans increased by 89 percent from 1992 to 2001. Average balances among indebted adults over 65 increased by 89 percent, to $4,041.

Seniors between 65 and 69 years old, presumably the newly-retired, saw the most staggering rise in credit card debt—217 percent—to an average of $5,844.

Female-headed senior households experienced a 48 percent increase between 1992 and 2001, to an average of $2,319.

Among seniors with incomes under $50,000 (70 percent of seniors), about one in five families with credit card debt is in debt hardhip—spending over 40 percent of their income on debt payments, including mortgage debt.

TRANSITIONERS (AGES 55–64)

Transitioners experienced a 47 percent increase in credit card debt between 1992 and 2001, to an average of $4,088.

The average credit card-indebted family in this age group now spends 31 percent of their income on debt payments, a 10 percent increase over the decade.

Mr. AKAKA. I also ask unanimous consent that the text of the Credit Card Minimum Payment Warning Act be printed in the RECORD.

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

S. 393

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 ''Credit Card Minimum Payment Warning Act of 2005''.

SEC. 2. ENHANCED CONSUMER DISCLOSURES REGARDING MINIMUM PAYMENTS.

Section 127(b) of the Truth in Lending Act (15 U.S.C. 1637(b)) is amended by adding at the end the following:

''(11)(A) Information regarding repayment of the outstanding balance of the consumer under the account, appearing in conspicuous type on the front of the first page of each such billing statement, and accompanied by an appropriate explanation, containing—

''(i) the words 'Minimum Payment Warning: Making only the minimum payment will increase the amount of interest that you pay and the time it will take to repay your outstanding balance.';

''(ii) the number of years and months (rounded to the nearest month) that it would take for the consumer to pay the entire amount of that balance, if the consumer pays only the required minimum monthly payments;

''(iii) the total cost to the consumer, shown as the sum of all principal and interest payments, and a breakdown of the total costs in interest and principal, of paying that balance in full if the consumer pays only the required minimum monthly payments, and if no further advances are made;

''(iv) the monthly payment amount that would be required for the consumer to eliminate the outstanding balance in 36 months if no further advances are made; and

''(v) a toll-free telephone number at which the consumer may receive information about accessing credit counseling and debt management services.

''(B)(i) Subject to clause (ii), in making the disclosures under subparagraph (A) the creditor shall apply the interest rate in effect on the date on which the disclosure is made.

''(ii) If the interest rate in effect on the date on which the disclosure is made is a temporary rate that will change under a contractual provision specifying a subsequent interest rate or applying an index or formula for subsequent interest rate adjustment, the creditor shall apply the interest rate in effect on the date on which the disclosure is made for as long as that interest rate will

apply under that contractual provision, and then shall apply the adjusted interest rate, as specified in the contract. If the contract applies a formula that uses an index that varies over time, the value of such index on the date on which the disclosure is made shall be used in the application of the formula.''.

SEC. 3. ACCESS TO CREDIT COUNSELING AND DEBT MANAGEMENT INFORMATION.

(a) GUIDELINES REQUIRED.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Board of Governors of the Federal Reserve System and the Federal Trade Commission (in this section referred to as the ''Board'' and the ''Commission'', respectively) shall jointly, by rule, regulation, or order, issue guidelines for the establishment and maintenance by creditors of a toll-free telephone number for purposes of the disclosures required under section 127(b)(11) of the Truth in Lending Act, as added by this Act.

(2) APPROVED AGENCIES.—Guidelines issued under this subsection shall ensure that referrals provided by the toll-free number include only those agencies approved by the Board and the Commission as meeting the criteria under this section.

(b) CRITERIA.—The Board and the Commission shall only approve a nonprofit budget and credit counseling agency for purposes of this section that—

(1) demonstrates that it will provide qualified counselors, maintain adequate provision for safekeeping and payment of client funds, provide adequate counseling with respect to client credit problems, and deal responsibly and effectively with other matters relating to the quality, effectiveness, and financial security of the services it provides;

(2) at a minimum—

(A) is registered as a nonprofit entity under section 501(c) of the Internal Revenue Code of 1986;

(B) has a board of directors, the majority of the members of which—

(i) are not employed by such agency; and

(ii) will not directly or indirectly benefit financially from the outcome of the counseling services provided by such agency;

(C) if a fee is charged for counseling services, charges a reasonable and fair fee, and provides services without regard to ability to pay the fee;

(D) provides for safekeeping and payment of client funds, including an annual audit of the trust accounts and appropriate employee bonding;

(E) provides full disclosures to clients, including funding sources, counselor qualifications, possible impact on credit reports, any costs of such program that will be paid by the client, and how such costs will be paid;

(F) provides adequate counseling with respect to the credit problems of the client, including an analysis of the current financial condition of the client, factors that caused such financial condition, and how such client can develop a plan to respond to the problems without incurring negative amortization of debt;

(G) provides trained counselors who—

(i) receive no commissions or bonuses based on the outcome of the counseling services provided;

(ii) have adequate experience; and

(iii) have been adequately trained to provide counseling services to individuals in financial difficulty, including the matters described in subparagraph (F);

(H) demonstrates adequate experience and background in providing credit counseling;

(I) has adequate financial resources to provide continuing support services for budgeting plans over the life of any repayment plan; and

(J) is accredited by an independent, nationally recognized accrediting organization.

By Mr. CORNYN (for himself and Mr. LEAHY):

S. 394. A bill to promote accessibility, accountability, and openness in Government by strengthening section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act), and for other purposes; to the Committee on the Judiciary.

(See exhibit 1.)

Mr. CORNYN. Mr. President, I rise today to introduce a bill, along with the Senator from Vermont who we will hear from shortly, that will help enhance the openness of the Federal Government. This bill is called the Open Government Act of 2005. It is a bipartisan effort to improve and update our public information laws—particularly the Freedom of Information Act.

The purpose of the bill is to arm the American people with the information they need to make certain that ours remains a government whose legitimacy is derived from the consent of the governed. This legislation will significantly expand the accessibility, accountability, and openness of the Federal Government.

Open government, of course, is one of the most basic requirements of a healthy democracy. It allows taxpayers to see where their money is going. It permits the honest exchange of information that ensures government accountability, and it upholds the ideal that government never rules without the consent of the governed. As is so often the case, Abraham Lincoln said it best:

> No man is good enough to govern another without that person's consent.

But achieving the true consent of the governed requires something more than just holding elections every couple of years. What we need is informed consent. Informed consent is impossible without open and accessible government.

It has been nearly a decade since Congress has approved major reforms to the Freedom of Information Act. The Senate Judiciary Committee has not convened an oversight hearing to examine the Freedom of Information Act compliance issue since 1992. And at that time, I believe it is clear that the growth of technology and the Internet has created a real desire among the American people to achieve direct, efficient, and open access to government information.

I thank my colleague from Vermont, the ranking member of the Judiciary Committee, who has long been a champion of these issues, for his hard work on this bill. Together our offices have spent a good deal of time meeting with open government advocates. I am proud to say this bill is supported by a broad coalition across the ideological spectrum, because I believe this legislation should not be a partisan or special interest bill. Indeed, it is not.

I ask unanimous consent that these endorsement letters from dozens of watchdog groups across the political spectrum be printed in the RECORD at the close of my remarks.

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

(See exhibit 2.)

Mr. CORNYN. Mr. President, as the Senator from Vermont said at a recent Judiciary Committee hearing:

> I have always found that every administration, Republican or Democrat, would love to keep a whole lot of things from the public. They do something they are proud of, they will send out a hundred press releases. Otherwise, they will hold it back. We have the Freedom of Information Act, which is a very good thing. It keeps both Democratic and Republican administrations in line.

I agree with that. Essentially, we are talking about human nature. It is only natural that elected officials and Government leaders want recognition for their successes but not their failures. But we, as a healthy democracy, need to know the good, the bad, and the ugly.

The news media, of course, is the main way people get information about the Government. The media pushes Government entities and elected officials, bureaucrats, and agencies to release information that the people have the right to know, occasionally exposing waste, fraud, and abuse—and hopefully more often than that letting the American people know what a good job their public officials are doing.

But we have also seen in recent years an expansion of other outlets for sharing information outside of the mainstream media to online communities, discussion groups, and blogs. I believe all these outlets can and do contribute to the health of our political democracy.

Let me make this clear. This is not just a bill for the media, lest anybody be confused. This is a bill that will benefit every man, woman, and child in the United States of America who cares about the Federal Government, cares about how the Federal Government operates, and ultimately cares about the success of this great democracy.

By reforming our information policies in order to guarantee true access by all citizens to Government records, we will revitalize the informed consent that keeps America free. The Open Government Act contains over a dozen substantive provisions, designed to achieve the following four objectives:

First, it will strengthen the Freedom of Information Act and close loopholes.

Secondly, it will help Freedom of Information Act requesters obtain timely responses to their requests.

Third, it will ensure that agencies have strong incentives to comply with the law in a timely fashion.

Fourth, it will provide Freedom of Information Act officials; that is, people within Government agencies, with all the tools, including the education, they need in order to ensure that our Government remains open and accessible.

This legislation is not just pro-openness, pro-accountability and pro-accessibility; it is also pro-Internet. It contains important congressional findings to reiterate the presumption of openness. It includes a provision for a hotline that enables citizens to track the requests and even allows tracking of those requests via the Internet. As a whole, the Open Government Act reiterates the principle that our Government is based not on the need to know but rather on the right to know.

We all recognize that America's security should never take a back seat. But nor should the claim, without justification, of national security be used as a barrier against allowing taxpayers to know how their money is being spent.

There is a broad consensus across the aisle, the political spectrum, that we currently overclassify Government documents, and that many documents and much information is placed beyond the public view without any real justification. I believe we need a system of classification that strikes the right balance between the need to classify documents in the interest of our national security and our national values of open government.

Our default position of the U.S. Government must be one of openness. If records can be open, they should be open. If there is a good reason to keep something closed, it is the Government that should bear the burden, not the other way around.

Open government is fundamentally an American issue. It is literally necessary to preserve our way of life as a self-governing people. Ensuring the accessibility, accountability, and openness of the Federal Government is a cause worthy of preservation, and I call on my colleagues to join the Senator from Vermont and I today in taking a meaningful step toward that goal.

Finally, before I yield the floor to the Senator from Vermont, let me again express my appreciation to him and his staff. They have worked very closely with my staff. This is one of those good Government initiatives that knows no party affiliation, no ideological affiliation, but is really one that is essential to the preservation of our way of life as a self-governing democracy.

EXHIBIT 1

OPENNESS PROMOTES EFFECTIVENESS IN OUR NATIONAL GOVERNMENT ACT OF 2005

Led by U.S. Senators John Cornyn and Patrick Leahy, the OPEN Government Act of 2005 is a bipartisan effort to achieve meaningful reforms to federal government information laws—including most notably the Freedom of Information Act of 1966 (''FOIA''). If enacted, the legislation would substantially enhance and expand the accessibility, accountability, and openness of the federal government. It has been nearly a decade since Congress has approved major reforms to FOIA. Moreover, the Senate Judiciary Committee has not convened an oversight hearing to examine FOIA compliance issues since April 30, 1992. (The Senate Homeland Security and Governmental Affairs Committee, which shares jurisdiction over federal government information laws with the Judiciary Committee, has not held a FOIA oversight hearing since 1980.)

This legislation is the culmination of months of extensive discussions between the offices of Senators Cornyn and Leahy and various members of the requestor community. The bill is supported by Texas Attorney General Greg Abbott and a broad coalition of organizations across the ideological spectrum, including:

American Association of Law Libraries
American Civil Liberties Union
American Library Association
American Society of Newspaper Editors
Associated Press Managing Editors
Association of Health Care Journalists
Center for Democracy & Technology
Coalition of Journalists for Open Government
Committee of Concerned Journalists
Education Writers Association
Electronic Privacy Information Center
Federation of American Scientists/Project on Government Secrecy
Free Congress Foundation/Center for Privacy & Technology Policy
Freedom of Information Center, University of Missouri
The Freedom of Information Foundation of Texas
The Heritage Foundation/Center for Media and Public Policy
Information Trust
National Conference of Editorial Writers
National Freedom of Information Coalition
National Newspaper Association
National Security Archive/George Washington University
Newspaper Association of America
People for the American Way
Project on Government Oversight
Radio-Television News Directors Association
The Reporters Committee for Freedom of the Press
Society of Environmental Journalists

The Act contains important Congressional findings to reiterate and reinforce the view that the Freedom of Information Act establishes a presumption of openness, and that our government is based not on the need to know, but upon the fundamental right to know. The Act also contains over a dozen substantive provisions, designed to achieve the following four objectives:

(1) Strengthen FOIA and close loopholes
(2) Help FOIA requestors obtain timely responses to their requests
(3) Ensure that agencies-have strong incentives to act on FOIA requests in a timely fashion
(4) Provide FOIA officials with all of the tools they need to ensure that our government remains open and accessible

STRENGTHEN FOIA AND CLOSE LOOPHOLES

Ensure that FOIA applies when agency recordkeeping functions are outsourced

Establish a new open government impact statement, by requiring that any future Congressional attempt to create a new FOIA exemption be expressly stated within the text of the legislation

Impose annual reporting requirement on usage of the DHS disclosure exemption for critical infrastructure information

Protect access to FOIA fee waivers for legitimate journalists, regardless of institutional association—including bloggers and other Internet-based journalists

Provide reliable reporting of FOIA performance, by requiring agencies to distinguish between first person requests for personal information and other kinds of requests

HELP FOIA REQUESTORS OBTAIN TIMELY RESPONSES

Establish FOIA hotline services, either by telephone or on the Internet, to enable requestors to track the status of their requests

Create a new FOIA ombudsman, located at the Administrative Conference of the United States, to review agency FOIA compliance and provide alternatives to litigation

Authorize reasonable recovery of attorney fees when litigation is inevitable

ENSURE THAT AGENCIES HAVE STRONG INCENTIVES TO ACT ON FOIA REQUESTS IN TIMELY FASHION

Restore meaningful deadlines for agency action by ensuring that the 20-day statutory clock runs immediately upon the receipt of the request

Impose real consequences on federal agencies for missing statutory deadlines

Enhance authority of the Office of Special Counsel to take disciplinary action against government officials who arbitrarily and capriciously deny disclosure

Strengthen reporting requirements on FOIA compliance to identify agencies plagued by excessive delay, and to identify excessive delays in fee status determinations

PROVIDE FOIA OFFICIALS WITH THE TOOLS THEY NEED TO ENSURE THAT OUR GOVERNMENT REMAINS OPEN AND ACCESSIBLE

Improve personnel policies for FOIA officials to enhance agency FOIA performance

Examine the need for FOIA awareness training for federal employees

Determine appropriate funding levels needed to ensure agency FOIA compliance

OPENNESS PROMOTES EFFECTIVENESS IN OUR NATIONAL GOVERNMENT ACT OF 2005

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short Title. The Open Government Act of 2005.

Sec. 2. Findings. The findings reiterate the intent of Congress upon enacting the Freedom of Information Act (FOIA), 5 D.S.C. 552 as amended, and restate FOIA's presumption in favor of disclosure.

Sec. 3. Protection of Fee Status for News Media. This section amends 5 U.S.C. 552(a)(4)(A)(ii) to make clear that independent journalists are not barred from obtaining fee waivers solely because they lack an institutional affiliation with a recognized news media entity. In determining whether to grant a fee waiver, an agency shall consider the prior publication history of the requestor. If the requestor has no prior publication history and no current affiliation with a news organization, the agency shall review the requestor's plans for disseminating the requested material and whether those plans include distributing the material to a reasonably broad audience.

Sec. 4. Recovery of Attorney Fees and Litigation Costs. This section, the so-called Buckhannon fix, amends 5 U.S.C. 552(a)(4)(E) to clarify that a complainant has substantially prevailed in a FOIA lawsuit, and is eligible to recover attorney fees, if the complainant has obtained a substantial part of his requested relief through a judicial or administrative order or if the pursuit of a claim was the catalyst for the voluntary or unilateral change in position by the opposing party. The section responds to the Supreme Court's ruling in Buckhannon Board and Care Home, Inc. v. West Virginia Dep't of Health and Human Resources, 532 U.S. 598 (2001), which eliminated the ''catalyst theory'' of attorney fee recovery under certain Federal civil rights laws. FOIA requestors have raised concerns that the holding in Buckhannon could be extended to FOIA cases. This section preserves the ''catalyst theory'' in FOIA litigation.

Sec. 5. Disciplinary Actions for Arbitrary and Capricious Rejections of Requests. FOIA currently requires that when a court finds that agency personnel have acted arbitrarily or capriciously with respect to withholding documents, the Office of Special Counsel

shall determine whether disciplinary action against the involved personnel is warranted. See 5 U.S.C. 552(a)(4)(F). This section of the bill amends FOIA to require the Attorney General to notify the Office of Special Counsel of any such court finding and to report the same to Congress. It further requires the Office of Special Counsel to report annually to Congress on any actions taken by the Special Counsel to investigate cases of this type.

Sec. 6. Time Limits for Agencies to Act on Requests. The section clarifies that the 20-day time limit on responding to a FOIA request commences on the date on which the request is first received by the agency. Further, the section states that if the agency fails to respond within the 20-day limit, the agency may not then assert any FOIA exemption under 5 U.S.C. 552(b), except under limited circumstances such as endangerment to national security or disclosure of personal private information protected by the Privacy Act of 1974, unless the agency can demonstrate, by clear and convincing evidence, good cause for failure to comply with the time limits.

Sec. 7. Individualized Tracking Numbers for Requests and Status Information. Requires agencies to establish tracking systems by assigning a tracking number to each FOIA request: notifying a requestor of the tracking number within ten days of receiving a request; and establishing a telephone or Internet tracking system to allow requestors to easily obtain information on the status of their individual requests, including an estimated date on which the agency will complete action on the request.

Sec. 8. Specific Citations in Exemptions. 5 U.S.C. 552(b)(3) states that records specifically exempted from disclosure by statute are exempt from FOIA. This section of the bill provides that Congress may not create new statutory exemptions under this provision of FOIA unless it does so explicitly. Accordingly, for any new statutory exemption to have effect, the statute must cite directly to 5 U.S.C. 552(b)(3), thereby conveying congressional intent to create a new (b)(3) exemption.

Sec. 9. Reporting Requirements. This section adds to current reporting requirements by mandating disclosure of data on the 10 oldest active requests pending at each agency, including the amount of time elapsed since each request was originally filed. This section further requires agencies to calculate and report on the average response times and range of response times of FOIA requests. (Current requirements mandate reporting on the median response time.) Finally, this section requires reports on the number of fee status requests that are granted and denied and the average number of days for adjudicating fee status determinations by individual agencies.

Sec. 10. Openness of Agency Records Maintained by a Private Entity. This section clarifies that agency records kept by private contractors licensed by the government to undertake recordkeeping functions remain subject to FOIA just as if those records were maintained by the relevant government agency.

Sec. 11. Office of Government Services. This section establishes an Office of Government Information Services within the Administrative Conference of the U.S. Within that office will be appointed a FOIA ombudsman to review agency policies and procedures, audit agency performance, recommend policy changes, and mediate disputes between FOIA requestors and agencies. The establishment of an ombudsman will not impact the ability of requestors to litigate FOIA claims, but rather will serve to alleviate the need for litigation whenever possible.

Sec. 12. Accessibility of Critical Infrastructure Information. This section requires reports on the implementation of the Critical Infrastructure Information Act of 2002, 6 U.S.C. 133. Reports shall be issued from the Comptroller General to the Congress on the number of private sector, state, and local agency submissions of CII data to the Department of Homeland Security and the number of requests for access to records. The Comptroller General will also be required to report on whether the nondisclosure of CII material has led to increased protection of critical infrastructure.

Sec. 13. Report on Personnel Policies Related to FOIA. This section requires the Office of Personnel Management to examine how FOIA can be better implemented at the agency level, including an assessment of whether FOIA performance should be considered as a factor in personnel performance reviews, whether a job classification series specific to FOIA and the Privacy Act should be considered, and whether FOIA awareness training should be provided to federal employees.

EXHIBIT 2

FEBRUARY 15, 2005.

Hon. JOHN CORNYN,
Chairman, U.S. Senate Judiciary Subcommittee on the Constitution, Civil Rights & Property Rights, Washington DC.

DEAR SENATOR CORNYN: I strongly endorse the proposed OPEN Government Act or 2005, which will strengthen the federal Freedom of Information Act (FOIA) and advance government openness.

James Madison once observed that ''[k]nowledge will forever govern ignorance; and a people who mean to be their own governors must arm themselves with the power which knowledge gives.'' The Father of the Constitution recognized that our constitutional democracy, which is rooted in self-government, requires the informed consent of the people. I share Madison's belief, and yours, that a government of the people, by the people, and for the people must operate in full view of the people. Openness and accountability—not secrecy and concealment—are what keep democracies strong and enduring.

A commitment to open government underpins both FOIA and the Texas Public Information Act, which you interpreted and forcefully defended as the 49th Attorney General of Texas. As your successor I am proud that Texas leads the nation in promoting open government and privileged to build upon your efforts to make sure the public's business is conducted in full sunshine. As you know, the Texas Public Information Act declares that ''government is the servant and not the master of the people,'' and ''[t]he people do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.''

The OPEN Government Act of 2005 will bring similar benefits to all Americans and ensure that FOIA finally lives up to its noble ideals. By closing loopholes and enabling government to be more responsive to requests for information, the OPEN Govermnent Act of 2005 will modernize FOIA's nearly 40-year-old commitment to open and accessible government.

Our system of self-government does not rest on the public's need to know, but on its fundamental right to know. Your proposed legislation will codify this venerable standard in federal law and reinforce one of our nation's first principles: open government leads inexorably to good government.

I cannot overstate my support for these important reforms and commend you for your exceptional leadership on this issue.

Sincerely,

GREG ABBOTT,
Attorney General of Texas.

AMERICAN ASSOCIATION OF LAW LIBRARIES,
WASHINGTON AFFAIRS OFFICE,
Washington, DC, February 14, 2005.

Hon. JOHN CORNYN,
U.S. Senate,
Washington, DC.

DEAR SENATOR CORNYN: On behalf of the American Association of Law Libraries, I commend you for your leadership in promoting access to government information by introducing the Openness Promotes Effectiveness in our National (OPEN) Government Act of 2005. We share your belief that accessible government information is both an essential principle of a democratic society and a valuable public good.

The American Association of Law Libraries (AALL) is a nonprofit educational organization with over 5000 members nationwide who respond to the legal information needs of legislators, judges, and other public officials at all levels of government, corporations and small businesses, law professors and students, attorneys, and members of the general public. Our mission is to promote and enhance the value of law libraries, to foster law librarianship and to provide leadership and advocacy in the field of legal information and information policy.

AALL believes that public inspection of government records, including electronic records, under the Freedom of Information Act (FOIA) is the foundation for citizen access to government information. The OPEN Government Act of 2005 provides important and timely amendments to FOIA. AALL supports this important legislation and we look forward to working with you to ensure its prompt enactment.

Sincerely,

MARY ALICE BAISH,
Associate Washington Affairs Representative.

AMERICAN CIVIL LIBERTIES UNION,
Washington, DC, February 14, 2005.

Hon. JOHN CORNYN,
U.S. Senate,
Washington, DC.
Hon. PATRICK LEAHY,
U.S. Senate,
Washington, DC.

DEAR SENATORS CORNYN AND LEAHY: On behalf of the American Civil Liberties Union and its more than 400,000 members, we are pleased to endorse the Openness Promotes Effectiveness in our National Government Act of 2005, the ''OPEN Government Act of 2005.''

As the Supreme Court has made clear, ''disclosure, not secrecy, is the dominant objective of the Act,'' Department of the Air Force v. Rose, 425 U.S. 352 (1976). Nevertheless, secrecy, not openness, all too often seems to be the dominant trend of agencies in recent times.

The OPEN Government Act includes a series of much-needed corrections to policies that have eroded the promise of the Freedom of Information Act (FOIA). These include ensuring requesters will have timely information on the status of their requests, enforceable time limits for agencies to respond to requests, news media status rules that recognize the reality of freelance journalists and the Internet, and strong incentives—including both carrots and sticks—for agency employees to improve FOIA compliance. The OPEN Government Act also includes a much needed review of the new exemption in the Homeland Security Act for critical infrastructure information.

James Madison warned against ''a popular Government without popular information,'' saying that ''a people who mean to be their own Governors, must arm themselves with the power knowledge gives.'' We strongly urge passage of the OPEN Government Act

of 2005 to help restore to the people some of that power.

Sincerely,

LAURA W. MURPHY,
Director, Washington Legislative Office.
TIMOTHY H. EDGAR,
Legislative Counsel.

AMERICAN SOCIETY OF NEWSPAPER EDITORS,
Reston, VA, February 9, 2005.

Hon. JOHN CORNYN,
U.S. Senate,
Washington, DC.

DEAR SENATOR CORNYN: On behalf of the American Society of Newspaper Editors (ASNE), I am writing to congratulate you on the Introduction of the ''Open Government Act.'' Since the organization was founded in 1922, ASNE's membership of directing editors of dally newspapers throughout the United States has worked to assist journalists and provide an unfettered and effective press in the service of the American people.

ASNE is proud to endorse the Open Government Act as legislation that can help us achieve these ideals. As you wrote in your recent article in the LBJ Journal of Public Affairs, ''Our national commitment to democracy and freedom is not merely some abstract notion. It is a very real and continuing effort, and an essential element of that effort is an open and accessible government'' The Open Government Act is a ringing reminder that the Freedom of Information Act (FOIA) is the cornerstone of this principle. Your bill comes at a time when many executive agencies are able to shortcut FOIA's guarantees of access to government documents while avoiding any repercussion for their actions.

We appreciate your desire to provide a meaningful enforcement mechanism for those who see that FOIA is not achieving its promise of open and accessible records for all. The bill's pragmatic focus on procedural, rather than substantive, change is noteworthy; instead of rewriting the law in a way that would promote or disfavor certain special interests, you wisely seek to bring government and citizenry together to make FOIA more efficient and effective.

ASNE applauds your efforts and joins you in urging passage of this bill in the 109th Congress.

Sincerely,

KARLA GARRETT HARSHAW,
President.

FEDERATION OF AMERICAN SCIENTISTS,
Washington, DC, February 4, 2005.

Senator JOHN CORNYN,
U.S. Senate,
Washington, DC.

DEAR SENATOR CORNYN: I am writing to express the support of the Federation of American Scientists for your continuing efforts to promote openness in government, and specifically for your proposed legislation to strengthen the Freedom of Information Act (FOIA).

It is our belief that openness generally, and the FOIA in particular, have an importance that transcends the usual political divides. By making information available to our citizens, we advance the ideals of democratic self-governance that we all share.

Your proposed legislation would strengthen the FOIA in several important ways: It would reverse recent trends to use fee recovery as an impediment to FOIA processing; it would strengthen the position of requesters who are forced to pursue litigation to gain the records they seek; it would enhance and clarify the administration of the FOIA; and it would create an important new mechanism to audit agency compliance with the FOIA, among other important provisions.

Perhaps most fundamentally, your legislation marks a hopeful new resurgence of congressional attention to these fundamental issues.

Thank you for your leadership.

Sincerely,

STEVEN AFTERGOOD,
Project Director,
FAS Project on Government Secrecy.

FREE CONGRESS FOUNDATION,
Washington, DC, February 11, 2005.

Hon. JOHN CORNYN,
U.S. Senate,
Washington, DC.

DEAR SENATOR CORNYN: We would like to commend your introduction of the OPEN Government Act of 2005.

Conservatives believe checks and balances are essential to our system of government. One important check is to ensure that citizens and the news media have access to what the Federal Government's departments and agencies are doing. Unfortunately, as noted by Austin American Statesman reporter Chuck Lindell, too often the Federal Government's bureaucracy demonstrates no interest in replying to such requests in a timely and efficient manner. It prefers to operate in darkness, not having their actions exposed to the sunlight of public scrutiny.

Citizens have a right to know what the Federal Government is doing with their tax dollars. The fact that the Department of Agriculture and the Environmental Protection Agency can take years to answer requests for information should be disturbing to conservatives who bemoan the arrogance and unresponsiveness of Big Government. Every citizen and every news reporter is entitled to a prompt answer to their request for information.

''The buck stops here'' is a snappy soundbite, and may have once represented a workable philosophy of governing in simpler times. The reality is that in today's Washington it's hard to tell where the buck is because it is simply obscured by an unresponsive bureaucracy. Ironically, technology and increasing expectations of transparency in government render the mindset practiced by a recalcitrant bureaucracy obsolete. A measure such as the OPEN Government Act of 2005 can help level the playing field in favor of the citizenry.

Sincerely,

STEVE LILIENTHAL,
Director,
Center for Privacy & Technology Policy.

THE FREEDOM OF INFORMATION FOUNDATION OF TEXAS,
Dallas, TX, February 8, 2005.

Ms. KATHERINE GARNER,
Executive Director.

DEAR BOARD MEMBERS: United States Senator John Cornyn will introduce legislation to strengthen the Freedom of Information Act next week. Among other things, the Open Government Act of 2005 would provide meaningful deadlines for federal agencies to act on Freedom of Information requests and impose consequences on federal agencies for missing statutory deadlines. In light of the fact that some federal agencies have had requests for information pending for as long as seventeen years, the Foundation believes Senator Cornyn's proposals are much needed and overdue. The proposed legislation would also make it easier for successful litigants to recover their attorney's fees when litigation becomes necessary, strengthen reporting requirements on government agencies' FOIA compliance, establish an ombudsman to resolve FOIA complaints without the need to resort to litigation and enhance the authority of the Office of Special Counsel to take disciplinary action against government officials who arbitrarily and capriciously deny disclosure.

The Foundation therefore enthusiastically endorses Senator Cornyn's proposed legislation and encourages each of your organizations to do the same.

Sincerely,

JOEL R. WHITE.

THE HERITAGE FOUNDATION,
CENTER FOR MEDIA AND PUBLIC POLICY,
Washington, DC, February 11, 2005.

Sen. JOHN CORNYN,
Hart Senate Office Building,
Washington, DC.

DEAR SENATOR CORNYN: Insuring the continuance of our Republican liberty depends upon maintaining the right of the people to know as much as possible about what their government is doing in order to hold the public officials and employees accountable.

Protecting this accountability tool grows ever more important as the power of the federal government continues its historic growth, with its attendant tendency continually to become more and more resistant to genuine transparency. That is why a healthy Freedom of Information Act is so vital.

But while the federal government has grown exponentially since passage of the FOIA in 1966, the law's effectiveness has steadily declined as politicians and career bureaucrats with a shared interest in avoiding accountability have become increasingly skilled at exploiting loopholes, creatively interpreting administrative provisions and relying upon the paucity of legal resources available to many requestors to avoid satisfying either the letter or spirit of the statute.

Indeed, the National Security Archive's 2003 survey that found an FOIA system ''in extreme disarray.'' The Archive found that ''agency contact information on the web was often inaccurate; response times largely failed to meet the statutory standard; only a few agencies performed thorough searches, including e-mail and meeting notes; and the lack of central accountability at the agencies resulted in lost requests and inability to track progress.''

I believe the comprehensive package of reforms contained in ''The Open Government Act of 2005'' would go far in restoring the effectiveness of the FOIA as an accountability tool for the people in dealing with their government.

We must remember that transparency and accountability are the strongest antidotes to the inevitable abuses of Big Government and are thus essential guarantors of every individual's liberty and prerequisites for the maintenance of our common security.

Sincerely,

MARK TAPSCOTT,
Director.

NATIONAL NEWSPAPER ASSOCIATION,
WASHINGTON PROGRAMS,
Arlington, VA, February 9, 2005.

Hon. JOHN CORNYN,
U.S. Senate,
Washington DC.

DEAR SENATOR CORNYN: The National Newspaper Association, an organization representing over 2,500 community newspapers nationwide, supports your efforts to strengthen the Freedom of Information Act. The OPEN Government Act of 2005 is a sound step toward a better FOIA.

Openness and transparency in government is vital to the proper functioning of a democratic government. Ensuring unhindered access to government information by the public is the utmost responsibility of our elected leaders, for without this access, it would be impossible for the consent of the governed to be truly informed.

The Freedom of Information Act is an important tool in achieving this lofty goal, and

it has proven to be useful to community newspapers around the country. The Act requires continual oversight from Congress to ensure the spirit of the law remains intact. Congress has neglected this duty in recent years, and we are pleased that you have undertaken efforts to rectify this neglect.

We want to emphasize that FOIA serves a function beyond providing records to requesters filing written requests. It also serves as a talisman for openness in similar state laws. It provides a framework for releasing information that is informally requested by journalists and others—a function of particular importance to community newspapers.

We will look forward to working with you as the bill is considered by the Judiciary Committee.

Sincerely,

MATTHEW PAXTON,
Chairman,
Government Relations Committee.

NEWSPAPER ASSOCIATION OF AMERICA,
Vienna, VA, February 10, 2005.

Hon. JOHN CORNYN,
Chairman, Senate Judiciary Subcommittee on the Constitution, Civil Rights, & Property Rights, Washington, DC.

DEAR SENATOR CORNYN: On behalf of the Newspaper Association of America (NAA), a non-profit organization representing more than 2,000 newspapers in the United States and Canada, I want to thank you for introducing the Open Government Act of 2005.

The Freedom of Information Act is premised on the belief that an informed citizenry is essential to democracy. The Open Government Act will strengthen the Freedom of Information Act and send a clear message that the openness and accessibility of the federal government is a vital part of our democratic process.

We commend you for your outstanding leadership, especially with regard to the inclusion of the provisions that would close current FOIA loopholes, prevent new ones, and restore meaningful deadlines for agency action on FOIA requests. Additionally, the legislation will make it easier for the public to access information about their government through the creation of a FOIA ombudsmen, agency FOIA hotlines, and tracking systems for FOIA requests.

Thank you again for your leadership on this important issue. We look forward to working with you and your staff in the coming months to ensure passage of the Open Government Act of 2005 in the 109th Congress.

Thanks for reading,

JOHN F. STURM,
President and CEO.

PEOPLE FOR THE AMERICAN WAY,
Washington, DC, February 9, 2005.

Hon. JOHN CORNYN,
U.S. Senate,
Washington, DC.
Hon. PATRICK LEAHY,
U.S. Senate,
Washington, DC.

DEAR SENATORS CORNYN AND LEAHY: On behalf of People For the American Way (PFAW) and its more than 675,000 members and supporters, I write in support of your efforts to strengthen the Freedom of Information Act (FOIA) and promote greater public access to government records through the proposed Open Government Act of 2005 (OGA).

Open government is a vital component of this country's democratic framework, allowing citizens to learn about the activities of their government and helping ensure government accountability. FOIA, which permits public access to federal records, has helped establish the public's right to obtain government information and created a strong presumption in favor of disclosure. Serious problems have arisen with full and timely agency compliance with FOIA and its goals, however, necessitating the types of important FOIA reforms contemplated in the OGA.

In particular, PFAW is supportive of the Act's use of penalties to enforce compliance with FOIA deadlines, particularly the provision imposing a presumptive waiver of FOIA exemptions when an agency fails to meet the 20-day production deadline, and the requirement that Congress be explicit when it considers creating additional exemptions under 5 U.S.C. 552(b)(3).

We also support the provision in the bill that would permit an award of attorney fees when a nonfrivolous lawsuit has served as the catalyst for voluntary disclosure of a substantial part of a FOIA request. It is imperative that a requester—who must incur litigation costs to enforce agency compliance with the law—be able to recover attorneys' fees and litigation costs in such cases, particularly in order to discourage arbitrary and unlawful agency rejections of legitimate FOIA requests.

Finally, we believe that the various record-keeping and monitoring provisions of the Open Government Act—including monitoring of the Department of Homeland Security's use of its ''critical infrastructure information'' exemption and mandatory agency disclosure of the 10 oldest active requests—are useful and necessary to ensure the integrity of the open government process and to gather the information needed to modify and adjust our open government laws going forward.

We applaud your efforts to reaffirm the vital importance of open government in this country and believe that the Open Government Act is an encouraging first step toward that goal.

Sincerely,

RALPH G. NEAS,
President.

Mr. CORNYN. 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. 394

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 ''Openness Promotes Effectiveness in our National Government Act of 2005'' or the ''OPEN Government Act of 2005''.

SEC. 2. FINDINGS.

Congress finds that—

(1) the Freedom of Information Act was signed into law on July 4, 1966, because the American people believe that—

(A) our constitutional democracy, our system of self-government, and our commitment to popular sovereignty depends upon the consent of the governed;

(B) such consent is not meaningful unless it is informed consent; and

(C) as Justice Black noted in his concurring opinion in Barr v. Matteo (360 U.S. 564 (1959)), ''The effective functioning of a free government like ours depends largely on the force of an informed public opinion. This calls for the widest possible understanding of the quality of government service rendered by all elective or appointed public officials or employees.'';

(2) the American people firmly believe that our system of government must itself be governed by a presumption of openness;

(3) the Freedom of Information Act establishes a ''strong presumption in favor of disclosure'' as noted by the United States Supreme Court in United States Department of State v. Ray (502 U.S. 164 (1991)), a presumption that applies to all agencies governed by that Act;

(4) ''disclosure, not secrecy, is the dominant objective of the Act,'' as noted by the United States Supreme Court in Department of Air Force v. Rose (425 U.S. 352 (1976));

(5) in practice, the Freedom of Information Act has not always lived up to the ideals of that Act; and

(6) Congress should regularly review section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act), in order to determine whether further changes and improvements are necessary to ensure that the Government remains open and accessible to the American people and is always based not upon the ''need to know'' but upon the fundamental ''right to know''.

SEC. 3. PROTECTION OF FEE STATUS FOR NEWS MEDIA.

Section 552(a)(4)(A)(ii) of title 5, United States Code, is amended by adding at the end the following:

''In making a determination of a representative of the news media under subclause (II), an agency may not deny that status solely on the basis of the absence of institutional associations of the requester, but shall consider the prior publication history of the requester. Prior publication history shall include books, magazine and newspaper articles, newsletters, television and radio broadcasts, and Internet publications. If the requestor has no prior publication history or current affiliation, the agency shall consider the requestor's stated intent at the time the request is made to distribute information to a reasonably broad audience.''.

SEC. 4. RECOVERY OF ATTORNEY FEES AND LITIGATION COSTS.

Section 552(a)(4)(E) of title 5, United States Code, is amended by adding at the end the following: ''For purposes of this section, a complainant has 'substantially prevailed' if the complainant has obtained a substantial part of its requested relief through a judicial or administrative order or an enforceable written agreement, or if the complainant's pursuit of a nonfrivolous claim or defense has been a catalyst for a voluntary or unilateral change in position by the opposing party that provides a substantial part of the requested relief.''.

SEC. 5. DISCIPLINARY ACTIONS FOR ARBITRARY AND CAPRICIOUS REJECTIONS OF REQUESTS.

Section 552(a)(4)(F) of title 5, United States Code, is amended—

(1) by inserting ''(i)'' after ''(F)''; and

(2) by adding at the end the following:

''(ii) The Attorney General shall—

''(I) notify the Special Counsel of each civil action described under the first sentence of clause (i); and

''(II) annually submit a report to Congress on the number of such civil actions in the preceding year.

''(iii) The Special Counsel shall annually submit a report to Congress on the actions taken by the Special Counsel under clause (i).''.

SEC. 6. TIME LIMITS FOR AGENCIES TO ACT ON REQUESTS.

(a) TIME LIMITS.—

(1) IN GENERAL.—Section 552(a)(6)(A)(i) of title 5, United States Code, is amended by inserting '', and the 20-day period shall commence on the date on which the request is first received by the agency, and shall not be tolled without the consent of the party filing the request'' after ''adverse determination''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall take effect 1 year after the date of enactment of this Act.

(b) AVAILABILITY OF AGENCY EXEMPTIONS.—

(1) IN GENERAL.—Section 552(a)(6) of title 5, United States Code, is amended by adding at the end the following:

''(G)(i) If an agency fails to comply with the applicable time limit provisions of this paragraph with respect to a request, the agency may not assert any exemption under subsection (b) to that request, unless disclosure—

''(I) would endanger the national security of the United States;

''(II) would disclose personal private information protected by section 552a or proprietary information; or

''(III) is otherwise prohibited by law.

''(ii) A court may waive the application of clause (i) if the agency demonstrates by clear and convincing evidence that there was good cause for the failure to comply with the applicable time limit provisions.''.

(2) EFFECTIVE DATE AND APPLICATION.—The amendment made by this subsection shall take effect 1 year after the date of enactment of this Act and apply to requests for information under section 552 of title 5, United States Code, filed on or after that effective date.

SEC. 7. INDIVIDUALIZED TRACKING NUMBERS FOR REQUESTS AND STATUS INFORMATION.

(a) IN GENERAL.—Section 552(a) of title 5, United States Code, is amended by adding at the end the following:

''(7) Each agency shall—

''(A) establish a system to assign an individualized tracking number for each request for information under this section;

''(B) not later than 10 days after receiving a request, provide each person making a request with the tracking number assigned to the request; and

''(C) establish a telephone line or Internet service that provides information about the status of a request to the person making the request using the assigned tracking number, including—

''(i) the date on which the agency originally received the request; and

''(ii) an estimated date on which the agency will complete action on the request.''.

(b) EFFECTIVE DATE AND APPLICATION.—The amendment made by this section shall take effect 1 year after the date of enactment of this Act and apply to requests for information under section 552 of title 5, United States Code, filed on or after that effective date.

SEC. 8. SPECIFIC CITATIONS IN EXEMPTIONS.

Section 552(b) of title 5, United States Code, is amended by striking paragraph (3) and inserting the following:

''(3) specifically exempted from disclosure by statute (other than section 552b of this title), provided that such statute—

''(A) if enacted after the date of enactment of the Openness Promotes Effectiveness in our National Government Act of 2005, specifically cites to this section; and

''(B)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

''(ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;''.

SEC. 9. REPORTING REQUIREMENTS.

Section 552(e)(1) of title 5, United States Code, is amended—

(1) in subparagraph (F), by striking ''and'' after the semicolon;

(2) in subparagraph (G), by striking the period and inserting a semicolon; and

(3) by adding at the end the following:

''(H) data on the 10 active requests with the earliest filing dates pending at each agency, including the amount of time that has elapsed since each request was originally filed;

''(I) the average number of days for the agency to respond to a request beginning the date on which the request was originally filed, the median number of days for the agency to respond to such requests, and the range in number of days for the agency to respond to such requests; and

''(J) the number of fee status requests that are granted and denied, and the average number of days for adjudicating fee status determinations.

When reporting the total number of requests filed, agencies shall distinguish between first person requests for personal records and other kinds of requests, and shall provide a total number for each category of requests.''.

SEC. 10. OPENNESS OF AGENCY RECORDS MAINTAINED BY A PRIVATE ENTITY.

Section 552(f) of title 5, United States Code, is amended by striking paragraph (2) and inserting the following:

''(2) 'record' and any other term used in this section in reference to information includes—

''(A) any information that would be an agency record subject to the requirements of this section when maintained by an agency in any format, including an electronic format; and

''(B) any information described under subparagraph (A) that is maintained for an agency by an entity under a contract between the agency and the entity.''.

SEC. 11. OFFICE OF GOVERNMENT INFORMATION SERVICES.

(a) IN GENERAL.—Chapter 5 of title 5, United States Code, is amended—

(1) by redesignating section 596 as section 597; and

(2) by inserting after section 595 the following:

''§ 596. Office of Government Information Services

''(a) There is established the Office of Government Information Services within the Administrative Conference of the United States.

''(b) The Office of Government Information Services shall—

''(1) review policies and procedures of administrative agencies under section 552 and compliance with that section by administrative agencies;

''(2) conduct audits of administrative agencies on such policies and compliance and issue reports detailing the results of such audits;

''(3) recommend policy changes to Congress and the President to improve the administration of section 552, including whether agencies are receiving and expending adequate funds to ensure compliance with that section; and

''(4) offer mediation services between persons making requests under section 552 and administrative agencies as a non-exclusive alternative to litigation and, at the discretion of the Office, issue advisory opinions if mediation has not resolved the dispute.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 5, United States Code, is amended by striking the item relating to section 596 and inserting the following:

''596. Office of Government Information Services.

''597. Authorization of appropriations.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 1 year after the date of enactment of this Act.

SEC. 12. ACCESSIBILITY OF CRITICAL INFRASTRUCTURE INFORMATION.

(a) IN GENERAL.—Not later than January 1 of each of the 3 years following the date of the enactment of this Act, the Comptroller General of the United States shall submit to Congress a report on the implementation and use of section 214 of the Homeland Security Act of 2002 (6 U.S.C. 133), including—

(1) the number of persons in the private sector, and the number of State and local agencies, that voluntarily furnished records to the Department under this section;

(2) the number of requests for access to records granted or denied under this section;

(3) such recommendations as the Comptroller General considers appropriate regarding improvements in the collection and analysis of sensitive information held by persons in the private sector, or by State and local agencies, relating to vulnerabilities of and threats to critical infrastructure, including the response to such vulnerabilities and threats; and

(4) an examination of whether the nondisclosure of such information has led to the increased protection of critical infrastructure.

(b) FORM.—The report shall be submitted in unclassified form, but may include a classified annex.

SEC. 13. REPORT ON PERSONNEL POLICIES RELATED TO FOIA.

Not later than 1 year after the date of enactment of this Act, the Office of Personnel Management shall submit to Congress a report that examines—

(1) whether changes to executive branch personnel policies could be made that would—

(A) provide greater encouragement to all Federal employees to fulfill their duties under section 552 of title 5, United States Code; and

(B) enhance the stature of officials administering that section within the executive branch;

(2) whether performance of compliance with section 552 of title 5, United States Code, should be included as a factor in personnel performance evaluations for any or all categories of Federal employees and officers;

(3) whether an employment classification series specific to compliance with sections 552 and 552a of title 5, United States Code, should be established;

(4) whether the highest level officials in particular agencies administering such sections should be paid at a rate of pay equal to or greater than a particular minimum rate ; and

(5) whether other changes to personnel policies can be made to ensure that there is a clear career advancement track for individuals interested in devoting themselves to a career in compliance with such sections; and

(6) whether the executive branch should require any or all categories of Federal employees to undertake awareness training of such sections.

Mr. LEAHY. Mr. President, I am pleased to join as a partner with the Senator from Texas in introducing the OPEN Government Act of 2005. I have devoted a considerable portion of my work in the Senate to improving Government oversight, Government openness and citizen ''right-to-know'' laws to make Government work better for the American people, and at times it has been a lonely battle. Finding dedicated allies on the other side of the aisle has proven difficult. That is why I am delighted to have a partner in JOHN CORNYN. Senator CORNYN has a distinguished record of supporting open government dating back to his days as Attorney General of Texas. In fact,

some of the provisions in the bill we introduce today are modeled after sections of the Texas Public Information Act.

I believe that we both see this effort as the first of many bipartisan steps we can take together in the new Congress. Senator CORNYN and I began to forge a partnership on improving public access to Government information well over a year ago when, during the 108th Congress, we worked with several other Senators and with the Library of Congress to improve the publicly accessible congressional information website, THOMAS. He and I also cooperated last fall in a successful effort to ensure that ''government information,'' including the application of the Freedom of Information Act, FOIA, be subject to the jurisdiction of both the Judiciary Committee and the newly constituted Homeland Security and Governmental Affairs Committee.

The bill we introduce today is a collection of commonsense modifications designed to update FOIA and improve the timely processing of FOIA requests by Federal agencies. It was drafted after a long and thoughtful process of consultation with individuals and organizations that rely on FOIA to obtain information and share it with the public, including the news media, librarians, and public interest organizations representing all facets of the political spectrum.

The OPEN Government Act reaffirms the fundamental premise of FOIA: Government information belongs to all Americans and should be subject to a presumption in favor of disclosure. James Madison said that ''a popular government, without popular information, or the means of acquiring it, is but a prologue to a farce or tragedy or perhaps both.'' His caution rings just as true today. The public's right to know what its government is doing promotes accountability, imbues trust and contributes to our system of checks and balances.

First enacted in 1966, FOIA represents the foundation of our modern open Government laws. In 1996, I was the principal author of the Electronic Freedom of Information Act Amendments, which updated FOIA for the internet age. The bill we introduce today is the next step: a practical set of important modifications that respond to common complaints and limitations in the current system that we have heard, whether from frequent FOIA requestors, such as representatives of the press, or individual citizens who may only occasionally rely on FOIA, but who nonetheless deserve timely and comprehensive responses to their requests.

Chief among the problems with FOIA implementation is agency delay. Following the successful model of the Texas Public Information Act, this legislation imposes penalties on agencies that miss statutory deadlines to release documents and strengthens reporting requirements on FOIA compliance.

The OPEN Government Act responds to some confusion over the applicability of FOIA to agency records that are held by outside private contractors. It does this by clarifying that such records are subject to FOIA wherever they are located.

Our legislation establishes an ombudsman to mediate FOIA disputes between agencies and requestors, a step that many FOIA requestors believe will help to ameliorate the need for FOIA litigation in the Federal courts. We hope that this mechanism will work to the benefit of all parties. However, where mediation fails to resolve disputes, our bill preserves the rights of requestors to litigate under FOIA.

Our bill responds to recent Federal jurisprudence by explicitly providing for recovery of attorneys' fees under the so-called ''catalyst theory.'' That is, where a FOIA lawsuit was the catalyst for an agency determination to release documents prior to a court's entry of judgment, the plaintiff may recover attorneys' fees.

Finally, the bill requires reports on a controversial law, the Critical Infrastructure Information Act, enacted as part of the Homeland Security Act of 2002, and it protects fee-waiver status for journalists under FOIA.

Letters of support for the OPEN Government Act have been submitted by the American Association of Law Libraries, American Civil Liberties Union, American Library Association, American Society of Newspaper Editors, Associated Press Managing Editors, Association of Health Care Journalists, Center for Democracy & Technology, Coalition of Journalists for Open Government, Committee of Concerned Journalists, Education Writers Association, Electronic Privacy Information Center, Federation of American Scientists/Project on Government Secrecy, Free Congress Foundation/Center for Privacy & Technology Policy, Freedom of Information Center/University of Missouri, The Freedom of Information Foundation of Texas, The Heritage Foundation/Center for Media and Public Policy, Information Trust, National Conference of Editorial Writers, National Freedom of Information Coalition, National Newspaper Association, National Security Archive/George Washington University, Newspaper Association of America, People for the American Way, Project on Government Oversight, Radio-Television News Directors Association, The Reporters Committee for Freedom of the Press, and the Society of Environmental Journalists.

The Freedom of Information Act is an invigorating mechanism that helps keep our government more open and effective and closer to the American people. FOIA has had serious setbacks in recent years that endanger its effectiveness. This legislation is a rare chance to advance the public's right to know.

I thank my colleague, the Senator from Texas, for the time and effort he has devoted to protecting the public's right to know, and I urge all members of the Senate to join us in supporting this important legislation.

By Mr. FEINGOLD:

S. 395. A bill to amend the Buy American Act to increase the requirement for American-made content, and to tighten the waiver provisions, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Mr. FEINGOLD. Mr. President, today I am introducing the second in a series of bills intended to support American companies and American workers. Yesterday, I submitted S. Con. Res. 12, which would set some minimum standards for future trade agreements into which our country enters.

The bill that I am introducing today, the Buy American Improvement Act, focuses on the Federal Government's responsibility to support domestic manufacturers and workers and on the role of Federal procurement policy in achieving this goal. The reintroduction of this bill, which I first introduced in 2003, is part of my ongoing effort to find ways to stem the flow of manufacturing jobs abroad.

The Buy American Act of 1933 is the primary statute that governs Federal procurement. The name of this law accurately and succinctly describes its purpose: to ensure that the Federal Government supports domestic companies and domestic workers by buying American-made goods. This is an important law but, regrettably, it contains a number of loopholes that make it too easy for government agencies to buy foreign-made goods.

My bill, the Buy American Improvement Act, would strengthen the existing act by tightening its waiver provisions. Currently, the heads of Federal departments and agencies are given broad discretion to waive the Act and buy foreign goods. We should ensure that the Federal Government makes every effort to give Federal contracts to companies that will perform the work domestically. We should also ensure that certain types of industries do not leave the United States completely, thus making the Federal Government dependent on foreign sources for goods, such as plane or ship parts, that our military may need to acquire on short notice.

I have often heard my colleagues say on this floor that American-made goods are the best in the world. I could not agree more. Regrettably, nearly 80,000 good-paying manufacturing jobs have left my state since 2000. And the country has lost more than two-and-one-half million manufacturing jobs since January 2001, including more than 25,000 jobs last month alone. This hemorrhaging of jobs shows no signs of stopping. Congress should do more to support domestic manufacturers and their employees. One way to do this is to ensure that the Federal Government makes every effort to buy American-made goods.

There are five primary waivers to the Buy American Act, and my bill addresses four of them The first of these waivers allows an agency head to buy foreign goods if complying with the Act would be ''inconsistent with the public interest.'' I am concerned that this waiver, which includes no definition for what is ''inconsistent with the public interest,'' is actually a gaping loophole that gives too much discretion to department secretaries and agency heads. My bill would modify this waiver provision to prohibit it from being invoked by an agency or department head after a request for proposals, or RFP, has been published in the Federal Register. Once the bidding process has begun, the Federal Government should not be able to pull an RFP by saying that it is in the ''public interest'' to do so. This determination, sometimes referred to as the Buy American Act's national security waiver, should be made well in advance of placing a procurement up for bid. To do otherwise pulls the rug out from under companies that are spending valuable time and resources to prepare a bid for a Federal contract.

The Buy American Act may also be waived if the head of the agency determines that the cost of the lowest-priced domestic product is ''unreasonable,'' and a system of price differentials is used to assist in making this determination. My bill would modify this waiver to require that preference be given to the American company if that company's bid is substantially similar to the lowest foreign bid or if the American company is the only domestic source for the item to be procured.

I have a long record of supporting efforts to help taxpayers get the most bang for their buck and of opposing wasteful Federal spending. I don't think anyone can argue that supporting American jobs is ''wasteful.'' We owe it to American manufacturers and their employees to make sure they get a fair shake. I would not support awarding a contract to an American company that is price gouging, but we should make every effort to ensure that domestic sources for goods needed by the Federal Government do not dry up because American companies have been slightly underbid by foreign competitors.

The Buy American Act also includes a waiver for goods bought by the Federal Government that will be used outside of the United States. There is no question that there are occasions when the Federal Government needs to procure items quickly for use outside the United States, such as in a time of war. However, there may be items that are bought on a regular basis and used at foreign military bases or United States embassies, for example, that could reasonably be procured from domestic sources and shipped to the location where they will be used. My bill would require Federal agencies to compare the difference in cost for obtaining articles that are used on regular basis outside the U.S., or that are not needed immediately, between an overseas versus a domestic source—including the cost of shipping—before awarding the contract to the company that will do the work overseas.

The Buy American Act's domestic source requirements may also be waived if the articles to be procured are not available from domestic sources ''in sufficient and reasonably available commercial quantities and of a satisfactory quality.'' My bill would require that an agency or department head, prior to issuing such a waiver, determine whether domestic production can be initiated to meet the procurement needs and whether a comparable article, material, or supply is available domestically.

My bill would also strengthen the Buy American Act in four other ways. It would, for the first time, make the Buy American requirement applicable to the United States Congress. The current definition of a Federal agency in the Act specifically exempts the Senate, the House, and Architect of the Capitol, and activities under the direction of the Architect. I believe that Congress should lead by example and comply with the Buy American Act—a requirement that we have imposed on executive agencies.

Secondly, my bill would increase the minimum American content standard qualification under the Act from the current 50 percent to 75 percent. The definition of what qualifies as an American-made product has been a source of much debate. To me, it seems clear that American-made means manufactured in this country. This classification is a source of pride for manufacturing workers around our country. The current 50 percent standard should be raised to a minimum of 75 percent.

In addition, my bill would make permanent the expanded reporting requirement that I authored which was first enacted as part of the fiscal year 2004 omnibus spending bill and was extended as part of the fiscal year 2005 omnibus spending bill. Prior to the enactment of these provisions, only the Department of Defense was required to report to Congress on its use of Buy American waivers and purchases of foreign goods. It is virtually impossible to get hard numbers on the Federal Government's purchases of foreign- and domestic-made goods and to ensure that there is disclosure and accountability in the waiver process.

The annual report to be submitted by agency heads will be required to include the following information: the dollar value of any items purchased that were manufactured outside of the United States; an itemized list of all applicable waivers granted with respect to such items under the Buy American Act; and a summary of the total procurement funds spent by the Federal agency on goods manufactured in the United States versus on goods manufactured overseas. In addition, my bill also requires that the heads of all Federal agencies make these annual reports publicly available on the Internet.

My bill also seeks to prevent dual-use technologies from falling into the hands of terrorists or countries of concern by prohibiting the awarding of overseas contracts or sub-contracts that would require the transfer of information relating to any item that is classified as a dual-use item on the Commerce Control List unless approval for such a contract has been obtained through the Export Administration Act process. It only makes sense that we would not award contracts that require the transfer of sensitive technology without following our own export licensing process. It is possible that this technology could later be used by some countries to make their own products to sell to countries that cannot obtain such goods from the United States. This loophole in our export control laws should be closed.

Finally, my bill would require the Government Accountability Office to report to Congress with recommendations for defining the terms ''inconsistent with the public interest'' and ''unreasonable cost'' for purposes of invoking the corresponding waivers in the Act. I am concerned that both of these terms lack definitions, and that they can be very broadly interpreted by agency or department heads. GAO would require to make recommendations for statutory definitions of both of these terms, as well as for establishing a consistent waiver process that can be used by all federal agencies.

I am pleased that my legislation is supported by a broad array of business and labor groups. The groups are committed to ensuring that we have a strong domestic manufacturing base that provides good-paying, stable jobs for American workers, and they include Save American Manufacturing, the national and Wisconsin AFL–CIO, the U.S. Business and Industry Council, the International Association of Machinists and Aerospace Workers, the International Brotherhood of Boilermakers, and the United Auto Workers.

In addition to strengthening the Buy American Act, Congress should support trade agreements that do not undermine it. As I have repeatedly stated on this floor, Congress and Administrations of both parties have a dismal record of promoting trade agreements that send American jobs overseas. And many of those same flawed trade agreements have repeatedly weakened the Buy American Act and other domestic preference laws.

Last year, the Ranking Member of the Homeland Security and Governmental Affairs Committee, Mr. LIEBERMAN, and I asked the GAO to study the effect of trade agreements on domestic source requirements such as those contained in the Buy American Act. That study found that the United States government is required to give

favorable treatment to certain goods from a total of 45 countries as a result of trade agreements and reciprocal defense procurement agreements. The report notes that the United States is a party to seven trade agreements, including the North American Free Trade Agreement (NAFTA) and the World Trade Organization's Government Procurement Agreement, that prevents the U.S. from applying domestic preference laws fully. The report also identifies 21 Department of Defense (DoD) Memoranda of Understanding that allow DoD to procure goods and services from foreign countries.

The gaping loopholes in the Buy American Act and the trade agreements and defense procurement agreements that contain additional waivers of domestic source restrictions have combined to weaken our domestic manufacturing base by allowing—and sometimes actually encouraging—the Federal Government to buy foreign-made goods. Congress can and should do more to support American companies and American workers. We must strengthen the Buy American Act and we must stop entering into bad trade agreements that send our jobs overseas and undermine our own domestic preference laws.

By strengthening Federal procurement policy, we can help to bolster our domestic manufacturers during these difficult times. As I have repeatedly noted, Congress cannot simply stand on the sidelines while tens of thousands of American manufacturing jobs have been and continue to be shipped overseas. While there may be no single solution to this problem, I believe that one way in which Congress should act is by strengthening the Buy American Act.

I ask unanimous consent that the text of my bill be printed in the RECORD.

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

S. 395

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 ''Buy American Improvement Act of 2005''.

SEC. 2. REQUIREMENTS FOR WAIVERS.

(a) IN GENERAL.—Section 2 of the Buy American Act (41 U.S.C. 10a) is amended—

(1) by striking ''Notwithstanding'' and inserting the following:

''(a) IN GENERAL.—Notwithstanding''; and

(2) by adding at the end the following:

''(b) SPECIAL RULES.—The following rules shall apply in carrying out the provisions of subsection (a):

''(1) PUBLIC INTEREST WAIVER.—A determination that it is not in the public interest to enter into a contract in accordance with this Act may not be made after a notice of solicitation of offers for the contract is published in accordance with section 18 of the Office of Federal Procurement Policy Act (41 U.S.C. 416) and section 8(e) of the Small Business Act (15 U.S.C. 637(e)).

''(2) DOMESTIC BIDDER.—A Federal agency entering into a contract shall give preference to a company submitting an offer on the contract that manufactures in the United States the article, material, or supply for which the offer is solicited, if—

''(A) that company's offer is substantially the same as an offer made by a company that does not manufacture the article, material, or supply in the United States; or

''(B) that company is the only company that manufactures in the United States the article, material, or supply for which the offer is solicited.

''(3) USE OUTSIDE THE UNITED STATES.—

''(A) IN GENERAL.—Subsection (a) shall apply without regard to whether the articles, materials, or supplies to be acquired are for use outside the United States if the articles, materials, or supplies are not needed on an urgent basis or if they are acquired on a regular basis.

''(B) COST ANALYSIS.—In any case where the articles, materials, or supplies are to be acquired for use outside the United States and are not needed on an urgent basis, before entering into a contract an analysis shall be made of the difference in the cost for acquiring the articles, materials, or supplies from a company manufacturing the articles, materials, or supplies in the United States (including the cost of shipping) and the cost for acquiring the articles, materials, or supplies from a company manufacturing the articles, materials, or supplies outside the United States (including the cost of shipping).

''(4) DOMESTIC AVAILABILITY.—The head of a Federal agency may not make a determination under subsection (a) that an article, material, or supply is not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of satisfactory quality, unless the head of the agency has conducted a study and, on the basis of such study, determined that—

''(A) domestic production cannot be initiated to meet the procurement needs; and

''(B) a comparable article, material, or supply is not available from a company in the United States.

''(c) REPORTS.—

''(1) IN GENERAL.—Not later than 180 days after the end of each fiscal year, the head of each Federal agency shall submit to Congress a report on the acquisitions that were made of articles, materials, or supplies by the agency in that fiscal year from entities that manufacture the articles, materials, or supplies outside the United States.

''(2) CONTENT OF REPORT.—The report for a fiscal year under paragraph (1) shall separately indicate the following information:

''(A) The dollar value of any articles, materials, or supplies that were manufactured outside the United States.

''(B) An itemized list of all waivers granted with respect to such articles, materials, or supplies under this Act.

''(C) A summary of—

''(i) the total procurement funds expended on articles, materials, and supplies manufactured inside the United States; and

''(ii) the total procurement funds expended on articles, materials, and supplies manufactured outside the United States.

''(3) PUBLIC AVAILABILITY.—The head of each Federal agency submitting a report under paragraph (1) shall make the report publicly available by posting on an Internet website.''.

(b) DEFINITIONS.—Section 1 of the Buy American Act (41 U.S.C. 10c) is amended—

(1) by striking subsection (c) and inserting the following:

''(c) FEDERAL AGENCY.—The term 'Federal agency' means any executive agency (as defined in section 4(1) of the Federal Procurement Policy Act (41 U.S.C. 403(1))) or any establishment in the legislative or judicial branch of the Government.''; and

(2) by adding at the end the following:

''(d) SUBSTANTIALLY ALL.—Articles, materials, or supplies shall be treated as made substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States, if the cost of the domestic components of such articles, materials, or supplies exceeds 75 percent.''.

(c) CONFORMING AMENDMENTS.—

(1) Section 2 of the Buy American Act (41 U.S.C. 10a) is amended by striking ''department or independent establishment'' and inserting ''Federal agency''.

(2) Section 3 of such Act (41 U.S.C. 10b) is amended—

(A) by striking ''department or independent establishment'' in subsection (a), and inserting ''Federal agency''; and

(B) by striking ''department, bureau, agency, or independent establishment'' in subsection (b) and inserting ''Federal agency''.

(3) Section 633 of the National Military Establishment Appropriations Act, 1950 (41 U.S.C. 10d) is amended by striking ''department or independent establishment'' and inserting ''Federal agency''.

SEC. 3. GAO REPORT AND RECOMMENDATIONS.

(a) SCOPE OF WAIVERS.—Not later than 6 months after the date of enactment of this Act, the Comptroller General of the United States shall report to Congress recommendations for determining, for purposes of applying the waiver provision of section 2(a) of the Buy American Act—

(1) unreasonable cost; and

(2) inconsistent with the public interest.

The report shall include recommendations for a statutory definition of unreasonable cost and standards for determining inconsistency with the public interest.

(b) WAIVER PROCEDURES.—The report described in subsection (a) shall also include recommendations for establishing procedures for applying the waiver provisions of the Buy American Act that can be consistently applied.

SEC. 4. DUAL-USE TECHNOLOGIES.

The head of a Federal agency (as defined in section 1(c) of the Buy American Act (as amended by section 2) may not enter into a contract, nor permit a subcontract under a contract of the Federal agency, with a foreign entity that involves giving the foreign entity plans, manuals, or other information pertaining to a dual-use item on the Commerce Control List or that would facilitate the manufacture of a dual-use item on the Commerce Control List unless approval for providing such plans, manuals, or information has been obtained in accordance with the provisions of the Export Administration Act of 1979 (50 U.S.C. App. 2401 et seq.) and the Export Administration Regulations (15 C.F.R. part 730 et seq.).

By Mr. CRAIG (for himself, Mr. BAUCUS, Mr. ALEXANDER, Mr. BUNNING, Mr. BURNS, Mr. CHAMBLISS, Mr. COBURN, Ms. COLLINS, Mr. CORNYN, Mr. CRAPO, Mr. DOMENICI, Mr. ENSIGN, Mr. ENZI, Mrs. HUTCHISON, Mr. INHOFE, Mr. ISAKSON, Mr. JOHNSON, Mr. KYL, Mrs. LINCOLN, Ms. MURKOWSKI, Mr. NELSON of Nebraska, Mr. SANTORUM, Mr. SESSIONS, Ms. SNOWE, Mr. STEVENS, Mr. THOMAS, Mr. THUNE, and Mr. SUNUNU):

S. 397. A bill to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others; read the first time.

Mr. CRAIG. Mr. President, I am pleased to join with Senator BAUCUS in introducing the Protection of Lawful Commerce in Arms Act.

This bill addresses the abuse of our Nation's courts through predatory lawsuits against the U.S. firearms industry—suits attempting to force law-abiding businesses to pay far criminal acts by individuals beyond their control.

It's important for our colleagues to understand that the lawsuits we're talking about are not brought by victims seeing relief for same wrongs done to them by the firearms industry. Instead, they are part of a politically inspired initiative trying to force social goals through an end-run around the Congress and State legislatures.

These lawsuits are based an the notion that even though a business complies with all laws and sells a legitimate product, it should be held responsible for the misuse or illegal use of the firearm by a criminal. This isn't a legal theory—it's just the latest twist in the gun controllers' notion that it's the gun, and not the criminal, that causes crime.

The truth is that there are millions of firearms in this country today, only a tiny fraction of which have ever been used in the commission of a crime. The truth is that again and again, law-abiding firearm owners are using their guns, often without even firing a shot, to defend life and property. The truth is that the intent of the user, not the gun, determines whether that gun will be used in a crime. The trend of predatory litigation targeting the firearms industry not only defies common sense and concepts of fundamental fairness, but it would do nothing to curb criminal gun violence. The cost of these lawsuits threatens to drive a critical industry out of business, losing thousands of good-paying jobs in the process and jeopardizing Americans' constitutionally protected access to firearms for self defense and other lawful uses.

The Protection of Lawful Commerce in Arms Act would stop these abusive lawsuits. However, it would not insulate the firearms industry from all lawsuits or deprive legitimate victims of their day in court. Indeed, it specifically provides that actions based on the wrongful conduct of those involved in the business of manufacturing and selling firearms would not be affected by this legislation. The bill is solely directed to stopping abusive, politically driven litigation against law-abiding individuals for the misbehavior of criminals over whom they had no control.

This bill is virtually identical to legislation introduced and debated to length in the Senate during the last Congress. As my colleagues will recall, the addition of two unrelated poison pill amendments doomed final passage of that bill; however, it is worth noting that all amendments to the actual substance of that measure were defeated.

The need for this legislation is every bit as serious today as it was in the last Congress. I am proud that a number of our colleagues on both sides of the aisle asked to sponsor this bill before it was even introduced: Mr. ALEXANDER, Mr. BUNNING, Mr. BURNS, Mr. CHAMBLISS, Mr. COBURN, Ms. COLLINS, Mr. CORNYN, Mr. CRAPO, Mr. DOMENICI, Mr. ENSIGN, Mr. ENZI, Mrs. HUTCHISON, Mr. INHOFE, Mr. ISAKSON, Mr. JOHNSON, Mr. KYL, Mrs. LINCOLN, Ms. MURKOWSKI, Mr. NELSON of Nebraska, Mr. SANTORUM, Mr. SESSIONS, Ms. SNOWE, Mr. STEVENS, Mr. THOMAS, and Mr. THUNE. I thank these original cosponsors for their support.

The courts of our Nation are supposed to be forums for resolving controversies between citizens and providing relief where warranted, not a mechanism for achieving political ends that are rejected by the people's representatives in Congress and the State legislatures. I hope all our colleagues will join us in taking a measured, principled stand against this abusive litigation by supporting the Protection of Lawful Commerce in Arms Act.

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. 397

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 ''Protection of Lawful Commerce in Arms Act''.

SEC. 2. FINDINGS; PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) The Second Amendment to the United States Constitution provides that the right of the people to keep and bear arms shall not be infringed.

(2) The Second Amendment to the United States Constitution protects the rights of individuals, including those who are not members of a militia or engaged in military service or training, to keep and bear arms.

(3) Lawsuits have been commenced against manufacturers, distributors, dealers, and importers of firearms that operate as designed and intended, which seek money damages and other relief for the harm caused by the misuse of firearms by third parties, including criminals.

(4) The manufacture, importation, possession, sale, and use of firearms and ammunition in the United States are heavily regulated by Federal, State, and local laws. Such Federal laws include the Gun Control Act of 1968, the National Firearms Act, and the Arms Export Control Act.

(5) Businesses in the United States that are engaged in interstate and foreign commerce through the lawful design, manufacture, marketing, distribution, importation, or sale to the public of firearms or ammunition products that have been shipped or transported in interstate or foreign commerce are not, and should not, be liable for the harm caused by those who criminally or unlawfully misuse firearm products or ammunition products that function as designed and intended.

(6) The possibility of imposing liability on an entire industry for harm that is solely caused by others is an abuse of the legal system, erodes public confidence in our Nation's laws, threatens the diminution of a basic constitutional right and civil liberty, invites the disassembly and destabilization of other industries and economic sectors lawfully competing in the free enterprise system of the United States, and constitutes an unreasonable burden on interstate and foreign commerce of the United States.

(7) The liability actions commenced or contemplated by the Federal Government, States, municipalities, and private interest groups and others are based on theories without foundation in hundreds of years of the common law and jurisprudence of the United States and do not represent a bona fide expansion of the common law. The possible sustaining of these actions by a maverick judicial officer or petit jury would expand civil liability in a manner never contemplated by the framers of the Constitution, by Congress, or by the legislatures of the several States. Such an expansion of liability would constitute a deprivation of the rights, privileges, and immunities guaranteed to a citizen of the United States under the Fourteenth Amendment to the United States Constitution.

(8) The liability actions commenced or contemplated by the Federal Government, States, municipalities, private interest groups and others attempt to use the judicial branch to circumvent the Legislative branch of government to regulate interstate and foreign commerce through judgments and judicial decrees thereby threatening the Separation of Powers doctrine and weakening and undermining important principles of federalism, State sovereignty and comity between the sister States.

(b) PURPOSES.—The purposes of this Act are as follows:

(1) To prohibit causes of action against manufacturers, distributors, dealers, and importers of firearms or ammunition products, and their trade associations, for the harm solely caused by the criminal or unlawful misuse of firearm products or ammunition products by others when the product functioned as designed and intended.

(2) To preserve a citizen's access to a supply of firearms and ammunition for all lawful purposes, including hunting, self-defense, collecting, and competitive or recreational shooting.

(3) To guarantee a citizen's rights, privileges, and immunities, as applied to the States, under the Fourteenth Amendment to the United States Constitution, pursuant to section 5 of that Amendment.

(4) To prevent the use of such lawsuits to impose unreasonable burdens on interstate and foreign commerce.

(5) To protect the right, under the First Amendment to the Constitution, of manufacturers, distributors, dealers, and importers of firearms or ammunition products, and trade associations, to speak freely, to assemble peaceably, and to petition the Government for a redress of their grievances.

(6) To preserve and protect the Separation of Powers doctrine and important principles of federalism, State sovereignty and comity between sister States.

(7) To exercise congressional power under art. IV, section 1 (the Full Faith and Credit Clause) of the United States Constitution.

SEC. 3. PROHIBITION ON BRINGING OF QUALIFIED CIVIL LIABILITY ACTIONS IN FEDERAL OR STATE COURT.

(a) IN GENERAL.—A qualified civil liability action may not be brought in any Federal or State court.

(b) DISMISSAL OF PENDING ACTIONS.—A qualified civil liability action that is pending on the date of enactment of this Act shall be immediately dismissed by the court in which the action was brought or is currently pending.

SEC. 4. DEFINITIONS.

In this Act:

(1) ENGAGED IN THE BUSINESS.—The term ''engaged in the business'' has the meaning given that term in section 921(a)(21) of title 18, United States Code, and, as applied to a seller of ammunition, means a person who devotes, time, attention, and labor to the sale of ammunition as a regular course of trade or business with the principal objective of livelihood and profit through the sale or distribution of ammunition.

(2) MANUFACTURER.—The term ''manufacturer'' means, with respect to a qualified product, a person who is engaged in the business of manufacturing the product in interstate or foreign commerce and who is licensed to engage in business as such a manufacturer under chapter 44 of title 18, United States Code.

(3) PERSON.—The term ''person'' means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity, including any governmental entity.

(4) QUALIFIED PRODUCT.—The term ''qualified product'' means a firearm (as defined in subparagraph (A) or (B) of section 921(a)(3) of title 18, United States Code), including any antique firearm (as defined in section 921(a)(16) of such title), or ammunition (as defined in section 921(a)(17)(A) of such title), or a component part of a firearm or ammunition, that has been shipped or transported in interstate or foreign commerce.

(5) QUALIFIED CIVIL LIABILITY ACTION.—

(A) IN GENERAL.—The term ''qualified civil liability action'' means a civil action or proceeding or an administrative proceeding brought by any person against a manufacturer or seller of a qualified product, or a trade association, for damages, punitive damages, injunctive or declaratory relief, abatement, restitution, fines, or penalties, or other relief'' resulting from the criminal or unlawful misuse of a qualified product by the person or a third party, but shall not include—

(i) an action brought against a transferor convicted under section 924(h) of title 18, United States Code, or a comparable or identical State felony law, by a party directly harmed by the conduct of which the transferee is so convicted;

(ii) an action brought against a seller for negligent entrustment or negligence per se;

(iii) an action in which a manufacturer or seller of a qualified product knowingly violated a State or Federal statute applicable to the sale or marketing of the product, and the violation was a proximate cause of the harm for which relief is sought, including—

(I) any case in which the manufacturer or seller knowingly made any false entry in, or failed to make appropriate entry in, any record required to be kept under Federal or State law with respect to the qualified product, or aided, abetted, or conspired with any person in making any false or fictitious oral or written statement with respect to any fact material to the lawfulness of the sale or other disposition of a qualified product; or

(II) any case in which the manufacturer or seller aided, abetted, or conspired with any other person to sell or otherwise dispose of a qualified product, knowing, or having reasonable cause to believe, that the actual buyer of the qualified product was prohibited from possessing or receiving a firearm or ammunition under subsection (g) or (n) of section 922 of title 18, United States Code;

(iv) an action for breach of contract or warranty in connection with the purchase of the product; or

(v) an action for death, physical injuries or property damage resulting directly from a defect in design or manufacture of the product, when used as intended or in a reasonably foreseeable manner, except that where the discharge of the product was caused by a volitional act that constituted a criminal offense then such act shall be considered the sole proximate cause of any resulting death, personal injuries or property damage.

(B) NEGLIGENT ENTRUSTMENT.—As used in subparagraph (A)(ii), the term 'negligent entrustment' means the supplying of a qualified product by a seller for use by another person when the seller knows, or reasonably should know, the person to whom the product is supplied is likely to, and does, use the product in a manner involving unreasonable risk of physical injury to the person or others.

(C) RULE OF CONSTRUCTION.—The exceptions enumerated under clauses (i) through (v) of subparagraph (A) shall be construed so as not to be in conflict, and no provision of this Act shall be construed to create a public or private cause of action or remedy.

(6) SELLER.—The term ''seller'' means, with respect to a qualified product—

(A) an importer (as defined in section 921(a)(9) of title 18, United States Code) who is engaged in the business as such an importer in interstate or foreign commerce and who is licensed to engage in business as such an importer under chapter 44 of title 18, United States Code;

(B) a dealer (as defined in section 921(a)(11) of title 18, United States Code) who is engaged in the business as such a dealer in interstate or foreign commerce and who is licensed to engage in business as such a dealer under chapter 44 of title 18, United States Code; or

(C) a person engaged in the business of selling ammunition (as defined in section 921(a)(17)(A) of title 18, United States Code) in interstate or foreign commerce at the wholesale or retail level.

(7) STATE.—The term ''State'' includes each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and any other territory or possession of the United States, and any political subdivision of any such place.

(8) TRADE ASSOCIATION.—The term ''trade association'' means—

(A) any corporation, unincorporated association, federation, business league, professional or business organization not organized or operated for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual;

(B) that is an organization described in section 501(c)(6) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code; and

(C) 2 or more members of which are manufacturers or sellers of a qualified product.

(9) UNLAWFUL MISUSE.—The term ''unlawful misuse'' means conduct that violates a statute, ordinance, or regulation as it relates to the use of a qualified product.

By Mr. SANTORUM (for himself and Mr. BAYH):

S. 398. A bill to amend the Internal Revenue Code of 1986 to expand the expensing of environmental remediation costs; to the Committee on Finance.

Mr. SANTORUM. Mr. President, I am pleased to introduce with my colleague from Indiana, Senator BAYH, important legislation to encourage the cleanup of contaminated sites commonly known as ''brownfields.'' I urge all my colleagues to join Senator BAYH and me as supporters of this legislation and ask that they actively work with us towards its enactment.

The United States Environmental Protection Agency, EPA, defines brownfields as ''abandoned, idled, or under used industrial commercial sites where expansion or redevelopment is complicated by real or perceived environmental contamination that can add cost, time, or uncertainness to redevelopment projects.''

Brownfields are not unique to my State of Pennsylvania, nor are they to Senator BAYH's State of Indiana. In every State in the Nation, there are areas blighted by run down, abandoned properties and unsightly vacant lots. They are the shut down manufacturing facilities, deserted warehouses and gas stations that are all too familiar to us. On these properties once stood vibrant and productive enterprises, but changing times and events have drained their vitality and they are now in desperate need of revitalization and redevelopment. Compounding the problem is that over the years, the activities on these sites have left the soil and water tables contaminated with environmental pollutants.

The negative social and economic effects that these sites cause on their surrounding communities are significant. There are serious financial impacts not only to the market values of the brownfield properties themselves, but also to property values in the surrounding neighborhoods. As middle class citizens are working to gain assets and potentially be able to borrow against, or even sell their homes in the future, property values become a very serious issue. A reduction of property values in brownfield neighborhoods hits hardest the families who can least afford it.

Brownfields have other serious repercussions, extending far beyond the pocketbook. The unsightliness of brownfields can lead to the characterization of entire neighborhoods as run-down and undesirable. The once vibrant spirit of these centrally located and thriving urban areas can be dampened as these eyesores drag down residents' morale and sense of connection with their community.

The U.S. Conference of Mayors and the Government Accountability Office estimate that there are over 400,000 brownfield sites across the country. According to a recent U.S. Conference of Mayors survey of 187 cities throughout the nation, redevelopment of their existing brownfields would bring additional tax revenues of up to $2 billion annually and could create hundreds of thousands of jobs.

Many brownfields are located in prime business locations near critical infrastructure, including transportation, and close to an already productive workforce. Putting these sites back into use will generate good paying jobs and affordable housing in areas where they are most needed. Rehabilitating and reusing these sites also serves to help prevent urban sprawl. We should encourage the cleanup and use of these brownfield sites rather than abandon them and instead always look to develop at new locations. A powerful example from my State of a successful brownfield revitalization effort and how it can have substantial and positive effects on a community is the city of Chester.

In the midst of a major revitalization, Chester is redeveloping its blighted and vacant waterfront district, including the former PECO power station. The city is striving to turn a former industrial site into a business center. Chester will be able to create new office space, and by working with a private developer Chester has received an initial commitment to move 2,000 jobs into the area. This initiative will help bring more business and infrastructure back to the community, adding to the area's prosperity and making Chester an even safer and more pleasant place to live.

Unfortunately, a big reason that so many brownfield properties are languishing in a state of decay and disrepair is the substantial clean up costs associated with them and the unfavorable tax treatment of those costs.

As part of the Community Renewal and Revitalization Act of 2000, Congress enacted section 198 of the Internal Revenue Code, which allowed cleanup costs to be expensed in the year they were incurred. Prior to that, these costs had to be capitalized to the land, postponing any recovery of these costs for tax purposes until the property was sold.

This expedited writeoff of clean up expenses helps a redeveloper manage the cost of rehabilitating existing properties which typically is much more expensive than developing new sites. Brownfield cleanup costs can be an imposing obstacle to redevelopment. While the price tag varies with each site, it is not unreasonable for the cleanup of a major site to cost between $500,000 and $1 million.

We in the Senate, and our colleagues in the House, were wise to enact section 198 and renew it for 2 years through the Working Families Tax Relief Act of 2004. That was a start, but more needs to be done in this area.

The bill my colleague and I are introducing today has three provisions. First, it makes section 198 a permanent provision in the Tax Code. Second, it broadens the definition of ''hazardous substances'' in section 198 to include petroleum. Finally, it repeals the provision in the law requiring the recapture of the section 198 deduction when the property is sold.

The tax policy of allowing the expensing of clean up costs should be a permanent fixture in the Tax Code. Brownfields are a long-term problem and this solution will allow us to complete this important task.

Furthermore, a shortcoming of the law passed in 2000 was the absence of petroleum as a contaminant that allowed a site to qualify as a brownfield under section 198. A large percentage of brownfields across the country are contaminated with petroleum. Extending the law to cover petroleum contamination makes much more sense and the law much more effective.

Finally, the provision in section 198 that requires a taxpayer who uses the clean up deduction to pay income tax on that amount when he or she sells the property is illogical. This sends a message to developers, that if they undertake the worthy endeavor of remediation of brownfield sites they will be subjected to substantial tax penalties for doing so. This policy is counterproductive to the efforts we are trying to encourage and it should be repealed.

The benefits of brownfields cleanup are obvious. Remediation of these sites revitalizes our neighborhoods and communities, and I urge my colleagues to support this legislation.

By Mr. COLEMAN (for himself and Mrs. FEINSTEIN):

S. 399. A bill to amend the Federal Food, Drug, and Cosmetic Act with respect to the sale of prescription drugs through the Internet, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. COLEMAN:

S. 400. A bill to prevent the illegal importation of controlled substances; to the Committee on the Judiciary.

Mr. COLEMAN. Mr. President, I rise to introduce two bills that expand Federal authority to prevent controlled substances from flooding into the U.S., authorizing States to shut down illegitimate virtual pharmacies, and bar Internet drug stores from dispensing drugs to customers referred to on-line doctors for a prescription.

Americans are increasingly turning to the Internet for access to affordable drugs. In 2003, consumer spending on drugs procured over the Internet exceeded $3.2 billion. Unfortunately, rogue Internet sites have proliferated and rake in millions of dollars by selling unproven, counterfeit, defective or otherwise inappropriate medications to unsuspecting consumers. Even more dangerously, these sites are profiting by selling addictive and potentially deadly controlled substances to consumers without a prescription or any physician oversight. This must stop before more individuals die or become addicted to easily obtainable narcotic drugs.

The first bill I am introducing was developed in close consultation with Senator FEINSTEIN, who is an original cosponsor. In appreciation for her role in helping write this legislation it is named after a young man from her state who died from an overdose of drugs purchased over the Internet. I am also pleased to announce that Congressmen TOM DAVIS and HENRY WAXMAN are introducing this exact measure in the House today. The issue of rogue Internet sites and the availability of controlled substances on-line is indeed a bi-partisan and bi-cameral issue.

17-year-old Ryan Haight of La Mesa, CA was an honor roll student, and avid baseball card collector about to enter college. As his mom says, ''he was a good kid.'' But in May of 2000 Ryan started hanging out with a different crowd of friends. He joined an online chat forum, which advocates the safe use of drugs, and he began buying prescription drugs from the Internet.

He used the family computer late at night and a debit card his parents gave him to buy baseball cards on Ebay. You might wonder how did a healthy 17-year-old obtain prescriptions for painkillers without a medical exam. He got them from Dr. Robert Ogle an ''online'' physician based out of Texas. With the prescriptions from Dr. Ogle, Ryan was able to order hydrocodone, morphine, Valium and Oxazepam and have them shipped via US mail right to his front door.

In February 2001, Ryan overdosed on a combination of these prescription drugs. His mother found him dead on his bedroom floor.

The Ryan Haight Internet Pharmacy Consumer Protection Act counters the growing sale of prescription drugs over the Internet without a valid prescription by one, providing new disclosure standards for Internet pharmacies; two, barring Internet sites from selling or dispensing prescription drugs to consumers who are provided a prescription solely on the basis of an online questionnaire; and three, allowing State Attorneys General to go to Federal court to shut down rogue sites.

The bill is geared to counter domestic Internet pharmacies that sell drugs without a valid prescription, not international pharmacies that sell drugs at a low cost to individuals who have a valid prescription from their U.S. doctors.

Under current law, purchasing drugs online without a valid prescription can be simple: a consumer just types the name of the drug into a search engine, quickly identifies a site selling the medication, fills in a brief questionnaire, and then clicks to purchase. The risks of self-medicating, however, can include potential adverse reactions from inappropriately prescribed medications, dangerous drug interactions, use of counterfeit or tainted products, and addiction to habit-forming substances. Several of these illegitimate sites fail to provide information about contraindications, potential adverse effects, and efficacy.

Regulating these Internet pharmacies is difficult for Federal and

State authorities. State medical and pharmacy boards have expressed the concern that they do not have adequate enforcement tools to regulate practice over the Internet. It can be virtually impossible for states to identify, investigate, and prosecute these illegal pharmacies because the consumer, prescriber, and seller of a drug may be located in different States.

The Internet Pharmacy Consumer Protection Act amends the Federal Food, Drug, and Cosmetic Act to address this problem in three steps. First, it requires Internet pharmacy web sites to display information identifying the business, pharmacist, and physician associated with the website.

Second, the bill bars the selling or dispensing of a prescription drug via the Internet when the website has referred the customer to a doctor who then writes a prescription without ever seeing the patient.

Third, the bill provides States with new enforcement authority modeled on the Federal Telemarketing Sales Act that will allow a State attorney general to shut down a rogue site across the country, rather than only bar sales to consumers of his or her State.

I am proud to say that the Ryan Haight Internet Pharmacy Consumer Protection Act is supported by the Federation of State Medical Boards, the National Community Pharmacists Association, and the American Pharmacists Association.

The second bill I am introducing enables Customs and Border Protection to immediately seize and destroy any package containing a controlled substance that is illegally imported into the U.S. without having to fill out duplicative forms and other unnecessary administrative paperwork. The Act will allow Customs to focus on interdicting and destroying potentially addictive and deadly controlled substances. The Act is dedicated to Todd Rode, a young man who died after overdosing on imported drugs.

Todd Rode had the heart and soul of a musician. He graduated from college magna cum laude with a major in psychology and a minor in music. The faculty named him the outstanding senior in the Psychology Department. He worked in this field for a number of years, but he constantly fought bouts of depression and anxiety.

Unfortunately Todd ordered controlled drugs from a pharmacy and doctor in another country. These drugs included Venlafaxine, Propoxyphene, and Codeine. All were controlled substances and all were obtained from overseas pharmacies without any safeguards. To obtain these controlled substances all Todd had to do was to fill out an online questionnaire and with the click of a mouse they were shipped directly to his front door.

In October of 1999, Todd's family found him dead in his apartment.

A six-month investigation by the Permanent Subcommittee on Investigations has revealed that tens of thousands of dangerous and addictive controlled substances are streaming into the U.S. on a daily basis from overseas Internet pharmacies. For example, on March 15 and 17, 2004, at JFK airport, home to the largest International Mail Branch in the U.S., at least 3000 boxes from a single vendor in the Netherlands containing hydrocodone and Diazepam (Valium) were seized by Customs and Border Protection (Customs).

In fact, senior Customs inspectors at JFK estimate that 40,000 parcels containing drugs are imported on a daily basis. During last summer's FDN Customs blitz, 28 percent of the drugs tested were controlled substances. Extrapolating these figures, 11,200 drug parcels containing controlled substances are imported through JFK daily, 78,400 weekly, 313,600 monthly and 3,763,200 annually. Top countries of origin include Brazil, India, Pakistan, Netherlands, Spain, Portugal, Canada, Mexico, and Romania.

Likewise, as of March 2003, senior Customs officials at the Miami International Airport indicated that as much as 30,000 packages containing drugs were being imported on a daily basis. A large percentage of these are controlled substances as well. Customs is simply overwhelmed. At Mail facilities across the U.S., Customs regularly seizes shipments of oxycodone, hydroquinone, tranquilizers, steroids, codeine laced product, GHB, date rape drug, and morphine.

In order to comply with paperwork requirements, Customs is forced to devote investigators solely to opening, counting, and analyzing drug packages, filling out duplicative forms, and logging into a computer all of the seized controlled substances. It takes Customs at least one hour to process a single shipment of a controlled substance. This minimizes the availability of inspectors to screen incoming drug packages. In fact, last year at JFK, there were as many as 20,000 packages of seized controlled substances waiting processing. Customs acknowledges that, because of the sheer volume of product, bureaucratic regulations, and lack of manpower, the vast majority of controlled substances that are illegally imported are simply missed and allowed into the U.S. stream of commerce.

The Act to Prevent the Illegal Importation of Controlled Substances is a simple bill to address this burgeoning and potentially lethal problem.

I am confident that, if enacted as stand-alone measures, each of these bills will make on-line drug purchasing safer. However, I have worked with Senator GREGG to ensure these safety features are included in his comprehensive reimportation bill and urge my colleagues to help make sure that this important piece of legislation becomes law this year.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 399

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 ''Internet Pharmacy Consumer Protection Act'' or the ''Ryan Haight Act''.

SEC. 2. INTERNET SALES OF PRESCRIPTION DRUGS.

(a) IN GENERAL.—Chapter 5 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351 et seq.) is amended by inserting after section 503A the following section:

''SEC. 503B. INTERNET SALES OF PRESCRIPTION DRUGS.

''(a) REQUIREMENTS REGARDING INFORMATION ON INTERNET SITE.—

''(1) IN GENERAL.—A person may not dispense a prescription drug pursuant to a sale of the drug by such person if—

''(A) the purchaser of the drug submitted the purchase order for the drug, or conducted any other part of the sales transaction for the drug, through an Internet site;

''(B) the person dispenses the drug to the purchaser by mailing or shipping the drug to the purchaser; and

''(C) such site, or any other Internet site used by such person for purposes of sales of a prescription drug, fails to meet each of the requirements specified in paragraph (2), other than a site or pages on a site that—

''(i) are not intended to be accessed by purchasers or prospective purchasers; or

''(ii) provide an Internet information location tool within the meaning of section 231(e)(5) of the Communications Act of 1934 (47 U.S.C. 231(e)(5)).

''(2) REQUIREMENTS.—With respect to an Internet site, the requirements referred to in subparagraph (C) of paragraph (1) for a person to whom such paragraph applies are as follows:

''(A) Each page of the site shall include either the following information or a link to a page that provides the following information:

''(i) The name of such person.

''(ii) Each State in which the person is authorized by law to dispense prescription drugs.

''(iii) The address and telephone number of each place of business of the person with respect to sales of prescription drugs through the Internet, other than a place of business that does not mail or ship prescription drugs to purchasers.

''(iv) The name of each individual who serves as a pharmacist for prescription drugs that are mailed or shipped pursuant to the site, and each State in which the individual is authorized by law to dispense prescription drugs.

''(v) If the person provides for medical consultations through the site for purposes of providing prescriptions, the name of each individual who provides such consultations; each State in which the individual is licensed or otherwise authorized by law to provide such consultations or practice medicine; and the type or types of health professions for which the individual holds such licenses or other authorizations.

''(B) A link to which paragraph (1) applies shall be displayed in a clear and prominent place and manner, and shall include in the caption for the link the words 'licensing and contact information'.

''(b) INTERNET SALES WITHOUT APPROPRIATE MEDICAL RELATIONSHIPS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), a person may not dispense a prescription drug, or sell such a drug, if—

''(A) for purposes of such dispensing or sale, the purchaser communicated with the person through the Internet;

''(B) the patient for whom the drug was dispensed or purchased did not, when such communications began, have a prescription for the drug that is valid in the United States;

''(C) pursuant to such communications, the person provided for the involvement of a practitioner, or an individual represented by the person as a practitioner, and the practitioner or such individual issued a prescription for the drug that was purchased;

''(D) the person knew, or had reason to know, that the practitioner or the individual referred to in subparagraph (C) did not, when issuing the prescription, have a qualifying medical relationship with the patient; and

''(E) the person received payment for the dispensing or sale of the drug.

For purposes of subparagraph (E), payment is received if money or other valuable consideration is received.

''(2) EXCEPTIONS.—Paragraph (1) does not apply to—

''(A) the dispensing or selling of a prescription drug pursuant to telemedicine practices sponsored by—

''(i) a hospital that has in effect a provider agreement under title XVIII of the Social Security Act (relating to the Medicare program); or

''(ii) a group practice that has not fewer than 100 physicians who have in effect provider agreements under such title; or

''(B) the dispensing or selling of a prescription drug pursuant to practices that promote the public health, as determined by the Secretary by regulation.

''(3) QUALIFYING MEDICAL RELATIONSHIP.—

''(A) IN GENERAL.—With respect to issuing a prescription for a drug for a patient, a practitioner has a qualifying medical relationship with the patient for purposes of this section if—

''(i) at least one in-person medical evaluation of the patient has been conducted by the practitioner; or

''(ii) the practitioner conducts a medical evaluation of the patient as a covering practitioner.

''(B) IN-PERSON MEDICAL EVALUATION.—A medical evaluation by a practitioner is an in-person medical evaluation for purposes of this section if the practitioner is in the physical presence of the patient as part of conducting the evaluation, without regard to whether portions of the evaluation are conducted by other health professionals.

''(C) COVERING PRACTITIONER.—With respect to a patient, a practitioner is a covering practitioner for purposes of this section if the practitioner conducts a medical evaluation of the patient at the request of a practitioner who has conducted at least one in-person medical evaluation of the patient and is temporarily unavailable to conduct the evaluation of the patient. A practitioner is a covering practitioner without regard to whether the practitioner has conducted any in-person medical evaluation of the patient involved.

''(4) RULES OF CONSTRUCTION.—

''(A) INDIVIDUALS REPRESENTED AS PRACTITIONERS.—A person who is not a practitioner (as defined in subsection (d)(1)) lacks legal capacity under this section to have a qualifying medical relationship with any patient.

''(B) STANDARD PRACTICE OF PHARMACY.—Paragraph (1) may not be construed as prohibiting any conduct that is a standard practice in the practice of pharmacy.

''(C) APPLICABILITY OF REQUIREMENTS.—Paragraph (3) may not be construed as having any applicability beyond this section, and does not affect any State law, or interpretation of State law, concerning the practice of medicine.

''(c) ACTIONS BY STATES.—

''(1) IN GENERAL.—Whenever an attorney general of any State has reason to believe that the interests of the residents of that State have been or are being threatened or adversely affected because any person has engaged or is engaging in a pattern or practice that violates section 301(l), the State may bring a civil action on behalf of its residents in an appropriate district court of the United States to enjoin such practice, to enforce compliance with such section (including a nationwide injunction), to obtain damages, restitution, or other compensation on behalf of residents of such State, to obtain reasonable attorneys fees and costs if the State prevails in the civil action, or to obtain such further and other relief as the court may deem appropriate.

''(2) NOTICE.—The State shall serve prior written notice of any civil action under paragraph (1) or (5)(B) upon the Secretary and provide the Secretary with a copy of its complaint, except that if it is not feasible for the State to provide such prior notice, the State shall serve such notice immediately upon instituting such action. Upon receiving a notice respecting a civil action, the Secretary shall have the right—

''(A) to intervene in such action;

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

''(C) to file petitions for appeal.

''(3) CONSTRUCTION.—For purposes of bringing any civil action under paragraph (1), nothing in this chapter shall prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

''(4) VENUE; SERVICE OF PROCESS.—Any civil action brought under paragraph (1) in a district court of the United States may be brought in the district in which the defendant is found, is an inhabitant, or transacts business or wherever venue is proper under section 1391 of title 28, United States Code. Process in such an action may be served in any district in which the defendant is an inhabitant or in which the defendant may be found.

''(5) ACTIONS BY OTHER STATE OFFICIALS.—

''(A) Nothing contained in this section shall prohibit an authorized State official from proceeding in State court on the basis of an alleged violation of any civil or criminal statute of such State.

''(B) In addition to actions brought by an attorney general of a State under paragraph (1), such an action may be brought by officers of such State who are authorized by the State to bring actions in such State on behalf of its residents.

''(d) GENERAL DEFINITIONS.—For purposes of this section:

''(1) The term 'practitioner' means a practitioner referred to in section 503(b)(1) with respect to issuing a written or oral prescription.

''(2) The term 'prescription drug' means a drug that is subject to section 503(b)(1).

''(3) The term 'qualifying medical relationship', with respect to a practitioner and a patient, has the meaning indicated for such term in subsection (b).

''(e) INTERNET-RELATED DEFINITIONS.—

''(1) IN GENERAL.—For purposes of this section:

''(A) The term 'Internet' means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the transmission control protocol/internet protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio.

''(B) The term 'link', with respect to the Internet, means one or more letters, words, numbers, symbols, or graphic items that appear on a page of an Internet site for the purpose of serving, when activated, as a method for executing an electronic command—

''(i) to move from viewing one portion of a page on such site to another portion of the page;

''(ii) to move from viewing one page on such site to another page on such site; or

''(iii) to move from viewing a page on one Internet site to a page on another Internet site.

''(C) The term 'page', with respect to the Internet, means a document or other file accessed at an Internet site.

''(D)(i) The terms 'site' and 'address', with respect to the Internet, mean a specific location on the Internet that is determined by Internet Protocol numbers. Such term includes the domain name, if any.

''(ii) The term 'domain name' means a method of representing an Internet address without direct reference to the Internet Protocol numbers for the address, including methods that use designations such as '.com', '.edu', '.gov', '.net', or '.org'.

''(iii) The term 'Internet Protocol numbers' includes any successor protocol for determining a specific location on the Internet.

''(2) AUTHORITY OF SECRETARY.—The Secretary may by regulation modify any definition under paragraph (1) to take into account changes in technology.

''(f) INTERACTIVE COMPUTER SERVICE; ADVERTISING.—No provider of an interactive computer service, as defined in section 230(f)(2) of the Communications Act of 1934 (47 U.S.C. 230(f)(2)), or of advertising services shall be liable under this section for dispensing or selling prescription drugs in violation of this section on account of another person's selling or dispensing such drugs, provided that the provider of the interactive computer service or of advertising services does not own or exercise corporate control over such person.''.

(b) INCLUSION AS PROHIBITED ACT.—Section 301 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331) is amended by inserting after paragraph (k) the following:

''(l) The dispensing or selling of a prescription drug in violation of section 503B.''.

(c) INTERNET SALES OF PRESCRIPTION DRUGS; CONSIDERATION BY SECRETARY OF PRACTICES AND PROCEDURES FOR CERTIFICATION OF LEGITIMATE BUSINESSES.—In carrying out section 503B of the Federal Food, Drug, and Cosmetic Act (as added by subsection (a) of this section), the Secretary of Health and Human Services shall take into consideration the practices and procedures of public or private entities that certify that businesses selling prescription drugs through Internet sites are legitimate businesses, including practices and procedures regarding disclosure formats and verification programs.

(d) REPORTS REGARDING INTERNET-RELATED VIOLATIONS OF STATE AND FEDERAL LAWS ON DISPENSING OF DRUGS.—

(1) IN GENERAL.—The Secretary of Health and Human Services (referred to in this subsection as the ''Secretary'') shall, pursuant to the submission of an application meeting the criteria of the Secretary, make an award of a grant or contract to the National Clearinghouse on Internet Prescribing (operated by the Federation of State Medical Boards) for the purpose of—

(A) identifying Internet sites that appear to be in violation of State or Federal laws concerning the dispensing of drugs;

(B) reporting such sites to State medical licensing boards and State pharmacy licensing boards, and to the Attorney General and the Secretary, for further investigation; and

(C) submitting, for each fiscal year for which the award under this subsection is made, a report to the Secretary describing investigations undertaken with respect to violations described in subparagraph (A).

(2) AUTHORIZATION OF APPROPRIATIONS.—For the purpose of carrying out paragraph (1), there is authorized to be appropriated $100,000 for each of the fiscal years 2005 through 2007.

(e) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) take effect upon the expiration of the 60-day period beginning on the date of the enactment of this Act, without regard to whether a final rule to implement such amendments has been promulgated by the Secretary of Health and Human Services under section 701(a) of the Federal Food, Drug, and Cosmetic Act. The preceding sentence may not be construed as affecting the authority of such Secretary to promulgate such a final rule.

S. 400

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 ''Prevention of Illegally Imported Controlled Substances Act of 2005'' or ''Todd Rode Act''.

SEC. 2. DESTRUCTION OF CERTAIN IMPORTED SHIPMENTS.

Part D of the Controlled Substances Act (21 U.S.C. 841 et seq.) is amended by adding at the end the following:

''DESTRUCTION OF CERTAIN IMPORTED SHIPMENTS

''SEC. 424. (a) IN GENERAL.—A shipment of controlled substances that is imported or offered for import into the United States in violation of section 401 and whose value is less than $10,000 shall be seized and summarily forfeited to the United States.

''(b) DESTRUCTION.—Controlled substances seized under subsection (a) shall be destroyed, subject to subsection (d). Section 801(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381(b)) does not authorize the delivery of the substances pursuant to the execution of a bond, and the substances may not be exported.

''(c) NOTICE.—

''(1) PROCEDURES.—The seizure and destruction of controlled substances under subsections (a) and (b) may be carried out without notice to the importer, owner, or consignee of the controlled substances involved. Appraisement of such substances is required only to the extent sufficient to document that the substances are subject to subsection (a).

''(2) GOALS.—Procedures promulgated under paragraph (1) shall be designed toward the goal of ensuring that, with respect to efficiently utilizing Federal resources available for carrying out this subsection, a substantial majority of shipments of controlled substances subject to subsection (a) are identified and seized under such paragraph and destroyed under subsection (b).

''(d) PRESENTATION OF EVIDENCE.—Controlled substances may not be destroyed under subsection (b) to the extent that the Attorney General of the United States determines that the controlled substances should be preserved as evidence or potential evidence with respect to an offense against the United States.''.

Mrs. FEINSTEIN. Mr. President, I am pleased to join Senator Coleman again this year to re-introduce the Ryan Haight Internet Pharmacy Consumer Protection Act. Our legislation will protect the safety of Americans who choose to purchase their prescription drugs legally over the Internet.

This legislation is necessary because of a growing problem of illegal prescription drug diversion and abuse of prescription drugs. Coupled with the ease of access to the Internet, it has led to an environment where illegitimate pharmacy websites can bypass traditional regulations and established safeguards for the sale of prescription drugs. Internet websites that allow consumers to obtain prescriptions drugs without the existence of a bona fide physician-patient relationship pose an immediate threat to public health and safety.

To address this problem, the Internet Pharmacy Consumer Protection Act makes several critical steps, to ensure safety and to assist regulatory authorities in shutting down ''rogue'' Internet pharmacies.

First, this bill establishes disclosure standards for Internet pharmacies.

Second, this bill prohibits the dispensing or sale of a prescription drug based solely on communications via the Internet such as the completion of an online medical questionnaire.

Third, it allows a State Attorney General to bring a civil action in a Federal district court to enjoin a pharmacy operation and to enforce compliance with the provisions of this law.

Under this bill, for a domestic Web site to sell prescription drugs legally, the web site would have to display identifying information such as the names, addresses, and medical licensing information for pharmacists and physicians associated with the Web site.

In addition, if a person wants to use the Internet to purchase their prescription drugs he or she will not be prohibited from doing so under this bill but, in order to do so, must already have a prescription for the drug that is valid in the United States prior to making the Internet purchase.

Reliance on the Internet for public health purposes and the expansion of telemedicine, particularly in rural areas, make it essential that there be at the very least a minimum standard for what qualifies as an acceptable medical relationship between patients and their physicians.

According to the American Medical Association, a health care practitioner who offers a prescription for a patient he or she has never seen before, based solely on an online questionnaire, generally does not meet the appropriate medical standard of care.

Let me illustrate the situation facing our country today. If a physician's office prescribed and dispensed prescription drugs the same way Internet pharmacies currently can do, it would look something like this: a physician opens a physical office, asks a patient to fill out a medical history questionnaire in the lobby and give his or her credit card information to the office manager. There is no nurse, and therefore no one to take the patients' height, weight, blood pressure, verify his or her medical history, and so forth and no one to answer the patient's questions regarding their health.

The questionnaire is then slipped through a hole in the window; the office manager takes it to the physician, or person acting as the physician, who then writes the prescription and hands it to the pharmacist, or person acting as the pharmacist, in the next room. Once the patient signs his credit card, he is on his way out the door, drugs in hand.

No examination is performed, no questions asked, and no verification or clarification of the answers provided on the medical history questionnaire.

This illustration is not an exaggeration. It occurs everyday all across the United States. The National Association of Boards of Pharmacy estimates that there are around 500 identifiable rogue pharmacy Web sites operating on the Internet.

According to the Federation of State Medical Boards, 31 States and the District of Columbia either have laws or medical board initiatives addressing Internet medical practice.

Many States have already enacted laws defining acceptable practices for qualifying medical relationships between doctors and patients and this bill would not affect any existing State laws.

For example, California law was changed in 2000 to say: ''no person or entity may prescribe, dispense, or furnish, or cause to be prescribed, dispensed, or furnished dangerous drugs or dangerous devices [defined as any drug or device unsafe for self-use] on the Internet for delivery to any person in this state, without a good faith prior examination and medical indication . . .''

I believe California's law is a perfect example of why this legislation is needed. The law only applies to persons living in California. As we all know, however, the Internet is not bound by State or even country borders.

This legislation makes a critical step forward by providing additional authority for State Attorneys General to file an injunction in Federal court to shut down an Internet site operating in another State that violates the provisions in the bill.

Under current law, in order to close down an Internet website selling prescription drugs prosecutors must take enforcement actions in every State where the Internet pharmacy operates, requiring a tremendous amount of resources in an environment where the location of the website is difficult, if not impossible, to determine or keep track of.

This bill will allow a State Attorney General to bring a civil action in a Federal district court to enjoin a pharmacy operation and to enforce compliance with the provisions of the law in every jurisdiction where the pharmacy is operating.

While this legislation pertains to domestic Internet pharmacies, the practice of international pharmacies selling low-cost drugs to U.S. consumers who have valid prescriptions from their doctors deserves to be discussed and debated on the Senate floor. It is my hope that the Senate will act this year on prescription drug importation legislation.

In closing, I want to share with you the story of Ryan T. Haight of La Mesa, California in whose memory this bill is named.

Ryan was an 18-year old honor student from La Mesa, CA, when he died in his home on February 12, 2001.

His parents found a bottle of Vicodin in his room with a label from an out-of-State pharmacy.

It turns out that Ryan had been ordering addictive drugs online and paying with a debit card his parents gave him to buy baseball cards on eBay.

Without a physical exam or his parents' consent, Ryan had been obtaining controlled substances, some from an Internet site in Oklahoma. It only took a few months before Ryan's life was ended by an overdose on a cocktail of painkillers.

Ryan's story and others like it force us to ask why anyone in the U.S. would be able to access such highly addictive and dangerous drugs over the Internet with such ease?

Why was there no physician or pharmacist on the other end of this teenager's computer verifying his age, his medical history and that there was a valid prescription?

That is why I support this legislation. It makes sensible requirements of Internet pharmacy websites that will not impact access to convenient, oftentimes cost-saving drugs.

With simple disclosure requirements for Internet sites such as names, addresses and medical or pharmacy licensing information, patients will be better off and State medica1 and pharmacy boards can ensure that pharmacists and doctors are properly licensed.

Lastly, this bill will give State attorneys general the authority they need to shut down rogue Internet pharmacies operating in other states.

I urge my colleagues to support this bill.

By Mr. HARKIN (for himself, Mr. SPECTER, Mr. KENNEDY, Mr. KERRY, Mr. BIDEN, Mr. DAYTON, Ms. LANDRIEU, Mr. SCHUMER, Mr. CORZINE, Mr. LAUTENBERG, Mr. LIEBERMAN, and Mr. DODD):

S. 401. A bill to amend title XIX of the Social Security Act to provide individuals with disabilities and older Americans with equal access to community-based attendant services and supports, and for other purposes; to the Committee on Finance.

Mr. HARKIN. Mr. President, today, Senator SPECTER and I and others introduce the Medicaid Community-Based Attendant Services and Supports Act of 2003 (MiCASSA). This legislation is needed to truly bring people with disabilities into the mainstream of society and provide equal opportunity for employment and community activities.

We anticipate that there will be some discussions of so called ''reform'' of the Medicaid system in this Congress. The Medicaid program is a critical source of services and supports for millions of Americans with disabilities. Any attempt to cap resources or decrease the availability of services under that program will meet strong opposition from myself and others.

But there is one area where Medicaid should be improved. Services should be expanded to increase access to personal attendant services. In order to work or live in their own homes, Americans with Disabilities and older Americans need access to community-based services and supports. Unfortunately, under current Federal Medicaid policy, the deck is stacked in favor of living in an institutional setting. Federal law requires that states cover nursing homes in their Medicaid programs. But there is no similar requirement for attendant services. The purpose of our bill is to level the playing field and give eligible individuals equal access to community-based services and supports they need.

The Medicaid Community Attendant Services and Supports Act will accomplish four goals.

First, the bill amends Title XIX of the Social Security Act to provide a new Medicaid plan benefit that would give individuals who are currently eligible for nursing home services or an intermediate care facility for the mentally retarded equal access to community-based attendant services and supports.

Second, for a limited time, States would have the opportunity to receive additional funds to support community attendant services and supports and for certain administrative activities. Each State currently gets federal money for their Medicaid program based on a set percentage. This percentage is the Medicaid match rate. This bill would increase that percentage to provide some additional funding to States to help them reform their long term care systems.

Third, the bill provides States with financial assistance to support ''real choice systems change initiatives'' that include specific action steps to increase the provision of home and community based services.

Finally, the bill establishes a demonstration project to evaluate service coordination and cost sharing approaches with respect to the provision of services and supports for individuals with disabilities under the age of 65 who are dually eligible for Medicaid and Medicare.

Although some states have already recognized the benefits of home and community based services, they are unevenly distributed and only reach a small percentage of eligible individuals. Every State offers services under home and community based waiver programs, but they only serve a capped number of individuals. Some states also are now providing the personal care optional benefit through their Medicaid program, but others do not.

Those left behind are often needlessly institutionalized because they cannot access community alternatives. A person with a disability's civil right to be integrated into his or her community should not depend on his or her address. In Olmstead v. LC, the Supreme Court recognized that needless institutionalization is a form of discrimination under the Americans With Disabilities Act. We in Congress have a responsibility to help States meet their obligations under Olmstead.

This MICASSA legislation is designed to do just that and make the promise of the ADA a reality. It will help rebalance the current Medicaid long term care system, which spends a disproportionate amount on institutional services. For example, in 2003, 67 percent of long term care Medicaid dollars were spent on institutional care, compared to 33 percent community based care.

And that means that individuals do not have equal access to community based care throughout this country. An individual should not be asked to move to another state in order to avoid needless segregation. They also should not be moved away from family and friends because their only choice is an institution.

Federal Medicaid policy should reflect the consensus reached in the ADA that Americans with Disabilities should have equal opportunity to contribute to our communities and participate in our society as full citizens. That means no one has to sacrifice their full participation in society because they need help getting out of the house in the morning or assistance with personal care or some other basic service.

I applaud the President's New Freedom Initiative for People with Disabilities and believe that this legislation helps promote the goals of that initiative. I will be reintroducing the Money Follows the Person legislation that is part of the New Freedom Initiative and believe that MICASSA and Money Follows the Person complement each other. Together these two bills could substantially reform long term services in this country.

Community based attendant services and supports allow people with disabilities to lead independent lives, have jobs, and participate in the community. Some will become taxpayers, some will get an education, and some will participate in recreational and civic activities. But all will experience a chance to make their own choices and govern their own lives.

This bill will open the door to full participation by people with disabilities in our workplaces, our economy, and our American Dream, and I urge

all my colleagues to support us on this issue. I want to thank Senator SPECTER for his leadership on this issue and his commitment to improving access to home and community based services for people with disabilities. I would also like to thank Senators KENNEDY, KERRY, BIDEN, DAYTON, LANDRIEU, CORZINE, SCHUMER, LAUTENBERG, LIEBERMAN and DODD for joining me in this important initiative.

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. 401

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 ''Medicaid Community-Based Attendant Services and Supports Act of 2005''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Findings and purposes.
TITLE I—ESTABLISHMENT OF MEDICAID PLAN BENEFIT
Sec. 101. Coverage of community-based attendant services and supports under the medicaid program.
Sec. 102. Enhanced FMAP for ongoing activities of early coverage States that enhance and promote the use of community-based attendant services and supports.
Sec. 103. Increased Federal financial participation for certain expenditures.
TITLE II—PROMOTION OF SYSTEMS CHANGE AND CAPACITY BUILDING
Sec. 201. Grants to promote systems change and capacity building.
Sec. 202. Demonstration project to enhance coordination of care under the medicare and medicaid programs for non-elderly dual eligible individuals.

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress makes the following findings:

(1) Long-term services and supports provided under the medicaid program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) must meet the ability and life choices of individuals with disabilities and older Americans, including the choice to live in one's own home or with one's own family and to become a productive member of the community.

(2) Research on the provision of long-term services and supports under the medicaid program (conducted by and on behalf of the Department of Health and Human Services) has revealed a significant funding bias toward institutional care. Only about 33 percent of long term care funds expended under the medicaid program, and only about 11 percent of all funds expended under that program, pay for services and supports in home and community-based settings.

(3) In the case of medicaid beneficiaries who need long term care, the only long-term care service currently guaranteed by Federal law in every State is nursing home care. Only 30 States have adopted the benefit option of providing personal care services under the medicaid program. Although every State has chosen to provide certain services under home and community-based waivers, these services are unevenly available within and across States, and reach a small percentage of eligible individuals. In fiscal year 2003, only 7 States spent 50 percent or more of their medicaid long term care funds under the medicaid program on home and community-based care.

(4) The goals of the Nation properly include providing families of children with disabilities, working-age adults with disabilities, and older Americans with—

(A) a meaningful choice of receiving long-term services and supports in the most integrated setting appropriate to their needs;

(B) the greatest possible control over the services received and, therefore, their own lives and futures; and

(C) quality services that maximize independence in the home and community, including in the workplace.

(b) PURPOSES.—The purposes of this Act are the following:

(1) To reform the medicaid program established under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) to provide equal access to community-based attendant services and supports.

(2) To provide financial assistance to States as they reform their long-term care systems to provide comprehensive statewide long-term services and supports, including community-based attendant services and supports that provide consumer choice and direction, in the most integrated setting appropriate.

TITLE I—ESTABLISHMENT OF MEDICAID PLAN BENEFIT

SEC. 101. COVERAGE OF COMMUNITY-BASED ATTENDANT SERVICES AND SUPPORTS UNDER THE MEDICAID PROGRAM.

(a) MANDATORY COVERAGE.—Section 1902(a)(10)(D) of the Social Security Act (42 U.S.C. 1396a(a)(10)(D)) is amended—

(1) by inserting ''(i)'' after ''(D)'';

(2) by adding ''and'' after the semicolon; and

(3) by adding at the end the following new clause:

''(ii) subject to section 1936, for the inclusion of community-based attendant services and supports for any individual who—

''(I) is eligible for medical assistance under the State plan;

''(II) with respect to whom there has been a determination that the individual requires the level of care provided in a nursing facility or an intermediate care facility for the mentally retarded (whether or not coverage of such intermediate care facility is provided under the State plan); and

''(III) chooses to receive such services and supports;''.

(b) COMMUNITY-BASED ATTENDANT SERVICES AND SUPPORTS.—

(1) IN GENERAL.—Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) is amended—

(A) by redesignating section 1936 as section 1937; and

(B) by inserting after section 1935 the following:

''COMMUNITY-BASED ATTENDANT SERVICES AND SUPPORTS

''SEC. 1936. (a) REQUIRED COVERAGE.—

''(1) IN GENERAL.—Not later than October 1, 2009, a State shall provide through a plan amendment for the inclusion of community-based attendant services and supports (as defined in subsection (g)(1)) for individuals described in section 1902(a)(10)(D)(ii) in accordance with this section.

''(2) ENHANCED FMAP AND ADDITIONAL FEDERAL FINANCIAL SUPPORT FOR EARLIER COVERAGE.—Notwithstanding section 1905(b), during the period that begins on October 1, 2005, and ends on September 30, 2009, in the case of a State with an approved plan amendment under this section during that period that also satisfies the requirements of subsection (c) the Federal medical assistance percentage shall be equal to the enhanced FMAP described in section 2105(b) with respect to medical assistance in the form of community-based attendant services and supports provided to individuals described in section 1902(a)(10)(D)(ii) in accordance with this section on or after the date of the approval of such plan amendment.

''(b) DEVELOPMENT AND IMPLEMENTATION OF BENEFIT.—In order for a State plan amendment to be approved under this section, a State shall provide the Secretary with the following assurances:

''(1) ASSURANCE OF DEVELOPMENT AND IMPLEMENTATION COLLABORATION.—That the State has developed and shall implement the provision of community-based attendant services and supports under the State plan through active collaboration with—

''(A) individuals with disabilities;

''(B) elderly individuals;

''(C) representatives of such individuals; and

''(D) providers of, and advocates for, services and supports for such individuals.

''(2) ASSURANCE OF PROVISION ON A STATEWIDE BASIS AND IN MOST INTEGRATED SETTING.—That community-based attendant services and supports will be provided under the State plan to individuals described in section 1902(a)(10)(D)(ii) on a statewide basis and in a manner that provides such services and supports in the most integrated setting appropriate for each individual eligible for such services and supports.

''(3) ASSURANCE OF NONDISCRIMINATION.—That the State will provide community-based attendant services and supports to an individual described in section 1902(a)(10)(D)(ii) without regard to the individual's age, type of disability, or the form of community-based attendant services and supports that the individual requires in order to lead an independent life.

''(4) ASSURANCE OF MAINTENANCE OF EFFORT.—That the level of State expenditures for optional medical assistance that—

''(A) is described in a paragraph other than paragraphs (1) through (5), (17) and (21) of section 1905(a) or that is provided under a waiver under section 1915, section 1115, or otherwise; and

''(B) is provided to individuals with disabilities or elderly individuals for a fiscal year, shall not be less than the level of such expenditures for the fiscal year preceding the fiscal year in which the State plan amendment to provide community-based attendant services and supports in accordance with this section is approved.

''(c) REQUIREMENTS FOR ENHANCED FMAP FOR EARLY COVERAGE.—In addition to satisfying the other requirements for an approved plan amendment under this section, in order for a State to be eligible under subsection (a)(2) during the period described in that subsection for the enhanced FMAP for early coverage under subsection (a)(2), the State shall satisfy the following requirements:

''(1) SPECIFICATIONS.—With respect to a fiscal year, the State shall provide the Secretary with the following specifications regarding the provision of community-based attendant services and supports under the plan for that fiscal year:

''(A)(i) The number of individuals who are estimated to receive community-based attendant services and supports under the plan during the fiscal year.

''(ii) The number of individuals that received such services and supports during the preceding fiscal year.

''(B) The maximum number of individuals who will receive such services and supports under the plan during that fiscal year.

''(C) The procedures the State will implement to ensure that the models for delivery of such services and supports are consumer controlled (as defined in subsection (g)(2)(B)).

''(D) The procedures the State will implement to inform all potentially eligible individuals and relevant other individuals of the availability of such services and supports under this title, and of other items and services that may be provided to the individual under this title or title XVIII.

''(E) The procedures the State will implement to ensure that such services and supports are provided in accordance with the requirements of subsection (b)(1).

''(F) The procedures the State will implement to actively involve individuals with disabilities, elderly individuals, and representatives of such individuals in the design, delivery, administration, and evaluation of the provision of such services and supports under this title.

''(2) PARTICIPATION IN EVALUATIONS.—The State shall provide the Secretary with such substantive input into, and participation in, the design and conduct of data collection, analyses, and other qualitative or quantitative evaluations of the provision of community-based attendant services and supports under this section as the Secretary deems necessary in order to determine the effectiveness of the provision of such services and supports in allowing the individuals receiving such services and supports to lead an independent life to the maximum extent possible.

''(d) QUALITY ASSURANCE PROGRAM.—

''(1) STATE RESPONSIBILITIES.—In order for a State plan amendment to be approved under this section, a State shall establish and maintain a quality assurance program with respect to community-based attendant services and supports that provides for the following:

''(A) The State shall establish requirements, as appropriate, for agency-based and other delivery models that include—

''(i) minimum qualifications and training requirements for agency-based and other models;

''(ii) financial operating standards; and

''(iii) an appeals procedure for eligibility denials and a procedure for resolving disagreements over the terms of an individualized plan.

''(B) The State shall modify the quality assurance program, as appropriate, to maximize consumer independence and consumer control in both agency-provided and other delivery models.

''(C) The State shall provide a system that allows for the external monitoring of the quality of services and supports by entities consisting of consumers and their representatives, disability organizations, providers, families of disabled or elderly individuals, members of the community, and others.

''(D) The State shall provide for ongoing monitoring of the health and well-being of each individual who receives community-based attendant services and supports.

''(E) The State shall require that quality assurance mechanisms appropriate for the individual be included in the individual's written plan.

''(F) The State shall establish a process for the mandatory reporting, investigation, and resolution of allegations of neglect, abuse, or exploitation in connection with the provision of such services and supports.

''(G) The State shall obtain meaningful consumer input, including consumer surveys, that measure the extent to which an individual receives the services and supports described in the individual's plan and the individual's satisfaction with such services and supports.

''(H) The State shall make available to the public the findings of the quality assurance program.

''(I) The State shall establish an ongoing public process for the development, implementation, and review of the State's quality assurance program.

''(J) The State shall develop and implement a program of sanctions for providers of community-based services and supports that violate the terms or conditions for the provision of such services and supports.

''(2) FEDERAL RESPONSIBILITIES.—

''(A) PERIODIC EVALUATIONS.—The Secretary shall conduct a periodic sample review of outcomes for individuals who receive community-based attendant services and supports under this title.

''(B) INVESTIGATIONS.—The Secretary may conduct targeted reviews and investigations upon receipt of an allegation of neglect, abuse, or exploitation of an individual receiving community-based attendant services and supports under this section.

''(C) DEVELOPMENT OF PROVIDER SANCTION GUIDELINES.—The Secretary shall develop guidelines for States to use in developing the sanctions required under paragraph (1)(J).

''(e) REPORTS.—The Secretary shall submit to Congress periodic reports on the provision of community-based attendant services and supports under this section, particularly with respect to the impact of the provision of such services and supports on—

''(1) individuals eligible for medical assistance under this title;

''(2) States; and

''(3) the Federal Government.

''(f) NO EFFECT ON ABILITY TO PROVIDE COVERAGE UNDER A WAIVER.—

''(1) IN GENERAL.—Nothing in this section shall be construed as affecting the ability of a State to provide coverage under the State plan for community-based attendant services and supports (or similar coverage) under a waiver approved under section 1915, section 1115, or otherwise.

''(2) ELIGIBILITY FOR ENHANCED MATCH.—In the case of a State that provides coverage for such services and supports under a waiver, the State shall not be eligible under subsection (a)(2) for the enhanced FMAP for the early provision of such coverage unless the State submits a plan amendment to the Secretary that meets the requirements of this section.

''(g) DEFINITIONS.—In this title:

''(1) COMMUNITY-BASED ATTENDANT SERVICES AND SUPPORTS.—

''(A) IN GENERAL.—The term 'community-based attendant services and supports' means attendant services and supports furnished to an individual, as needed, to assist in accomplishing activities of daily living, instrumental activities of daily living, and health-related functions through hands-on assistance, supervision, or cueing—

''(i) under a plan of services and supports that is based on an assessment of functional need and that is agreed to by the individual or, as appropriate, the individual's representative;

''(ii) in a home or community setting, which may include a school, workplace, or recreation or religious facility, but does not include a nursing facility or an intermediate care facility for the mentally retarded;

''(iii) under an agency-provider model or other model (as defined in paragraph (2)(C)); and

''(iv) the furnishing of which is selected, managed, and dismissed by the individual, or, as appropriate, with assistance from the individual's representative.

''(B) INCLUDED SERVICES AND SUPPORTS.—Such term includes—

''(i) tasks necessary to assist an individual in accomplishing activities of daily living, instrumental activities of daily living, and health-related functions;

''(ii) the acquisition, maintenance, and enhancement of skills necessary for the individual to accomplish activities of daily living, instrumental activities of daily living, and health-related functions;

''(iii) backup systems or mechanisms (such as the use of beepers) to ensure continuity of services and supports; and

''(iv) voluntary training on how to select, manage, and dismiss attendants.

''(C) EXCLUDED SERVICES AND SUPPORTS.—Subject to subparagraph (D), such term does not include—

''(i) the provision of room and board for the individual;

''(ii) special education and related services provided under the Individuals with Disabilities Education Act and vocational rehabilitation services provided under the Rehabilitation Act of 1973;

''(iii) assistive technology devices and assistive technology services;

''(iv) durable medical equipment; or

''(v) home modifications.

''(D) FLEXIBILITY IN TRANSITION TO COMMUNITY-BASED HOME SETTING.—Such term may include expenditures for transitional costs, such as rent and utility deposits, first month's rent and utilities, bedding, basic kitchen supplies, and other necessities required for an individual to make the transition from a nursing facility or intermediate care facility for the mentally retarded to a community-based home setting where the individual resides.

''(2) ADDITIONAL DEFINITIONS.—

''(A) ACTIVITIES OF DAILY LIVING.—The term 'activities of daily living' includes eating, toileting, grooming, dressing, bathing, and transferring.

''(B) CONSUMER CONTROLLED.—The term 'consumer controlled' means a method of providing services and supports that allow the individual, or where appropriate, the individual's representative, maximum control of the community-based attendant services and supports, regardless of who acts as the employer of record.

''(C) DELIVERY MODELS.—

''(i) AGENCY-PROVIDER MODEL.—The term 'agency-provider model' means, with respect to the provision of community-based attendant services and supports for an individual, a method of providing consumer controlled services and supports under which entities contract for the provision of such services and supports.

''(ii) OTHER MODELS.—The term 'other models' means methods, other than an agency-provider model, for the provision of consumer controlled services and supports. Such models may include the provision of vouchers, direct cash payments, or use of a fiscal agent to assist in obtaining services.

''(D) HEALTH-RELATED FUNCTIONS.—The term 'health-related functions' means functions that can be delegated or assigned by licensed health-care professionals under State law to be performed by an attendant.

''(E) INSTRUMENTAL ACTIVITIES OF DAILY LIVING.—The term 'instrumental activities of daily living' includes meal planning and preparation, managing finances, shopping for food, clothing, and other essential items, performing essential household chores, communicating by phone and other media, and traveling around and participating in the community.

''(F) INDIVIDUAL'S REPRESENTATIVE.—The term 'individual's representative' means a parent, a family member, a guardian, an advocate, or an authorized representative of an individual.''.

(c) CONFORMING AMENDMENTS.—

(1) MANDATORY BENEFIT.—Section 1902(a)(10)(A) of the Social Security Act (42

U.S.C. 1396a(a)(10)(A)) is amended, in the matter preceding clause (i), by striking ''(17) and (21)'' and inserting ''(17), (21), and (28)''.

(2) DEFINITION OF MEDICAL ASSISTANCE.—Section 1905(a) of the Social Security Act (42 U.S.C. 1396d) is amended—

(A) by striking ''and'' at the end of paragraph (27);

(B) by redesignating paragraph (28) as paragraph (29); and

(C) by inserting after paragraph (27) the following:

''(28) community-based attendant services and supports (to the extent allowed and as defined in section 1936); and''.

(3) IMD/ICFMR REQUIREMENTS.—Section 1902(a)(10)(C)(iv) of the Social Security Act (42 U.S.C. 1396a(a)(10)(C)(iv)) is amended by inserting ''and (28)'' after ''(24)''.

(d) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section (other than the amendment made by subsection (c)(1)) take effect on October 1, 2005, and apply to medical assistance provided for community-based attendant services and supports described in section 1936 of the Social Security Act furnished on or after that date.

(2) MANDATORY BENEFIT.—The amendment made by subsection (c)(1) takes effect on October 1, 2009.

SEC. 102. ENHANCED FMAP FOR ONGOING ACTIVITIES OF EARLY COVERAGE STATES THAT ENHANCE AND PROMOTE THE USE OF COMMUNITY-BASED ATTENDANT SERVICES AND SUPPORTS.

(a) IN GENERAL.—Section 1936 of the Social Security Act, as added by section 101(b), is amended—

(1) by redesignating subsections (d) through (g) as subsections (f) through (i), respectively;

(2) in subsection (a)(1), by striking ''subsection (g)(1)'' and inserting ''subsection (i)(1)'';

(3) in subsection (a)(2), by inserting '', and with respect to expenditures described in subsection (d), the Secretary shall pay the State the amount described in subsection (d)(1)'' before the period;

(4) in subsection (c)(1)(C), by striking ''subsection (g)(2)(B)'' and inserting ''subsection (i)(2)(B)''; and

(5) by inserting after subsection (c), the following:

''(d) INCREASED FEDERAL FINANCIAL PARTICIPATION FOR EARLY COVERAGE STATES THAT MEET CERTAIN BENCHMARKS.—

''(1) IN GENERAL.—Subject to paragraph (2), for purposes of subsection (a)(2), the amount and expenditures described in this subsection are an amount equal to the Federal medical assistance percentage, increased by 10 percentage points, of the expenditures incurred by the State for the provision or conduct of the services or activities described in paragraph (3).

''(2) EXPENDITURE CRITERIA.—A State shall—

''(A) develop criteria for determining the expenditures described in paragraph (1) in collaboration with the individuals and representatives described in subsection (b)(1); and

''(B) submit such criteria for approval by the Secretary.

''(3) SERVICES AND ACTIVITIES DESCRIBED.—For purposes of paragraph (1), the services and activities described in this subparagraph are the following:

''(A) One-stop intake, referral, and institutional diversion services.

''(B) Identifying and remedying gaps and inequities in the State's current provision of long-term services, particularly those services that are provided based on such factors as age, disability type, ethnicity, income, institutional bias, or other similar factors.

''(C) Establishment of consumer participation and consumer governance mechanisms, such as cooperatives and regional service authorities, that are managed and controlled by individuals with significant disabilities who use community-based services and supports or their representatives.

''(D) Activities designed to enhance the skills, earnings, benefits, supply, career, and future prospects of workers who provide community-based attendant services and supports.

''(E) Continuous improvement activities that are designed to ensure and enhance the health and well-being of individuals who rely on community-based attendant services and supports, particularly activities involving or initiated by consumers of such services and supports or their representatives.

''(F) Family support services to augment the efforts of families and friends to enable individuals with disabilities of all ages to live in their own homes and communities.

''(G) Health promotion and wellness services and activities.

''(H) Provider recruitment and enhancement activities, particularly such activities that encourage the development and maintenance of consumer controlled cooperatives or other small businesses or microenterprises that provide community-based attendant services and supports or related services.

''(I) Activities designed to ensure service and systems coordination.

''(J) Any other services or activities that the Secretary deems appropriate.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) take effect on October 1, 2005.

SEC. 103. INCREASED FEDERAL FINANCIAL PARTICIPATION FOR CERTAIN EXPENDITURES.

(a) IN GENERAL.—Section 1936 of the Social Security Act, as added by section 101(b) and amended by section 102, is amended by inserting after subsection (d) the following:

''(e) INCREASED FEDERAL FINANCIAL PARTICIPATION FOR CERTAIN EXPENDITURES.—

''(1) ELIGIBILITY FOR PAYMENT.—

''(A) IN GENERAL.—In the case of a State that the Secretary determines satisfies the requirements of subparagraph (B), the Secretary shall pay the State the amounts described in paragraph (2) in addition to any other payments provided for under section 1903 or this section for the provision of community-based attendant services and supports.

''(B) REQUIREMENTS.—The requirements of this subparagraph are the following:

''(i) The State has an approved plan amendment under this section.

''(ii) The State has incurred expenditures described in paragraph (2).

''(iii) The State develops and submits to the Secretary criteria to identify and select such expenditures in accordance with the requirements of paragraph (3).

''(iv) The Secretary determines that payment of the applicable percentage of such expenditures (as determined under paragraph (2)(B)) would enable the State to provide a meaningful choice of receiving community-based services and supports to individuals with disabilities and elderly individuals who would otherwise only have the option of receiving institutional care.

''(2) AMOUNTS AND EXPENDITURES DESCRIBED.—

''(A) EXPENDITURES IN EXCESS OF 150 PERCENT OF BASELINE AMOUNT.—The amounts and expenditures described in this paragraph are an amount equal to the applicable percentage, as determined by the Secretary in accordance with subparagraph (B), of the expenditures incurred by the State for the provision of community-based attendant services and supports to an individual that exceed 150 percent of the average cost of providing nursing facility services to an individual who resides in the State and is eligible for such services under this title, as determined in accordance with criteria established by the Secretary.

''(B) APPLICABLE PERCENTAGE.—The Secretary shall establish a payment scale for the expenditures described in subparagraph (A) so that the Federal financial participation for such expenditures gradually increases from 70 percent to 90 percent as such expenditures increase.

''(3) SPECIFICATION OF ORDER OF SELECTION FOR EXPENDITURES.—In order to receive the amounts described in paragraph (2), a State shall—

''(A) develop, in collaboration with the individuals and representatives described in subsection (b)(1) and pursuant to guidelines established by the Secretary, criteria to identify and select the expenditures submitted under that paragraph; and

''(B) submit such criteria to the Secretary.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) takes effect on October 1, 2005.

TITLE II—PROMOTION OF SYSTEMS CHANGE AND CAPACITY BUILDING

SEC. 201. GRANTS TO PROMOTE SYSTEMS CHANGE AND CAPACITY BUILDING.

(a) AUTHORITY TO AWARD GRANTS.—

(1) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall award grants to eligible States to carry out the activities described in subsection (b).

(2) APPLICATION.—In order to be eligible for a grant under this section, a State shall submit to the Secretary an application in such form and manner, and that contains such information, as the Secretary may require.

(b) PERMISSIBLE ACTIVITIES.—A State that receives a grant under this section may use funds provided under the grant for any of the following activities, focusing on areas of need identified by the State and the Consumer Task Force established under subsection (c):

(1) The development and implementation of the provision of community-based attendant services and supports under section 1936 of the Social Security Act (as added by section 101(b) and amended by sections 102 and 103) through active collaboration with—

(A) individuals with disabilities;

(B) elderly individuals;

(C) representatives of such individuals; and

(D) providers of, and advocates for, services and supports for such individuals.

(2) Substantially involving individuals with significant disabilities and representatives of such individuals in jointly developing, implementing, and continually improving a mutually acceptable comprehensive, effectively working statewide plan for preventing and alleviating unnecessary institutionalization of such individuals.

(3) Engaging in system change and other activities deemed necessary to achieve any or all of the goals of such statewide plan.

(4) Identifying and remedying disparities and gaps in services to classes of individuals with disabilities and elderly individuals who are currently experiencing or who face substantial risk of unnecessary institutionalization.

(5) Building and expanding system capacity to offer quality consumer controlled community-based services and supports to individuals with disabilities and elderly individuals, including by—

(A) seeding the development and effective use of community-based attendant services

and supports cooperatives, independent living centers, small businesses, microenterprises and similar joint ventures owned and controlled by individuals with disabilities or representatives of such individuals and community-based attendant services and supports workers;

(B) enhancing the choice and control individuals with disabilities and elderly individuals exercise, including through their representatives, with respect to the personal assistance and supports they rely upon to lead independent, self-directed lives;

(C) enhancing the skills, earnings, benefits, supply, career, and future prospects of workers who provide community-based attendant services and supports;

(D) engaging in a variety of needs assessment and data gathering;

(E) developing strategies for modifying policies, practices, and procedures that result in unnecessary institutional bias or the overmedicalization of long-term services and supports;

(F) engaging in interagency coordination and single point of entry activities;

(G) providing training and technical assistance with respect to the provision of community-based attendant services and supports;

(H) engaging in—

(i) public awareness campaigns;

(ii) facility-to-community transitional activities; and

(iii) demonstrations of new approaches; and

(I) engaging in other systems change activities necessary for developing, implementing, or evaluating a comprehensive statewide system of community-based attendant services and supports.

(6) Ensuring that the activities funded by the grant are coordinated with other efforts to increase personal attendant services and supports, including—

(A) programs funded under or amended by the Ticket to Work and Work Incentives Improvement Act of 1999 (Public Law 106–170; 113 Stat. 1860);

(B) grants funded under the Families of Children With Disabilities Support Act of 2000 (42 U.S.C. 15091 et seq.); and

(C) other initiatives designed to enhance the delivery of community-based services and supports to individuals with disabilities and elderly individuals.

(7) Engaging in transition partnership activities with nursing facilities and intermediate care facilities for the mentally retarded that utilize and build upon items and services provided to individuals with disabilities or elderly individuals under the medicaid program under title XIX of the Social Security Act, or by Federal, State, or local housing agencies, independent living centers, and other organizations controlled by consumers or their representatives.

(c) CONSUMER TASK FORCE.—

(1) ESTABLISHMENT AND DUTIES.—To be eligible to receive a grant under this section, each State shall establish a Consumer Task Force (referred to in this subsection as the ''Task Force'') to assist the State in the development, implementation, and evaluation of real choice systems change initiatives.

(2) APPOINTMENT.—Members of the Task Force shall be appointed by the Chief Executive Officer of the State in accordance with the requirements of paragraph (3), after the solicitation of recommendations from representatives of organizations representing a broad range of individuals with disabilities, elderly individuals, representatives of such individuals, and organizations interested in individuals with disabilities and elderly individuals.

(3) COMPOSITION.—

(A) IN GENERAL.—The Task Force shall represent a broad range of individuals with disabilities from diverse backgrounds and shall include representatives from Developmental Disabilities Councils, Mental Health Councils, State Independent Living Centers and Councils, Commissions on Aging, organizations that provide services to individuals with disabilities and consumers of long-term services and supports.

(B) INDIVIDUALS WITH DISABILITIES.—A majority of the members of the Task Force shall be individuals with disabilities or representatives of such individuals.

(C) LIMITATION.—The Task Force shall not include employees of any State agency providing services to individuals with disabilities other than employees of entities described in the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15001 et seq.).

(d) ANNUAL REPORT.—

(1) STATES.—A State that receives a grant under this section shall submit an annual report to the Secretary on the use of funds provided under the grant in such form and manner as the Secretary may require.

(2) SECRETARY.—The Secretary shall submit to Congress an annual report on the grants made under this section.

(e) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There is authorized to be appropriated to carry out this section, $50,000,000 for each of fiscal years 2006 through 2008.

(2) AVAILABILITY.—Amounts appropriated to carry out this section shall remain available without fiscal year limitation.

SEC. 202. DEMONSTRATION PROJECT TO ENHANCE COORDINATION OF CARE UNDER THE MEDICARE AND MEDICAID PROGRAMS FOR NON-ELDERLY DUAL ELIGIBLE INDIVIDUALS.

(a) DEFINITIONS.—In this section:

(1) NON-ELDERLY DUALLY ELIGIBLE INDIVIDUAL.—The term ''non-elderly dually eligible individual'' means an individual who—

(A) has not attained age 65; and

(B) is enrolled in the medicare and medicaid programs established under titles XVIII and XIX, respectively, of the Social Security Act (42 U.S.C. 1395 et seq., 1396 et seq.).

(2) PROJECT.—The term ''project'' means the demonstration project authorized to be conducted under this section.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

(b) AUTHORITY TO CONDUCT PROJECT.—The Secretary shall conduct a project under this section for the purpose of evaluating service coordination and cost-sharing approaches with respect to the provision of community-based services and supports to non-elderly dually eligible individuals.

(c) REQUIREMENTS.—

(1) NUMBER OF PARTICIPANTS.—Not more than 5 States may participate in the project.

(2) APPLICATION.—A State that desires to participate in the project shall submit an application to the Secretary, at such time and in such form and manner as the Secretary shall specify.

(3) DURATION.—The project shall be conducted for at least 5, but not more than 10 years.

(d) EVALUATION AND REPORT.—

(1) EVALUATION.—Not later than 1 year prior to the termination date of the project, the Secretary, in consultation with States participating in the project, representatives of non-elderly dually eligible individuals, and others, shall evaluate the impact and effectiveness of the project.

(2) REPORT.—The Secretary shall submit a report to Congress that contains the findings of the evaluation conducted under paragraph (1) along with recommendations regarding whether the project should be extended or expanded, and any other legislative or administrative actions that the Secretary considers appropriate as a result of the project.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

Mr. SPECTER. Mr. President, I have sought recognition to join Senator TOM HARKIN, my colleague and distinguished ranking member of the Appropriations Subcommittee on Labor, Health and Human Services and Education, which I chair, in introducing the ''Medicaid Attendant Care Services and Supports Act of 2005.'' This creative proposal addresses a glaring gap in Federal health coverage, and assists one of our Nation's most vulnerable populations, persons with disabilities.

In an effort to improve the delivery of care and the comfort of those with long-term disabilities, this vital legislation would allow for reimbursement for community-based attendant care services, in lieu of institutionalization, for eligible individuals who require such services based on functional need, without regard to the individual's age or the nature of the disability. Under this proposal, Medicaid would provide States funding to offer and allow individuals who are currently eligible for nursing home services or an intermediate care facility for the mentally retarded equal access to community-based attendants.

The most recent data available tell us that 8.9 million individuals receive care for disabilities under the Medicaid program. The number of disabled who are currently enrolled in Medicaid and would apply for this improved benefit has been estimated at 2 million, a substantial number due largely to the preference of home and community-based care over institutional care. Currently, each State gets Federal money for their Medicaid program based on a Medicaid match rate. This bill would temporarily increase the Medicaid matching percentage providing States with additional funding to reform their long term care systems and implement this benefit.

Let me speak briefly about why such a change in Medicaid law is so desperately needed. The Supreme Court held in Olmstead v. L.C., 119 S. Ct. 2176 (1999), that the Americans with Disabilities Act, ADA, requires States, under some circumstances, to provide community-based treatment to persons with mental disabilities rather than placing them in institutions. This decision and several lower court decisions have pointed to the need for a structured Medicaid attendant-care services benefit in order to meet obligations under the ADA. Disability advocates strongly support this legislation, arguing that the lack of Medicaid community-based services options is discriminatory and unhealthful for disabled individuals. Virtually every major disability advocacy group supports this bill, including ADAPT, the Arc, the National Council on Independent Living, Paralyzed Veterans of America,

and the National Spinal Cord Injury Association.

Senator HARKIN and I recognize that such a shift in the Medicaid program is a huge undertaking—but feel that it is a vitally important one. We are introducing this legislation today in an attempt to move ahead with the consideration of crucial disability legislation and to provide a starting point for debate. The time has come for concerted action in this arena.

I urge the Congressional leadership, including the appropriate committee chairmen, to move forward in considering this legislation, and take the significant next step forward in achieving the objective of providing individuals with disabilities the freedom to live in their own communities.

By Mr. REID:

S. 404. A bill to make a technical correction relating to the land conveyance authorized by Public Law 108–67; to the Committee on Energy and Natural Resources.

Mr. REID. 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. 404

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

SECTION 1. WASHOE TRIBE OF NEVADA AND CALIFORNIA LAND CONVEYANCE.

Section 2 of Public Law 108–67 (117 Stat. 880) is amended by striking ''the parcel'' and all that follows and inserting ''a portion of Lots 3 and 4, as shown on the United States and Encumbrance Map revised January 10, 1991, for the Toiyabe National Forest, Ranger District Carson −1, located in the S½ of NW¼ and N½ of SW¼ of the SE¼ of sec. 27, T. 15N, R. 18E, Mt. Diablo Base and Meridian, comprising 24.3 acres.''.

By Mr. REID (for himself and Mr. ENSIGN):

S. 405. A bill to provide for the conveyance of certain public land in Clark County, Nevada, for use as a heliport; to the Committee on Energy and Natural Resources.

Mr. REID. Mr. President, I rise today, for myself and Senator ENSIGN, to introduce legislation to establish a public heliport facility in Clark County, NY.

The purpose of this bill is simple: It would convey about a third of a square mile of public land managed by the Bureau of Land Management to Clark County for dedicated use as a heliport. The land is located just south of the Henderson city limits and east of Interstate 15.

The establishment of this heliport will help eliminate the ongoing conflict between air tour operators whose overflights of the Grand Canyon represent a classic component of the Las Vegas visitor experience and residents in the west-central and southwestern parts of the Las Vegas Valley whose every day lives are adversely affected by helicopter noise.

Local officials are committed to establishing a heliport within the Las Vegas Valley. The county and local municipalities have previously considered a site, currently in use as a go-kart track, near Interstate 15 near Henderson. The drawback of developing this site is that tours originating from this location would fly over the most sensitive parts of the Sloan Canyon National Conservation Area, with no restrictions on routing or elevation. Sloan Canyon itself—one of the richest petroglyph sites in the Mohave Desert—would be subject to regular overflights. That outcome would be entirely legal, entirely predictable and entirely regrettable.

In 2002, I worked closely with Senator ENSIGN, Congresswoman BERKLEY, Congressman GIBBONS and local advocates to protect the Sloan Canyon area and its unique cultural resources. Through our combined efforts we created the Sloan Canyon National Conservation Area and the McCullough Mountains Wilderness, I am proud of these efforts and today I offer this legislation as a further effort to protect the precious resources that we worked to safeguard in 2002.

The bill I am introducing in the Senate today, and which I offered in the 108th Congress, would not prohibit helicopter overflights of the Sloan Canyon National Conservation Area. But it does ensure that such flights steer clear of the most sensitive and special cultural resources and minimize the impact on the majestic bighorn sheep and other wildlife that live in the McCullough Mountains.

My legislation stipulates that any helicopter flight originating from and/or landing at this heliport would be required by law to fly within a set path—between 3 and 5 miles north of the southernmost boundary of the Sloan Canyon National Conservation Area—and at a minimum height—at least 500 to 1000 feet above ground level while in the NCA. Further, it requires that every such flight contribute 3 dollars per passenger to a special fund dedicated to the protection of the cultural, wilderness, and wildlife resources in Nevada.

These provisions justify conveying the land to Clark County at no cost because they provide a stable, long-term source of funding in excess of the market value of the land and because the conveyance and use are in the public interest.

It was my pleasure to introduce this bill during the last Congress. My fellow Senators, particularly the Chairman and Ranking member of the Senate Energy and Natural Resources Committee, were generous in their support of this measure, allowing us to hold a prompt hearing. I am hopeful that my distinguished colleagues will work with me to complete work on this important legislation during the current session.

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. 405

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

SECTION 1. CONVEYANCE OF PROPERTY TO CLARK COUNTY, NEVADA.

(a) FINDINGS.—Congress finds that—

(1) the Las Vegas Valley in the State of Nevada is the fastest growing community in the United States;

(2) helicopter tour operations are conflicting with the needs of long-established residential communities in the Valley; and

(3) the designation of a public heliport in the Valley that would reduce conflicts between helicopter tour operators and residential communities is in the public interest.

(b) PURPOSE.—The purpose of this Act is to provide a suitable location for the establishment of a commercial service heliport facility to serve the Las Vegas Valley in the State of Nevada while minimizing and mitigating the impact of air tours on the Sloan Canyon National Conservation Area and North McCullough Mountains Wilderness.

(c) DEFINITIONS.—In this Act:

(1) CONSERVATION AREA.—The term ''Conservation Area'' means the Sloan Canyon National Conservation Area established by section 604(a) of the Clark County Conservation of Public Land and Natural Resources Act of 2002 (116 Stat. 2010).

(2) COUNTY.—The term ''County'' means Clark County, Nevada.

(3) HELICOPTER TOUR.—

(A) IN GENERAL.—The term ''helicopter tour'' means a commercial helicopter tour operated for profit.

(B) EXCLUSION.—The term ''helicopter tour'' does not include a helicopter tour that is carried out to assist a Federal, State, or local agency.

(4) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(5) WILDERNESS.—The term ''Wilderness'' means the North McCullough Mountains Wilderness established by section 202(a)(13) of the Clark County Conservation of Public Land and Natural Resources Act of 2002 (116 Stat. 2000).

(d) CONVEYANCE.—As soon as practicable after the date of enactment of this Act, the Secretary shall convey to the County, subject to valid existing rights, for no consideration, all right, title, and interest of the United States in and to the parcel of land described in subsection (e).

(e) DESCRIPTION OF LAND.—The parcel of land to be conveyed under subsection (d) is the parcel of approximately 229 acres of land depicted as tract A on the map entitled ''Clark County Public Heliport Facility'' and dated May 3, 2004.

(f) USE OF LAND.—

(1) IN GENERAL.—The parcel of land conveyed under subsection (d)—

(A) shall be used by the County for the operation of a heliport facility under the conditions stated in paragraphs (2) and (3); and

(B) shall not be disposed of by the County.

(2) IMPOSITION OF FEES.—

(A) IN GENERAL.—Any operator of a helicopter tour originating from or concluding at the parcel of land described in subsection (e) shall pay to the Clark County Department of Aviation a $3 conservation fee for each passenger on the helicopter tour if any portion of the helicopter tour occurs over the Conservation Area.

(B) DISPOSITION OF FUNDS.—Any amounts collected under subparagraph (A) shall be deposited in a special account in the Treasury of the United States, which shall be available to the Secretary, without further appropriation, for the management of cultural,

wildlife, and wilderness resources on public land in the State of Nevada.

(3) FLIGHT PATH.—Except for safety reasons, any helicopter tour originating or concluding at the parcel of land described in subsection (e) that flies over the Conservation Area shall not fly—

(A) over any area in the Conservation Area except the area that is between 3 and 5 miles north of the latitude of the southernmost boundary of the Conservation Area;

(B) lower than 1,000 feet over the eastern segments of the boundary of the Conservation Area; or

(C) lower than 500 feet over the western segments of the boundary of the Conservation Area.

(4) REVERSION.—If the County ceases to use any of the land described in subsection (d) for the purpose described in paragraph (1)(A) and under the conditions stated in paragraphs (2) and (3)—

(A) title to the parcel shall revert to the United States, at the option of the United States; and

(B) the County shall be responsible for any reclamation necessary to revert the parcel to the United States.

(g) ADMINISTRATIVE COSTS.—The Secretary shall require, as a condition of the conveyance under subsection (d), that the County pay the administrative costs of the conveyance, including survey costs and any other costs associated with the transfer of title.

By Ms. SNOWE (for herself, Mr. TALENT, Mr. BOND, Mr. BYRD, Mrs. DOLE, Mr. MCCAIN, Mrs. HUTCHISON, Mr. COLEMAN, Mr. VITTER, and Mr. MARTINEZ):

S. 406. A bill to amend title I of the Employee Retirement Security Act of 1974 to improve access and choice for entrepreneurs with small businesses with respect to medical care for their employees; to the Committee on Health, Education, Labor, and Pensions.

Ms. SNOWE. Mr. President, as Chair of the Committee on Small Business and Entrepreneurship, I rise to introduce the Small Business Health Fairness Act of 2005. I am joined in this bipartisan effort by Senators TALENT, BOND, BYRD, DOLE, MCCAIN, HUTCHISON, COLEMAN, VITTER and MARTINEZ.

This bill creates Association Health Plans (AHPs), also called Small Business Health Plans, that give small businesses the same market based advantages and leverage that large employers and unions currently enjoy when providing health insurance to their employees.

AHPs directly address one of the most critical issues facing small businesses nationwide: the crisis small businesses face trying to provide health insurance for their employees. No other issue has been mentioned so frequently or by so many of the small businesses with whom I have met since I became Chair. While the problem has been growing for years, the outcry has built so that now it is indeed a loud chorus of small businesses desperate for relief and demanding that something be done.

Without exception, every small business person who has approached me has asked me to do something about the crushing burden from increased health insurance costs. The anecdotal accounts that I have heard have been confirmed by reports detailing how much health insurance costs are increasing across the board for all employers and especially for small businesses.

The Kaiser Family Foundation has reported that health insurance premiums increased between the spring of 2003 and spring of 2004 by 11.2 percent. This is the fourth such year of double digit increases and follows increases of 13.9 percent, 12.9 percent and 10.9 percent. In contrast, overall inflation during the last three years was 2.3 percent, 2.2 percent and 1.6 percent, wage gains for non-supervisory workers were similarly stable at 2.2 percent, 3.1 percent and 3.2 percent, respectively. This is an astonishing trend.

Not only are the costs for employers increasing, but these are now being passed onto the employees. As a result, the amount of premium employees pay for family coverage has increased almost 64 percent over the past 4 years, from $1,619 to $2,661. As I have heard from many small businesses, increases in insurance costs often mean employees do not get the benefit of salary and wage increases. Employers are rewarding employees with raises and then requiring them to pay more of their health insurance. These employers are disheartened that they are giving a raise with one hand and then turning around and taking it away with the other.

The Kaiser report also shows that this year, firms with 3 to 199 workers had premium increases of 9.1 percent and the smallest firms with 3 to 9 workers averaged 12.4 percent increases. So we see that as bad as things have gotten they're worse for the smallest businesses who are the source of as much as 75 percent of our country's new jobs. In my meetings with small businesses, they invariably report increases far greater than even these percentages, generally 30 percent, 40 percent or more.

The increase in these costs can not be dismissed as just another cost of doing business and absorbed or passed on to customers, because we know small businesses often have lower profit margins for their goods and services than other businesses. These skyrocketing costs often mean the difference between the business expanding or struggling to survive.

The high cost of health insurance can even make the difference in whether a small business creates new jobs. Small businesses have told me that the high cost of providing health care is preventing small businesses from adding more employees because they can not afford the additional health insurance expenses. In other cases, employers are turning to temporary or part time employees, again to avoid paying outrageous health insurance costs.

The result of these higher costs is that, according to the U.S. Census Bureau, in 2003 there were 45 million people without insurance, 1.4 million more than the year before and 3.8 million since 2001. This is being attributed to a decrease in the number of people covered by insurance through their employers—down 61 percent in 2004. Disturbingly, the Kaiser study says that only 52 percent of firms with 3 to 9 employees offer health benefits. Indeed, sometimes I wonder how small businesses can provide insurance at all. The fact that so many do is testimony to their recognition of how essential this is to their employees, and their determination to offer this benefit even in the face of constantly skyrocketing costs.

Last year's Kaiser report suggests that the greater increase in premiums for traditionally insured plans of 15.6 percent versus self insured plans at 12.4 percent ''may indicate that part of the rise in health care premiums is due to insurers expanding their underwriting gains.'' They also say that one of the factors driving the high rate of premium growth appears to be ''insurers' efforts to emphasize profitability in their pricing.''

What these statements really mean is that insurance companies are getting as much as they can out of their small business customers because they know these customers have no other options. Large employers, unlike small businesses, have competition for their business because they have many employees through whom to spread the risks. This makes them attractive to insurance companies who compete for their business.

Large employers also have the option of self insuring under ERISA which is only practical for employers who are large enough to afford the costs. This approach, though, offers significant savings by eliminating the administrative costs of the middle man—the insurance companies. A study by SBA's Office of Advocacy has shown that these plans have administrative costs as much as 30 percent lower.

Small businesses from my home state of Maine have made it clear that they have only one choice for their health care. Even when they band together in local purchasing pools, they are unable to attract any other insurance carriers to provide them with less expensive and more flexible options. Right after small businesses tell me how high their rates are they tell me how they have no choices and in some cases are even lucky to have anyone offering them any coverage at all.

In response to this health care crisis facing the small business community, I am introducing the Small Business Health Fairness Act of 2005.

This bill creates national Association Health Plans which allow small businesses to pool their employees together under the auspices of their bona fide associations to get the same bulk purchasing and administrative efficiencies already enjoyed by large employers and unions with their health care plans. It builds on the success of the ERISA self

insurance plans used by large employers and the Taft-Hartley plans available to union employers. These two types of plans currently provide health benefits for 72 million people, more than half of the 130 million total people who get their health insurance through their employer.

It is ludicrous that we have a two tiered health insurance system in this country where one group of employers—large ones and those who are union employers—get preferential treatment over those who create over 75 percent of the new jobs. I am at a loss to understand why small businesses should be denied the same advantages that these other employers already have. This is a matter of basic fairness.

AHPs will be able to offer less expensive plans, and also greater flexibility because they will be exempt from the myriad state benefit regulations. Associations will be able to design their plans to meet the needs of their members and their employees. By administering one national plan, it will further reduce the administrative costs instead of trying to administer a plan subject to the mandates of each state.

Even though the benefit mandates will not be in effect, associations will need to design their plans so that enough members participate in them to attract the necessary employees to make them work. This means that they will naturally provide a full range of benefits similar to what many states currently require. In many cases, the plans offered by large employers and unions, which are also exempt from the state benefit mandates, are the most generous plans available. People will often stay in those jobs specifically to keep their health care coverage.

The bill would also provide extensive new protections to ensure that the health care coverage is there when employees need it. Associations sponsoring these plans would need to be established for at least three years for purposes other than providing health insurance—this is intended to prevent the current epidemic of fraud and abuse that is occurring through sham associations who take money from unsuspecting small businesses and then cease to exist when someone files a claim.

In addition, self-funded AHPs would be required to have sufficient funds in reserve, specific stop-loss insurances, indemnification insurance, and other funding and certification requirements to make sure the insurance coverage would be available when needed. None of these requirements apply to any of the plans currently regulated by the Department of Labor, either the large employer plans under the Employee Retirement Income Security Act (ERISA), or the union plans under the Taft-Hartley Act.

Yet, the opponents of this bill have mis-characterized it in ways that make it sound like this would be the worst thing in the world for small businesses.

They have said that this bill would lead to ''cherry picking''—where AHPs would only take young healthy people. There is language in the bill which explicitly states that an association which offers a plan must offer it to all of their members, and a member who participates in the plan must offer the plan to every employee. Violation of these requirements is subject to enforcement by the Department of Labor under ERISA.

They have said that the Department of Labor would not be able to handle their responsibilities under this bill. The Department of Labor is already overseeing 275,000 similarly structured plans. We do not hear employees complain about these plans, or that they are failing and leaving subscribers without coverage. The additional plans from AHPs would not add that much of a burden to their operations and the Secretary of Labor has testified before the Small Business Committee that sufficient resources would be available to make sure the Department fulfilled its obligations.

Opponents have claimed that AHPs would not be subject to any solvency protections or other insurance regulations. This is flat out not true. The bill specifies detailed solvency protections that self funded AHPs would have to implement which are far beyond anything current self funded large employer plans have to implement. In fact those plans are not required to have any solvency protections. Insurance companies that would provide the coverage for fully insured AHPs would continue to be subject to state solvency requirements, as well as other state protections in the same way as they are now.

Opponents of this bill are basically saying that small businesses do not need more options and that they should be satisfied with the few that they have. They want to preserve the status quo which does nothing for small businesses. This bill would create competition in the small group market where there currently is none. If we expect our small employers to provide health insurance to their employees, we must pass AHP legislation to give them the same advantages enjoyed by large employers and union employers.

Giving small businesses better and more affordable options for their health care will also have an impact on the larger problem of the uninsured. The latest Census Bureau figures indicate that in 2003 approximately 45 million people had no health insurance. We also know that about 60 percent of these uninsured work for a small business, or are in a family of someone who works for a small business. The CBO has estimated that 600,000 people would go from being uninsured to being insured if AHPs were available. There are other studies that show this number could be more like 4.5 million and possibly as high as 8.5 million. What is clear is that giving small businesses AHPs as an option will mean that more of them who currently do not offer health insurance will be able to provide this benefit to their employees and their families.

This bill is supported by a large coalition of small business interests with approximately 12 million employers who represent about 80 million employees. President Bush included AHPs in the State of the Union and has made this part of his agenda for providing more health care options and helping small businesses. During the campaign he called for passage of this bill on almost a daily basis. And he continues to call for its passage. Our Majority Leader has indicated his support for taking up this bill. The House has passed the bill several times with strong bipartisan support and will pass it again this year. Significantly, the Senate Task Force on the Uninsured included AHPs among its recommendation for increasing coverage. The time has come to get this bill through the Senate. We must pass AHPs this session.

In the time I have been Chair of the Small Business Committee, I have come to understand even more that the entrepreneurial spirit burns bright throughout our nation. There are millions of people who seek a better life and personal satisfaction through starting and running small businesses. These folks are not looking for a handout, or preferential treatment. They are merely looking to us to recognize the absolutely essential role they play in our economy and to be treated accordingly and fairly. If we want more jobs, and better family lives, we must give small businesses the support they are seeking.

While this bill has passed the House with bipartisan support on several occasions, it has not been considered in the Senate. I intend to change that. I will work with Senator ENZI as the new chair of the HELP Committee, Senate Leaders, and others to find ways and develop enhancements to get this bill through the Senate. If there are changes that can be made, I am willing to consider them.

I believe we will see movement on this issue this Congress, and I look forward to working with my colleagues to bring relief and assistance to our nation's small businesses.

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. 406

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

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Small Business Health Fairness Act of 2005''.

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title and table of contents.
Sec. 2. Rules governing association health plans.

Sec. 3. Clarification of treatment of single employer arrangements.
Sec. 4. Enforcement provisions relating to association health plans.
Sec. 5. Cooperation between Federal and State authorities.
Sec. 6. Effective date and transitional and other rules.

SEC. 2. RULES GOVERNING ASSOCIATION HEALTH PLANS.

(a) IN GENERAL.—Subtitle B of title I of the Employee Retirement Income Security Act of 1974 is amended by adding after part 7 the following new part:

"PART 8—RULES GOVERNING ASSOCIATION HEALTH PLANS

"SEC. 801. ASSOCIATION HEALTH PLANS.

''(a) IN GENERAL.—For purposes of this part, the term 'association health plan' means a group health plan whose sponsor is (or is deemed under this part to be) described in subsection (b).

''(b) SPONSORSHIP.—The sponsor of a group health plan is described in this subsection if such sponsor—

''(1) is organized and maintained in good faith, with a constitution and bylaws specifically stating its purpose and providing for periodic meetings on at least an annual basis, as a bona fide trade association, a bona fide industry association (including a rural electric cooperative association or a rural telephone cooperative association), a bona fide professional association, or a bona fide chamber of commerce (or similar bona fide business association, including a corporation or similar organization that operates on a cooperative basis (within the meaning of section 1381 of the Internal Revenue Code of 1986)), for substantial purposes other than that of obtaining or providing medical care;

''(2) is established as a permanent entity which receives the active support of its members and requires for membership payment on a periodic basis of dues or payments necessary to maintain eligibility for membership in the sponsor; and

''(3) does not condition membership, such dues or payments, or coverage under the plan on the basis of health status-related factors with respect to the employees of its members (or affiliated members), or the dependents of such employees, and does not condition such dues or payments on the basis of group health plan participation.

Any sponsor consisting of an association of entities which meet the requirements of paragraphs (1), (2), and (3) shall be deemed to be a sponsor described in this subsection.

"SEC. 802. CERTIFICATION OF ASSOCIATION HEALTH PLANS.

''(a) IN GENERAL.—The applicable authority shall prescribe by regulation a procedure under which, subject to subsection (b), the applicable authority shall certify association health plans which apply for certification as meeting the requirements of this part.

''(b) STANDARDS.—Under the procedure prescribed pursuant to subsection (a), in the case of an association health plan that provides at least one benefit option which does not consist of health insurance coverage, the applicable authority shall certify such plan as meeting the requirements of this part only if the applicable authority is satisfied that the applicable requirements of this part are met (or, upon the date on which the plan is to commence operations, will be met) with respect to the plan.

''(c) REQUIREMENTS APPLICABLE TO CERTIFIED PLANS.—An association health plan with respect to which certification under this part is in effect shall meet the applicable requirements of this part, effective on the date of certification (or, if later, on the date on which the plan is to commence operations).

''(d) REQUIREMENTS FOR CONTINUED CERTIFICATION.—The applicable authority may provide by regulation for continued certification of association health plans under this part.

''(e) CLASS CERTIFICATION FOR FULLY INSURED PLANS.—The applicable authority shall establish a class certification procedure for association health plans under which all benefits consist of health insurance coverage. Under such procedure, the applicable authority shall provide for the granting of certification under this part to the plans in each class of such association health plans upon appropriate filing under such procedure in connection with plans in such class and payment of the prescribed fee under section 807(a).

''(f) CERTIFICATION OF SELF-INSURED ASSOCIATION HEALTH PLANS.—An association health plan which offers one or more benefit options which do not consist of health insurance coverage may be certified under this part only if such plan consists of any of the following:

''(1) A plan which offered such coverage on the date of the enactment of the Small Business Health Fairness Act of 2005.

''(2) A plan under which the sponsor does not restrict membership to one or more trades and businesses or industries and whose eligible participating employers represent a broad cross-section of trades and businesses or industries.

''(3) A plan whose eligible participating employers represent one or more trades or businesses, or one or more industries, consisting of any of the following: agriculture; equipment and automobile dealerships; barbering and cosmetology; certified public accounting practices; child care; construction; dance, theatrical and orchestra productions; disinfecting and pest control; financial services; fishing; foodservice establishments; hospitals; labor organizations; logging; manufacturing (metals); mining; medical and dental practices; medical laboratories; professional consulting services; sanitary services; transportation (local and freight); warehousing; wholesaling/distributing; or any other trade or business or industry which has been indicated as having average or above-average risk or health claims experience by reason of State rate filings, denials of coverage, proposed premium rate levels, or other means demonstrated by such plan in accordance with regulations.

"SEC. 803. REQUIREMENTS RELATING TO SPONSORS AND BOARDS OF TRUSTEES.

''(a) SPONSOR.—The requirements of this subsection are met with respect to an association health plan if the sponsor has met (or is deemed under this part to have met) the requirements of section 801(b) for a continuous period of not less than 3 years ending with the date of the application for certification under this part.

''(b) BOARD OF TRUSTEES.—The requirements of this subsection are met with respect to an association health plan if the following requirements are met:

''(1) FISCAL CONTROL.—The plan is operated, pursuant to a trust agreement, by a board of trustees which has complete fiscal control over the plan and which is responsible for all operations of the plan.

''(2) RULES OF OPERATION AND FINANCIAL CONTROLS.—The board of trustees has in effect rules of operation and financial controls, based on a 3-year plan of operation, adequate to carry out the terms of the plan and to meet all requirements of this title applicable to the plan.

''(3) RULES GOVERNING RELATIONSHIP TO PARTICIPATING EMPLOYERS AND TO CONTRACTORS.—

''(A) BOARD MEMBERSHIP.—

''(i) IN GENERAL.—Except as provided in clauses (ii) and (iii), the members of the board of trustees are individuals selected from individuals who are the owners, officers, directors, or employees of the participating employers or who are partners in the participating employers and actively participate in the business.

''(ii) LIMITATION.—

''(I) GENERAL RULE.—Except as provided in subclauses (II) and (III), no such member is an owner, officer, director, or employee of, or partner in, a contract administrator or other service provider to the plan.

''(II) LIMITED EXCEPTION FOR PROVIDERS OF SERVICES SOLELY ON BEHALF OF THE SPONSOR.—Officers or employees of a sponsor which is a service provider (other than a contract administrator) to the plan may be members of the board if they constitute not more than 25 percent of the membership of the board and they do not provide services to the plan other than on behalf of the sponsor.

''(III) TREATMENT OF PROVIDERS OF MEDICAL CARE.—In the case of a sponsor which is an association whose membership consists primarily of providers of medical care, subclause (I) shall not apply in the case of any service provider described in subclause (I) who is a provider of medical care under the plan.

''(iii) CERTAIN PLANS EXCLUDED.—Clause (i) shall not apply to an association health plan which is in existence on the date of the enactment of the Small Business Health Fairness Act of 2005.

''(B) SOLE AUTHORITY.—The board has sole authority under the plan to approve applications for participation in the plan and to contract with a service provider to administer the day-to-day affairs of the plan.

''(c) TREATMENT OF FRANCHISE NETWORKS.—In the case of a group health plan which is established and maintained by a franchiser for a franchise network consisting of its franchisees—

''(1) the requirements of subsection (a) and section 801(a) shall be deemed met if such requirements would otherwise be met if the franchiser were deemed to be the sponsor referred to in section 801(b), such network were deemed to be an association described in section 801(b), and each franchisee were deemed to be a member (of the association and the sponsor) referred to in section 801(b); and

''(2) the requirements of section 804(a)(1) shall be deemed met.

The Secretary may by regulation define for purposes of this subsection the terms 'franchiser', 'franchise network', and 'franchisee'.

"SEC. 804. PARTICIPATION AND COVERAGE REQUIREMENTS.

''(a) COVERED EMPLOYERS AND INDIVIDUALS.—The requirements of this subsection are met with respect to an association health plan if, under the terms of the plan—

''(1) each participating employer must be—

''(A) a member of the sponsor;

''(B) the sponsor; or

''(C) an affiliated member of the sponsor with respect to which the requirements of subsection (b) are met, except that, in the case of a sponsor which is a professional association or other individual-based association, if at least one of the officers, directors, or employees of an employer, or at least one of the individuals who are partners in an employer and who actively participates in the business, is a member or such an affiliated member of the sponsor, participating employers may also include such employer; and

''(2) all individuals commencing coverage under the plan after certification under this part must be—

''(A) active or retired owners (including self-employed individuals), officers, directors, or employees of, or partners in, participating employers; or

''(B) the beneficiaries of individuals described in subparagraph (A).

''(b) COVERAGE OF PREVIOUSLY UNINSURED EMPLOYEES.—In the case of an association health plan in existence on the date of the enactment of the Small Business Health Fairness Act of 2005, an affiliated member of the sponsor of the plan may be offered coverage under the plan as a participating employer only if—

''(1) the affiliated member was an affiliated member on the date of certification under this part; or

''(2) during the 12-month period preceding the date of the offering of such coverage, the affiliated member has not maintained or contributed to a group health plan with respect to any of its employees who would otherwise be eligible to participate in such association health plan.

''(c) INDIVIDUAL MARKET UNAFFECTED.—The requirements of this subsection are met with respect to an association health plan if, under the terms of the plan, no participating employer may provide health insurance coverage in the individual market for any employee not covered under the plan which is similar to the coverage contemporaneously provided to employees of the employer under the plan, if such exclusion of the employee from coverage under the plan is based on a health status-related factor with respect to the employee and such employee would, but for such exclusion on such basis, be eligible for coverage under the plan.

''(d) PROHIBITION OF DISCRIMINATION AGAINST EMPLOYERS AND EMPLOYEES ELIGIBLE TO PARTICIPATE.—The requirements of this subsection are met with respect to an association health plan if—

''(1) under the terms of the plan, all employers meeting the preceding requirements of this section are eligible to qualify as participating employers for all geographically available coverage options, unless, in the case of any such employer, participation or contribution requirements of the type referred to in section 2711 of the Public Health Service Act are not met;

''(2) upon request, any employer eligible to participate is furnished information regarding all coverage options available under the plan; and

''(3) the applicable requirements of sections 701, 702, and 703 are met with respect to the plan.

''SEC. 805. OTHER REQUIREMENTS RELATING TO PLAN DOCUMENTS, CONTRIBUTION RATES, AND BENEFIT OPTIONS.

''(a) IN GENERAL.—The requirements of this section are met with respect to an association health plan if the following requirements are met:

''(1) CONTENTS OF GOVERNING INSTRUMENTS.—The instruments governing the plan include a written instrument, meeting the requirements of an instrument required under section 402(a)(1), which—

''(A) provides that the board of trustees serves as the named fiduciary required for plans under section 402(a)(1) and serves in the capacity of a plan administrator (referred to in section 3(16)(A));

''(B) provides that the sponsor of the plan is to serve as plan sponsor (referred to in section 3(16)(B)); and

''(C) incorporates the requirements of section 806.

''(2) CONTRIBUTION RATES MUST BE NONDISCRIMINATORY.—

''(A) IN GENERAL.—The contribution rates for any participating small employer shall not vary on the basis of any health status-related factor in relation to employees of such employer or their beneficiaries and shall not vary on the basis of the type of business or industry in which such employer is engaged.

''(B) EFFECT OF TITLE.—Nothing in this title or any other provision of law shall be construed to preclude an association health plan, or a health insurance issuer offering health insurance coverage in connection with an association health plan, from—

''(i) setting contribution rates based on the claims experience of the plan; or

''(ii) varying contribution rates for small employers in a State to the extent that such rates could vary using the same methodology employed in such State for regulating premium rates in the small group market with respect to health insurance coverage offered in connection with bona fide associations (within the meaning of section 2791(d)(3) of the Public Health Service Act), subject to the requirements of section 702(b) relating to contribution rates.

''(3) FLOOR FOR NUMBER OF COVERED INDIVIDUALS WITH RESPECT TO CERTAIN PLANS.—If any benefit option under the plan does not consist of health insurance coverage, the plan has as of the beginning of the plan year not fewer than 1,000 participants and beneficiaries.

''(4) MARKETING REQUIREMENTS.—

''(A) IN GENERAL.—If a benefit option which consists of health insurance coverage is offered under the plan, State-licensed insurance agents shall be used to distribute to small employers coverage which does not consist of health insurance coverage in a manner comparable to the manner in which such agents are used to distribute health insurance coverage.

''(B) STATE-LICENSED INSURANCE AGENTS.—For purposes of subparagraph (A), the term 'State-licensed insurance agents' means one or more agents who are licensed in a State and are subject to the laws of such State relating to licensure, qualification, testing, examination, and continuing education of persons authorized to offer, sell, or solicit health insurance coverage in such State.

''(5) REGULATORY REQUIREMENTS.—Such other requirements as the applicable authority determines are necessary to carry out the purposes of this part, which shall be prescribed by the applicable authority by regulation.

''(b) ABILITY OF ASSOCIATION HEALTH PLANS TO DESIGN BENEFIT OPTIONS.—Subject to section 514(d), nothing in this part or any provision of State law (as defined in section 514(c)(1)) shall be construed to preclude an association health plan, or a health insurance issuer offering health insurance coverage in connection with an association health plan, from exercising its sole discretion in selecting the specific items and services consisting of medical care to be included as benefits under such plan or coverage, except (subject to section 514) in the case of (1) any law to the extent that it is not preempted under section 731(a)(1) with respect to matters governed by section 711, 712, or 713, or (2) any law of the State with which filing and approval of a policy type offered by the plan was initially obtained to the extent that such law prohibits an exclusion of a specific disease from such coverage.

''SEC. 806. MAINTENANCE OF RESERVES AND PROVISIONS FOR SOLVENCY FOR PLANS PROVIDING HEALTH BENEFITS IN ADDITION TO HEALTH INSURANCE COVERAGE.

''(a) IN GENERAL.—The requirements of this section are met with respect to an association health plan if—

''(1) the benefits under the plan consist solely of health insurance coverage; or

''(2) the plan provides any additional benefit options which do not consist of health insurance coverage, the plan—

''(A) establishes and maintains reserves with respect to such additional benefit options, in amounts recommended by the qualified actuary, consisting of—

''(i) a reserve sufficient for unearned contributions;

''(ii) a reserve sufficient for benefit liabilities which have been incurred, which have not been satisfied, and for which risk of loss has not yet been transferred, and for expected administrative costs with respect to such benefit liabilities;

''(iii) a reserve sufficient for any other obligations of the plan; and

''(iv) a reserve sufficient for a margin of error and other fluctuations, taking into account the specific circumstances of the plan; and

''(B) establishes and maintains aggregate and specific excess/stop loss insurance and solvency indemnification, with respect to such additional benefit options for which risk of loss has not yet been transferred, as follows:

''(i) The plan shall secure aggregate excess/stop loss insurance for the plan with an attachment point which is not greater than 125 percent of expected gross annual claims. The applicable authority may by regulation provide for upward adjustments in the amount of such percentage in specified circumstances in which the plan specifically provides for and maintains reserves in excess of the amounts required under subparagraph (A).

''(ii) The plan shall secure specific excess/stop loss insurance for the plan with an attachment point which is at least equal to an amount recommended by the plan's qualified actuary. The applicable authority may by regulation provide for adjustments in the amount of such insurance in specified circumstances in which the plan specifically provides for and maintains reserves in excess of the amounts required under subparagraph (A).

''(iii) The plan shall secure indemnification insurance for any claims which the plan is unable to satisfy by reason of a plan termination.

Any person issuing to a plan insurance described in clause (i), (ii), or (iii) of subparagraph (B) shall notify the Secretary of any failure of premium payment meriting cancellation of the policy prior to undertaking such a cancellation. Any regulations prescribed by the applicable authority pursuant to clause (i) or (ii) of subparagraph (B) may allow for such adjustments in the required levels of excess/stop loss insurance as the qualified actuary may recommend, taking into account the specific circumstances of the plan.

''(b) MINIMUM SURPLUS IN ADDITION TO CLAIMS RESERVES.—In the case of any association health plan described in subsection (a)(2), the requirements of this subsection are met if the plan establishes and maintains surplus in an amount at least equal to—

''(1) $500,000, or

''(2) such greater amount (but not greater than $2,000,000) as may be set forth in regulations prescribed by the applicable authority, considering the level of aggregate and specific excess /stop loss insurance provided with respect to such plan and other factors related to solvency risk, such as the plan's projected levels of participation or claims, the nature of the plan's liabilities, and the types of assets available to assure that such liabilities are met.

''(c) ADDITIONAL REQUIREMENTS.—In the case of any association health plan described in subsection (a)(2), the applicable authority may provide such additional requirements relating to reserves, excess /stop loss insurance, and indemnification insurance as the applicable authority considers appropriate. Such requirements may be provided by regulation with respect to any such plan or any class of such plans.

''(d) ADJUSTMENTS FOR EXCESS /STOP LOSS INSURANCE.—The applicable authority may

provide for adjustments to the levels of reserves otherwise required under subsections (a) and (b) with respect to any plan or class of plans to take into account excess /stop loss insurance provided with respect to such plan or plans.

''(e) ALTERNATIVE MEANS OF COMPLIANCE.—The applicable authority may permit an association health plan described in subsection (a)(2) to substitute, for all or part of the requirements of this section (except subsection (a)(2)(B)(iii)), such security, guarantee, hold-harmless arrangement, or other financial arrangement as the applicable authority determines to be adequate to enable the plan to fully meet all its financial obligations on a timely basis and is otherwise no less protective of the interests of participants and beneficiaries than the requirements for which it is substituted. The applicable authority may take into account, for purposes of this subsection, evidence provided by the plan or sponsor which demonstrates an assumption of liability with respect to the plan. Such evidence may be in the form of a contract of indemnification, lien, bonding, insurance, letter of credit, recourse under applicable terms of the plan in the form of assessments of participating employers, security, or other financial arrangement.

''(f) MEASURES TO ENSURE CONTINUED PAYMENT OF BENEFITS BY CERTAIN PLANS IN DISTRESS.—

''(1) PAYMENTS BY CERTAIN PLANS TO ASSOCIATION HEALTH PLAN FUND.—

''(A) IN GENERAL.—In the case of an association health plan described in subsection (a)(2), the requirements of this subsection are met if the plan makes payments into the Association Health Plan Fund under this subparagraph when they are due. Such payments shall consist of annual payments in the amount of $5,000, and, in addition to such annual payments, such supplemental payments as the Secretary may determine to be necessary under paragraph (2). Payments under this paragraph are payable to the Fund at the time determined by the Secretary. Initial payments are due in advance of certification under this part. Payments shall continue to accrue until a plan's assets are distributed pursuant to a termination procedure.

''(B) PENALTIES FOR FAILURE TO MAKE PAYMENTS.—If any payment is not made by a plan when it is due, a late payment charge of not more than 100 percent of the payment which was not timely paid shall be payable by the plan to the Fund.

''(C) CONTINUED DUTY OF THE SECRETARY.—The Secretary shall not cease to carry out the provisions of paragraph (2) on account of the failure of a plan to pay any payment when due.

''(2) PAYMENTS BY SECRETARY TO CONTINUE EXCESS /STOP LOSS INSURANCE COVERAGE AND INDEMNIFICATION INSURANCE COVERAGE FOR CERTAIN PLANS.—In any case in which the applicable authority determines that there is, or that there is reason to believe that there will be—

''(A) a failure to take necessary corrective actions under section 809(a) with respect to an association health plan described in subsection (a)(2); or

''(B) a termination of such a plan under section 809(b) or 810(b)(8) (and, if the applicable authority is not the Secretary, certifies such determination to the Secretary)

the Secretary shall determine the amounts necessary to make payments to an insurer (designated by the Secretary) to maintain in force excess /stop loss insurance coverage or indemnification insurance coverage for such plan, if the Secretary determines that there is a reasonable expectation that, without such payments, claims would not be satisfied by reason of termination of such coverage. The Secretary shall, to the extent provided in advance in appropriation Acts, pay such amounts so determined to the insurer designated by the Secretary.

''(3) ASSOCIATION HEALTH PLAN FUND.—

''(A) IN GENERAL.—There is established on the books of the Treasury a fund to be known as the 'Association Health Plan Fund'. The Fund shall be available for making payments pursuant to paragraph (2). The Fund shall be credited with payments received pursuant to paragraph (1)(A), penalties received pursuant to paragraph (1)(B); and earnings on investments of amounts of the Fund under subparagraph (B).

''(B) INVESTMENT.—Whenever the Secretary determines that the moneys of the fund are in excess of current needs, the Secretary may request the investment of such amounts as the Secretary determines advisable by the Secretary of the Treasury in obligations issued or guaranteed by the United States.

''(g) EXCESS /STOP LOSS INSURANCE.—For purposes of this section—

''(1) AGGREGATE EXCESS /STOP LOSS INSURANCE.—The term 'aggregate excess /stop loss insurance' means, in connection with an association health plan, a contract—

''(A) under which an insurer (meeting such minimum standards as the applicable authority may prescribe by regulation) provides for payment to the plan with respect to aggregate claims under the plan in excess of an amount or amounts specified in such contract;

''(B) which is guaranteed renewable; and

''(C) which allows for payment of premiums by any third party on behalf of the insured plan.

''(2) SPECIFIC EXCESS /STOP LOSS INSURANCE.—The term 'specific excess /stop loss insurance' means, in connection with an association health plan, a contract—

''(A) under which an insurer (meeting such minimum standards as the applicable authority may prescribe by regulation) provides for payment to the plan with respect to claims under the plan in connection with a covered individual in excess of an amount or amounts specified in such contract in connection with such covered individual;

''(B) which is guaranteed renewable; and

''(C) which allows for payment of premiums by any third party on behalf of the insured plan.

''(h) INDEMNIFICATION INSURANCE.—For purposes of this section, the term 'indemnification insurance' means, in connection with an association health plan, a contract—

''(1) under which an insurer (meeting such minimum standards as the applicable authority may prescribe by regulation) provides for payment to the plan with respect to claims under the plan which the plan is unable to satisfy by reason of a termination pursuant to section 809(b) (relating to mandatory termination);

''(2) which is guaranteed renewable and noncancellable for any reason (except as the applicable authority may prescribe by regulation); and

''(3) which allows for payment of premiums by any third party on behalf of the insured plan.

''(i) RESERVES.—For purposes of this section, the term 'reserves' means, in connection with an association health plan, plan assets which meet the fiduciary standards under part 4 and such additional requirements regarding liquidity as the applicable authority may prescribe by regulation.

''(j) SOLVENCY STANDARDS WORKING GROUP.—

''(1) IN GENERAL.—Within 90 days after the date of the enactment of the Small Business Health Fairness Act of 2005, the applicable authority shall establish a Solvency Standards Working Group. In prescribing the initial regulations under this section, the applicable authority shall take into account the recommendations of such Working Group.

''(2) MEMBERSHIP.—The Working Group shall consist of not more than 15 members appointed by the applicable authority. The applicable authority shall include among persons invited to membership on the Working Group at least one of each of the following:

''(A) A representative of the National Association of Insurance Commissioners.

''(B) A representative of the American Academy of Actuaries.

''(C) A representative of the State governments, or their interests.

''(D) A representative of existing self-insured arrangements, or their interests.

''(E) A representative of associations of the type referred to in section 801(b)(1), or their interests.

''(F) A representative of multiemployer plans that are group health plans, or their interests.

''SEC. 807. REQUIREMENTS FOR APPLICATION AND RELATED REQUIREMENTS.

''(a) FILING FEE.—Under the procedure prescribed pursuant to section 802(a), an association health plan shall pay to the applicable authority at the time of filing an application for certification under this part a filing fee in the amount of $5,000, which shall be available in the case of the Secretary, to the extent provided in appropriation Acts, for the sole purpose of administering the certification procedures applicable with respect to association health plans.

''(b) INFORMATION TO BE INCLUDED IN APPLICATION FOR CERTIFICATION.—An application for certification under this part meets the requirements of this section only if it includes, in a manner and form which shall be prescribed by the applicable authority by regulation, at least the following information:

''(1) IDENTIFYING INFORMATION.—The names and addresses of—

''(A) the sponsor; and

''(B) the members of the board of trustees of the plan.

''(2) STATES IN WHICH PLAN INTENDS TO DO BUSINESS.—The States in which participants and beneficiaries under the plan are to be located and the number of them expected to be located in each such State.

''(3) BONDING REQUIREMENTS.—Evidence provided by the board of trustees that the bonding requirements of section 412 will be met as of the date of the application or (if later) commencement of operations.

''(4) PLAN DOCUMENTS.—A copy of the documents governing the plan (including any bylaws and trust agreements), the summary plan description, and other material describing the benefits that will be provided to participants and beneficiaries under the plan.

''(5) AGREEMENTS WITH SERVICE PROVIDERS.—A copy of any agreements between the plan and contract administrators and other service providers.

''(6) FUNDING REPORT.—In the case of association health plans providing benefits options in addition to health insurance coverage, a report setting forth information with respect to such additional benefit options determined as of a date within the 120-day period ending with the date of the application, including the following:

''(A) RESERVES.—A statement, certified by the board of trustees of the plan, and a statement of actuarial opinion, signed by a qualified actuary, that all applicable requirements of section 806 are or will be met in accordance with regulations which the applicable authority shall prescribe.

''(B) ADEQUACY OF CONTRIBUTION RATES.—A statement of actuarial opinion, signed by a

qualified actuary, which sets forth a description of the extent to which contribution rates are adequate to provide for the payment of all obligations and the maintenance of required reserves under the plan for the 12-month period beginning with such date within such 120-day period, taking into account the expected coverage and experience of the plan. If the contribution rates are not fully adequate, the statement of actuarial opinion shall indicate the extent to which the rates are inadequate and the changes needed to ensure adequacy.

''(C) CURRENT AND PROJECTED VALUE OF ASSETS AND LIABILITIES.—A statement of actuarial opinion signed by a qualified actuary, which sets forth the current value of the assets and liabilities accumulated under the plan and a projection of the assets, liabilities, income, and expenses of the plan for the 12-month period referred to in subparagraph (B). The income statement shall identify separately the plan's administrative expenses and claims.

''(D) COSTS OF COVERAGE TO BE CHARGED AND OTHER EXPENSES.—A statement of the costs of coverage to be charged, including an itemization of amounts for administration, reserves, and other expenses associated with the operation of the plan.

''(E) OTHER INFORMATION.—Any other information as may be determined by the applicable authority, by regulation, as necessary to carry out the purposes of this part.

''(c) FILING NOTICE OF CERTIFICATION WITH STATES.—A certification granted under this part to an association health plan shall not be effective unless written notice of such certification is filed with the applicable State authority of each State in which at least 25 percent of the participants and beneficiaries under the plan are located. For purposes of this subsection, an individual shall be considered to be located in the State in which a known address of such individual is located or in which such individual is employed.

''(d) NOTICE OF MATERIAL CHANGES.—In the case of any association health plan certified under this part, descriptions of material changes in any information which was required to be submitted with the application for the certification under this part shall be filed in such form and manner as shall be prescribed by the applicable authority by regulation. The applicable authority may require by regulation prior notice of material changes with respect to specified matters which might serve as the basis for suspension or revocation of the certification.

''(e) REPORTING REQUIREMENTS FOR CERTAIN ASSOCIATION HEALTH PLANS.—An association health plan certified under this part which provides benefit options in addition to health insurance coverage for such plan year shall meet the requirements of section 103 by filing an annual report under such section which shall include information described in subsection (b)(6) with respect to the plan year and, notwithstanding section 104(a)(1)(A), shall be filed with the applicable authority not later than 90 days after the close of the plan year (or on such later date as may be prescribed by the applicable authority). The applicable authority may require by regulation such interim reports as it considers appropriate.

''(f) ENGAGEMENT OF QUALIFIED ACTUARY.—The board of trustees of each association health plan which provides benefits options in addition to health insurance coverage and which is applying for certification under this part or is certified under this part shall engage, on behalf of all participants and beneficiaries, a qualified actuary who shall be responsible for the preparation of the materials comprising information necessary to be submitted by a qualified actuary under this part. The qualified actuary shall utilize such assumptions and techniques as are necessary to enable such actuary to form an opinion as to whether the contents of the matters reported under this part—

''(1) are in the aggregate reasonably related to the experience of the plan and to reasonable expectations; and

''(2) represent such actuary's best estimate of anticipated experience under the plan.

The opinion by the qualified actuary shall be made with respect to, and shall be made a part of, the annual report.

''SEC. 808. NOTICE REQUIREMENTS FOR VOLUNTARY TERMINATION.

''Except as provided in section 809(b), an association health plan which is or has been certified under this part may terminate (upon or at any time after cessation of accruals in benefit liabilities) only if the board of trustees, not less than 60 days before the proposed termination date—

''(1) provides to the participants and beneficiaries a written notice of intent to terminate stating that such termination is intended and the proposed termination date;

''(2) develops a plan for winding up the affairs of the plan in connection with such termination in a manner which will result in timely payment of all benefits for which the plan is obligated; and

''(3) submits such plan in writing to the applicable authority.

Actions required under this section shall be taken in such form and manner as may be prescribed by the applicable authority by regulation.

''SEC. 809. CORRECTIVE ACTIONS AND MANDATORY TERMINATION.

''(a) ACTIONS TO AVOID DEPLETION OF RESERVES.—An association health plan which is certified under this part and which provides benefits other than health insurance coverage shall continue to meet the requirements of section 806, irrespective of whether such certification continues in effect. The board of trustees of such plan shall determine quarterly whether the requirements of section 806 are met. In any case in which the board determines that there is reason to believe that there is or will be a failure to meet such requirements, or the applicable authority makes such a determination and so notifies the board, the board shall immediately notify the qualified actuary engaged by the plan, and such actuary shall, not later than the end of the next following month, make such recommendations to the board for corrective action as the actuary determines necessary to ensure compliance with section 806. Not later than 30 days after receiving from the actuary recommendations for corrective actions, the board shall notify the applicable authority (in such form and manner as the applicable authority may prescribe by regulation) of such recommendations of the actuary for corrective action, together with a description of the actions (if any) that the board has taken or plans to take in response to such recommendations. The board shall thereafter report to the applicable authority, in such form and frequency as the applicable authority may specify to the board, regarding corrective action taken by the board until the requirements of section 806 are met.

''(b) MANDATORY TERMINATION.—In any case in which—

''(1) the applicable authority has been notified under subsection (a) (or by an issuer of excess /stop loss insurance or indemnity insurance pursuant to section 806(a)) of a failure of an association health plan which is or has been certified under this part and is described in section 806(a)(2) to meet the requirements of section 806 and has not been notified by the board of trustees of the plan that corrective action has restored compliance with such requirements; and

''(2) the applicable authority determines that there is a reasonable expectation that the plan will continue to fail to meet the requirements of section 806, the board of trustees of the plan shall, at the direction of the applicable authority, terminate the plan and, in the course of the termination, take such actions as the applicable authority may require, including satisfying any claims referred to in section 806(a)(2)(B)(iii) and recovering for the plan any liability under subsection (a)(2)(B)(iii) or (e) of section 806, as necessary to ensure that the affairs of the plan will be, to the maximum extent possible, wound up in a manner which will result in timely provision of all benefits for which the plan is obligated.

''SEC. 810. TRUSTEESHIP BY THE SECRETARY OF INSOLVENT ASSOCIATION HEALTH PLANS PROVIDING HEALTH BENEFITS IN ADDITION TO HEALTH INSURANCE COVERAGE.

''(a) APPOINTMENT OF SECRETARY AS TRUSTEE FOR INSOLVENT PLANS.—Whenever the Secretary determines that an association health plan which is or has been certified under this part and which is described in section 806(a)(2) will be unable to provide benefits when due or is otherwise in a financially hazardous condition, as shall be defined by the Secretary by regulation, the Secretary shall, upon notice to the plan, apply to the appropriate United States district court for appointment of the Secretary as trustee to administer the plan for the duration of the insolvency. The plan may appear as a party and other interested persons may intervene in the proceedings at the discretion of the court. The court shall appoint such Secretary trustee if the court determines that the trusteeship is necessary to protect the interests of the participants and beneficiaries or providers of medical care or to avoid any unreasonable deterioration of the financial condition of the plan. The trusteeship of such Secretary shall continue until the conditions described in the first sentence of this subsection are remedied or the plan is terminated.

''(b) POWERS AS TRUSTEE.—The Secretary, upon appointment as trustee under subsection (a), shall have the power—

''(1) to do any act authorized by the plan, this title, or other applicable provisions of law to be done by the plan administrator or any trustee of the plan;

''(2) to require the transfer of all (or any part) of the assets and records of the plan to the Secretary as trustee;

''(3) to invest any assets of the plan which the Secretary holds in accordance with the provisions of the plan, regulations prescribed by the Secretary, and applicable provisions of law;

''(4) to require the sponsor, the plan administrator, any participating employer, and any employee organization representing plan participants to furnish any information with respect to the plan which the Secretary as trustee may reasonably need in order to administer the plan;

''(5) to collect for the plan any amounts due the plan and to recover reasonable expenses of the trusteeship;

''(6) to commence, prosecute, or defend on behalf of the plan any suit or proceeding involving the plan;

''(7) to issue, publish, or file such notices, statements, and reports as may be required by the Secretary by regulation or required by any order of the court;

''(8) to terminate the plan (or provide for its termination in accordance with section 809(b)) and liquidate the plan assets, to restore the plan to the responsibility of the sponsor, or to continue the trusteeship;

''(9) to provide for the enrollment of plan participants and beneficiaries under appropriate coverage options; and

''(10) to do such other acts as may be necessary to comply with this title or any order of the court and to protect the interests of plan participants and beneficiaries and providers of medical care.

''(c) NOTICE OF APPOINTMENT.—As soon as practicable after the Secretary's appointment as trustee, the Secretary shall give notice of such appointment to—

''(1) the sponsor and plan administrator;

''(2) each participant;

''(3) each participating employer; and

''(4) if applicable, each employee organization which, for purposes of collective bargaining, represents plan participants.

''(d) ADDITIONAL DUTIES.—Except to the extent inconsistent with the provisions of this title, or as may be otherwise ordered by the court, the Secretary, upon appointment as trustee under this section, shall be subject to the same duties as those of a trustee under section 704 of title 11, United States Code, and shall have the duties of a fiduciary for purposes of this title.

''(e) OTHER PROCEEDINGS.—An application by the Secretary under this subsection may be filed notwithstanding the pendency in the same or any other court of any bankruptcy, mortgage foreclosure, or equity receivership proceeding, or any proceeding to reorganize, conserve, or liquidate such plan or its property, or any proceeding to enforce a lien against property of the plan.

''(f) JURISDICTION OF COURT.—

''(1) IN GENERAL.—Upon the filing of an application for the appointment as trustee or the issuance of a decree under this section, the court to which the application is made shall have exclusive jurisdiction of the plan involved and its property wherever located with the powers, to the extent consistent with the purposes of this section, of a court of the United States having jurisdiction over cases under chapter 11 of title 11, United States Code. Pending an adjudication under this section such court shall stay, and upon appointment by it of the Secretary as trustee, such court shall continue the stay of, any pending mortgage foreclosure, equity receivership, or other proceeding to reorganize, conserve, or liquidate the plan, the sponsor, or property of such plan or sponsor, and any other suit against any receiver, conservator, or trustee of the plan, the sponsor, or property of the plan or sponsor. Pending such adjudication and upon the appointment by it of the Secretary as trustee, the court may stay any proceeding to enforce a lien against property of the plan or the sponsor or any other suit against the plan or the sponsor.

''(2) VENUE.—An action under this section may be brought in the judicial district where the sponsor or the plan administrator resides or does business or where any asset of the plan is situated. A district court in which such action is brought may issue process with respect to such action in any other judicial district.

''(g) PERSONNEL.—In accordance with regulations which shall be prescribed by the Secretary, the Secretary shall appoint, retain, and compensate accountants, actuaries, and other professional service personnel as may be necessary in connection with the Secretary's service as trustee under this section.

''SEC. 811. STATE ASSESSMENT AUTHORITY.

''(a) IN GENERAL.—Notwithstanding section 514, a State may impose by law a contribution tax on an association health plan described in section 806(a)(2), if the plan commenced operations in such State after the date of the enactment of the Small Business Health Fairness Act of 2005.

''(b) CONTRIBUTION TAX.—For purposes of this section, the term 'contribution tax' imposed by a State on an association health plan means any tax imposed by such State if—

''(1) such tax is computed by applying a rate to the amount of premiums or contributions, with respect to individuals covered under the plan who are residents of such State, which are received by the plan from participating employers located in such State or from such individuals;

''(2) the rate of such tax does not exceed the rate of any tax imposed by such State on premiums or contributions received by insurers or health maintenance organizations for health insurance coverage offered in such State in connection with a group health plan;

''(3) such tax is otherwise nondiscriminatory; and

''(4) the amount of any such tax assessed on the plan is reduced by the amount of any tax or assessment otherwise imposed by the State on premiums, contributions, or both received by insurers or health maintenance organizations for health insurance coverage, aggregate excess /stop loss insurance (as defined in section 806(g)(1)), specific excess /stop loss insurance (as defined in section 806(g)(2)), other insurance related to the provision of medical care under the plan, or any combination thereof provided by such insurers or health maintenance organizations in such State in connection with such plan.

''SEC. 812. DEFINITIONS AND RULES OF CONSTRUCTION.

''(a) DEFINITIONS.—For purposes of this part—

''(1) GROUP HEALTH PLAN.—The term 'group health plan' has the meaning provided in section 733(a)(1) (after applying subsection (b) of this section).

''(2) MEDICAL CARE.—The term 'medical care' has the meaning provided in section 733(a)(2).

''(3) HEALTH INSURANCE COVERAGE.—The term 'health insurance coverage' has the meaning provided in section 733(b)(1).

''(4) HEALTH INSURANCE ISSUER.—The term 'health insurance issuer' has the meaning provided in section 733(b)(2).

''(5) APPLICABLE AUTHORITY.—The term 'applicable authority' means the Secretary, except that, in connection with any exercise of the Secretary's authority regarding which the Secretary is required under section 506(d) to consult with a State, such term means the Secretary, in consultation with such State.

''(6) HEALTH STATUS-RELATED FACTOR.—The term 'health status-related factor' has the meaning provided in section 733(d)(2).

''(7) INDIVIDUAL MARKET.—

''(A) IN GENERAL.—The term 'individual market' means the market for health insurance coverage offered to individuals other than in connection with a group health plan.

''(B) TREATMENT OF VERY SMALL GROUPS.—

''(i) IN GENERAL.—Subject to clause (ii), such term includes coverage offered in connection with a group health plan that has fewer than 2 participants as current employees or participants described in section 732(d)(3) on the first day of the plan year.

''(ii) STATE EXCEPTION.—Clause (i) shall not apply in the case of health insurance coverage offered in a State if such State regulates the coverage described in such clause in the same manner and to the same extent as coverage in the small group market (as defined in section 2791(e)(5) of the Public Health Service Act) is regulated by such State.

''(8) PARTICIPATING EMPLOYER.—The term 'participating employer' means, in connection with an association health plan, any employer, if any individual who is an employee of such employer, a partner in such employer, or a self-employed individual who is such employer (or any dependent, as defined under the terms of the plan, of such individual) is or was covered under such plan in connection with the status of such individual as such an employee, partner, or self-employed individual in relation to the plan.

''(9) APPLICABLE STATE AUTHORITY.—The term 'applicable State authority' means, with respect to a health insurance issuer in a State, the State insurance commissioner or official or officials designated by the State to enforce the requirements of title XXVII of the Public Health Service Act for the State involved with respect to such issuer.

''(10) QUALIFIED ACTUARY.—The term 'qualified actuary' means an individual who is a member of the American Academy of Actuaries.

''(11) AFFILIATED MEMBER.—The term 'affiliated member' means, in connection with a sponsor—

''(A) a person who is otherwise eligible to be a member of the sponsor but who elects an affiliated status with the sponsor,

''(B) in the case of a sponsor with members which consist of associations, a person who is a member of any such association and elects an affiliated status with the sponsor, or

''(C) in the case of an association health plan in existence on the date of the enactment of the Small Business Health Fairness Act of 2005, a person eligible to be a member of the sponsor or one of its member associations.

''(12) LARGE EMPLOYER.—The term 'large employer' means, in connection with a group health plan with respect to a plan year, an employer who employed an average of at least 51 employees on business days during the preceding calendar year and who employs at least 2 employees on the first day of the plan year.

''(13) SMALL EMPLOYER.—The term 'small employer' means, in connection with a group health plan with respect to a plan year, an employer who is not a large employer.

''(b) RULES OF CONSTRUCTION.—

''(1) EMPLOYERS AND EMPLOYEES.—For purposes of determining whether a plan, fund, or program is an employee welfare benefit plan which is an association health plan, and for purposes of applying this title in connection with such plan, fund, or program so determined to be such an employee welfare benefit plan—

''(A) in the case of a partnership, the term 'employer' (as defined in section 3(5)) includes the partnership in relation to the partners, and the term 'employee' (as defined in section 3(6)) includes any partner in relation to the partnership; and

''(B) in the case of a self-employed individual, the term 'employer' (as defined in section 3(5)) and the term 'employee' (as defined in section 3(6)) shall include such individual.

''(2) PLANS, FUNDS, AND PROGRAMS TREATED AS EMPLOYEE WELFARE BENEFIT PLANS.—In the case of any plan, fund, or program which was established or is maintained for the purpose of providing medical care (through the purchase of insurance or otherwise) for employees (or their dependents) covered thereunder and which demonstrates to the Secretary that all requirements for certification under this part would be met with respect to such plan, fund, or program if such plan, fund, or program were a group health plan, such plan, fund, or program shall be treated for purposes of this title as an employee welfare benefit plan on and after the date of such demonstration.''.

(b) CONFORMING AMENDMENTS TO PREEMPTION RULES.—

(1) Section 514(b)(6) of such Act (29 U.S.C. 1144(b)(6)) is amended by adding at the end the following new subparagraph:

''(E) The preceding subparagraphs of this paragraph do not apply with respect to any State law in the case of an association health plan which is certified under part 8.''.

(2) Section 514 of such Act (29 U.S.C. 1144) is amended—

(A) in subsection (b)(4), by striking ''Subsection (a)'' and inserting ''Subsections (a) and (d)'';

(B) in subsection (b)(5), by striking ''subsection (a)'' in subparagraph (A) and inserting ''subsection (a) of this section and subsections (a)(2)(B) and (b) of section 805'', and by striking ''subsection (a)'' in subparagraph (B) and inserting ''subsection (a) of this section or subsection (a)(2)(B) or (b) of section 805'';

(C) by redesignating subsection (d) as subsection (e); and

(D) by inserting after subsection (c) the following new subsection:

''(d)(1) Except as provided in subsection (b)(4), the provisions of this title shall supersede any and all State laws insofar as they may now or hereafter preclude, or have the effect of precluding, a health insurance issuer from offering health insurance coverage in connection with an association health plan which is certified under part 8.

''(2) Except as provided in paragraphs (4) and (5) of subsection (b) of this section—

''(A) In any case in which health insurance coverage of any policy type is offered under an association health plan certified under part 8 to a participating employer operating in such State, the provisions of this title shall supersede any and all laws of such State insofar as they may preclude a health insurance issuer from offering health insurance coverage of the same policy type to other employers operating in the State which are eligible for coverage under such association health plan, whether or not such other employers are participating employers in such plan.

''(B) In any case in which health insurance coverage of any policy type is offered in a State under an association health plan certified under part 8 and the filing, with the applicable State authority (as defined in section 812(a)(9)), of the policy form in connection with such policy type is approved by such State authority, the provisions of this title shall supersede any and all laws of any other State in which health insurance coverage of such type is offered, insofar as they may preclude, upon the filing in the same form and manner of such policy form with the applicable State authority in such other State, the approval of the filing in such other State.

''(3) Nothing in subsection (b)(6)(E) or the preceding provisions of this subsection shall be construed, with respect to health insurance issuers or health insurance coverage, to supersede or impair the law of any State—

''(A) providing solvency standards or similar standards regarding the adequacy of insurer capital, surplus, reserves, or contributions, or

''(B) relating to prompt payment of claims.

''(4) For additional provisions relating to association health plans, see subsections (a)(2)(B) and (b) of section 805.

''(5) For purposes of this subsection, the term 'association health plan' has the meaning provided in section 801(a), and the terms 'health insurance coverage', 'participating employer', and 'health insurance issuer' have the meanings provided such terms in section 812, respectively.''.

(3) Section 514(b)(6)(A) of such Act (29 U.S.C. 1144(b)(6)(A)) is amended—

(A) in clause (i)(II), by striking ''and'' at the end;

(B) in clause (ii), by inserting ''and which does not provide medical care (within the meaning of section 733(a)(2)),'' after ''arrangement,'', and by striking ''title.'' and inserting ''title, and''; and

(C) by adding at the end the following new clause:

''(iii) subject to subparagraph (E), in the case of any other employee welfare benefit plan which is a multiple employer welfare arrangement and which provides medical care (within the meaning of section 733(a)(2)), any law of any State which regulates insurance may apply.''.

(4) Section 514(e) of such Act (as redesignated by paragraph (2)(C)) is amended—

(A) by striking ''Nothing'' and inserting ''(1) Except as provided in paragraph (2), nothing''; and

(B) by adding at the end the following new paragraph:

''(2) Nothing in any other provision of law enacted on or after the date of the enactment of the Small Business Health Fairness Act of 2005 shall be construed to alter, amend, modify, invalidate, impair, or supersede any provision of this title, except by specific cross-reference to the affected section.''.

(c) PLAN SPONSOR.—Section 3(16)(B) of such Act (29 U.S.C. 102(16)(B)) is amended by adding at the end the following new sentence: ''Such term also includes a person serving as the sponsor of an association health plan under part 8.''.

(d) DISCLOSURE OF SOLVENCY PROTECTIONS RELATED TO SELF-INSURED AND FULLY INSURED OPTIONS UNDER ASSOCIATION HEALTH PLANS.—Section 102(b) of such Act (29 U.S.C. 102(b)) is amended by adding at the end the following: ''An association health plan shall include in its summary plan description, in connection with each benefit option, a description of the form of solvency or guarantee fund protection secured pursuant to this Act or applicable State law, if any.''.

(e) SAVINGS CLAUSE.—Section 731(c) of such Act is amended by inserting ''or part 8'' after ''this part''.

(f) REPORT TO CONGRESS REGARDING CERTIFICATION OF SELF-INSURED ASSOCIATION HEALTH PLANS.—Not later than January 1, 2010, the Secretary of Labor shall report to the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and the Workforce of the House of Representatives the effect association health plans have had, if any, on reducing the number of uninsured individuals.

(g) CLERICAL AMENDMENT.—The table of contents in section 1 of the Employee Retirement Income Security Act of 1974 is amended by inserting after the item relating to section 734 the following new items:

''PART 8—RULES GOVERNING ASSOCIATION HEALTH PLANS

''801. Association health plans.
''802. Certification of association health plans.
''803. Requirements relating to sponsors and boards of trustees.
''804. Participation and coverage requirements.
''805. Other requirements relating to plan documents, contribution rates, and benefit options.
''806. Maintenance of reserves and provisions for solvency for plans providing health benefits in addition to health insurance coverage.
''807. Requirements for application and related requirements.
''808. Notice requirements for voluntary termination.
''809. Corrective actions and mandatory termination.
''810. Trusteeship by the Secretary of insolvent association health plans providing health benefits in addition to health insurance coverage.
''811. State assessment authority.
''812. Definitions and rules of construction.''.

SEC. 3. CLARIFICATION OF TREATMENT OF SINGLE EMPLOYER ARRANGEMENTS.

Section 3(40)(B) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(40)(B)) is amended—

(1) in clause (i), by inserting after ''control group,'' the following: ''except that, in any case in which the benefit referred to in subparagraph (A) consists of medical care (as defined in section 812(a)(2)), 2 or more trades or businesses, whether or not incorporated, shall be deemed a single employer for any plan year of such plan, or any fiscal year of such other arrangement, if such trades or businesses are within the same control group during such year or at any time during the preceding 1-year period,'';

(2) in clause (iii), by striking ''(iii) the determination'' and inserting the following:

''(iii)(I) in any case in which the benefit referred to in subparagraph (A) consists of medical care (as defined in section 812(a)(2)), the determination of whether a trade or business is under 'common control' with another trade or business shall be determined under regulations of the Secretary applying principles consistent and coextensive with the principles applied in determining whether employees of 2 or more trades or businesses are treated as employed by a single employer under section 4001(b), except that, for purposes of this paragraph, an interest of greater than 25 percent may not be required as the minimum interest necessary for common control, or

''(II) in any other case, the determination'';

(3) by redesignating clauses (iv) and (v) as clauses (v) and (vi), respectively; and

(4) by inserting after clause (iii) the following new clause:

''(iv) in any case in which the benefit referred to in subparagraph (A) consists of medical care (as defined in section 812(a)(2)), in determining, after the application of clause (i), whether benefits are provided to employees of 2 or more employers, the arrangement shall be treated as having only one participating employer if, after the application of clause (i), the number of individuals who are employees and former employees of any one participating employer and who are covered under the arrangement is greater than 75 percent of the aggregate number of all individuals who are employees or former employees of participating employers and who are covered under the arrangement,''.

SEC. 4. ENFORCEMENT PROVISIONS RELATING TO ASSOCIATION HEALTH PLANS.

(a) CRIMINAL PENALTIES FOR CERTAIN WILLFUL MISREPRESENTATIONS.—Section 501 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1131) is amended—

(1) by inserting ''(a)'' after ''Sec. 501.''; and

(2) by adding at the end the following new subsection:

''(b) Any person who willfully falsely represents, to any employee, any employee's beneficiary, any employer, the Secretary, or any State, a plan or other arrangement established or maintained for the purpose of offering or providing any benefit described in section 3(1) to employees or their beneficiaries as—

''(1) being an association health plan which has been certified under part 8;

''(2) having been established or maintained under or pursuant to one or more collective bargaining agreements which are reached pursuant to collective bargaining described in section 8(d) of the National Labor Relations Act (29 U.S.C. 158(d)) or paragraph Fourth of section 2 of the Railway Labor Act (45 U.S.C. 152, paragraph Fourth) or which

are reached pursuant to labor-management negotiations under similar provisions of State public employee relations laws; or

''(3) being a plan or arrangement described in section 3(40)(A)(i), shall, upon conviction, be imprisoned not more than 5 years, be fined under title 18, United States Code, or both.''.

(b) CEASE ACTIVITIES ORDERS.—Section 502 of such Act (29 U.S.C. 1132) is amended by adding at the end the following new subsection:

''(n) ASSOCIATION HEALTH PLAN CEASE AND DESIST ORDERS.—

''(1) IN GENERAL.—Subject to paragraph (2), upon application by the Secretary showing the operation, promotion, or marketing of an association health plan (or similar arrangement providing benefits consisting of medical care (as defined in section 733(a)(2))) that—

''(A) is not certified under part 8, is subject under section 514(b)(6) to the insurance laws of any State in which the plan or arrangement offers or provides benefits, and is not licensed, registered, or otherwise approved under the insurance laws of such State; or

''(B) is an association health plan certified under part 8 and is not operating in accordance with the requirements under part 8 for such certification, a district court of the United States shall enter an order requiring that the plan or arrangement cease activities.

''(2) EXCEPTION.—Paragraph (1) shall not apply in the case of an association health plan or other arrangement if the plan or arrangement shows that—

''(A) all benefits under it referred to in paragraph (1) consist of health insurance coverage; and

''(B) with respect to each State in which the plan or arrangement offers or provides benefits, the plan or arrangement is operating in accordance with applicable State laws that are not superseded under section 514.

''(3) ADDITIONAL EQUITABLE RELIEF.—The court may grant such additional equitable relief, including any relief available under this title, as it deems necessary to protect the interests of the public and of persons having claims for benefits against the plan.''.

(c) RESPONSIBILITY FOR CLAIMS PROCEDURE.—Section 503 of such Act (29 U.S.C. 1133) is amended by inserting ''(a) IN GENERAL.—'' before ''In accordance'', and by adding at the end the following new subsection:

''(b) ASSOCIATION HEALTH PLANS.—The terms of each association health plan which is or has been certified under part 8 shall require the board of trustees or the named fiduciary (as applicable) to ensure that the requirements of this section are met in connection with claims filed under the plan.''.

SEC. 5. COOPERATION BETWEEN FEDERAL AND STATE AUTHORITIES.

Section 506 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1136) is amended by adding at the end the following new subsection:

''(d) CONSULTATION WITH STATES WITH RESPECT TO ASSOCIATION HEALTH PLANS.—

''(1) AGREEMENTS WITH STATES.—The Secretary shall consult with the State recognized under paragraph (2) with respect to an association health plan regarding the exercise of—

''(A) the Secretary's authority under sections 502 and 504 to enforce the requirements for certification under part 8; and

''(B) the Secretary's authority to certify association health plans under part 8 in accordance with regulations of the Secretary applicable to certification under part 8.

''(2) RECOGNITION OF PRIMARY DOMICILE STATE.—In carrying out paragraph (1), the Secretary shall ensure that only one State will be recognized, with respect to any particular association health plan, as the State with which consultation is required. In carrying out this paragraph—

''(A) in the case of a plan which provides health insurance coverage (as defined in section 812(a)(3)), such State shall be the State with which filing and approval of a policy type offered by the plan was initially obtained, and

''(B) in any other case, the Secretary shall take into account the places of residence of the participants and beneficiaries under the plan and the State in which the trust is maintained.''.

SEC. 6. EFFECTIVE DATE AND TRANSITIONAL AND OTHER RULES.

(a) EFFECTIVE DATE.—The amendments made by this Act shall take effect one year after the date of the enactment of this Act. The Secretary of Labor shall first issue all regulations necessary to carry out the amendments made by this Act within one year after the date of the enactment of this Act.

(b) TREATMENT OF CERTAIN EXISTING HEALTH BENEFITS PROGRAMS.—

(1) IN GENERAL.—In any case in which, as of the date of the enactment of this Act, an arrangement is maintained in a State for the purpose of providing benefits consisting of medical care for the employees and beneficiaries of its participating employers, at least 200 participating employers make contributions to such arrangement, such arrangement has been in existence for at least 10 years, and such arrangement is licensed under the laws of one or more States to provide such benefits to its participating employers, upon the filing with the applicable authority (as defined in section 812(a)(5) of the Employee Retirement Income Security Act of 1974 (as amended by this subtitle)) by the arrangement of an application for certification of the arrangement under part 8 of subtitle B of title I of such Act—

(A) such arrangement shall be deemed to be a group health plan for purposes of title I of such Act;

(B) the requirements of sections 801(a) and 803(a) of the Employee Retirement Income Security Act of 1974 shall be deemed met with respect to such arrangement;

(C) the requirements of section 803(b) of such Act shall be deemed met, if the arrangement is operated by a board of directors which—

(i) is elected by the participating employers, with each employer having one vote; and

(ii) has complete fiscal control over the arrangement and which is responsible for all operations of the arrangement;

(D) the requirements of section 804(a) of such Act shall be deemed met with respect to such arrangement; and

(E) the arrangement may be certified by any applicable authority with respect to its operations in any State only if it operates in such State on the date of certification.

The provisions of this subsection shall cease to apply with respect to any such arrangement at such time after the date of the enactment of this Act as the applicable requirements of this subsection are not met with respect to such arrangement.

(2) DEFINITIONS.—For purposes of this subsection, the terms ''group health plan'', ''medical care'', and ''participating employer'' shall have the meanings provided in section 812 of the Employee Retirement Income Security Act of 1974, except that the reference in paragraph (7) of such section to an ''association health plan'' shall be deemed a reference to an arrangement referred to in this subsection.

Mr. BOND. Mr. President, with approximately 45 million uninsured Americans, expanding access to quality, affordable health care should be a top priority for the Senate. We hear about the cost explosion that insurance companies are imposing on small businesses and how small business owners are now finding it virtually impossible to provide the health insurance coverage that they, as well as their employees, need. No one is harder hit by large premium increases than small business—studies indicate more than 60 percent of these uninsured Americans either work for a small business or are dependent upon someone who does. As health care costs skyrocket and place more and more small business employees in jeopardy of losing their health benefits, it becomes more important that Congress turn its attention to the uninsured and act in a swift and bipartisan manner to address this problem.

Today we are here to offer hope to the millions of uninsured. Today we are here to talk about a solution that can help millions of small business employees access the same type of health care that their counterparts in large corporations and unions already enjoy.

The solution to this problem is to allow small businesses across the country to pool together and access health insurance through their membership with a bona fide trade or professional organization. This will provide small businesses the same opportunities as other large insurance purchasers. These Association Health Plans, AHPs, would reduce costs through greater economies of scale to spread costs and risk, increase group bargaining power with large insurance companies, and generate more insurance options for small businesses.

AHPs are not a new idea. They have been talked about, bandied about, argued about and compromised about for almost a decade. And during that period, what was once thought to be a manageable problem—became the crisis that we have today. Had we passed AHP legislation, we would not be seeing the problems we see today for small business.

The principle underpinning AHPs is simple. This is the same principle that makes it cheaper to buy your soda by the case instead of by individual cans. Bulk purchasing is why large companies and unions can get better rates for their employees than small businesses and it is about time that we bring Fortune 500 style health benefits to the Nation's Main Street small businesses and their employees.

In the words of President Bush, ''It makes no sense in America, to isolate small businesses as little health care islands unto themselves.'' AHPs will mean more coverage for the employees of these companies, especially their families and children.

It is time that we take control and find a way to curtail the explosive costs of health care. Small businesses deserve a chance to channel these funds toward other needs, such as expanding and creating more jobs for the

economy. Association Health Plans will level the playing field and break down the barriers that prevent small businesses from providing health insurance.

I commend Senator SNOWE for taking the lead on this critical issue and for using her position as chairwomen of the Small Business Committee to advance the number one health care priority of the small business community. With the support of President Bush, the Department of Labor, the Small Business Administration, and a broad and diverse coalition of over 100 groups, I hope that this bill will more quickly.

For the sake of small businesses throughout this country, their employees, and their families we must pass AHP legislation. We must bring fortune 500 health care to small business. The time to act is now. I thank Senators SNOWE and TALENT for their leadership, dedication and commitment on behalf of small business, and I look forward to working with them to pass Association Health Plans legislation in the Senate.

By Mr. DEWINE (for himself, Mr. DODD, Mr. HAGEL, Mr. WARNER, Mr. CORZINE, Mr. LIEBERMAN, Mr. LAUTENBERG, Ms. LANDRIEU, Mr. JEFFORDS, and Mr. SALAZAR):

S. 408. A bill to provide for programs and activities with respect to the prevention of underage drinking; to the Committee on Health, Education, Labor, and Pensions.

Mr. DEWINE. Mr. President, I rise today, along with my good friend and colleague Senator DODD, to reintroduce the Sober Truth on Preventing Underage Drinking Act—also known as the STOP Underage Drinking Act. I thank Senator DODD for his commitment to this issue, as well as our colleagues on the House side—Representatives ROYBAL-ALLARD, WOLF, OSBORNE, DELAURO, and WAMP for working so diligently with us to draft this bill. It is a good bill—a carefully crafted, bipartisan, bi-cameral piece of legislation.

I also want to thank the additional Senate co-sponsors of this legislation—Senators HAGEL, WARNER, LIEBERMAN, LAUTENBERG, LANDRIEU, CORZINE, JEFFORDS, and SALAZAR. I thank them for their support. They know that underage drinking is a serious, and often deadly, problem for our Nation's children and youth and that we have to do something about it.

In September 2003, I chaired a HELP Subcommittee hearing about underage drinking. As we discussed at that hearing, it is well known that underage drinking is a significant problem for youth in this country. We've known that for a very long time.

We know that underage drinking often contributes to the four leading causes of deaths among 15 to 20 year olds—that 69 percent of youths who died in alcohol-related traffic fatalities in the year 2000 involved young drinking drivers and that in 1999, nearly 40 percent of people under the age of 21 who were victims of drownings, burns, and falls tested positive for alcohol. We also know that alcohol has been reported to be involved in 36 percent of homicides, 12 percent of male suicides, and 8 percent of female suicides involving people under 21.

How did we get here. These statistics are frightening. Too many American kids are drinking regularly, and they are drinking in quantities that can be of great, long-term harm. As a nation, we clearly haven't done enough to address this problem. We haven't done enough to acknowledge how prevalent and widespread teenage drinking is in this country. We haven't done enough to let parents know that they, too, are a part of this problem and can be a part of the solution.

We talk about drugs and the dangers of drug use, as we should, but the reality is that we, as a society, have become complacent about the problem of underage drinking. This has to change. The culture has to change.

One way to begin changing this culture is with the STOP Underage Drinking Act. Our legislation has four major areas of policy development:

First, there is a federal coordination and reporting provision. This title would create an Interagency Coordinating Committee to coordinate the efforts and expertise of various federal agencies to combat underage drinking. It would be chaired by the Secretary of Health and Human Services and would include other agencies and departments, such as the Department of Education, the Office of Juvenile Justice and Delinquency Prevention, and the Federal Trade Commission. This title also would mandate an annual report to Congress from the Interagency Committee on their efforts to combat underage drinking, as well as an annual report card on State efforts to combat the problem. Two million dollars annually would be appropriated under this section.

Second, the bill contains an authorization for an adult-oriented national media campaign against underage drinking. This title would provide $1 million in fiscal years 2006 and 2007 to authorize a national media campaign for which the Ad Council has received start up funding. The campaign is expected to launch in August of this year.

Third, the bill would support new intervention programs to prevent underage drinking. This section of the bill would provide $5 million for enhancement grants to the Drug Free Communities program to be directed at the problem of underage drinking. This title also would create a program which would provide competitive grants to states, non-profit entities, and institutions of higher education to create state-wide coalitions to prevent underage drinking. These grants will work to change the culture of underage drinking at our Nation's institutions of higher education and their surrounding communities. This program would be funded at $5 million annually, as well.

Finally, our bill contains a section devoted to research. This title would provide $6 million for increased federal research and data collection on underage drinking, including reporting on the types and brands of alcohol that kids use and the short-term and long-term impacts of underage drinking upon adolescent brain development.

Again, I thank Senator DODD for working with me on this issue here in the Senate, and I look forward to continuing to work with my colleagues in the House and Senate to pass this very important bill.

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. 408

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 ''Sober Truth on Preventing Underage Drinking Act'', or the ''STOP Underage Drinking Act''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 3. Definitions.
TITLE I—SENSE OF CONGRESS
Sec. 101. Sense of Congress.
TITLE II—INTERAGENCY COORDINATING COMMITTEE; ANNUAL REPORT CARD
Sec. 201. Establishment of interagency coordinating committee to prevent underage drinking.
Sec. 202. Annual report card.
Sec. 203. Authorization of appropriations.
TITLE III—NATIONAL MEDIA CAMPAIGN
Sec. 301. National media campaign to prevent underage drinking.
TITLE IV—INTERVENTIONS
Sec. 401. Community-based coalition enhancement grants to prevent underage drinking.
Sec. 402. Grants directed at reducing higher-education alcohol abuse.
TITLE V—ADDITIONAL RESEARCH
Sec. 501. Additional research on underage drinking.
Sec. 502. Authorization of appropriations.

SEC. 2. FINDINGS.

The Congress finds as follows:

(1) Drinking alcohol under the age of 21 is illegal in each of the 50 States and the District of Columbia. Enforcement of current laws and regulations in States and communities, such as minimum age drinking laws, zero tolerance laws, and laws and regulations which restrict availability of alcohol, must supplement other efforts to reduce underage drinking.

(2) Data collected annually by the Department of Health and Human Services shows that alcohol is the most heavily used drug by children in the United States, and that—

(A) more youths consume alcoholic beverages than use tobacco products or illegal drugs;

(B) by the end of the eighth grade, 45.6 percent of children have engaged in alcohol use,

and by the end of high school, 76.6 percent have done so; and

(C) the annual societal cost of underage drinking is estimated at $53 to $58 billion.

(3) Data collected by the Department of Health and Human Services and the Department of Transportation indicate that alcohol use by youth has many negative consequences, such as immediate risk from acute impairment; traffic fatalities; violence; suicide; and unprotected sex.

(4) Research confirms that the harm caused by underage drinking lasts beyond the underage years. Compared to persons who wait until age 21 or older to start drinking, those who start to drink before age 14 are, as adults, four times more likely to become alcohol dependent; seven times more likely to be in a motor vehicle crash because of drinking; and more likely to suffer mental and physical damage from alcohol abuse.

(5) Alcohol abuse creates long-term risk developmentally and is associated with negative physical impacts on the brain.

(6) Research indicates that adults greatly underestimate the extent of alcohol use by youths, its negative consequences, and its use by their own children. The IOM report concluded that underage drinking cannot be successfully addressed by focusing on youth alone. Ultimately, adults are responsible for young people obtaining alcohol by selling, providing, or otherwise making it available to them. Parents are the most important channel of influence on their children's underage drinking, according to the IOM report, which also recommends a national adult-oriented media campaign.

(7) Research shows that public service health messages, in combination with community-based efforts, can reduce health-damaging behavior. The Department of Health and Human Services and the Ad Council have undertaken a public health campaign targeted at parents to combat underage alcohol consumption. The Ad Council estimates that, for a typical public health campaign, it receives an average of $28 million per year in free media through its 28,000 media outlets nationwide.

(8) A significant percentage of the total alcohol consumption in the United States each year is by underage youth. The Substance Abuse and Mental Health Services Administration reports that the percentage is over 11 percent.

(9) Youth are exposed to a significant amount of alcohol advertising through a variety of media. Some studies indicate that youth awareness of alcohol advertising correlates to their drinking behavior and beliefs.

(10) According to the Center on Alcohol Marketing and Youth, in 2002, the alcoholic beverage industry spent $927,900,000 on product advertising on television, and $24,700,000 on television advertising designed to promote the responsible use of alcohol. For every one television ad discouraging underage alcohol use, there were 215 product ads.

(11) Alcohol use occurs in 76 percent of movies rated G or PG and 97 percent of movies rated PG-13. The Federal Trade Commission has recommended restricting paid alcohol beverage promotional placements to films rated R or NC-17.

(12) Youth spend 9 to 11 hours per week listening to music, and 17 percent of all lyrics contain alcohol references; 30 percent of those songs include brand-name mentions.

(13) Studies show that adolescents watch 20 to 27 hours of television each week, and 71 percent of prime-time television episodes depict alcohol use and 77 percent contain some reference to alcohol.

(14) College and university presidents have cited alcohol abuse as the number one health problem on college and university campuses.

(15) According to the National Institute on Alcohol Abuse and Alcoholism, two of five college students are binge drinkers; 1,400 college students die each year from alcohol-related injuries, a majority of which involve motor vehicle crashes; more than 70,000 students are victims of alcohol-related sexual assault; and 500,000 students are injured under the influence of alcohol each year.

(16) According to the Center on Alcohol Marketing and Youth, in 2002, alcohol producers spent a total of $58 million to place 6,251 commercials in college sports programs, and spent $27.7 million advertising during the NCAA men's basketball tournament, which had as many alcohol ads (939) as the Super Bowl, World Series, College Bowl Games and the National Football League's Monday Night Football broadcasts combined (925).

(17) The IOM report recommended that colleges and universities ban alcohol advertising and promotion on campus in order to demonstrate their commitment to discouraging alcohol use among underage students.

(18) According to the Government Accountability Office (''GAO''), the Federal Government spends $1.8 billion annually to combat youth drug use and $71 million to prevent underage alcohol use.

(19) The GAO concluded that there is a lack of reporting about how these funds are specifically expended, inadequate collaboration among the agencies, and no central coordinating group or office to oversee how the funds are expended or to determine the effectiveness of these efforts.

(20) There are at least three major, annual, government funded national surveys in the United States that include underage drinking data: the National Household Survey on Drug Use and Health, Monitoring the Future, and the Youth Risk Behavior Survey. These surveys do not use common indicators to allow for direct comparison of youth alcohol consumption patterns. Analyses of recent years' data do, however, show similar results.

(21) Research shows that school-based and community-based interventions can reduce underage drinking and associated problems, and that positive outcomes can be achieved by combining environmental and institutional change with theory-based health education—a comprehensive, community-based approach.

(22) Studies show that a minority of youth who need treatment for their alcohol problems receive such services. Further, insufficient information exists to properly assist clinicians and other providers in their youth treatment efforts.

SEC. 3. DEFINITIONS.

For purposes of this Act:

(1) The term ''binge drinking'' means a pattern of drinking alcohol that brings blood alcohol concentration (BAC) to 0.08 gm percent or above. For the typical adult, this pattern corresponds to consuming 5 or more drinks (male), or 4 or more drinks (female), in about 2 hours.

(2) The term ''heavy drinking'' means five or more drinks on the same occasion in the past 30 days.

(3) The term ''frequent heavy drinking'' means five or more drinks on at least five occasions in the last 30 days.

(4) The term ''alcoholic beverage industry'' means the brewers, vintners, distillers, importers, distributors, and retail outlets that sell and serve beer, wine, and distilled spirits.

(5) The term ''school-based prevention'' means programs, which are institutionalized, and run by staff members or school-designated persons or organizations in every grade of school, kindergarten through 12th grade.

(6) The term ''youth'' means persons under the age of 21.

(7) The term ''IOM report'' means the report released in September 2003 by the National Research Council, Institute of Medicine, and entitled ''Reducing Underage Drinking: A Collective Responsibility''.

TITLE I—SENSE OF CONGRESS

SEC. 101. SENSE OF CONGRESS.

It is the sense of the Congress that:

(1) A multi-faceted effort is needed to more successfully address the problem of underage drinking in the United States. A coordinated approach to prevention, intervention, treatment, and research is key to making progress. This Act recognizes the need for a focused national effort, and addresses particulars of the Federal portion of that effort.

(2) States and communities, including colleges and universities, are encouraged to adopt comprehensive prevention approaches, including—

(A) evidence-based screening, programs and curricula;

(B) brief intervention strategies;

(C) consistent policy enforcement; and

(D) environmental changes that limit underage access to alcohol.

(3) Public health and consumer groups have played an important role in drawing the Nation's attention to the health crisis of underage drinking. Working at the Federal, State, and community levels, and motivated by grass-roots support, they have initiated effective prevention programs that have made significant progress in the battle against underage drinking.

(4) The alcohol beverage industry has developed and paid for national education and awareness messages on illegal underage drinking directed to parents as well as consumers generally. According to the industry, it has also supported the training of more than 1.6 million retail employees, community-based prevention programs, point of sale education, and enforcement programs. All of these efforts are aimed at further reducing illegal underage drinking and preventing sales of alcohol to persons under the age of 21. All sectors of the alcohol beverage industry have also voluntarily committed to placing advertisements in broadcast and magazines where at least 70 percent of the audiences are expected to be 21 years of age or older. The industry should continue to monitor and tailor its advertising practices to further limit underage exposure, including the use of independent third party review. The industry should continue and expand evidence-based efforts to prevent underage drinking.

(5) Public health and consumer groups, in collaboration with the alcohol beverage industry, should explore opportunities to reduce underage drinking.

(6) The entertainment industries have a powerful impact on youth, and they should use rating systems and marketing codes to reduce the likelihood that underage audiences will be exposed to movies, recordings, or television programs with unsuitable alcohol content, even if adults are expected to predominate in the viewing or listening audiences.

(7) Objective scientific evidence and data should be generated and made available to the general public and policy makers at the local, state, and national levels to help them make informed decisions, implement judicious policies, and monitor progress in preventing childhood/adolescent alcohol use.

(8) The National Collegiate Athletic Association, its member colleges and universities, and athletic conferences should affirm a commitment to a policy of discouraging alcohol use among underage students and

other young fans by ending all alcohol advertising during radio and television broadcasts of collegiate sporting events.

TITLE II—INTERAGENCY COORDINATING COMMITTEE; ANNUAL REPORT CARD

SEC. 201. ESTABLISHMENT OF INTERAGENCY COORDINATING COMMITTEE TO PREVENT UNDERAGE DRINKING.

(a) IN GENERAL.—The Secretary of Health and Human Services, in collaboration with the Federal officials specified in subsection (b), shall establish an interagency coordinating committee focusing on underage drinking (referred to in this section as the ''Committee'').

(b) OTHER AGENCIES.—The officials referred to in subsection (a) are the Secretary of Education, the Attorney General, the Secretary of Transportation, the Secretary of the Treasury, the Secretary of Defense, the Surgeon General, the Director of the Centers for Disease Control and Prevention, the Director of the National Institute on Alcohol Abuse and Alcoholism, the Administrator of the Substance Abuse and Mental Health Services Administration, the Director of the National Institute on Drug Abuse, the Assistant Secretary for Children and Families, the Director of the Office of National Drug Control Policy, the Administrator of the National Highway Traffic Safety Administration, the Administrator of the Office of Juvenile Justice and Delinquency Prevention, the Chairman of the Federal Trade Commission, and such other Federal officials as the Secretary of Health and Human Services determines to be appropriate.

(c) CHAIR.—The Secretary of Health and Human Services shall serve as the chair of the Committee.

(d) DUTIES.—The Committee shall guide policy and program development across the Federal Government with respect to underage drinking.

(e) CONSULTATIONS.—The Committee shall actively seek the input of and shall consult with all appropriate and interested parties, including public health research and interest groups, foundations, and alcohol beverage industry trade associations and companies.

(f) ANNUAL REPORT.—

(1) IN GENERAL.—The Secretary of Health and Human Services, on behalf of the Committee, shall annually submit to the Congress a report that summarizes—

(A) all programs and policies of Federal agencies designed to prevent underage drinking;

(B) the extent of progress in reducing underage drinking nationally;

(C) data that the Secretary shall collect with respect to the information specified in paragraph (2); and

(D) such other information regarding underage drinking as the Secretary determines to be appropriate.

(2) CERTAIN INFORMATION.—The report under paragraph (1) shall include information on the following:

(A) Patterns and consequences of underage drinking.

(B) Measures of the availability of alcohol to underage populations and the exposure of this population to messages regarding alcohol in advertising and the entertainment media.

(C) Surveillance data, including information on the onset and prevalence of underage drinking.

(D) Any additional findings resulting from research conducted or supported under section 501.

(E) Evidence-based best practices to both prevent underage drinking and provide treatment services to those youth who need them.

SEC. 202. ANNUAL REPORT CARD.

(a) IN GENERAL.—The Secretary of Health and Human Services (referred to in this section as the ''Secretary'') shall, with input and collaboration from other appropriate Federal agencies, States, Indian tribes, territories, and public health, consumer, and alcohol beverage industry groups, annually issue a ''report card'' to accurately rate the performance of each state in enacting, enforcing, and creating laws, regulations, and programs to prevent or reduce underage drinking. The report card shall include ratings on outcome measures for categories related to the prevalence of underage drinking in each State.

(b) OUTCOME MEASURES.—

(1) IN GENERAL.—The Secretary shall develop, in consultation with the Committee established in section 201, a set of outcome measures to be used in preparing the report card.

(2) CATEGORIES.—In developing the outcome measures, the Secretary shall develop measures for categories related to the following:

(A) The degree of strictness of the minimum drinking age laws and dram shop liability statutes in each State.

(B) The number of compliance checks within alcohol retail outlets conducted measured against the number of total alcohol retail outlets in each State, and the results of such checks.

(C) Whether or not the State mandates or otherwise provides training on the proper selling and serving of alcohol for all sellers and servers of alcohol as a condition of employment.

(D) Whether or not the State has policies and regulations with regard to Internet sales and home delivery of alcoholic beverages.

(E) The number of adults in the State targeted by State programs to deter adults from purchasing alcohol for minors.

(F) The number of youths, parents, and caregivers who are targeted by State programs designed to deter underage drinking.

(G) Whether or not the State has enacted graduated drivers licenses and the extent of those provisions.

(H) The amount that the State invests, per youth capita, on the prevention of underage drinking, further broken down by the amount spent on—

(i) compliance check programs in retail outlets, including providing technology to prevent and detect the use of false identification by minors to make alcohol purchases;

(ii) checkpoints;

(iii) community-based, school-based, and higher-education-based programs to prevent underage drinking;

(iv) underage drinking prevention programs that target youth within the juvenile justice and child welfare systems; and

(v) other State efforts or programs as deemed appropriate.

SEC. 203. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out this title $2,000,000 for fiscal year 2006, and such sums as may be necessary for each of the fiscal years 2007 through 2010.

TITLE III—NATIONAL MEDIA CAMPAIGN

SEC. 301. NATIONAL MEDIA CAMPAIGN TO PREVENT UNDERAGE DRINKING.

(a) SCOPE OF THE CAMPAIGN.—The Secretary of Health and Human Services shall continue to fund and oversee the production, broadcasting, and evaluation of the Ad Council's national adult-oriented media public service campaign.

(b) REPORT.—The Secretary of Health and Human Services shall provide a report to the Congress annually detailing the production, broadcasting, and evaluation of the campaign referred to in subsection (a), and to detail in the report the effectiveness of the campaign in reducing underage drinking, the need for and likely effectiveness of an expanded adult-oriented media campaign, and the feasibility and the likely effectiveness of a national youth-focused media campaign to combat underage drinking.

(c) CONSULTATION REQUIREMENT.—In carrying out the media campaign, the Secretary of Health and Human Services shall direct the Ad Council to consult with interested parties including both the alcohol beverage industry and public health and consumer groups. The progress of this consultative process is to be covered in the report under subsection (b).

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section, $1,000,000 for each of the fiscal years 2006 and 2007, and such sums as may be necessary for each subsequent fiscal year.

TITLE IV—INTERVENTIONS

SEC. 401. COMMUNITY-BASED COALITION ENHANCEMENT GRANTS TO PREVENT UNDERAGE DRINKING.

(a) AUTHORIZATION OF PROGRAM.—The Director of the Office of National Drug Control Policy shall award ''enhancement grants'' to eligible entities to design, test, evaluate and disseminate strategies to maximize the effectiveness of community-wide approaches to preventing and reducing underage drinking.

(b) PURPOSES.—The purposes of this section are, in conjunction with the Drug-Free Communities Act of 1997 (21 U.S.C. 1521 et seq.), to—

(1) reduce alcohol use among youth in communities throughout the United States;

(2) strengthen collaboration among communities, the Federal Government, and State, local, and tribal governments;

(3) enhance intergovernmental cooperation and coordination on the issue of alcohol use among youth;

(4) serve as a catalyst for increased citizen participation and greater collaboration among all sectors and organizations of a community that first demonstrates a long-term commitment to reducing alcohol use among youth;

(5) disseminate to communities timely information regarding state-of-the-art practices and initiatives that have proven to be effective in reducing alcohol use among youth; and

(6) enhance, not supplant, local community initiatives for reducing alcohol use among youth.

(c) APPLICATION.—An eligible entity desiring an enhancement grant under this section shall submit an application to the Director at such time, and in such manner, and accompanied by such information as the Director may require. Each application shall include—

(1) a complete description of the entity's current underage alcohol use prevention initiatives and how the grant will appropriately enhance the focus on underage drinking issues; or

(2) a complete description of the entity's current initiatives, and how it will use this grant to enhance those initiatives by adding a focus on underage drinking prevention.

(d) USES OF FUNDS.—Each eligible entity that receives a grant under this section shall use the grant funds to carry out the activities described in such entity's application submitted pursuant to subsection (c). Grants under this section shall not exceed $50,000 per year, and may be awarded for each year the entity is funded as per subsection (f).

(e) SUPPLEMENT NOT SUPPLANT.—Grant funds provided under this section shall be used to supplement, not supplant, Federal and non-Federal funds available for carrying out the activities described in this section.

(f) DEFINITIONS.—For purposes of this section, the term ''eligible entity'' means an organization that is currently eligible to receive grant funds under the Drug-Free Communities Act of 1997 (21 U.S.C. 1521 et seq.).

(g) ADMINISTRATIVE EXPENSES.—Not more than 6 percent of a grant under this section may be expended for administrative expenses.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $5,000,000 for fiscal year 2006, and such sums as may be necessary for each of the fiscal years 2007 through 2010.

SEC. 402. GRANTS DIRECTED AT REDUCING HIGHER-EDUCATION ALCOHOL ABUSE.

(a) AUTHORIZATION OF PROGRAM.—The Secretary shall award grants to eligible entities to enable the entities to reduce the rate of underage alcohol use and binge drinking among students at institutions of higher education.

(b) APPLICATIONS.—An eligible entity that desires to receive a grant under this Act shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require. Each application shall include—

(1) a description of how the eligible entity will work to enhance an existing, or where none exists to build a, statewide coalition;

(2) a description of how the eligible entity will target underage students in the State;

(3) a description of how the eligible entity intends to ensure that the statewide coalition is actually implementing the purpose of this Act and moving toward indicators described in section (d);

(4) a list of the members of the statewide coalition or interested parties involved in the work of the eligible entity;

(5) a description of how the eligible entity intends to work with State agencies on substance abuse prevention and education;

(6) the anticipated impact of funds provided under this Act in reducing the rates of underage alcohol use;

(7) outreach strategies, including ways in which the eligible entity proposes to—

(A) reach out to students;

(B) promote the purpose of this Act;

(C) address the range of needs of the students and the surrounding communities; and

(D) address community norms for underage students regarding alcohol use; and

(8) such additional information as required by the Secretary.

(c) USES OF FUNDS.—Each eligible entity that receives a grant under this section shall use the grant funds to carry out the activities described in such entity's application submitted pursuant to subsection (b).

(d) ACCOUNTABILITY.—On the date on which the Secretary first publishes a notice in the Federal Register soliciting applications for grants under this section, the Secretary shall include in the notice achievement indicators for the program authorized under this section. The achievement indicators shall be designed—

(1) to measure the impact that the statewide coalitions assisted under this Act are having on the institutions of higher education and the surrounding communities, including changes in the number of alcohol incidents of any kind (including violations, physical assaults, sexual assaults, reports of intimidation, disruptions of school functions, disruptions of student studies, mental health referrals, illnesses, or deaths);

(2) to measure the quality and accessibility of the programs or information offered by the statewide coalitions; and

(3) to provide such other measures of program impact as the Secretary determines appropriate.

(e) SUPPLEMENT NOT SUPPLANT.—Grant funds provided under this Act shall be used to supplement, and not supplant, Federal and non-Federal funds available for carrying out the activities described in this section.

(f) DEFINITIONS.—For purposes of this section:

(1) ELIGIBLE ENTITY.—The term ''eligible entity'' means a State, institution of higher education, or nonprofit entity.

(2) INSTITUTION OF HIGHER EDUCATION.—The term ''institution of higher education'' has the meaning given the term in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)).

(3) SECRETARY.—The term ''Secretary'' means the Secretary of Education.

(4) STATE.—The term ''State'' means each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(5) STATEWIDE COALITION.—The term ''statewide coalition'' means a coalition that—

(A) includes—

(i) institutions of higher education within a State; and

(ii) a nonprofit group, a community underage drinking prevention coalition, or another substance abuse prevention group within a State; and

(B) works toward lowering the alcohol abuse rate by targeting underage students at institutions of higher education throughout the State and in the surrounding communities.

(6) SURROUNDING COMMUNITY.—The term ''surrounding community'' means the community—

(A) that surrounds an institution of higher education participating in a statewide coalition;

(B) where the students from the institution of higher education take part in the community; and

(C) where students from the institution of higher education live in off-campus housing.

(g) ADMINISTRATIVE EXPENSES.—Not more than 5 percent of a grant under this section may be expended for administrative expenses.

(h) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $5,000,000 for fiscal year 2006, and such sums as may be necessary for each of the fiscal years 2007 through 2010.

TITLE V—ADDITIONAL RESEARCH

SEC. 501. ADDITIONAL RESEARCH ON UNDERAGE DRINKING.

(a) IN GENERAL.—The Secretary of Health and Human Services shall collect data on, and conduct or support research on, underage drinking with respect to the following:

(1) The short and long-range impact of alcohol use and abuse upon adolescent brain development and other organ systems.

(2) Comprehensive community-based programs or strategies and statewide systems to prevent underage drinking, across the underage years from early childhood to young adulthood, including programs funded and implemented by government entities, public health interest groups and foundations, and alcohol beverage companies and trade associations.

(3) Improved knowledge of the scope of the underage drinking problem and progress in preventing and treating underage drinking.

(4) Annually obtain more precise information than is currently collected on the type and quantity of alcoholic beverages consumed by underage drinkers, as well as information on brand preferences of these drinkers and their exposure to alcohol advertising.

(b) CERTAIN MATTERS.—The Secretary of Health and Human Services shall carry out activities toward the following objectives with respect to underage drinking:

(1) Testing every unnatural death of persons ages 12 to 20 in the United States for alcohol involvement, including suicides, homicides, and unintentional injuries such as falls, drownings, burns, poisonings, and motor vehicle crash deaths.

(2) Obtaining new epidemiological data within the National Epidemiological Study on Alcoholism and Related Conditions and other national or targeted surveys that identify alcohol use and attitudes about alcohol use during pre- and early adolescence, including second-hand effects of adolescent alcohol use such as date rapes, violence, risky sexual behavior, and prenatal alcohol exposure.

(3) Developing or identifying successful clinical treatments for youth with alcohol problems.

SEC. 502. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to carry out section 501 $6,000,000 for fiscal year 2006, and such sums as may be necessary for each of the fiscal years 2007 through 2010.

MR. DODD. Mr. President, I rise today with my colleague, Senator MIKE DEWINE, to reintroduce legislation designed to prevent our nation's children and youth from succumbing to the dangers associated with underage alcohol use. The legislation that we introduce today, the STOP, Sober Truth On Preventing, Underage Drinking Act, will greatly strengthen our Nation's ability to combat the too often deadly consequences associated with underage drinking.

An initial examination, of the problems presented by underage drinking is truly alarming. Alcohol is the most commonly used drug among America's youth. More young people drink alcohol than smoke tobacco or use marijuana combined. In 2002, 20 percent of eighth graders had drunk alcohol in the previous 30 days. Forty-nine percent of high school seniors are drinkers, and 29 percent report having had five or more drinks in a row, or binged in the past two weeks.

Tragically, we know that this year underage drinking will directly lead to more than 3,500 deaths, more than two million injuries, 1,200 babies born with fetal alcohol syndrome and more than 50,000 youths treated for alcohol dependence. We also know that the social costs associated with underage drinking total close to $53 billion annually, including $19 billion from automobile accidents and $29 billion from associated violent crime.

And while no one can argue with the tragic loss of life and significant financial costs associated with underage drinking, too few of us think of the equally devastating loss of potential that occurs when our children begin to drink. Research indicates that children who begin drinking do so at only 12 years of age. We also know that children that begin drinking at such an early age develop a predisposition for alcohol dependence later in life. Such early experimentation can have devastating consequences and derail a child's potential just as she or he is starting out on the path to adulthood. The consumption of alcohol by our children can literally rob them of their future.

The truly alarming and devastating effects of underage alcohol use are

what initially led Senator DEWINE and I to begin work to address this important issue. Since that time we have worked extensively with Representatives ROYBAL-ALLARD, WOLF, DELAURO, OSBOURNE and WAMP to craft the broad legislative initiative that we introduce today.

The STOP Underage Drinking Act creates the framework for a multifaceted, comprehensive national campaign to prevent underage drinking. Specifically, the legislation includes four major areas of policy development. First, the STOP Underage Drinking Act authorizes $2 million to establish an Interagency Coordinating Committee to coordinate all federal agency efforts and expertise designed to prevent underage drinking. Chaired by the Secretary of Health and Human Services, this committee will be required to report to the Congress on an annual basis the extent to which federal efforts are addressing the urgent need to curb underage drinking.

I am particularly pleased that one of the many items in this annual report to Congress will provide for the public health monitoring of the amount of alcohol advertising reaching our children. I have become increasingly concerned about the degree to which alcohol advertisements appear to target our Nation's children. It is my hope that the monitoring called for by this legislation will expose any unethical advertising practices that reach children. We must do all that we can to ensure that our children are not exposed to harmful and deceptive alcohol promotions.

In addition to the federal coordination of federal underage drinking prevention efforts, the STOP Underage Drinking Act additionally authorizes $1 million to fund an adult-oriented National Media Campaign against Underage Drinking. Research indicates that most children who drink obtain the alcohol from their parents or from other adults. The National Media Campaign against underage drinking will specifically seek to educate those who provide our children with alcohol about the dangers inherent in underage alcohol use. This media campaign will build upon the valuable underage drinking prevention efforts already underway by the Ad Council, whose campaigns average an estimated $28 million in donated media from media outlets nationwide.

The legislation additionally authorizes $10 million to provide states, not-for-profit groups and institutions of higher education the ability to create statewide coalitions to prevent underage drinking and alcohol abuse by college and university students. This section will also provide alcohol-specific enhancement grants through the Drug Free Communities program.

Lastly, the STOP Underage Drinking Act authorizes $6 million to expand research to assess the health effects of underage drinking on adolescent development, including its effect on the brain. This effort will additionally increase federal data collection on underage drinking, including reporting on the types and brands of alcohol that kids consume.

I want to convey my belief that this legislation truly offers a historical, first step toward addressing the national tragedy represented by underage drinking. I pledge to work strenuously toward passing the STOP Underage Drinking Act and building on its strong foundation and I ask for the support of my colleagues for this critically important initiative.

By Mr. COLEMAN (for himself, Mr. DEWINE, and Mr. ALEXANDER):

S. 409. A bill to establish a Federal Youth Development Council to improve the administration and coordination of Federal programs serving youth, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. COLEMAN. Mr. President, today I am pleased to introduce the Federal Youth Coordination Act with my good friends, Senator MIKE DEWINE and Senator LAMAR ALEXANDER.

The idea for this legislation emanated from the 2003 White House Task Force for Disadvantaged Youth report that indicated Federal youth programs were spread across 12 different departments and agencies. It identified 150 programs that served children and youth up to age 21, but also discovered several of these programs were no longer in existence.

Today, there is a real need for strong role models in our communities to help at-risk youth. As a parent, I know there are a number of things that influence and shape our children's lives and unfortunately sometimes there are more negative things than positive. Youth programs help combat the negative influences and help restore hope, provide guidance, and help kids stay on the right track. While we have the resources to help our kids, a lack of coordination among youth programs has limited the full potential we have to change lives. Our bill will unleash that potential and bring our youth groups to full strength.

The Federal Youth Coordination Act will bring efficiency and accountability to federal youth policy by developing a Federal Youth Development Council. Composed of Department Secretaries, youth serving organizations and youth themselves, the Council will coordinate existing federal programs, research and other initiatives, enabling a more comprehensive approach to serving the nation's young people.

The purpose of the Council is not to eliminate existing programs, nor to create new ones. The Council will ensure communication among youth serving agencies, assess the needs of youth, set quantifiable goals and objectives for federal youth programs and develop a coordinated plan to achieve those goals. This approach is also cost-effective. The Council will only cost about $1.5 million, and the cost-savings that will be achieved through improved efficiency and reduced duplication of efforts will easily recoup those costs.

This legislation has bipartisan support and the strong support of our nation's youth serving organizations including the Boy Scouts of America, the Girl Scouts of America, the Boys & Girls Clubs of America, the YMCA and the Child Welfare League of America. I hope the Senate will be able to act on this important legislation early this year to ensure our kids have the support they need.

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. 409

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 ''Federal Youth Coordination Act''.

SEC. 2. ESTABLISHMENT AND MEMBERSHIP.

(a) MEMBERS AND TERMS.—There is established the Federal Youth Development Council (in this Act referred to as the ''Council'') composed of—

(1) the Attorney General, the Secretary of Agriculture, the Secretary of Labor, the Secretary of Health and Human Services, Secretary of Housing and Urban Development, the Secretary of Education, the Secretary of the Interior, the Secretary of Commerce, the Secretary of Defense, the Secretary of Homeland Security, the Director of National Drug Control Policy, the Director of the Office of Management and Budget, the Assistant to the President for Domestic Policy, the Director of the U.S.A. Freedom Corps, the Deputy Assistant to the President and Director of the Office of Faith-Based and Community Initiatives, and the Chief Executive Officer of the Corporation for National and Community Service, and other Federal officials as directed by the President, to serve for the life of the Council; and

(2) such additional members as the President, in consultation with the majority and minority leadership of the House of Representatives and the Senate, shall appoint from among representatives of faith-based organizations, community based organizations, child and youth focused foundations, universities, non-profit organizations, youth service providers, State and local government, and youth in disadvantaged situations, to serve for terms of 2 years and who may be reappointed by the President for a second 2-year term.

(b) CHAIRPERSON.—The Chairperson of the Council shall be designated by the President.

(c) MEETINGS.—The Council shall meet at the call of the Chairperson, not less frequently than 4 times each year. The first meeting shall be not less than 6 months after the date of enactment of this Act.

SEC. 3. DUTIES OF THE COUNCIL.

The duties of the Council shall be—

(1) to ensure communication among agencies administering programs designed to serve youth, especially those in disadvantaged situations;

(2) to assess the needs of youth, especially those in disadvantaged situations, and those who work with youth, and the quantity and quality of Federal programs offering services, supports, and opportunities to help

youth in their educational, social, emotional, physical, vocational, and civic development;

(3) to set objectives and quantifiable 5-year goals for such programs;

(4) to make recommendations for the allocation of resources in support of such goals and objectives;

(5) to identify target populations of youth who are disproportionately at risk and assist agencies in focusing additional resources on them;

(6) to develop a plan, including common indicators of youth well-being, and assist agencies in coordinating to achieve such goals and objectives;

(7) to assist Federal agencies, at the request of one or more such agency, in collaborating on model programs and demonstration projects focusing on special populations, including youth in foster care, migrant youth, projects to promote parental involvement, and projects that work to involve young people in service programs;

(8) to solicit and document ongoing input and recommendations from—

(A) youth, especially those in disadvantaged situations, by forming an advisory council of youth to work with the Council;

(B) national youth development experts, parents, faith and community-based organizations, foundations, business leaders, youth service providers, and teachers;

(C) researchers; and

(D) State and local government officials; and

(9) to work with Federal agencies to conduct high-quality research and evaluation, identify and replicate model programs, and provide technical assistance, and, subject to the availability of appropriations, to fund additional research to fill identified needs.

SEC. 4. ASSISTANCE OF STAFF.

(a) DIRECTOR AND STAFF.—The Chairperson, in consultation with the Council, shall employ and set the rate of pay for a Director and any necessary staff to assist in carrying out its duties.

(b) STAFF OF FEDERAL AGENCIES.—Upon request of the Council, the head of any Federal department or agency may detail, on a reimbursable basis, any of the personnel of that department or agency to the Council to assist it in carrying out its duties under this Act.

SEC. 5. POWERS OF THE COUNCIL.

(a) MAILS.—The Council may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(b) ADMINISTRATIVE SUPPORT SERVICES.—Upon the request of the Council, the Administrator of General Services shall provide to the Council, on a reimbursable basis, the administrative support services necessary for the Council to carry out its responsibilities under this Act.

SEC. 6. ASSISTANCE TO STATES.

(a) IN GENERAL.—Subject to the availability of appropriations, the Council may provide technical assistance and make grants to States to support State councils for coordinating State youth efforts.

(b) APPLICATIONS.—Applicants for grants must be States. Applications for grants under this section shall be submitted at such time and in such form as determined by the Council.

(c) PRIORITY.—Priority for grants will be given to States that—

(1) have already initiated an interagency coordination effort focused on youth;

(2) plan to work with at least 1 locality to support a local youth council for coordinating local youth efforts;

(3) demonstrate the inclusion of nonprofit organizations, including faith-based and community-based organizations, in the work of the State council; and

(4) demonstrate the inclusion of young people, especially those in disadvantaged situations, in the work of the State council.

SEC. 7. REPORT.

Not later than 1 year after the Council holds its first meeting, and on an annual basis for a period of 4 years thereafter, the Council shall transmit to the President and to Congress a report of the findings and recommendations of the Council. The report shall—

(1) include a comprehensive compilation of recent research and statistical reporting by various Federal agencies on the overall wellbeing of youth;

(2) include the assessment of the needs of youth and those who serve them, the goals and objectives, the target populations of at-risk youth, and the plan called for in section 3;

(3) report on the link between quality of service provision, technical assistance and successful youth outcomes and recommend ways to coordinate and improve Federal training and technical assistance, information sharing, and communication among the various programs and agencies serving youth;

(4) include recommendations to better integrate and coordinate policies across agencies at the Federal, State, and local levels, including recommendations for legislation and administrative actions;

(5) include a summary of actions the Council has taken at the request of Federal agencies to facilitate collaboration and coordination on youth serving programs and the results of those collaborations, if available; and

(6) include a summary of the input and recommendations from the groups identified in section 3(8).

SEC. 8. TERMINATION.

The Council shall terminate 60 days after transmitting its fifth and final report pursuant to section 6.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated for fiscal years 2005 through 2009 such sums as may be necessary to carry out this Act.

By Mr. McCAIN:

S. 410. A bill to authorize the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of Ukraine; to the Committee on Finance.

Mr. McCAIN. Mr. President, the recent ''Orange Revolution'' in Ukraine marked a huge victory for the advancement of democracy in the world. The Ukrainian people made clear that they would not stand idle as a corrupt regime sought to deny them their democratic rights. Now that the people of Ukraine have seized control of their destiny, the United States must stand ready to assist them as they do the hard work of consolidating democracy. The Jackson-Vanik amendment is, with respect to Ukraine, now anachronistic and inappropriate. Therefore, I am pleased to introduce legislation that would terminate it.

The bill would authorize the President to terminate the application of Jackson-Vanik, Title IV of the Trade Act of 1974, to Ukraine. Ukraine would then be eligible to receive permanent normal trade relations (PNTR) tariff status in its trade with the United States. I am pleased to note that Representatives HYDE and LANTOS will be introducing an identical bill in the House.

Beyond any benefits to our bilateral trading relationship, lifting Jackson-Vanik for Ukraine constitutes an important symbol of Ukraine's new democracy and its relationship with the United States. I led a delegation of four Senators and six representatives to Kiev last week; where we met with President Yuschenko, Prime Minister Tymoshenko, and students who led protests in Independence Square. I was struck by the great enthusiasm for democracy and freedom that has taken hold in Ukraine, and I wish the new leaders all the best a they begin the challenge of governing. I pledged to them that I would work toward the lifting of Jackson-Vanik on Ukraine, and today I am happy to take the first step toward that end.

By Mrs. MURRAY (for herself and Ms. CANTWELL):

S. 411. A bill to amend title XVIII of the Social Security Act to improve the provisions of items and services provided to Medicare beneficiaries residing in States with more cost-effective health care delivery systems; to the Committee on Finance.

Mrs. MURRAY. Mr. President, I rise today to again join my colleague, Senator CANTWELL, in introducing the MediFair Act of 2005. My bill will restore fairness to the Medicare program and provide greater equity for health providers participating in Medicare. Most importantly, it will open doors of care to more seniors and the disabled in my State.

Today, in Washington state, unfair Medicare reimbursement rates are causing doctors to limit their care for Medicare beneficiaries. Throughout my State, seniors and the disabled are having a hard time finding a doctor who will accept new Medicare patients.

Unfortunately, the Medicare Modernization Act, enacted in 2003, creates even greater inequities for my State. Prior to enactment, Washington State was 41st in per beneficiary reimbursement costs. When fully implemented, this legislation will push Washington State to 45th in per beneficiary costs. This growing inequity places health care providers in my State at an economic disadvantage and further limits access to health care for Washington patients.

My bill will reduce the regional inequities that have resulted in vastly different levels of care and access to care by ensuring that every state receives at least the national average of per beneficiary spending. This measure will encourage more doctors to accept Medicare patients and will also guarantee that seniors are not penalized when they choose to retire in the State of Washington. The regional inequities in Medicare reimbursement have created a very different program for my seniors, one that offers them fewer benefits.

In addition to ensuring that no state receives less than the national average, my legislation will encourage healthy outcomes and the efficient use of Medicare payments. The current Medicare structure punishes health care providers who practice efficient health care and who produce higher levels of healthy outcomes. Physicians and hospitals in my state are proud of the pioneering role they have played in providing high quality, cost-effective medicine. Unfortunately, instead of being rewarded for their exceptional service, they are being punished with unfair Medicare payments that only cover a fraction of their actual costs.

I applaud recent efforts by the Centers for Medicare and Medicaid Services (CMS) to direct Medicare resources to performance-based medicine. I believe this effort to reward providers who practice performance-based health care is an important step forward. It's a wise investment to shift Medicare from a disease-based program, which rewards over utilization and medical errors, to a prevention-based program that encourages healthy outcomes based on performance. It will mean better care for seniors and will slow the hemorrhaging of Medicare dollars. I am hopeful that CMS will expand these efforts.

Performance-based medicine will also begin to close the gap in Medicare reimbursement. We must invest in this new approach and begin to make changes system wide. In the 2003 Medicare Modernization Act, we worked to close the gap between rural and urban providers. I believe it is time to take the next step. When doctors and hospitals work to improve outcomes and lower utilization rates they should not be punished with unfair Medicare payments.

I want to acknowledge the lead sponsor of the MediFair bill in the House, Congressman ADAM SMITH, as well as the other House cosponsors, Congressman BAIRD, Congressman MCDERMOTT, Congressman DICKS, Congressman INSLEE, and Congressman LARSEN.

I ask unanimous consent that the text of 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. 411

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 ''MediFair Act of 2005''.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Regional inequities in medicare reimbursement has created barriers to care for seniors and the disabled.

(2) The regional inequities in medicare reimbursement penalize States that have cost-effective health care delivery systems and rewards those States with high utilization rates and that provide inefficient care.

(3) Over a lifetime, those inequities can mean as much as a $50,000 difference in the cost of care provided per beneficiary.

(4) Regional inequities have resulted in creating very different medicare programs for seniors and the disabled based on where they live.

(5) Because the Medicare+Choice rate is based on the fee-for-service reimbursement rate, regional inequities have allowed some medicare beneficiaries access to plans with significantly more benefits including prescription drugs. Beneficiaries in States with lower reimbursement rates have not benefitted to the same degree as beneficiaries in other parts of the country.

(6) Regional inequities in medicare reimbursement have created an unfair competitive advantage for hospitals and other health care providers in States that receive above average payments. Higher payments mean that those providers can pay higher salaries in a tight, competitive market.

(7) Regional inequities in medicare reimbursement can limit timely access to new technology for beneficiaries in States with lower reimbursement rates.

(8) Regional inequities in medicare reimbursement, if left unchecked, will reduce access to medicare services and impact healthy outcomes for beneficiaries.

(9) Regional inequities in medicare reimbursement are not just a rural versus urban problem. Many States with large urban centers are at the bottom of the national average for per beneficiary costs.

SEC. 3. IMPROVING FAIRNESS OF PAYMENTS TO PROVIDERS UNDER THE MEDICARE FEE-FOR-SERVICE PROGRAM.

Title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) is amended by adding at the end the following new section:

''IMPROVING PAYMENT EQUITY UNDER THE ORIGINAL MEDICARE FEE-FOR-SERVICE PROGRAM

''SEC. 1898. (a) ESTABLISHMENT OF SYSTEM.—Notwithstanding any other provision of law, the Secretary shall establish a system for making adjustments to the amount of payment made to entities and individuals for items and services provided under the original medicare fee-for-service program under parts A and B.

''(b) SYSTEM REQUIREMENTS.—

''(1) INCREASE FOR STATES BELOW THE NATIONAL AVERAGE.—Under the system established under subsection (a), if a State average per beneficiary amount for a year is less than the national average per beneficiary amount for such year, then the Secretary (beginning in 2006) shall increase the amount of applicable payments in such a manner as will result (as estimated by the Secretary) in the State average per beneficiary amount for the subsequent year being equal to the national average per beneficiary amount for such subsequent year.

''(2) REDUCTION FOR CERTAIN STATES ABOVE THE NATIONAL AVERAGE TO ENHANCE QUALITY CARE AND MAINTAIN BUDGET NEUTRALITY.—

''(A) IN GENERAL.—The Secretary shall ensure that the increase in payments under paragraph (1) does not cause the estimated amount of expenditures under this title for a year to increase or decrease from the estimated amount of expenditures under this title that would have been made in such year if this section had not been enacted by reducing the amount of applicable payments in each State that the Secretary determines has—

''(i) a State average per beneficiary amount for a year that is greater than the national average per beneficiary amount for such year; and

''(ii) healthy outcome measurements or quality care measurements that indicate that a reduction in applicable payments would encourage more efficient use of, and reduce overuse of, items and services for which payment is made under this title.

''(B) LIMITATION.—The Secretary shall not reduce applicable payments under subparagraph (A) to a State that—

''(i) has a State average per beneficiary amount for a year that is greater than the national average per beneficiary amount for such year; and

''(ii) has healthy outcome measurements or quality care measurements that indicate that the applicable payments are being used to improve the access of beneficiaries to quality care.

''(3) DETERMINATION OF AVERAGES.—

''(A) STATE AVERAGE PER BENEFICIARY AMOUNT.—Each year (beginning in 2005), the Secretary shall determine a State average per beneficiary amount for each State which shall be equal to the Secretary's estimate of the average amount of expenditures under the original medicare fee-for-service program under parts A and B for the year for a beneficiary enrolled under such parts that resides in the State.

''(B) NATIONAL AVERAGE PER BENEFICIARY AMOUNT.—Each year (beginning in 2005), the Secretary shall determine the national average per beneficiary amount which shall be equal to the average of the State average per beneficiary amount determined under subparagraph (A) for the year.

''(4) DEFINITIONS.—In this section:

''(A) APPLICABLE PAYMENTS.—The term 'applicable payments' means payments made to entities and individuals for items and services provided under the original medicare fee-for-service program under parts A and B to beneficiaries enrolled under such parts that reside in the State.

''(B) STATE.—The term 'State' has the meaning given such term in section 210(h).

''(c) BENEFICIARIES HELD HARMLESS.—The provisions of this section shall not affect—

''(1) the entitlement to items and services of a beneficiary under this title, including the scope of such items and services; or

''(2) any liability of the beneficiary with respect to such items and services.

''(d) REGULATIONS.—

''(1) IN GENERAL.—The Secretary, in consultation with the Medicare Payment Advisory Commission, shall promulgate regulations to carry out this section.

''(2) PROTECTING RURAL COMMUNITIES.—In promulgating the regulations pursuant to paragraph (1), the Secretary shall give special consideration to rural areas.''.

SEC. 4. MEDPAC RECOMMENDATIONS ON HEALTHY OUTCOMES AND QUALITY CARE.

(a) RECOMMENDATIONS.—The Medicare Payment Advisory Commission established under section 1805 of the Social Security Act (42 U.S.C. 1395b–6) shall develop recommendations on policies and practices that, if implemented, would encourage—

(1) healthy outcomes and quality care under the medicare program in States with respect to which payments are reduced under section 1898(b)(2) of such Act (as added by section 3); and

(2) the efficient use of payments made under the medicare program in such States.

(b) SUBMISSION.—Not later than the date that is 9 months after the date of enactment of this Act, the Commission shall submit to Congress the recommendations developed under subsection (a).

By Mr. DORGAN (for himself and Mr. INOUYE):

S. 412. A bill to reauthorize the Native American Programs Act of 1974; to the Committee on Indian Affairs.

Mr. DORGAN. Mr. President, I rise today to introduce a bill that would reauthorize the Native American Programs Act. This Act provides authority

for the social and economic development grants that are so critical to Indian Country. Senator INOUYE joins me in sponsoring this measure.

The Native American Programs Act of 1974 is administered by the Administration for Native Americans (ANA) within the Department of Health and Human Services. The purpose of the Act is to promote economic and social self-sufficiency by assisting Native American institutions and tribal governments to exercise control and decision making over their own resources; to foster the development of stable, diversified local tribal economies and economic activities that provide jobs, promote economic well-being, and reduce dependency on public funds and social services; and to support access, control and coordination of services and programs that safeguard the health and well-being of native people that are essential to their communities.

The ANA awards annual grants to tribal entities on a competitive basis and provides many native communities with critical startup funds for social, governance, economic, environmental, and cultural programs that are developed by the communities themselves. The program addresses key needs for native communities by helping them begin and expand businesses, enhancing tribal ability to promote natural environments, and preserving and restoring native languages. The Native American Programs Act supports Native American self-governance in the development of economic, social, and governance capacities of Native American communities.

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. 412

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

SECTION 1. NATIVE AMERICAN PROGRAMS ACT OF 1974.

(a) INTRA-DEPARTMENTAL COUNCIL ON NATIVE AMERICAN AFFAIRS.—Section 803B(d)(1) of the Native American Programs Act of 1974 (42 U.S.C. 2991b–2(d)(1)) is amended by striking ''There'' and all that follows and inserting the following: ''There is established in the Office of the Secretary the Intra-Departmental Council on Native American Affairs. The Commissioner and the Director of the Indian Health Service shall serve as co-chairpersons of the Council. The co-chairpersons shall advise the Secretary on all matters affecting Native Americans that involve the Department.''.

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 816 of the Native American Programs Act of 1974 (42 U.S.C. 2992d) is amended—

(1) by striking subsections (a) through (c) and inserting the following:

''(a) IN GENERAL.—There are authorized to be appropriated—

''(1) to carry out section 803(d), $8,000,000 for each of fiscal years 2006 through 2010; and

''(2) to carry out provisions of this title other than section 803(d) and any other provision having an express authorization of appropriations, such sums as are necessary for each of fiscal years 2006 through 2010.

''(b) LIMITATION.—Not less than 90 percent of the funds made available to carry out this title for a fiscal year (other than funds made available to carry out sections 803(d), 803A, 803C, and 804, and any other provision of this title having an express authorization of appropriations) shall be expended to carry out section 803(a).'';

(2) by redesignating subsection (d) as subsection (c); and

(3) by striking subsection (e).

(c) REPORTS.—Section 811A of the Native American Programs Act of 1974 (42 U.S.C. 2992–1) is amended—

(1) by striking the section heading and all that follows through ''each year,'' and inserting the following:

''SEC. 811A. REPORTS.

''Every 5 years, the Secretary shall''; and

(2) by striking ''an annual report'' and inserting ''a report''.

SEC. 2. RESEARCH AND EDUCATIONAL ACTIVITIES.

Section 7205(a)(3) of the Native Hawaiian Education Act (20 U.S.C. 7515(a)(3)) is amended—

(1) by redesignating subparagraphs (K) and (L) as subparagraphs (L) and (M), respectively; and

(2) by inserting after subparagraph (J) the following:

''(K) research and educational activities relating to Native Hawaiian law;''.

By Mrs. FEINSTEIN (for herself, Ms. SNOWE, Mr. MCCAIN, Mr. CHAFEE, Mrs. MURRAY, Mr. JEFFORDS, Mr. DURBIN, Mr. LIEBERMAN, Mr. LEAHY, Mr. LAUTENBERG, Mrs. BOXER, Ms. CANTWELL, Mr. AKAKA, and Mr. REED):

S.J. Res. 5. A joint resolution expressing the sense of Congress that the United States should act to reduce greenhouse gas emissions; to the Committee on Foreign Relations.

Mrs. FEINSTEIN. Mr. President, I rise today to offer a resolution with Senators SNOWE, MCCAIN, CHAFEE, MURRAY, JEFFORDS, DURBIN, LIEBERMAN, LEAHY, LAUTENBERG, BOXER, CANTWELL, AKAKA and REED that urges the Administration to participate in international negotiations and actively reduce our greenhouse gas emissions that contribute to global warming.

The Kyoto Protocol goes into effect today. More than 140 nations, including all 25 members of the European Union, Russia and China, have ratified the agreement to reduce man-made emissions of greenhouse gases.

The United States, which accounts for about one-fourth of the greenhouse gases believed responsible for global warming, has refused to ratify the treaty.

Thirty-five of the world's thirty-eight industrialized countries—except for the United States, Australia, and Monaco—have ratified this important treaty.

This means that industrialized nations are bound to cut their combined greenhouse gases by 5 percent below 1990 levels between 2008 and 2012.

The United States is missing an important opportunity to protect our planet's environment by not ratifying the Protocol.

I believe this is a huge mistake.

There is emerging consensus that global warming is real.

According to the National Academy of Sciences, ''Since the 1900s global average temperature and atmospheric carbon dioxide concentration have increased dramatically, particularly compared to their levels in the 900 preceding years.''

Scientists now agree on three main Facts about global warming.

Fact 1: The Earth is warming.

Fact 2: The primary cause of this warming is man-made activities, especially fossil fuel consumption.

Fact 3: If we don't act now to reduce emissions, the problem will only get worse.

We have already begun to see the impacts of climate change: four hurricanes of significant force pounded the state of Florida in a six week period last fall. The storms formed over an area of the ocean where surface temperatures have increased an average of 17 degrees over the past decade.

Eskimos are being forced inland in Alaska as their native homes on the coastline are melting into the sea.

Glaciers are beginning to disappear in Glacier National Park in Montana. In 100 years, the Park has gone from having 150 glaciers to fewer than 30. And the 30 that remain are two-thirds smaller than they once were.

In California, water supplies are threatened by smaller snowpacks in the Sierra Nevada. Record snowfalls this winter have provided hope for this summer but the region still could face drought or floods unless temperatures stay cold enough to maintain the snowpack and average snowfall continues for the rest of the precipitation season.

If we take strong action to reduce greenhouse gas emissions, there will be 27 percent snowpack remaining in the Sierras at the end of the century.

However, if we do nothing to reduce our greenhouse gas emissions, there will only be 11 percent snowpack left in the Sierras at the end of the century.

The San Diego based Scripps Institution of Oceanography, a preeminent center for marine science research, will release a study later this week showing that global warming will likely have serious ramifications in the very near future, including: a water crisis in the western United States in the next 20 years due to smaller snowpacks.

The disappearance of the glaciers in the Andes in Peru in as little as 10 years, leaving the population without an adequate water supply during the summer.

The melting of two-thirds of the glaciers in western China by 2050, seriously diminishing the water supply for the region's 300 million inhabitants.

Further, the UN Comprehensive Assessment of Freshwater Resources of the World estimates that by 2025, around 5 billion people, out of a total

world population of 8 billion, will not have access to adequate water supplies.

And concern about the effects of climate change is mounting around the world.

Scientists fear that an ''ecological catastrophe'' is developing in Tibet with the melting of the region's glaciers as a result of global warming.

Glaciers in West Antarctica are thinning twice as fast as they did in the 1990s

The mean air temperature has risen 4–5 degrees in Alaska in the past three decades causing glaciers to melt and the coastline to recede.

Peru's Quelccaya ice cap, the largest in the tropics, could be gone by 2100 if it continues to melt at its current rate—contracting more than 600 feet a year in some places.

In addition, according to National Geographic, ''the famed snows of Kilimanjaro have melted more than 80 percent since 1912. Glaciers in the Garhwal Himalaya in India are retreating so fast that researchers believe that most central and eastern Himalayan glaciers could virtually disappear by 2035. Arctic sea ice has thinned significantly over the past half century, and its extent has declined by about 10 percent in the past 30 years. Greenland's ice sheet is shrinking.''

The Pew Center for Climate Change reports strong evidence of global warming in the United States. The findings included: the red fox has shifted its habitat northward, where it is encroaching on the Arctic fox's range.

Southern, warm-water fish have begun to infiltrate waters off Monterey, California, which were previously dominated by colder-water species.

The Alaskan tundra, which has for thousands of years been a depository for carbon dioxide, has begun to release more of the gas into the air than it removes because warmer winters are causing stored plant matter to decompose.

There have been documented trends in which the natural timing of animal or insect life cycles changed and the plants on which they depended did not. Many Southern species of butterflies have disappeared entirely over the past century as their range contracted.

According to the International Climate Change Taskforce, of which Senator SNOWE is a Co-Chair, if the earth's average temperature increases by more than 2 degres Celsius, or 3.6 degrees Fahrenheit, the world could face substantial agricultural losses, countless people at risk of water shortages, and widespread adverse health impacts such as malaria.

Even more critically, if the temperature rises more than 3.6 degrees Fahrenheit, we could be at risk for catastrophic/weather events. For instance, we would risk losing the West Antarctic and Greenland ice sheets, which could raise sea levels, shut down the Gulf Stream, and destroy the world's forests.

Climate change is real. Its impacts are already being felt. If emissions keep growing at projected levels, greenhouse gases in our atmosphere will reach levels unknown since the time of the dinosaurs during the lifetimes of children born today.

That is why my colleagues and I have introduced this resolution that: Urges the Administration to engage in international discussions on post-Kyoto greenhouse gas reductions.

Calls upon the Administration to take action NOW to reduce emissions domestically.

Encourages the United States to keep global average temperatures from increasing more than 3.6 degrees Fahrenheit over pre-industrial levels.

As the world's largest emitter of greenhouse gases, it is the responsibility of the United States to lead by example. By not ratifying the Kyoto Protocol, we have sent a harsh message to the world that the largest emitter and contributor to global warming refuses to participate in a worldwide program aimed at reducing greenhouse gases.

But fortunately, even though the federal government has refused to acknowledge global warming, many States have recognized that in spite of the federal government's inaction, action must be taken.

Nearly 40 States have developed their own climate plans.

A emission trading system is emerging in the Northeast that will require large power plants from Maine to Delaware to reduce their carbon emissions.

Eighteen States and Washington, DC have enacted renewable portfolio standards. They include Arizona, California, Colorado, Connecticut, Hawaii, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, New York, Pennsylvania, Rhode Island, Texas, and Wisconsin.

California has enacted legislation that will reduce greenhouse gas emissions from vehicle tailpipes—it is expected that the Northeastern States and Canada will also follow California's lead.

Yet without concerted Federal action, the United States will not be able to achieve real, significant greenhouse gas reductions.

As the world's largest greenhouse gas emitter, we must act now to reduce the impacts of climate change and save the environment for future generations.

The Kyoto Protocol ends in 2012. Though the Protocol ends, the United States needs to lead and move to negotiate a post-Kyoto framework. There are many things we can do. For example, we can: use our forests and our farmland as a depository for carbon to prevent it from being released into the atmosphere; develop new technologies such as clean coal, renewable energy, and hydrogen vehicles; make better use of existing technologies such as hybrid vehicles and energy efficient buildings, appliances, and power generation; and use market-based programs, such as cap and trade, to reduce emissions with the least harm to economy.

Being a responsible steward of the climate is more than just taking steps to pollute less. It also requires participating in international negotiations on the policies the world will need to achieve significant, long-term reductions in greenhouse gas emissions.

I ask unanimous consent that the text of the joint resolution be printed in the RECORD.

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

S.J. RES. 5

Whereas in May 1992, the Senate gave advice and consent to the ratification of the United Nations Framework Convention on Climate Change with the intent of reducing global manmade emissions of greenhouse gases, which committed the United States (along with other developed countries) to a nonbinding target of containing emissions levels at 1990 rates by 2000;

Whereas the United Nations Framework Convention on Climate Change was signed by President George Herbert Walker Bush and took effect in March 1994;

Whereas in December 1997, at the United Nations Framework Convention on Climate Change conference of the parties, the Kyoto Protocol, which set targets for reductions in the greenhouse gas emissions of industrialized countries, was established based on principles described in the 1992 framework agreement;

Whereas on February 16, 2005, the Kyoto Protocol will take effect, at which time more than 30 industrialized countries will be legally bound to meet quantitative targets for reducing or limiting the greenhouse gas emissions of those countries, an international carbon trading market will be established through an emissions trading program (which was originally proposed by the United States and enables any industrialized country to buy or sell emissions credits), and the clean development mechanism, which provides opportunities to invest in projects in developing countries that limit emissions while promoting sustainable development, will begin full operation;

Whereas 141 nations (including Canada, China, the European Union, India, Japan, and Russia) have ratified the Kyoto Protocol;

Whereas the United States is the only member of the Group of 8 that has not ratified the Kyoto Protocol;

Whereas, according to the National Academy of Sciences, ''Greenhouse gases are accumulating in Earth's atmosphere as a result of human activities, causing surface air temperatures and subsurface ocean temperatures to rise . . . Human-induced warming and associated sea level rises are expected to continue through the 21st century.'';

Whereas the Administrator of the Environmental Protection Agency stated that ''Scientists know for certain that human activities are changing the composition of Earth's atmosphere. Increasing levels of greenhouse gases, like carbon dioxide, in the atmosphere since pre-industrial times have been well documented. There is no doubt this atmospheric buildup of carbon dioxide and other greenhouse gases is largely the result of human activities.'';

Whereas major scientific organizations (including the American Association for the Advancement of Science, the American Meteorological Society, and the American Geophysical Union) have issued statements acknowledging the compelling scientific evidence of human modification of climate;

Whereas in 2001, the Intergovernmental Panel on Climate Change estimated that global average temperatures have risen by approximately 1 degree Fahrenheit in the past century;

Whereas the report entitled ''Our Changing Planet: The U.S. Climate Change Science Program for Fiscal Years 2004 and 2005'' states that ''Atmospheric concentrations of carbon dioxide and methane have been increasing for about two centuries as a result of human activities and are now higher than they have been for over 400,000 years.'';

Whereas according to the Arctic climate impact assessment published in November 2004, the Arctic is warming almost twice as fast as the rest of the planet, and winter temperatures in Alaska have increased approximately 5 to 7 degrees Fahrenheit over the past 50 years;

Whereas scientists at the Hadley Centre for Climate Prediction and Research in the United Kingdom have estimated that man-made climate change has already doubled the risk of heat waves, such as the heat wave that caused more than 15,000 deaths in Europe in 2003;

Whereas scientists at the international conference entitled ''Avoiding Dangerous Climate Change'', held in Exeter, England, from February 1, 2005, through February 3, 2005, predicted that an increase in temperature of 1.8 degrees Fahrenheit (which could occur within 25 years) would cause a decline in food production, water shortages, and a net loss of gross domestic product in some developing countries;

Whereas scientists at the international conference entitled ''Avoiding Dangerous Climate Change'' predicted that an increase in temperature of 3.6 degrees Fahrenheit (which could occur before 2050) could cause a substantial loss of Arctic Sea ice, widespread bleaching of coral reefs, an increased frequency of forest fires, and rivers to become too warm to support trout and salmon, and, in developing countries, would cause an increased risk of hunger, water shortages that would affect an additional 1,500,000,000 people, and significant losses of gross domestic product in some countries;

Whereas scientists at the international conference entitled ''Avoiding Dangerous Climate Change'' predicted that an increase in temperature of 5.4 degrees Fahrenheit (which could occur before 2070) would cause irreversible damage to the Amazon rainforest, destruction of many coral reefs, a rapid increase in hunger, large losses in crop production in certain regions, which could affect as many as 5,500,000,000 people, and water shortages that would affect an additional 3,000,000,000 people;

Whereas scientists at the international conference entitled ''Avoiding Dangerous Climate Change'' predicted that an increase in temperature of greater than 5.4 degrees Fahrenheit (which could occur after 2070) would cause certain regions to become unsuitable for food production, and have a substantial effect on the global gross domestic product;

Whereas in the United States, multiple mechanisms (including market cap and trade programs) exist to carry out mitigation of climate change, sequestration activities in agricultural sectors, and development of new technologies such as clean coal and hydrogen vehicles; and

Whereas, because the United States has critical economic and other interests in international climate policy, it is in the best interest of the United States to play an active role in any international discussion on climate policy: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. That it is the sense of Congress that the United States should demonstrate international leadership and responsibility regarding reducing the health, environmental, and economic risks posed by climate change by—

(1) carrying out reasonable and responsible actions to ensure significant and meaningful reductions in emissions of all greenhouse gases;

(2) generating climate-friendly technologies by enacting and implementing policies and programs to address all greenhouse gas emissions to promote sustained economic growth;

(3) participating in international negotiations under the United Nations Framework Convention on Climate Change to achieve significant, long-term, cost-effective reductions in global greenhouse gas emissions; and

(4) supporting the establishment of a long-term objective to prevent the global average temperature from increasing by greater than 3.6 degrees Fahrenheit above preindustrial levels.

SEC. 2. The Secretary of State is authorized to and shall engage in efforts with other federal agencies to lead international negotiations to mitigate impacts of global warming.

SUBMITTED RESOLUTIONS—MONDAY, FEBRUARY 14, 2005

SENATE RESOLUTION 52—HONORING SHIRLEY CHISHOLM FOR HER SERVICE TO THE NATION AND EXPRESSING CONDOLENCES TO HER FAMILY, FRIENDS, AND SUPPORTERS ON HER DEATH

Mrs. CLINTON (for herself and Mr. LEVIN) submitted the following resolution; which was considered and agreed to:

S. RES. 52

Whereas Shirley Chisholm was born Shirley Anita St. Hill on November 30, 1924, in Brooklyn, New York, to Charles and Ruby St. Hill, immigrants from British Guyana and Barbados;

Whereas in 1949, Shirley Chisholm was a founding member of the Bedford-Stuyvesant Political League;

Whereas in 1960, she established the Unity Democratic Club, which was instrumental in mobilizing black and Hispanic voters;

Whereas in 1964, Chisholm ran for a New York State Assembly seat and won;

Whereas in 1968, Chisholm became the first African-American woman elected to Congress, representing New York's Twelfth Congressional District;

Whereas as a member of Congress, Chisholm was an advocate for civil rights, women's rights, and the poor;

Whereas in 1969, Shirley Chisholm, along with other African-American members of Congress, founded the Congressional Black Caucus;

Whereas on January 25, 1972, Chisholm announced her candidacy for President and became the first African-American to be considered for the presidential nomination by a major national political party;

Whereas although Chisholm did not win the nomination at the 1972 Democratic National Convention in Miami, she received the votes of 151 delegates;

Whereas Shirley Chisholm served 7 terms in the House of Representatives before retiring from politics in 1982;

Whereas Shirley Chisholm was a dedicated member of Delta Sigma Theta Sorority and received the sorority's highest award, the Mary Church Terrell Award, in 1977 for her political activism and contributions to the Civil Rights Movement;

Whereas Shirley Chisholm was a model public servant and an example for African-American women, and her strength and perseverance serve as an inspiration for all people striving for change; and

Whereas on January 1, 2005, Shirley Chisholm died at the age of 80: Now, therefore, be it

Resolved, That the Senate—

(1) honors Shirley Chisholm for her service to the Nation, her work to improve the lives of women and minorities, her steadfast commitment to demonstrating the power of compassion, and her dedication to justice and equality; and

(2) expresses its deepest condolences to her family, friends, and supporters.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 55—RECOGNIZING THE CONTRIBUTIONS OF THE LATE ZHAO ZIYANG TO THE PEOPLE OF CHINA

Mr. GRAHAM (for himself, Mr. LUGAR, Mr. BIDEN, Mr. BROWNBACK, and Mr. DORGAN) submitted the following resolution; which was referred to the Committee on Foreign Relations:

S. RES. 55

Whereas leading reformist and former Chinese Communist Party Secretary General, Zhao Ziyang, died under house arrest in China on January 17, 2005, at the age of 85;

Whereas Zhao implemented important agricultural, industrial, and economic reforms in China and rose to the prominent positions of premier and Secretary General within the Communist Party despite criticisms of his capitalist ideals;

Whereas, in the early summer of 1989, students gathered in Tiananmen Square to voice their support for democracy and to protest the Communist government that continues to deny them that democracy;

Whereas Secretary General Zhao advised against the use of military force to end the pro-democracy protests in Tiananmen Square;

Whereas, on May 19, 1989, in Tiananmen Square, Zhao warned the tens of thousands of students clamoring for democracy that the authorities were approaching and urged them to return to their homes; an action that illustrated his sympathy for their cause;

Whereas Zhao was consequently relieved of all leadership responsibilities following his actions in Tiananmen Square that summer and was placed under house arrest for the remaining years of his life;

Whereas the Government of China remained indecisive regarding a ceremony for Zhao for several days before allowing a relatively modest ceremony at the Babaoshan Revolutionary Cemetery in Beijing, where Zhao was cremated on January 29, 2005;

Whereas the Government of China's fear of civil unrest resulted in the prohibition of political dissidents and others from the funeral, and the thousands who were in attendance were surrounded in an intimidating environment without adequate time to mourn and grieve;

Whereas news of Zhao's death was announced only in a brief notice by the Communist government and was forbidden to be covered by the radio or national television, while eulogies were erased by censors from memorial websites;

Whereas, upon the announcement of Zhao's death, Chinese news agencies were certain to reference the ''serious mistake'' committed by Zhao at what they refer to as a political incident in 1989;

Whereas mourning the death of Zhao in the Hong Kong Legislative Council was deemed unconstitutional and lawmakers in Hong Kong were refused the opportunity to observe a moment of silence in honor of his life;

Whereas the death of Zhao has renewed the desire of certain Chinese people for a reassessment of the crackdown in 1989 in order to acknowledge the merit of pro-democracy student demonstrations and complaints of government corruption; and

Whereas Zhao will continue to serve as a symbol of the dreams and purpose of the 1989 Tiananmen Square demonstration, which survived the Tiananmen massacre but which have still not been realized for the people of China: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes that Zhao Ziyang made an important contribution to the people of China by providing assistance to the students in Tiananmen Square in 1989, and that through this contribution and his decisions to actively seek reform, Zhao remains a symbol of hope for reform and human rights for the people of China;

(2) expresses sympathy for Zhao's family and to the people of China who were unable to appropriately mourn his death or to celebrate his life;

(3) calls on the Government of China—

(A) to release all prisoners of conscience, including those persons still in prison as a result of their participation in the peaceful pro-democracy protests in Tiananmen Square in 1989; and

(B) to allow those people exiled on account of their activities to return to live in freedom in China; and

(4) stands with the people of China as they strive to improve their way of life and create a government that is truly democratic and respectful of international norms in the area of human rights.

SENATE RESOLUTION 57—DESIGNATING FEBRUARY 25, 2005, AS ''NATIONAL MPS AWARENESS DAY''

Mr. GRAHAM (for himself, Mr. SPECTER, Mr. BROWNBACK, Mr. KOHL, Mr. HATCH, Mr. FEINGOLD, Ms. CANTWELL, Mr. CHAMBLISS, Mrs. MURRAY, Mrs. DOLE, Mr. SANTORUM, and Mr. JEFFORDS) submitted the following resolution; which was considered and agreed to:

S. RES. 57

Whereas Mucopolysaccharidosis (''MPS'') and Mucolipidosis (''ML'') disorders are genetically determined lysosomal storage disorders that result in the body's inability to produce certain enzymes needed to breakdown complex carbohydrates;

Whereas these complex carbohydrates are then stored in virtually every cell in the body and progressively cause damage to these cells, adversely affecting an individual's body, including an individual's heart, respiratory system, bones, internal organs, and central nervous system;

Whereas the cellular damage caused by MPS often results in mental retardation, short stature, corneal damage, joint stiffness, loss of mobility, speech and hearing impairment, heart disease, hyperactivity, chronic respiratory problems, and most importantly, a drastically shortened life span;

Whereas the nature of the disorder is usually not apparent at birth;

Whereas without treatment, life expectancy of an individual afflicted with MPS is usually very early in life;

Whereas recent research developments have resulted in limited treatments for some MPS disorders;

Whereas promising advancements are underway in pursuit of treatments for additional MPS disorders;

Whereas despite newly developed remedies, the blood brain barrier continues to be a significant impediment to effectively treating the brain, thereby preventing the treatment of many of the symptoms of MPS;

Whereas treatments for MPS will be greatly enhanced with continued public funding;

Whereas the quality of life for individuals afflicted with MPS and the treatments available to them will be enhanced through the development of early detection techniques and early intervention;

Whereas treatments and research advancements for MPS are limited by a lack of awareness about MPS disorders;

Whereas the lack of awareness about MPS disorders extends to those within the medical community;

Whereas the damage that is caused by MPS makes it a model for many other degenerative genetic disorders;

Whereas the development of effective therapies and a potential cure for MPS disorders can be accomplished by increased awareness, research, data collection, and information distribution;

Whereas the Senate is an institution than can raise public awareness about MPS; and

Whereas the Senate is also an institution that can assist in encouraging and facilitating increased public and private sector research for early diagnosis and treatments of MPS disorders: Now, therefore, be it

Resolved, That the Senate—

(1) designates February 25, 2005, as ''National MPS Awareness Day''; and

(2) supports the goals and ideals of ''National MPS Awareness Day''.

SENATE RESOLUTION 56—DESIGNATING THE MONTH OF MARCH AS DEEP-VEIN THROMBOSIS AWARENESS MONTH, IN MEMORY OF JOURNALIST DAVID BLOOM

Mr. SPECTER submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 56

Whereas deep-vein thrombosis is a condition that occurs when a blood clot forms in one of the large veins, which may result in a fatal pulmonary embolism;

Whereas deep-vein thrombosis is a serious but preventable medical condition;

Whereas deep-vein thrombosis occurs in approximately 2,000,000 Americans every year;

Whereas fatal pulmonary embolism causes more deaths each year than breast cancer and AIDS combined;

Wherease complications from deep-vein thrombosis take up to 200,000 American lives each year;

Whereas fatal pulmonary embolism may be the most common preventable cause of hospital death in the United States;

Whereas the risk factors for deep-vein thrombosis include cancer and certain heart or respiratory diseases;

Whereas pulmonary embolism is the leading cause of maternal death associated with childbirth;

Whereas, according to a survey conducted by the American Public Health Association, 74 percent of Americans are unaware of deep-vein thrombosis;

Whereas National Broadcasting Company correspondent David Bloom died of a fatal pulmonary embolism while covering the war in Iraq;

Whereas Melanie Bloom, widow of David Bloom, and more than 35 members of the Coalition to Prevent Deep-Vein Thrombosis are working to raise awareness of this silent killer; and

Whereas the establishment of March as Deep-Vein Thrombosis Awareness Month in honor of David Bloom would raise public awareness about this life-threatening but preventable condition: Now, therefore, be it

Resolved, That the Senate—

(1) designates the month of March as ''Deep-Vein Thrombosis Awareness Month'';

(2) honors the memory of David Bloom; and

(3) recognizes the importance of raising awareness of deep-vein thrombosis.

Mr. SPECTER. Mr. President, I have sought recognition today to submit a resolution to designate March 2005, as Deep Vein Thrombosis Awareness Month.

Deep vein thrombosis, DVT, affects more than two million Americans each year, according to the American Heart Association. DVT is a condition that occurs when a blood clot forms in one of the large veins, usually in the lower limbs. These blood clots can grow in size, break loose, travel through the bloodstream and obstruct a pulmonary artery, resulting in a pulmonary embolism, PE, a sudden blockage of an artery in the lung, which can cause sudden death. According to the American Heart Association, up to 2 million Americans are affected annually by DVT. Up to 200,000 people die as a result of PE, 98 percent of which are complications brought on by DVT.

Deep vein thrombosis may best be known for its effects on those who fly for long periods of time. Sitting for many hours without getting up and moving around makes blood flow in the legs slow down, increasing the tendency for blood to clump and form blood clots. However, this cause of DVT accounts for only a small percentage of the DVT cases in the United States. DVT can strike anyone, anywhere. Americans who have or have had cancer or certain heart or respiratory diseases may be at increased risk for DVT. Americans are also at risk if they are overweight, elderly, bed-ridden, or have had a stroke.

Unfortunately, 74 percent of Americans have little or no awareness of DVT, according to a national survey sponsored by the American Public Health Association. DVT and its complications also take a toll on our Nation's hospital systems, costing approximately $860 million annually.

Among DVT's many victims was NBC News correspondent David Bloom. In March and April 2003, David, only 39 years old, was embedded with the U.S. Army's 3rd Infantry Division covering the war in Iraq. On April 6, 2003, after being seated in a cramped Army vehicle for many hours, David was stricken with DVT. The blood clot had traveled to his lungs and proved fatal.

Like David Bloom, many of us may be at risk for DVT and not know it. Some risk factors include: acute medical illness such as cancer, certain heart or respiratory diseases, prior DVT, increasing age, obesity, major orthopedic surgery, pregnancy, restricted mobility and paralysis. DVT can be prevented through maintaining a healthy lifestyle, including a fitness program and a healthy diet. Further, during periods of prolonged immobility such as airplane travel, stretch your legs as often as possible.

As Chairman of the Labor, Health and Human Services, and Education Appropriations Subcommittee, I led the effort to double funding for the National Institutes of Health (NIH) over 5 years. Funding for the NIH has increased from $11.3 billion in fiscal year 1995 to $28.5 billion in fiscal year 2005. In 2004, the NIH, through the National Heart, Lung, and Blood Institute, provided $6.1 million for DVT and PE research. The NIH is also advancing research of this condition through a recently formed international partnership working to prevent and control blood clots, and improve therapies for conditions such as heart attacks, strokes, deep vein thrombosis and pulmonary embolisms.

Together with Melanie Bloom, widow of David Bloom, and the more than 35 leading health organizations in the Coalition to Prevent DVT, we are working to help raise awareness of this condition. To increase public awareness of this serious, yet preventable condition, I urge my colleagues to support this legislation to designate March 2005 as Deep Vein Thrombosis Awareness Month in honor of David Bloom's memory.

AMENDMENTS SUBMITTED AND PROPOSED

SA 13. Mr. ENZI proposed an amendment to the bill S. 306, to prohibit discrimination on the basis of genetic information with respect to health insurance and employment.

TEXT OF AMENDMENTS

SA. 13. Mr. ENZI proposed an amendment to the bill S. 306, to prohibit discrimination on the basis of genetic information with respect to health insurance and employment; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Genetic Information Nondiscrimination Act of 2005''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
TITLE I—GENETIC NONDISCRIMINATION IN HEALTH INSURANCE
Sec. 101. Amendments to Employee Retirement Income Security Act of 1974.
Sec. 102. Amendments to the Public Health Service Act.
Sec. 103. Amendments to title XVIII of the Social Security Act relating to medigap.
Sec. 104. Privacy and confidentiality.
Sec. 105. Assuring coordination.
Sec. 106. Regulations; effective date.
TITLE II—PROHIBITING EMPLOYMENT DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION
Sec. 201. Definitions.
Sec. 202. Employer practices.
Sec. 203. Employment agency practices.
Sec. 204. Labor organization practices.
Sec. 205. Training programs.
Sec. 206. Confidentiality of genetic information.
Sec. 207. Remedies and enforcement.
Sec. 208. Disparate impact.
Sec. 209. Construction.
Sec. 210. Medical information that is not genetic information.
Sec. 211. Regulations.
Sec. 212. Authorization of appropriations.
Sec. 213. Effective date.
TITLE III—MISCELLANEOUS PROVISION
Sec. 301. Severability.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Deciphering the sequence of the human genome and other advances in genetics open major new opportunities for medical progress. New knowledge about the genetic basis of illness will allow for earlier detection of illnesses, often before symptoms have begun. Genetic testing can allow individuals to take steps to reduce the likelihood that they will contract a particular disorder. New knowledge about genetics may allow for the development of better therapies that are more effective against disease or have fewer side effects than current treatments. These advances give rise to the potential misuse of genetic information to discriminate in health insurance and employment.

(2) The early science of genetics became the basis of State laws that provided for the sterilization of persons having presumed genetic ''defects'' such as mental retardation, mental disease, epilepsy, blindness, and hearing loss, among other conditions. The first sterilization law was enacted in the State of Indiana in 1907. By 1981, a majority of States adopted sterilization laws to ''correct'' apparent genetic traits or tendencies. Many of these State laws have since been repealed, and many have been modified to include essential constitutional requirements of due process and equal protection. However, the current explosion in the science of genetics, and the history of sterilization laws by the States based on early genetic science, compels Congressional action in this area.

(3) Although genes are facially neutral markers, many genetic conditions and disorders are associated with particular racial and ethnic groups and gender. Because some genetic traits are most prevalent in particular groups, members of a particular group may be stigmatized or discriminated against as a result of that genetic information. This form of discrimination was evident in the 1970s, which saw the advent of programs to screen and identify carriers of sickle cell anemia, a disease which afflicts African-Americans. Once again, State legislatures began to enact discriminatory laws in the area, and in the early 1970s began mandating genetic screening of all African Americans for sickle cell anemia, leading to discrimination and unnecessary fear. To alleviate some of this stigma, Congress in 1972 passed the National Sickle Cell Anemia Control Act, which withholds Federal funding from States unless sickle cell testing is voluntary.

(4) Congress has been informed of examples of genetic discrimination in the workplace. These include the use of pre-employment genetic screening at Lawrence Berkeley Laboratory, which led to a court decision in favor of the employees in that case *Norman-Bloodsaw v. Lawrence Berkeley Laboratory* (135 F.3d 1260, 1269 (9th Cir. 1998)). Congress clearly has a compelling public interest in relieving the fear of discrimination and in prohibiting its actual practice in employment and health insurance.

(5) Federal law addressing genetic discrimination in health insurance and employment is incomplete in both the scope and depth of its protections. Moreover, while many States have enacted some type of genetic non-discrimination law, these laws vary widely with respect to their approach, application, and level of protection. Congress has collected substantial evidence that the American public and the medical community find the existing patchwork of State and Federal laws to be confusing and inadequate to protect them from discrimination. Therefore Federal legislation establishing a national and uniform basic standard is necessary to fully protect the public from discrimination and allay their concerns about the potential for discrimination, thereby allowing individuals to take advantage of genetic testing, technologies, research, and new therapies.

TITLE I—GENETIC NONDISCRIMINATION IN HEALTH INSURANCE

SEC. 101. AMENDMENTS TO EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.

(a) PROHIBITION OF HEALTH DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION OR GENETIC SERVICES.—

(1) NO ENROLLMENT RESTRICTION FOR GENETIC SERVICES.—Section 702(a)(1)(F) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182(a)(1)(F)) is amended by inserting before the period the following: ''(including information about a request for or receipt of genetic services by an individual or family member of such individual)''.

(2) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—Section 702(b) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182(b)) is amended—

(A) in paragraph (2)(A), by inserting before the semicolon the following: ''except as provided in paragraph (3)''; and

(B) by adding at the end the following:

''(3) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—For purposes of this section, a group health plan, or a health insurance issuer offering group health insurance coverage in connection with a group health plan, shall not adjust premium or contribution amounts for a group on the basis of genetic information concerning an individual in the group or a family member of the individual (including information about a request for or receipt of genetic services by an individual or family member of such individual).''.

(b) LIMITATIONS ON GENETIC TESTING.—Section 702 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1182) is amended by adding at the end the following:

''(c) GENETIC TESTING.—

''(1) LIMITATION ON REQUESTING OR REQUIRING GENETIC TESTING.—A group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, shall not request or require an individual or a family member of such individual to undergo a genetic test.

''(2) RULE OF CONSTRUCTION.—Nothing in this part shall be construed to—

''(A) limit the authority of a health care professional who is providing health care services with respect to an individual to request that such individual or a family member of such individual undergo a genetic test;

''(B) limit the authority of a health care professional who is employed by or affiliated with a group health plan or a health insurance issuer and who is providing health care services to an individual as part of a bona fide wellness program to notify such individual of the availability of a genetic test or to provide information to such individual regarding such genetic test; or

''(C) authorize or permit a health care professional to require that an individual undergo a genetic test.

''(d) APPLICATION TO ALL PLANS.—The provisions of subsections (a)(1)(F), (b)(3), and (c) shall apply to group health plans and health insurance issuers without regard to section 732(a).''.

(c) REMEDIES AND ENFORCEMENT.—Section 502 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132) is amended by adding at the end the following:

''(n) ENFORCEMENT OF GENETIC NONDISCRIMINATION REQUIREMENTS.—

''(1) INJUNCTIVE RELIEF FOR IRREPARABLE HARM.—With respect to any violation of subsection (a)(1)(F), (b)(3), or (c) of section 702, a participant or beneficiary may seek relief under subsection 502(a)(1)(B) prior to the exhaustion of available administrative remedies under section 503 if it is demonstrated to the court, by a preponderance of the evidence, that the exhaustion of such remedies would cause irreparable harm to the health of the participant or beneficiary. Any determinations that already have been made under section 503 in such case, or that are made in such case while an action under this paragraph is pending, shall be given due consideration by the court in any action under this subsection in such case.

''(2) EQUITABLE RELIEF FOR GENETIC NONDISCRIMINATION.—

''(A) REINSTATEMENT OF BENEFITS WHERE EQUITABLE RELIEF HAS BEEN AWARDED.—The recovery of benefits by a participant or beneficiary under a civil action under this section may include an administrative penalty under subparagraph (B) and the retroactive reinstatement of coverage under the plan involved to the date on which the participant or beneficiary was denied eligibility for coverage if—

''(i) the civil action was commenced under subsection (a)(1)(B); and

''(ii) the denial of coverage on which such civil action was based constitutes a violation of subsection (a)(1)(F), (b)(3), or (c) of section 702.

''(B) ADMINISTRATIVE PENALTY.—

''(i) IN GENERAL.—An administrator who fails to comply with the requirements of subsection (a)(1)(F), (b)(3), or (c) of section 702 with respect to a participant or beneficiary may, in an action commenced under subsection (a)(1)(B), be personally liable in the discretion of the court, for a penalty in the amount not more than $100 for each day in the noncompliance period.

''(ii) NONCOMPLIANCE PERIOD.—For purposes of clause (i), the term 'noncompliance period' means the period—

''(I) beginning on the date that a failure described in clause (i) occurs; and

''(II) ending on the date that such failure is corrected.

''(iii) PAYMENT TO PARTICIPANT OR BENEFICIARY.—A penalty collected under this subparagraph shall be paid to the participant or beneficiary involved.

''(3) SECRETARIAL ENFORCEMENT AUTHORITY.—

''(A) GENERAL RULE.—The Secretary has the authority to impose a penalty on any failure of a group health plan to meet the requirements of subsection (a)(1)(F), (b)(3), or (c) of section 702.

''(B) AMOUNT.—

''(i) IN GENERAL.—The amount of the penalty imposed by subparagraph (A) shall be $100 for each day in the noncompliance period with respect to each individual to whom such failure relates.

''(ii) NONCOMPLIANCE PERIOD.—For purposes of this paragraph, the term 'noncompliance period' means, with respect to any failure, the period—

''(I) beginning on the date such failure first occurs; and

''(II) ending on the date such failure is corrected.

''(C) MINIMUM PENALTIES WHERE FAILURE DISCOVERED.—Notwithstanding clauses (i) and (ii) of subparagraph (D):

''(i) IN GENERAL.—In the case of 1 or more failures with respect to an individual—

''(I) which are not corrected before the date on which the plan receives a notice from the Secretary of such violation; and

''(II) which occurred or continued during the period involved;

the amount of penalty imposed by subparagraph (A) by reason of such failures with respect to such individual shall not be less than $2,500.

''(ii) HIGHER MINIMUM PENALTY WHERE VIOLATIONS ARE MORE THAN DE MINIMIS.—To the extent violations for which any person is liable under this paragraph for any year are more than de minimis, clause (i) shall be applied by substituting '$15,000' for '$2,500' with respect to such person.

''(D) LIMITATIONS.—

''(i) PENALTY NOT TO APPLY WHERE FAILURE NOT DISCOVERED EXERCISING REASONABLE DILIGENCE.—No penalty shall be imposed by subparagraph (A) on any failure during any period for which it is established to the satisfaction of the Secretary that the person otherwise liable for such penalty did not know, and exercising reasonable diligence would not have known, that such failure existed.

''(ii) PENALTY NOT TO APPLY TO FAILURES CORRECTED WITHIN CERTAIN PERIODS.—No penalty shall be imposed by subparagraph (A) on any failure if—

''(I) such failure was due to reasonable cause and not to willful neglect; and

''(II) such failure is corrected during the 30-day period beginning on the first date the person otherwise liable for such penalty knew, or exercising reasonable diligence would have known, that such failure existed.

''(iii) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—In the case of failures which are due to reasonable cause and not to willful neglect, the penalty imposed by subparagraph (A) for failures shall not exceed the amount equal to the lesser of—

''(I) 10 percent of the aggregate amount paid or incurred by the employer (or predecessor employer) during the preceding taxable year for group health plans; or

''(II) $500,000.

''(E) WAIVER BY SECRETARY.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the penalty imposed by subparagraph (A) to the extent that the payment of such penalty would be excessive relative to the failure involved.''.

(d) DEFINITIONS.—Section 733(d) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191b(d)) is amended by adding at the end the following:

''(5) FAMILY MEMBER.—The term 'family member' means with respect to an individual—

''(A) the spouse of the individual;

''(B) a dependent child of the individual, including a child who is born to or placed for adoption with the individual; and

''(C) all other individuals related by blood to the individual or the spouse or child described in subparagraph (A) or (B).

''(6) GENETIC INFORMATION.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'genetic information' means information about—

''(i) an individual's genetic tests;

''(ii) the genetic tests of family members of the individual; or

''(iii) the occurrence of a disease or disorder in family members of the individual.

''(B) EXCLUSIONS.—The term 'genetic information' shall not include information about the sex or age of an individual.

''(7) GENETIC TEST.—

''(A) IN GENERAL.—The term 'genetic test' means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

''(B) EXCEPTIONS.—The term 'genetic test' does not mean—

''(i) an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or

''(ii) an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

''(8) GENETIC SERVICES.—The term 'genetic services' means—

''(A) a genetic test;

''(B) genetic counseling (such as obtaining, interpreting, or assessing genetic information); or

''(C) genetic education.''.

(e) REGULATIONS AND EFFECTIVE DATE.—

(1) REGULATIONS.—Not later than 1 year after the date of enactment of this title, the Secretary of Labor shall issue final regulations in an accessible format to carry out the amendments made by this section.

(2) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to group health plans for plan years beginning after the date that is 18 months after the date of enactment of this title.

SEC. 102. AMENDMENTS TO THE PUBLIC HEALTH SERVICE ACT.

(a) AMENDMENTS RELATING TO THE GROUP MARKET.—

(1) PROHIBITION OF HEALTH DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION OR GENETIC SERVICES.—

(A) NO ENROLLMENT RESTRICTION FOR GENETIC SERVICES.—Section 2702(a)(1)(F) of the Public Health Service Act (42 U.S.C. 300gg–1(a)(1)(F)) is amended by inserting before the period the following: ''(including information about a request for or receipt of genetic services by an individual or family member of such individual)''.

(B) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—Section 2702(b) of the Public Health Service Act (42 U.S.C. 300gg–1(b)) is amended—

(i) in paragraph (2)(A), by inserting before the semicolon the following: '', except as provided in paragraph (3)''; and

(ii) by adding at the end the following:

''(3) NO DISCRIMINATION IN GROUP PREMIUMS BASED ON GENETIC INFORMATION.—For purposes of this section, a group health plan, or a health insurance issuer offering group health insurance coverage in connection with a group health plan, shall not adjust premium or contribution amounts for a group on the basis of genetic information concerning an individual in the group or a family member of the individual (including information about a request for or receipt of genetic services by an individual or family member of such individual).''.

(2) LIMITATIONS ON GENETIC TESTING.—Section 2702 of the Public Health Service Act (42 U.S.C. 300gg–1) is amended by adding at the end the following:

''(c) GENETIC TESTING.—

''(1) LIMITATION ON REQUESTING OR REQUIRING GENETIC TESTING.—A group health plan, or a health insurance issuer offering health insurance coverage in connection with a group health plan, shall not request or require an individual or a family member of such individual to undergo a genetic test.

''(2) RULE OF CONSTRUCTION.—Nothing in this part shall be construed to—

''(A) limit the authority of a health care professional who is providing health care services with respect to an individual to request that such individual or a family member of such individual undergo a genetic test;

''(B) limit the authority of a health care professional who is employed by or affiliated with a group health plan or a health insurance issuer and who is providing health care services to an individual as part of a bona fide wellness program to notify such individual of the availability of a genetic test or to provide information to such individual regarding such genetic test; or

''(C) authorize or permit a health care professional to require that an individual undergo a genetic test.

''(d) APPLICATION TO ALL PLANS.—The provisions of subsections (a)(1)(F), (b)(3), and (c) shall apply to group health plans and health insurance issuers without regard to section 2721(a).''.

(3) REMEDIES AND ENFORCEMENT.—Section 2722(b) of the Public Health Service Act (42 U.S.C. 300gg–22)(b)) is amended by adding at the end the following:

''(3) ENFORCEMENT AUTHORITY RELATING TO GENETIC DISCRIMINATION.—

''(A) GENERAL RULE.—In the cases described in paragraph (1), notwithstanding the provisions of paragraph (2)(C), the following provisions shall apply with respect to an action under this subsection by the Secretary with respect to any failure of a health insurance issuer in connection with a group health plan, to meet the requirements of subsection (a)(1)(F), (b)(3), or (c) of section 2702.

''(B) AMOUNT.—

''(i) IN GENERAL.—The amount of the penalty imposed under this paragraph shall be $100 for each day in the noncompliance period with respect to each individual to whom such failure relates.

''(ii) NONCOMPLIANCE PERIOD.—For purposes of this paragraph, the term 'noncompliance period' means, with respect to any failure, the period—

''(I) beginning on the date such failure first occurs; and

''(II) ending on the date such failure is corrected.

''(C) MINIMUM PENALTIES WHERE FAILURE DISCOVERED.—Notwithstanding clauses (i) and (ii) of subparagraph (D):

''(i) IN GENERAL.—In the case of 1 or more failures with respect to an individual—

''(I) which are not corrected before the date on which the plan receives a notice from the Secretary of such violation; and

''(II) which occurred or continued during the period involved;

the amount of penalty imposed by subparagraph (A) by reason of such failures with respect to such individual shall not be less than $2,500.

''(ii) HIGHER MINIMUM PENALTY WHERE VIOLATIONS ARE MORE THAN DE MINIMIS.—To the extent violations for which any person is liable under this paragraph for any year are more than de minimis, clause (i) shall be applied by substituting '$15,000' for '$2,500' with respect to such person.

''(D) LIMITATIONS.—

''(i) PENALTY NOT TO APPLY WHERE FAILURE NOT DISCOVERED EXERCISING REASONABLE DILIGENCE.—No penalty shall be imposed by subparagraph (A) on any failure during any period for which it is established to the satisfaction of the Secretary that the person otherwise liable for such penalty did not know, and exercising reasonable diligence would not have known, that such failure existed.

''(ii) PENALTY NOT TO APPLY TO FAILURES CORRECTED WITHIN CERTAIN PERIODS.—No penalty shall be imposed by subparagraph (A) on any failure if—

''(I) such failure was due to reasonable cause and not to willful neglect; and

''(II) such failure is corrected during the 30-day period beginning on the first date the person otherwise liable for such penalty knew, or exercising reasonable diligence would have known, that such failure existed.

''(iii) OVERALL LIMITATION FOR UNINTENTIONAL FAILURES.—In the case of failures which are due to reasonable cause and not to willful neglect, the penalty imposed by subparagraph (A) for failures shall not exceed the amount equal to the lesser of—

''(I) 10 percent of the aggregate amount paid or incurred by the employer (or predecessor employer) during the preceding taxable year for group health plans; or

''(II) $500,000.

''(E) WAIVER BY SECRETARY.—In the case of a failure which is due to reasonable cause and not to willful neglect, the Secretary may waive part or all of the penalty imposed by subparagraph (A) to the extent that the payment of such penalty would be excessive relative to the failure involved.''.

(4) DEFINITIONS.—Section 2791(d) of the Public Health Service Act (42 U.S.C. 300gg–91(d)) is amended by adding at the end the following:

''(15) FAMILY MEMBER.—The term 'family member' means with respect to an individual—

''(A) the spouse of the individual;

''(B) a dependent child of the individual, including a child who is born to or placed for adoption with the individual; and

''(C) all other individuals related by blood to the individual or the spouse or child described in subparagraph (A) or (B).

''(16) GENETIC INFORMATION.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), the term 'genetic information' means information about—

''(i) an individual's genetic tests;

''(ii) the genetic tests of family members of the individual; or

''(iii) the occurrence of a disease or disorder in family members of the individual.

''(B) EXCLUSIONS.—The term 'genetic information' shall not include information about the sex or age of an individual.

''(17) GENETIC TEST.—

''(A) IN GENERAL.—The term 'genetic test' means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

''(B) EXCEPTIONS.—The term 'genetic test' does not mean—

''(i) an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or

''(ii) an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

''(18) GENETIC SERVICES.—The term 'genetic services' means—

''(A) a genetic test;

''(B) genetic counseling (such as obtaining, interpreting, or assessing genetic information); or

''(C) genetic education.''.

(b) AMENDMENT RELATING TO THE INDIVIDUAL MARKET.—

(1) IN GENERAL.—The first subpart 3 of part B of title XXVII of the Public Health Service Act (42 U.S.C. 300gg–51 et seq.) (relating to other requirements) is amended—

(A) by redesignating such subpart as subpart 2; and

(B) by adding at the end the following:

''SEC. 2753. PROHIBITION OF HEALTH DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION.

''(a) PROHIBITION ON GENETIC INFORMATION AS A CONDITION OF ELIGIBILITY.—A health insurance issuer offering health insurance coverage in the individual market may not establish rules for the eligibility (including continued eligibility) of any individual to enroll in individual health insurance coverage based on genetic information (including information about a request for or receipt of genetic services by an individual or family member of such individual).

''(b) PROHIBITION ON GENETIC INFORMATION IN SETTING PREMIUM RATES.—A health insurance issuer offering health insurance coverage in the individual market shall not adjust premium or contribution amounts for an individual on the basis of genetic information concerning the individual or a family member of the individual (including information about a request for or receipt of genetic services by an individual or family member of such individual).

''(c) GENETIC TESTING.—

''(1) LIMITATION ON REQUESTING OR REQUIRING GENETIC TESTING.—A health insurance issuer offering health insurance coverage in the individual market shall not request or require an individual or a family member of such individual to undergo a genetic test.

''(2) RULE OF CONSTRUCTION.—Nothing in this part shall be construed to—

''(A) limit the authority of a health care professional who is providing health care services with respect to an individual to request that such individual or a family member of such individual undergo a genetic test;

''(B) limit the authority of a health care professional who is employed by or affiliated with a health insurance issuer and who is providing health care services to an individual as part of a bona fide wellness program to notify such individual of the availability of a genetic test or to provide information to such individual regarding such genetic test; or

''(C) authorize or permit a health care professional to require that an individual undergo a genetic test.''.

(2) REMEDIES AND ENFORCEMENT.—Section 2761(b) of the Public Health Service Act (42 U.S.C. 300gg–61)(b)) is amended to read as follows:

''(b) SECRETARIAL ENFORCEMENT AUTHORITY.—The Secretary shall have the same authority in relation to enforcement of the provisions of this part with respect to issuers of health insurance coverage in the individual market in a State as the Secretary has under section 2722(b)(2), and section 2722(b)(3) with respect to violations of genetic nondiscrimination provisions, in relation to the enforcement of the provisions of part A with respect to issuers of health insurance coverage in the small group market in the State.''.

(c) ELIMINATION OF OPTION OF NON-FEDERAL GOVERNMENTAL PLANS TO BE EXCEPTED FROM REQUIREMENTS CONCERNING GENETIC INFORMATION.—Section 2721(b)(2) of the Public Health Service Act (42 U.S. C. 300gg–21(b)(2)) is amended—

(1) in subparagraph (A), by striking ''If the plan sponsor'' and inserting ''Except as provided in subparagraph (D), if the plan sponsor''; and

(2) by adding at the end the following:

''(D) ELECTION NOT APPLICABLE TO REQUIREMENTS CONCERNING GENETIC INFORMATION.—

The election described in subparagraph (A) shall not be available with respect to the provisions of subsections (a)(1)(F) and (c) of section 2702 and the provisions of section 2702(b) to the extent that such provisions apply to genetic information (or information about a request for or the receipt of genetic services by an individual or a family member of such individual).''.

(d) REGULATIONS AND EFFECTIVE DATE.—

(1) REGULATIONS.—Not later than 1 year after the date of enactment of this title, the Secretary of Labor and the Secretary of Health and Human Services (as the case may be) shall issue final regulations in an accessible format to carry out the amendments made by this section.

(2) EFFECTIVE DATE.—The amendments made by this section shall apply—

(A) with respect to group health plans, and health insurance coverage offered in connection with group health plans, for plan years beginning after the date that is 18 months after the date of enactment of this title; and

(B) with respect to health insurance coverage offered, sold, issued, renewed, in effect, or operated in the individual market after the date that is 18 months after the date of enactment of this title.

SEC. 103. AMENDMENTS TO TITLE XVIII OF THE SOCIAL SECURITY ACT RELATING TO MEDIGAP.

(a) NONDISCRIMINATION.—

(1) IN GENERAL.—Section 1882(s)(2) of the Social Security Act (42 U.S.C. 1395ss(s)(2)) is amended by adding at the end the following:

''(E)(i) An issuer of a medicare supplemental policy shall not deny or condition the issuance or effectiveness of the policy, and shall not discriminate in the pricing of the policy (including the adjustment of premium rates) of an eligible individual on the basis of genetic information concerning the individual (or information about a request for, or the receipt of, genetic services by such individual or family member of such individual).

''(ii) For purposes of clause (i), the terms 'family member', 'genetic services', and 'genetic information' shall have the meanings given such terms in subsection (x).''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to a policy for policy years beginning after the date that is 18 months after the date of enactment of this Act.

(b) LIMITATIONS ON GENETIC TESTING.—

(1) IN GENERAL.—Section 1882 of the Social Security Act (42 U.S.C. 1395ss) is amended by adding at the end the following:

''(x) LIMITATIONS ON GENETIC TESTING.—

''(1) GENETIC TESTING.—

''(A) LIMITATION ON REQUESTING OR REQUIRING GENETIC TESTING.—An issuer of a medicare supplemental policy shall not request or require an individual or a family member of such individual to undergo a genetic test.

''(B) RULE OF CONSTRUCTION.—Nothing in this title shall be construed to—

''(i) limit the authority of a health care professional who is providing health care services with respect to an individual to request that such individual or a family member of such individual undergo a genetic test;

''(ii) limit the authority of a health care professional who is employed by or affiliated with an issuer of a medicare supplemental policy and who is providing health care services to an individual as part of a bona fide wellness program to notify such individual of the availability of a genetic test or to provide information to such individual regarding such genetic test; or

''(iii) authorize or permit a health care professional to require that an individual undergo a genetic test.

''(2) DEFINITIONS.—In this subsection:

''(A) FAMILY MEMBER.—The term 'family member' means with respect to an individual—

''(i) the spouse of the individual;

''(ii) a dependent child of the individual, including a child who is born to or placed for adoption with the individual; or

''(iii) any other individuals related by blood to the individual or to the spouse or child described in clause (i) or (ii).

''(B) GENETIC INFORMATION.—

''(i) IN GENERAL.—Except as provided in clause (ii), the term 'genetic information' means information about—

''(I) an individual's genetic tests;

''(II) the genetic tests of family members of the individual; or

''(III) the occurrence of a disease or disorder in family members of the individual.

''(ii) EXCLUSIONS.—The term 'genetic information' shall not include information about the sex or age of an individual.

''(C) GENETIC TEST.—

''(i) IN GENERAL.—The term 'genetic test' means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

''(ii) EXCEPTIONS.—The term 'genetic test' does not mean—

''(I) an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes; or

''(II) an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.

''(D) GENETIC SERVICES.—The term 'genetic services' means—

''(i) a genetic test;

''(ii) genetic counseling (such as obtaining, interpreting, or assessing genetic information); or

''(iii) genetic education.

''(E) ISSUER OF A MEDICARE SUPPLEMENTAL POLICY.—The term 'issuer of a medicare supplemental policy' includes a third-party administrator or other person acting for or on behalf of such issuer.''.

(2) CONFORMING AMENDMENT.—Section 1882(o) of the Social Security Act (42 U.S.C. 1395ss(o)) is amended by adding at the end the following:

''(4) The issuer of the medicare supplemental policy complies with subsection (s)(2)(E) and subsection (x).''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to an issuer of a medicare supplemental policy for policy years beginning on or after the date that is 18 months after the date of enactment of this Act.

(c) TRANSITION PROVISIONS.—

(1) IN GENERAL.—If the Secretary of Health and Human Services identifies a State as requiring a change to its statutes or regulations to conform its regulatory program to the changes made by this section, the State regulatory program shall not be considered to be out of compliance with the requirements of section 1882 of the Social Security Act due solely to failure to make such change until the date specified in paragraph (4).

(2) NAIC STANDARDS.—If, not later than June 30, 2006, the National Association of Insurance Commissioners (in this subsection referred to as the ''NAIC'') modifies its NAIC Model Regulation relating to section 1882 of the Social Security Act (referred to in such section as the 1991 NAIC Model Regulation, as subsequently modified) to conform to the amendments made by this section, such revised regulation incorporating the modifications shall be considered to be the applicable NAIC model regulation (including the revised NAIC model regulation and the 1991 NAIC Model Regulation) for the purposes of such section.

(3) SECRETARY STANDARDS.—If the NAIC does not make the modifications described in paragraph (2) within the period specified in such paragraph, the Secretary of Health and Human Services shall, not later than October 1, 2006, make the modifications described in such paragraph and such revised regulation incorporating the modifications shall be considered to be the appropriate regulation for the purposes of such section.

(4) DATE SPECIFIED.—

(A) IN GENERAL.—Subject to subparagraph (B), the date specified in this paragraph for a State is the earlier of—

(i) the date the State changes its statutes or regulations to conform its regulatory program to the changes made by this section, or

(ii) October 1, 2006.

(B) ADDITIONAL LEGISLATIVE ACTION REQUIRED.—In the case of a State which the Secretary identifies as—

(i) requiring State legislation (other than legislation appropriating funds) to conform its regulatory program to the changes made in this section, but

(ii) having a legislature which is not scheduled to meet in 2006 in a legislative session in which such legislation may be considered, the date specified in this paragraph is the first day of the first calendar quarter beginning after the close of the first legislative session of the State legislature that begins on or after July 1, 2006. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

SEC. 105. PRIVACY AND CONFIDENTIALITY.

(a) APPLICABILITY.—Except as provided in subsection (d), the provisions of this section shall apply to group health plans, health insurance issuers (including issuers in connection with group health plans or individual health coverage), and issuers of medicare supplemental policies, without regard to—

(1) section 732(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1191a(a));

(2) section 2721(a) of the Public Health Service Act (42 U.S.C. 300gg–21(a)); and

(3) section 9831(a)(2) of the Internal Revenue Code of 1986.

(b) COMPLIANCE WITH CERTAIN CONFIDENTIALITY STANDARDS WITH RESPECT TO GENETIC INFORMATION.—

(1) IN GENERAL.—The regulations promulgated by the Secretary of Health and Human Services under part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.) and section 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note) shall apply to the use or disclosure of genetic information.

(2) PROHIBITION ON UNDERWRITING AND PREMIUM RATING.—Notwithstanding paragraph (1), a group health plan, a health insurance issuer, or issuer of a medicare supplemental policy shall not use or disclose genetic information (including information about a request for or a receipt of genetic services by an individual or family member of such individual) for purposes of underwriting, determinations of eligibility to enroll, premium rating, or the creation, renewal or replacement of a plan, contract or coverage for health insurance or health benefits.

(c) PROHIBITION ON COLLECTION OF GENETIC INFORMATION.—

(1) IN GENERAL.—A group health plan, health insurance issuer, or issuer of a medicare supplemental policy shall not request, require, or purchase genetic information (including information about a request for or a

receipt of genetic services by an individual or family member of such individual) for purposes of underwriting, determinations of eligibility to enroll, premium rating, or the creation, renewal or replacement of a plan, contract or coverage for health insurance or health benefits.

(2) LIMITATION RELATING TO THE COLLECTION OF GENETIC INFORMATION PRIOR TO ENROLLMENT.—A group health plan, health insurance issuer, or issuer of a medicare supplemental policy shall not request, require, or purchase genetic information (including information about a request for or a receipt of genetic services by an individual or family member of such individual) concerning a participant, beneficiary, or enrollee prior to the enrollment, and in connection with such enrollment, of such individual under the plan, coverage, or policy.

(3) INCIDENTAL COLLECTION.—Where a group health plan, health insurance issuer, or issuer of a medicare supplemental policy obtains genetic information incidental to the requesting, requiring, or purchasing of other information concerning a participant, beneficiary, or enrollee, such request, requirement, or purchase shall not be considered a violation of this subsection if—

(A) such request, requirement, or purchase is not in violation of paragraph (1); and

(B) any genetic information (including information about a request for or receipt of genetic services) requested, required, or purchased is not used or disclosed in violation of subsection (b).

(d) APPLICATION OF CONFIDENTIALITY STANDARDS.—The provisions of subsections (b) and (c) shall not apply—

(1) to group health plans, health insurance issuers, or issuers of medicare supplemental policies that are not otherwise covered under the regulations promulgated by the Secretary of Health and Human Services under part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.) and section 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note); and

(2) to genetic information that is not considered to be individually-identifiable health information under the regulations promulgated by the Secretary of Health and Human Services under part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.) and section 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note).

(e) ENFORCEMENT.—A group health plan, health insurance issuer, or issuer of a medicare supplemental policy that violates a provision of this section shall be subject to the penalties described in sections 1176 and 1177 of the Social Security Act (42 U.S.C. 1320d–5 and 1320d–6) in the same manner and to the same extent that such penalties apply to violations of part C of title XI of such Act.

(f) PREEMPTION.—

(1) IN GENERAL.—A provision or requirement under this section or a regulation promulgated under this section shall supersede any contrary provision of State law unless such provision of State law imposes requirements, standards, or implementation specifications that are more stringent than the requirements, standards, or implementation specifications imposed under this section or such regulations. No penalty, remedy, or cause of action to enforce such a State law that is more stringent shall be preempted by this section.

(2) RULE OF CONSTRUCTION.—Nothing in paragraph (1) shall be construed to establish a penalty, remedy, or cause of action under State law if such penalty, remedy, or cause of action is not otherwise available under such State law.

(g) COORDINATION WITH PRIVACY REGULATIONS.—The Secretary shall implement and administer this section in a manner that is consistent with the implementation and administration by the Secretary of the regulations promulgated by the Secretary of Health and Human Services under part C of title XI of the Social Security Act (42 U.S.C. 1320d et seq.) and section 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–2 note).

(h) DEFINITIONS.—In this section:

(1) GENETIC INFORMATION; GENETIC SERVICES.—The terms ''family member'', ''genetic information'', ''genetic services'', and ''genetic test'' have the meanings given such terms in section 2791 of the Public Health Service Act (42 U.S.C. 300gg–91), as amended by this Act.

(2) GROUP HEALTH PLAN; HEALTH INSURANCE ISSUER.—The terms ''group health plan'' and ''health insurance issuer'' include only those plans and issuers that are covered under the regulations described in subsection (d)(1).

(3) ISSUER OF A MEDICARE SUPPLEMENTAL POLICY.—The term ''issuer of a medicare supplemental policy'' means an issuer described in section 1882 of the Social Security Act (42 insert 1395ss).

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

SEC. 106. ASSURING COORDINATION.

(a) IN GENERAL.—Except as provided in subsection (b), the Secretary of the Treasury, the Secretary of Health and Human Services, and the Secretary of Labor shall ensure, through the execution of an interagency memorandum of understanding among such Secretaries, that—

(1) regulations, rulings, and interpretations issued by such Secretaries relating to the same matter over which two or more such Secretaries have responsibility under this title (and the amendments made by this title) are administered so as to have the same effect at all times; and

(2) coordination of policies relating to enforcing the same requirements through such Secretaries in order to have a coordinated enforcement strategy that avoids duplication of enforcement efforts and assigns priorities in enforcement.

(b) AUTHORITY OF THE SECRETARY.—The Secretary of Health and Human Services has the sole authority to promulgate regulations to implement section 104.

SEC. 107. REGULATIONS; EFFECTIVE DATE.

(a) REGULATIONS.—Not later than 1 year after the date of enactment of this title, the Secretary of Labor, the Secretary of Health and Human Services, and the Secretary of the Treasury shall issue final regulations in an accessible format to carry out this title.

(b) EFFECTIVE DATE.—Except as provided in section 103, the amendments made by this title shall take effect on the date that is 18 months after the date of enactment of this Act.

TITLE II—PROHIBITING EMPLOYMENT DISCRIMINATION ON THE BASIS OF GENETIC INFORMATION

SEC. 201. DEFINITIONS.

In this title:

(1) COMMISSION.—The term ''Commission'' means the Equal Employment Opportunity Commission as created by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4).

(2) EMPLOYEE; EMPLOYER; EMPLOYMENT AGENCY; LABOR ORGANIZATION; MEMBER.—

(A) IN GENERAL.—The term ''employee'' means—

(i) an employee (including an applicant), as defined in section 701(f) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(f));

(ii) a State employee (including an applicant) described in section 304(a) of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16c(a));

(iii) a covered employee (including an applicant), as defined in section 101 of the Congressional Accountability Act of 1995 (2 U.S.C. 1301);

(iv) a covered employee (including an applicant), as defined in section 411(c) of title 3, United States Code; or

(v) an employee or applicant to which section 717(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16(a)) applies.

(B) EMPLOYER.—The term ''employer'' means—

(i) an employer (as defined in section 701(b) of the Civil Rights Act of 1964 (42 U.S.C. 2000e(b));

(ii) an entity employing a State employee described in section 304(a) of the Government Employee Rights Act of 1991;

(iii) an employing office, as defined in section 101 of the Congressional Accountability Act of 1995;

(iv) an employing office, as defined in section 411(c) of title 3, United States Code; or

(v) an entity to which section 717(a) of the Civil Rights Act of 1964 applies.

(C) EMPLOYMENT AGENCY; LABOR ORGANIZATION.—The terms ''employment agency'' and ''labor organization'' have the meanings given the terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

(D) MEMBER.—The term ''member'', with respect to a labor organization, includes an applicant for membership in a labor organization.

(3) FAMILY MEMBER.—The term ''family member'' means with respect to an individual—

(A) the spouse of the individual;

(B) a dependent child of the individual, including a child who is born to or placed for adoption with the individual; and

(C) all other individuals related by blood to the individual or the spouse or child described in subparagraph (A) or (B).

(4) GENETIC INFORMATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the term ''genetic information'' means information about—

(i) an individual's genetic tests;

(ii) the genetic tests of family members of the individual; or

(iii) the occurrence of a disease or disorder in family members of the individual.

(B) EXCEPTIONS.—The term ''genetic information'' shall not include information about the sex or age of an individual.

(5) GENETIC MONITORING.—The term ''genetic monitoring'' means the periodic examination of employees to evaluate acquired modifications to their genetic material, such as chromosomal damage or evidence of increased occurrence of mutations, that may have developed in the course of employment due to exposure to toxic substances in the workplace, in order to identify, evaluate, and respond to the effects of or control adverse environmental exposures in the workplace.

(6) GENETIC SERVICES.—The term ''genetic services'' means—

(A) a genetic test;

(B) genetic counseling (such as obtaining, interpreting or assessing genetic information); or

(C) genetic education.

(7) GENETIC TEST.—

(A) IN GENERAL.—The term ''genetic test'' means the analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.

(B) EXCEPTION.—The term ''genetic test'' does not mean an analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes.

SEC. 202. EMPLOYER PRACTICES.

(a) USE OF GENETIC INFORMATION.—It shall be an unlawful employment practice for an employer—

(1) to fail or refuse to hire or to discharge any employee, or otherwise to discriminate against any employee with respect to the compensation, terms, conditions, or privileges of employment of the employee, because of genetic information with respect to the employee (or information about a request for or the receipt of genetic services by such employee or family member of such employee); or

(2) to limit, segregate, or classify the employees of the employer in any way that would deprive or tend to deprive any employee of employment opportunities or otherwise adversely affect the status of the employee as an employee, because of genetic information with respect to the employee (or information about a request for or the receipt of genetic services by such employee or family member of such employee).

(b) ACQUISITION OF GENETIC INFORMATION.—It shall be an unlawful employment practice for an employer to request, require, or purchase genetic information with respect to an employee or a family member of the employee (or information about a request for the receipt of genetic services by such employee or a family member of such employee) except—

(1) where an employer inadvertently requests or requires family medical history of the employee or family member of the employee;

(2) where—

(A) health or genetic services are offered by the employer, including such services offered as part of a bona fide wellness program;

(B) the employee provides prior, knowing, voluntary, and written authorization;

(C) only the employee (or family member if the family member is receiving genetic services) and the licensed health care professional or board certified genetic counselor involved in providing such services receive individually identifiable information concerning the results of such services; and

(D) any individually identifiable genetic information provided under subparagraph (C) in connection with the services provided under subparagraph (A) is only available for purposes of such services and shall not be disclosed to the employer except in aggregate terms that do not disclose the identity of specific employees;

(3) where an employer requests or requires family medical history from the employee to comply with the certification provisions of section 103 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613) or such requirements under State family and medical leave laws;

(4) where an employer purchases documents that are commercially and publicly available (including newspapers, magazines, periodicals, and books, but not including medical databases or court records) that include family medical history; or

(5) where the information involved is to be used for genetic monitoring of the biological effects of toxic substances in the workplace, but only if—

(A) the employer provides written notice of the genetic monitoring to the employee;

(B)(i) the employee provides prior, knowing, voluntary, and written authorization; or

(ii) the genetic monitoring is required by Federal or State law;

(C) the employee is informed of individual monitoring results;

(D) the monitoring is in compliance with—

(i) any Federal genetic monitoring regulations, including any such regulations that may be promulgated by the Secretary of Labor pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.), or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); or

(ii) State genetic monitoring regulations, in the case of a State that is implementing genetic monitoring regulations under the authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); and

(E) the employer, excluding any licensed health care professional or board certified genetic counselor that is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific employees;

(c) PRESERVATION OF PROTECTIONS.—In the case of information to which any of paragraphs (1) through (5) of subsection (b) applies, such information may not be used in violation of paragraph (1) or (2) of subsection (a) or treated or disclosed in a manner that violates section 206.

SEC. 203. EMPLOYMENT AGENCY PRACTICES.

(a) USE OF GENETIC INFORMATION.—It shall be an unlawful employment practice for an employment agency—

(1) to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of genetic information with respect to the individual (or information about a request for or the receipt of genetic services by such individual or family member of such individual);

(2) to limit, segregate, or classify individuals or fail or refuse to refer for employment any individual in any way that would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect the status of the individual as an employee, because of genetic information with respect to the individual (or information about a request for or the receipt of genetic services by such individual or family member of such individual); or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this title.

(b) ACQUISITION OF GENETIC INFORMATION.—It shall be an unlawful employment practice for an employment agency to request, require, or purchase genetic information with respect to an individual or a family member of the individual (or information about a request for the receipt of genetic services by such individual or a family member of such individual) except—

(1) where an employment agency inadvertently requests or requires family medical history of the individual or family member of the individual;

(2) where—

(A) health or genetic services are offered by the employment agency, including such services offered as part of a bona fide wellness program;

(B) the individual provides prior, knowing, voluntary, and written authorization;

(C) only the individual (or family member if the family member is receiving genetic services) and the licensed health care professional or board certified genetic counselor involved in providing such services receive individually identifiable information concerning the results of such services; and

(D) any individually identifiable genetic information provided under subparagraph (C) in connection with the services provided under subparagraph (A) is only available for purposes of such services and shall not be disclosed to the employment agency except in aggregate terms that do not disclose the identity of specific individuals;

(3) where an employment agency requests or requires family medical history from the individual to comply with the certification provisions of section 103 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613) or such requirements under State family and medical leave laws;

(4) where an employment agency purchases documents that are commercially and publicly available (including newspapers, magazines, periodicals, and books, but not including medical databases or court records) that include family medical history; or

(5) where the information involved is to be used for genetic monitoring of the biological effects of toxic substances in the workplace, but only if—

(A) the employment agency provides written notice of the genetic monitoring to the individual;

(B)(i) the individual provides prior, knowing, voluntary, and written authorization; or

(ii) the genetic monitoring is required by Federal or State law;

(C) the individual is informed of individual monitoring results;

(D) the monitoring is in compliance with—

(i) any Federal genetic monitoring regulations, including any such regulations that may be promulgated by the Secretary of Labor pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.), or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); or

(ii) State genetic monitoring regulations, in the case of a State that is implementing genetic monitoring regulations under the authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); and

(E) the employment agency, excluding any licensed health care professional or board certified genetic counselor that is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific individuals;

(c) PRESERVATION OF PROTECTIONS.—In the case of information to which any of paragraphs (1) through (5) of subsection (b) applies, such information may not be used in violation of paragraph (1) or (2) of subsection (a) or treated or disclosed in a manner that violates section 206.

SEC. 204. LABOR ORGANIZATION PRACTICES.

(a) USE OF GENETIC INFORMATION.—It shall be an unlawful employment practice for a labor organization—

(1) to exclude or to expel from the membership of the organization, or otherwise to discriminate against, any member because of genetic information with respect to the member (or information about a request for or the receipt of genetic services by such member or family member of such member);

(2) to limit, segregate, or classify the members of the organization, or fail or refuse to refer for employment any member, in any way that would deprive or tend to deprive any member of employment opportunities, or otherwise adversely affect the status of the member as an employee, because of genetic information with respect to the member (or information about a request for or the receipt of genetic services by such member or family member of such member); or

(3) to cause or attempt to cause an employer to discriminate against a member in violation of this title.

(b) ACQUISITION OF GENETIC INFORMATION.—It shall be an unlawful employment practice for a labor organization to request, require, or purchase genetic information with respect to a member or a family member of the member (or information about a request for the receipt of genetic services by such member or a family member of such member) except—

(1) where a labor organization inadvertently requests or requires family medical history of the member or family member of the member;

(2) where—

(A) health or genetic services are offered by the labor organization, including such services offered as part of a bona fide wellness program;

(B) the member provides prior, knowing, voluntary, and written authorization;

(C) only the member (or family member if the family member is receiving genetic services) and the licensed health care professional or board certified genetic counselor involved in providing such services receive individually identifiable information concerning the results of such services; and

(D) any individually identifiable genetic information provided under subparagraph (C) in connection with the services provided under subparagraph (A) is only available for purposes of such services and shall not be disclosed to the labor organization except in aggregate terms that do not disclose the identity of specific members;

(3) where a labor organization requests or requires family medical history from the members to comply with the certification provisions of section 103 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613) or such requirements under State family and medical leave laws;

(4) where a labor organization purchases documents that are commercially and publicly available (including newspapers, magazines, periodicals, and books, but not including medical databases or court records) that include family medical history; or

(5) where the information involved is to be used for genetic monitoring of the biological effects of toxic substances in the workplace, but only if—

(A) the labor organization provides written notice of the genetic monitoring to the member;

(B)(i) the member provides prior, knowing, voluntary, and written authorization; or

(ii) the genetic monitoring is required by Federal or State law;

(C) the member is informed of individual monitoring results;

(D) the monitoring is in compliance with—

(i) any Federal genetic monitoring regulations, including any such regulations that may be promulgated by the Secretary of Labor pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.), or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); or

(ii) State genetic monitoring regulations, in the case of a State that is implementing genetic monitoring regulations under the authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); and

(E) the labor organization, excluding any licensed health care professional or board certified genetic counselor that is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific members;

(c) PRESERVATION OF PROTECTIONS.—In the case of information to which any of paragraphs (1) through (5) of subsection (b) applies, such information may not be used in violation of paragraph (1) or (2) of subsection (a) or treated or disclosed in a manner that violates section 206.

SEC. 205. TRAINING PROGRAMS.

(a) USE OF GENETIC INFORMATION.—It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs—

(1) to discriminate against any individual because of genetic information with respect to the individual (or information about a request for or the receipt of genetic services by such individual or a family member of such individual) in admission to, or employment in, any program established to provide apprenticeship or other training or retraining;

(2) to limit, segregate, or classify the applicants for or participants in such apprenticeship or other training or retraining, or fail or refuse to refer for employment any individual, in any way that would deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect the status of the individual as an employee, because of genetic information with respect to the individual (or information about a request for or receipt of genetic services by such individual or family member of such individual); or

(3) to cause or attempt to cause an employer to discriminate against an applicant for or a participant in such apprenticeship or other training or retraining in violation of this title.

(b) ACQUISITION OF GENETIC INFORMATION.—It shall be an unlawful employment practice for an employer, labor organization, or joint labor-management committee described in subsection (a) to request, require, or purchase genetic information with respect to an individual or a family member of the individual (or information about a request for the receipt of genetic services by such individual or a family member of such individual) except—

(1) where the employer, labor organization, or joint labor-management committee inadvertently requests or requires family medical history of the individual or family member of the individual;

(2) where—

(A) health or genetic services are offered by the employer, labor organization, or joint labor-management committee, including such services offered as part of a bona fide wellness program;

(B) the individual provides prior, knowing, voluntary, and written authorization;

(C) only the individual (or family member if the family member is receiving genetic services) and the licensed health care professional or board certified genetic counselor involved in providing such services receive individually identifiable information concerning the results of such services;

(D) any individually identifiable genetic information provided under subparagraph (C) in connection with the services provided under subparagraph (A) is only available for purposes of such services and shall not be disclosed to the employer, labor organization, or joint labor-management committee except in aggregate terms that do not disclose the identity of specific individuals;

(3) where the employer, labor organization, or joint labor-management committee requests or requires family medical history from the individual to comply with the certification provisions of section 103 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613) or such requirements under State family and medical leave laws;

(4) where the employer, labor organization, or joint labor-management committee purchases documents that are commercially and publicly available (including newspapers, magazines, periodicals, and books, but not including medical databases or court records) that include family medical history; or

(5) where the information involved is to be used for genetic monitoring of the biological effects of toxic substances in the workplace, but only if—

(A) the employer, labor organization, or joint labor-management committee provides written notice of the genetic monitoring to the individual;

(B)(i) the individual provides prior, knowing, voluntary, and written authorization; or

(ii) the genetic monitoring is required by Federal or State law;

(C) the individual is informed of individual monitoring results;

(D) the monitoring is in compliance with—

(i) any Federal genetic monitoring regulations, including any such regulations that may be promulgated by the Secretary of Labor pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.), the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 et seq.), or the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.); or

(ii) State genetic monitoring regulations, in the case of a State that is implementing genetic monitoring regulations under the authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); and

(E) the employer, labor organization, or joint labor-management committee, excluding any licensed health care professional or board certified genetic counselor that is involved in the genetic monitoring program, receives the results of the monitoring only in aggregate terms that do not disclose the identity of specific individuals;

(c) PRESERVATION OF PROTECTIONS.—In the case of information to which any of paragraphs (1) through (5) of subsection (b) applies, such information may not be used in violation of paragraph (1) or (2) of subsection (a) or treated or disclosed in a manner that violates section 206.

SEC. 206. CONFIDENTIALITY OF GENETIC INFORMATION.

(a) TREATMENT OF INFORMATION AS PART OF CONFIDENTIAL MEDICAL RECORD.—If an employer, employment agency, labor organization, or joint labor-management committee possesses genetic information about an employee or member (or information about a request for or receipt of genetic services by such employee or member or family member of such employee or member), such information shall be maintained on separate forms and in separate medical files and be treated as a confidential medical record of the employee or member.

(b) LIMITATION ON DISCLOSURE.—An employer, employment agency, labor organization, or joint labor-management committee shall not disclose genetic information concerning an employee or member (or information about a request for or receipt of genetic services by such employee or member or family member of such employee or member) except—

(1) to the employee (or family member if the family member is receiving the genetic services) or member of a labor organization at the request of the employee or member of such organization;

(2) to an occupational or other health researcher if the research is conducted in compliance with the regulations and protections provided for under part 46 of title 45, Code of Federal Regulations;

(3) in response to an order of a court, except that—

(A) the employer, employment agency, labor organization, or joint labor-management committee may disclose only the genetic information expressly authorized by such order; and

(B) if the court order was secured without the knowledge of the employee or member to whom the information refers, the employer, employment agency, labor organization, or joint labor-management committee shall provide the employee or member with adequate notice to challenge the court order;

(4) to government officials who are investigating compliance with this title if the information is relevant to the investigation; or

(5) to the extent that such disclosure is made in connection with the employee's compliance with the certification provisions of section 103 of the Family and Medical

Leave Act of 1993 (29 U.S.C. 2613) or such requirements under State family and medical leave laws.

SEC. 207. REMEDIES AND ENFORCEMENT.

(a) EMPLOYEES COVERED BY TITLE VII OF THE CIVIL RIGHTS ACT OF 1964.—

(1) IN GENERAL.—The powers, remedies, and procedures provided in sections 705, 706, 707, 709, 710, and 711 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4 et seq.) to the Commission, the Attorney General, or any person, alleging a violation of title VII of that Act (42 U.S.C. 2000e et seq.) shall be the powers, remedies, and procedures this title provides to the Commission, the Attorney General, or any person, respectively, alleging an unlawful employment practice in violation of this title against an employee described in section 201(2)(A)(i), except as provided in paragraphs (2) and (3).

(2) COSTS AND FEES.—The powers, remedies, and procedures provided in subsections (b) and (c) of section 722 of the Revised Statutes (42 U.S.C. 1988), shall be powers, remedies, and procedures this title provides to the Commission, the Attorney General, or any person, alleging such a practice.

(3) DAMAGES.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to the Commission, the Attorney General, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

(b) EMPLOYEES COVERED BY GOVERNMENT EMPLOYEE RIGHTS ACT OF 1991.—

(1) IN GENERAL.—The powers, remedies, and procedures provided in sections 302 and 304 of the Government Employee Rights Act of 1991 (42 U.S.C. 2000e–16b, 2000e–16c) to the Commission, or any person, alleging a violation of section 302(a)(1) of that Act (42 U.S.C. 2000e–16b(a)(1)) shall be the powers, remedies, and procedures this title provides to the Commission, or any person, respectively, alleging an unlawful employment practice in violation of this title against an employee described in section 201(2)(A)(ii), except as provided in paragraphs (2) and (3).

(2) COSTS AND FEES.—The powers, remedies, and procedures provided in subsections (b) and (c) of section 722 of the Revised Statutes (42 U.S.C. 1988), shall be powers, remedies, and procedures this title provides to the Commission, or any person, alleging such a practice.

(3) DAMAGES.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to the Commission, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

(c) EMPLOYEES COVERED BY CONGRESSIONAL ACCOUNTABILITY ACT OF 1995.—

(1) IN GENERAL.—The powers, remedies, and procedures provided in the Congressional Accountability Act of 1995 (2 U.S.C. 1301 et seq.) to the Board (as defined in section 101 of that Act (2 U.S.C. 1301)), or any person, alleging a violation of section 201(a)(1) of that Act (42 U.S.C. 1311(a)(1)) shall be the powers, remedies, and procedures this title provides to that Board, or any person, alleging an unlawful employment practice in violation of this title against an employee described in section 201(2)(A)(iii), except as provided in paragraphs (2) and (3).

(2) COSTS AND FEES.—The powers, remedies, and procedures provided in subsections (b) and (c) of section 722 of the Revised Statutes (42 U.S.C. 1988), shall be powers, remedies, and procedures this title provides to that Board, or any person, alleging such a practice.

(3) DAMAGES.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to that Board, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

(4) OTHER APPLICABLE PROVISIONS.—With respect to a claim alleging a practice described in paragraph (1), title III of the Congressional Accountability Act of 1995 (2 U.S.C. 1381 et seq.) shall apply in the same manner as such title applies with respect to a claim alleging a violation of section 201(a)(1) of such Act (2 U.S.C. 1311(a)(1)).

(d) EMPLOYEES COVERED BY CHAPTER 5 OF TITLE 3, UNITED STATES CODE.—

(1) IN GENERAL.—The powers, remedies, and procedures provided in chapter 5 of title 3, United States Code, to the President, the Commission, the Merit Systems Protection Board, or any person, alleging a violation of section 411(a)(1) of that title, shall be the powers, remedies, and procedures this title provides to the President, the Commission, such Board, or any person, respectively, alleging an unlawful employment practice in violation of this title against an employee described in section 201(2)(A)(iv), except as provided in paragraphs (2) and (3).

(2) COSTS AND FEES.—The powers, remedies, and procedures provided in subsections (b) and (c) of section 722 of the Revised Statutes (42 U.S.C. 1988), shall be powers, remedies, and procedures this title provides to the President, the Commission, such Board, or any person, alleging such a practice.

(3) DAMAGES.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to the President, the Commission, such Board, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

(e) EMPLOYEES COVERED BY SECTION 717 OF THE CIVIL RIGHTS ACT OF 1964.—

(1) IN GENERAL.—The powers, remedies, and procedures provided in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16) to the Commission, the Attorney General, the Librarian of Congress, or any person, alleging a violation of that section shall be the powers, remedies, and procedures this title provides to the Commission, the Attorney General, the Librarian of Congress, or any person, respectively, alleging an unlawful employment practice in violation of this title against an employee or applicant described in section 201(2)(A)(v), except as provided in paragraphs (2) and (3).

(2) COSTS AND FEES.—The powers, remedies, and procedures provided in subsections (b) and (c) of section 722 of the Revised Statutes (42 U.S.C. 1988), shall be powers, remedies, and procedures this title provides to the Commission, the Attorney General, the Librarian of Congress, or any person, alleging such a practice.

(3) DAMAGES.—The powers, remedies, and procedures provided in section 1977A of the Revised Statutes (42 U.S.C. 1981a), including the limitations contained in subsection (b)(3) of such section 1977A, shall be powers, remedies, and procedures this title provides to the Commission, the Attorney General, the Librarian of Congress, or any person, alleging such a practice (not an employment practice specifically excluded from coverage under section 1977A(a)(1) of the Revised Statutes).

(f) DEFINITION.—In this section, the term ''Commission'' means the Equal Employment Opportunity Commission.

SEC. 208. DISPARATE IMPACT.

(a) GENERAL RULE.—Notwithstanding any other provision of this Act, ''disparate impact'', as that term is used in section 703(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–d(k)), on the basis of genetic information does not establish a cause of action under this Act.

(b) COMMISSION.—On the date that is 6 years after the date of enactment of this Act, there shall be established a commission, to be known as the Genetic Nondiscrimination Study Commission (referred to in this section as the ''Commission'') to review the developing science of genetics and to make recommendations to Congress regarding whether to provide a disparate impact cause of action under this Act.

(c) MEMBERSHIP.—

(1) IN GENERAL.—The Commission shall be composed of 8 members, of which—

(A) 1 member shall be appointed by the Majority Leader of the Senate;

(B) 1 member shall be appointed by the Minority Leader of the Senate;

(C) 1 member shall be appointed by the Chairman of the Committee on Health, Education, Labor, and Pensions of the Senate;

(D) 1 member shall be appointed by the ranking minority member of the Committee on Health, Education, Labor, and Pensions of the Senate;

(E) 1 member shall be appointed by the Speaker of the House of Representatives;

(F) 1 member shall be appointed by the Minority Leader of the House of Representatives;

(G) 1 member shall be appointed by the Chairman of the Committee on Education and the Workforce of the House of Representatives; and

(H) 1 member shall be appointed by the ranking minority member of the Committee on Education and the Workforce of the House of Representatives.

(2) COMPENSATION AND EXPENSES.—The members of the Commission shall not receive compensation for the performance of services for the Commission, but shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(d) ADMINISTRATIVE PROVISIONS.—

(1) LOCATION.—The Commission shall be located in a facility maintained by the Equal Employment Opportunity Commission.

(2) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(3) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out the provisions of this section. Upon request of the Commission, the head of such department or agency shall furnish such information to the Commission.

(4) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out the objectives of this section, except that, to the extent possible,

the Commission shall use existing data and research.

(5) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(e) REPORT.—Not later than 1 year after all of the members are appointed to the Commission under subsection (c)(1), the Commission shall submit to Congress a report that summarizes the findings of the Commission and makes such recommendations for legislation as are consistent with this Act.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Equal Employment Opportunity Commission such sums as may be necessary to carry out this section.

SEC. 209. CONSTRUCTION.

Nothing in this title shall be construed to—

(1) limit the rights or protections of an individual under the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.), including coverage afforded to individuals under section 102 of such Act (42 U.S.C. 12112), or under the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.);

(2)(A) limit the rights or protections of an individual to bring an action under this title against an employer, employment agency, labor organization, or joint labor-management committee for a violation of this title; or

(B) establish a violation under this title for an employer, employment agency, labor organization, or joint labor-management committee of a provision of the amendments made by title I;

(3) limit the rights or protections of an individual under any other Federal or State statute that provides equal or greater protection to an individual than the rights or protections provided for under this title;

(4) apply to the Armed Forces Repository of Specimen Samples for the Identification of Remains;

(5) limit or expand the protections, rights, or obligations of employees or employers under applicable workers' compensation laws;

(6) limit the authority of a Federal department or agency to conduct or sponsor occupational or other health research that is conducted in compliance with the regulations contained in part 46 of title 45, Code of Federal Regulations (or any corresponding or similar regulation or rule); and

(7) limit the statutory or regulatory authority of the Occupational Safety and Health Administration or the Mine Safety and Health Administration to promulgate or enforce workplace safety and health laws and regulations.

SEC. 210. MEDICAL INFORMATION THAT IS NOT GENETIC INFORMATION.

An employer, employment agency, labor organization, or joint labor-management committee shall not be considered to be in violation of this title based on the use, acquisition, or disclosure of medical information that is not genetic information about a manifested disease, disorder, or pathological condition of an employee or member, including a manifested disease, disorder, or pathological condition that has or may have a genetic basis.

SEC. 211. REGULATIONS.

Not later than 1 year after the date of enactment of this title, the Commission shall issue final regulations in an accessible format to carry out this title.

SEC. 212. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as may be necessary to carry out this title (except for section 208).

SEC. 213. EFFECTIVE DATE.

This title takes effect on the date that is 18 months after the date of enactment of this Act.

TITLE III—MISCELLANEOUS PROVISION

SEC. 301. SEVERABILITY.

If any provision of this Act, an amendment made by this Act, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of such provisions to any person or circumstance shall not be affected thereby.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. DEWINE. 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 Wednesday, February 16, 2005, at 10 a.m., to conduct an oversight hearing on the semi-annual monetary policy report of the Federal Reserve.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. DEWINE. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate, on Wednesday, February 16 at 11:30 a.m., to consider pending calendar business.

Agenda

Agenda Item 1: S. 48—A bill to reauthorize appropriations for the New Jersey Coastal Heritage Trail Route, and for other purposes.

Agenda Item 2: S. 52—A bill to direct the Secretary of the Interior to convey a parcel of real property to Beaver County, Utah.

Agenda Item 3: S. 54—A bill to amend the National Trails System Act to require the Secretary of the Interior to update the feasibility and suitability studies of four national historic trails, and for other purposes.

Agenda Item 4: S. 55—A bill to adjust the boundary of Rocky Mountain National Park in the State of Colorado.

Agenda Item 5: S. 56—A bill to establish the Rio Grande Natural Area in the State of Colorado, and for other purposes.

Agenda Item 6: S. 57—A bill to further the purposes of the Sand Creek Massacre National Historic Site Establishment Act of 2000.

Agenda Item 7: S. 97—A bill to provide for the sale of bentonite in Big Horn County, Wyoming.

Agenda Item 8: S. 99—A bill to authorize the Secretary of the Interior to contract with the city of Cheyenne, Wyoming, for the storage of the city's water in the Kendrick Project, Wyoming.

Agenda Item 9: S. 101—A bill to convey to the town of Frannie, Wyoming, certain land withdrawn by the Commission of Reclamation.

Agenda Item 10: S. 128—A bill to designate certain public land in Humboldt, Del Norte, Mendocino, Lake, and Napa Counties in the State of California as wilderness, to designate certain segments of the Black Butte River in Mendocino County, California as a wild or scenic river, and for other purposes.

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

Agenda Item 11: S. 136—A bill to authorize the Secretary of the Interior to provide supplemental funding and other services that are necessary to assist certain local school districts in the State of California in providing education services for students attending schools located within Yosemite National Park, and to authorize the Secretary of the Interior to adjust the boundaries of the Golden Gate National Recreation Area.

Agenda Item 12: S. 152—A bill to enhance ecosystem protection and the range of outdoor opportunities protected by statute in the Skykomish River valley of the State of Washington by designating certain lower-elevation Federal lands as wilderness, and for other purposes.

Agenda Item 13: S. 161—A bill to provide for a land exchange in the State of Arizona between the Secretary of Agriculture and Yavapai Ranch Limited Partnership.

Agenda Item 14: S. 164—A bill to provide for the acquisition of certain property in Washington County, Utah.

Agenda Item 15: S. 182—A bill to provide for the establishment of the Uintah Research and Curatorial Center for Dinosaur National Monument in the States of Colorado and Utah, and for other purposes.

Agenda Item 16: S. 272—A bill to designate certain National Forest System land in the Commonwealth of Puerto Rico as components of the National Wilderness Preservation System.

Agenda Item 17: S. 276—A bill to revise the boundary of the Wind Cave National Park in the State of South Dakota.

Agenda Item 18: S. 301—A bill to authorize the Secretary of the Interior to provide assistance in implementing cultural heritage, conservation, and recreational activities in the Connecticut River watershed of the States of New Hampshire and Vermont. In addition, the Committee may turn to any other measures that are ready for consideration.

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. DEWINE. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet on Wednesday, February 16, 2005, at 9:30 a.m., to conduct a hearing regarding S. 131, Clear Skies Act 2005 and S. 125 to designate the United States courthouse at 501 I Street in Sacramento, CA as the ''Robert T. Matsui United States Courthouse''.

The hearing will be held in SD 406.

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

COMMITTEE ON FINANCE

Mr. DEWINE. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session on Wednesday, February 16, 2005, at 10 a.m., to hear testimony on the President's budget proposals.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. DEWINE. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, February 16, 2004, at 10 a.m., to hold a meeting on the foreign affairs budget.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR AND PENSIONS

Mr. DEWINE. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to hold a hearing during the session of the Senate on Wednesday, February 16, 2005, at 10 a.m., in SD–430.

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

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Mr. DEWINE. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet on Wednesday, February 16, 2005, at 10 a.m., for a hearing titled ''Transforming Government for the 21st Century.''

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

COMMITTEE ON INDIAN AFFAIRS

Mr. DEWINE. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Wednesday, February 16, 2005, at 9:30 a.m., in room 485 of the Russell Senate Office Building to conduct an oversight hearing on the President's fiscal year 2006 budget request for Indian programs.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. DEWINE. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on February 16, 2005, at 10 a.m., to hold an open hearing.

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

SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS AND PROPERTY RIGHTS

Mr. DEWINE. Mr. President, I ask unanimous consent that the Subcommittee on the Constitution, Civil Rights and Property Rights be authorized to meet to conduct a hearing on ''Obscenity Prosecution and the Constitution'' on Wednesday, February 16, 2005, at 3 p.m., in SD226.

Witness List

Mr. Robert Destro, J.D., Professor of Law, Catholic University of America, Columbus School of Law, Washington, DC; Mr. William Wagner, J.D., Associate Professor of Law, the Thomas M. Cooley Law School, Lansing, MI; and Mr. Frederick Schauer, J.D., Frank Stanton Professor of the First Amendment, John F. Kennedy School of Government, Harvard University, Cambridge, MA.

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

PRIVILEGE OF THE FLOOR

Mr. HARKIN. Mr. President, I ask consent that Stephanie Strasko of my staff be granted floor privileges for the duration of today's session.

FOREIGN TRAVEL FINANCIAL REPORTS

In accordance with the appropriate provisions of law, the Secretary of the Senate herewith submits the following reports for standing committees of the Senate, certain joint committees of the Congress, delegations and groups, and select and special committees of the Senate, relating to expenses incurred in the performance of authorized foreign travel:

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2004

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Eric Steiner:									
United States	Dollar				7,628.49				7,628.49
Thailand	Dollar		1,624.00						1,624.00
Laos	Dollar		172.00						172.00
Vietnam	Dollar		1,183.00						1,183.00
Hong Kong	Dollar		379.00						379.00
Jonathan Rhodes:									
United States	Dollar				7,448.25				7,448.25
Thailand	Dollar		1,624.00						1,624.00
Laos	Dollar		172.00						172.00
Vietnam	Dollar		1,183.00						1,183.00
Hong Kong	Dollar		379.00						379.00
Total			6,716.00		15,076.74				21,792.74

THAD COCHRAN,
Chairman, Committee on Agriculture, Nutrition, and Forestry, Jan. 11, 2005.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON APPROPRIATIONS FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2004

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Carol Cribbs:									
United Kingdom	Pound		814.00				100.00		914.00
Italy	Euro		764.00				100.00		864.00
Poland	Zloty		283.00				50.00		333.00
Ireland	Euro		277.00				50.00		327.00
United States	Dollar				6,225.37				6,225.37
Rebecca Davies:									
United Kingdom	Pound		814.00				100.00		914.00
Italy	Euro		764.00				100.00		864.00
Poland	Zloty		283.00				50.00		333.00
Ireland	Euro		277.00				50.00		327.00
United States	Dollar				6,225.37				6,225.37
Thomas Hawkins:									
Israel	Dollar		725.00						725.00

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON APPROPRIATIONS FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2004—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Jordan	Dollar		254.00						254.00
Lebanon	Dollar		729.00						729.00
United States	Dollar				5,997.74				5,997.74
Jordan	Dinar				146.96				146.96
Paul Grove:									
Israel	Dollar		725.00						725.00
Jordan	Dollar		254.00						254.00
Lebanon	Dollar		729.00						729.00
United States	Dollar				5,997.74				5,997.74
Jordan	Dinar				146.96				146.96
Brian Wilson:									
Germany	Euro		1,040.00						1,040.00
Italy	Euro		1,014.00						1,014.00
United States	Dollar				6,209.46				6,209.46
Brian Potts:									
Germany	Euro		1,040.00						1,040.00
Italy	Euro		1,014.00						1,014.00
United States	Dollar				6,209.46				6,209.46
Sid Ashworth:									
Kuwait	Dollar		888.00						888.00
Qatar	Dollar		554.00				8.00		562.00
Total			13,242.00		37,159.06		608.00		51,009,06

TED STEVENS,
Chairman, Committee on Appropriations, Jan. 3, 2005.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754, COMMITTEE ON ARMED SERVICES FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2004

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Jack Reed:									
Kuwait	Dollar		781.00						781.00
Elizabeth King:									
Kuwait	Dollar		742.00						742.00
Iraq	Dollar		15.00						15.00
Senator James M. Talent:									
United States	Dollar				6,715.34				6,715.34
Qatar	Dollar		303.50						303.50
Kuwait	Dollar		571.00						571.00
Israel	Dollar		534.50						534.50
Lindsey R. Neas:									
United States	Dollar				6,715.34				6,715.34
Qatar	Dollar		298.00						298.00
Kuwait	Dollar		571.00						571.00
Israel	Dollar		470.50						470.50
Maren R. Leed:									
United States	Dollar				8,020.00				8,020.00
Japan	Yen		1,796.53						1,796.53
Thomas J. MacKenzie:									
United States	Dollar				8,108.71				8,108.71
Japan	Yen		833.31						833.31
Michael J. McCord:									
United States	Dollar				6,283.00				6,283.00
Japan	Yen		786.00						786.00
Joseph T. Sixeas:									
United States	Dollar				3,974.77		54.10		4,028.87
Japan	Yen		1,301.00						1,301.00
Richard F. Walsh:									
United States	Dollar				6,109.92				6,109.92
Germany	Dollar		357.00						357.00
Diana G. Tabler:									
United States	Dollar				5,591.92				5,591.92
Germany	Dollar		398.05						398.05
Gerald J. Leeling:									
United States	Dollar				5,591.92				5,591.92
Germany	Dollar		421.55						421.55
Senator James M. Inhofe:									
United States	Dollar				6,437.50				6,437.50
Nigeria	Dollar		145.00						145.00
Ghana	Dollar		194.00						194.00
Mark Powers:									
United States	Dollar				6,437.50				6,437.50
Nigeria	Dollar		145.00						145.00
Ghana	Dollar		194.00						194.00
Senator John McCain:									
United States	Dollar				5,425.96				5,425.96
United Kingdom	Pound		542.00						542.00
Ireland	Euro		301.54				494.46		796.00
Senator Lindsey Graham:									
United States	Dollar				6,567.50				6,567.50
Ireland	Euro		437.40				190.60		628.00
Mark Salter:									
United States	Dollar				5,425.96				5,425.96
United Kingdom	Pound		185.00						185.00
Ireland	Euro		881.00						881.00
Richard H. Fontaine, Jr.:									
United States	Dollar				5,425.96				5,425.96
United Kingdom	Pound		185.00						185.00
Ireland	Euro		881.00						881.00
Senator Saxby Chambliss:									
Kuwait	Dollar		688.00						688.00
Pakistan	Dollar		213.00				50.00		263.00
Germany	Dollar		319.00				50.00		369.00
Clyde Taylor:									
Kuwait	Dollar		688.00						688.00
Pakistan	Dollar		213.00				50.00		263.00
Germany	Dollar		319.00				50.00		369.00

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754, COMMITTEE ON ARMED SERVICES FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2004—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Krister Holladay:									
Kuwait	Dollar		688.00						688.00
Pakistan	Dollar		213.00				50.00		263.00
Germany	Dollar		319.00				50.00		369.00
Senator Ben Nelson:									
Kuwait	Dollar		688.00						688.00
Pakistan	Dollar		213.00				50.00		263.00
Germany	Dollar		319.00				50.00		369.00
Eric Pierce:									
Kuwait	Dollar		688.00						688.00
Pakistan	Dollar		213.00				50.00		263.00
Germany	Dollar		319.00				50.00		369.00
Evelyn Farkas:									
United States	Dollar				4,698.27				4,698.27
Colombia	Dollar		520.02						520.02
Ecuador	Dollar		43.00						43.00
Paraguay	Dollar		105.70						105.70
Brazil	Dollar		114.00						114.00
Fred Downey:									
United States	Dollar				5,896.50				5,896.50
Israel	Dollar		1,001.00						1,001.00
Mark Jones:									
United States	Dollar				5,557.50				5,557.50
Israel	Dollar		681.78						681.78
Senator Joseph I. Lieberman:									
United States	Dollar				1,419.50				1,419.50
Israel	Dollar		1,580.00						1,580.00
Senator John Warner:									
Kuwait	Dollar		688.00						688.00
Belgium	Euro		395.45						395.45
United Kingdom	Pound		135.00						135.00
Senator John Cornyn:									
Kuwait	Dollar		688.00						688.00
Belgium	Euro		395.45						395.45
United Kingdom	Pound		135.00						135.00
Senator Evan Bayh:									
Kuwait	Dollar		430.00						430.00
Judith A. Ansley:									
Kuwait	Dollar		543.00						543.00
Belgium	Euro		564.00						564.00
United Kingdom	Pound		135.00						135.00
Daniel J. Cox:									
Kuwait	Dollar		538.00						538.00
Belgium	Euro		779.00						779.00
United Kingdom	Pound		135.00						135.00
Total			29,977.28		110,403.07		1,239.16		141,619.51

JOHN WARNER,
Chairman, Committee on Armed Services, Feb. 7, 2005.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2004

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Richard Shelby:									
United Kingdom	Pound		1,643.00						1,643.00
France	Euro		884.00						884.00
Austria	Euro		610.00						610.00
Czech Republic	Crown		612.00						612.00
Germany	Euro		1,506.00						1,506.00
Kathleen L. Casey:									
United Kingdom	Pound		1,643.00						1,643.00
France	Euro		884.00						884.00
Austria	Euro		610.00						610.00
Czech Republic	Crown		612.00						612.00
Germany	Euro		1,506.00						1,506.00
Total			10,510.00						10,510.00

RICHARD SHELBY,
Chairman, Committee on Banking, Housing, and Urban Affairs,
Jan. 24, 2005.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2004

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Floyd DesChamps:									
China	Yuan		1,105.00						1,105.00
United States	Dollar				1,424.37				1,424.37
Argentina	Peso		1,490.00						1,490.00
United States	Dollar				972.00				972.00
Dabney Hegg:									
Panama	Balboa		389.00						389.00
United States	Dollar				496.00				496.00
John Richards:									
Argentina	Peso		1,831.00						1,831.00
United States	Dollar				972.00				972.00
Amit Ronen:									
Argentina	Peso		1,190.00						1,190.00

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2004—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
United States	Dollar				995.00				995.00
Total			6,005.00		4,859.37				10,864.37

TED STEVENS,
Chairman, Committee on Commerce, Science, and Transportation,
Jan 10, 2005.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ENERGY AND NATURAL RESOURCES COMMITTEE FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2004

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Peter B. Lyons:									
Japan	Yen		546.19		482.57				1,028.76
China	Yuan		628.18						628.18
United States	Dollar				7,804.80				7,804.80
Robert M. Simon:									
France	Euro		824.00						824.00
United States	Dollar				6,069.05				6,069.05
Jonathan Black:									
Argentina	Peso		1,980.00						1,980.00
United States	Dollar				4,782.00				4,782.00
John Peschke:									
Argentina	Peso		1,108.82						1,108.82
United States	Dollar				4,782.00				4,782.00
Total			5,087.19		23,920.42				29,007.61

PETE V. DOMENICI,
Chairman, Committee on Energy and Natural Resources, Jan. 7, 2004.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS FOR TRAVEL FROM JULY 1 TO SEPT. 30, 2004

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Shannon Heyck-Williams:									
United States	Dollar				5,677.84		370.00		6,047.84
Slovenia	Euro		814.00						814.00
Total			814.00		5,677.84		370.00		6,861.84

JAMES M. INHOFE,
Chairman, Committee on Environment and Public Works, Feb. 3, 2005.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2004

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
William Boyd:									
United States	Dollar				6,892.54				6,892.54
Kenya	Shilling		1,770.00						1,770.00
United States	Dollar				4,574.12				4,574.12
Czech Republic	Koruna		1,424.00						1,424.00
Edward Michaels:									
United States	Dollar				6,027.02				6,027.02
Switzerland	Franc		2,598.00						2,598.00
United States	Dollar				4,357.26				4,357.26
Czech Republic	Koruna		2,136.00						2,136.00
Frank Fannon:									
United States	Dollar				6,027.02				6,027.02
Switzerland	Franc		2,598.00						2,598.00
Chris Miller:									
United States	Dollar				6,107.41				6,107.41
Czech Republic	Koruna		2,136.00						2,136.00
Switzerland	Franc		2,328.00						2,328.00
United States	Dollar				6,633.00				6,633.00
Argentina	Peso		1,540.00						1,540.00
Mary Anne Dolbeare:									
United States	Dollar				5,998.61				5,998.61
Switzerland	Franc		1,577.00						1,577.00
Michael Catanzaro:									
United States	Dollar				4,782.00				4,782.00
Argentina	Peso		1,540.00						1,540.00
Staci Stevenson:									
United States	Dollar				972.00				972.00
Argentina	Peso		1,232.00						1,232.00
Brian Mormino:									
United States	Dollar				4,957.00				4,957.00
Argentina	Peso		1,540.00						1,540.00
Alison Taylor:									
United States	Dollar				6,633.00				6,633.00
Argentina	Peso		1,540.00						1,540.00
Andrew Wheeler:									
United States	Dollar				4,782.00				4,782.00

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2004—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Argentina	Peso		1,540.00						1,540.00
John Shanahan:									
United States	Dollar				8,484.00				8,484.00
Argentina	Peso		1,540.00						1,540.00
Shawn Whitman:									
Argentina	Peso		1,320.00						1,320.00
Total					28,359.00		77,226.98		105,585.98

JAMES M. INHOFE,
Chairman, Committee on Environment and Public Works, Feb. 3, 2005.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FINANCE FOR TRAVEL FROM OCT. 1, 2004 TO DEC. 31, 2004

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Max Baucus:									
New Zealand	Dollar		833.00						833.00
Australia	Dollar		301.00						301.00
United States	Dollar				13,153.82				13,153.82
Cuba	Dollar		350.00						350.00
United States	Dollar				3,534.40				3,534.40
Mexico	Dollar				355.74				355.74
Shara Aranoff:									
New Zealand	Dollar		384.99						384.99
Australia	Dollar		689.45						689.45
United States	Dollar				9,616.46				9,616.46
William Dauster:									
New Zealand	Dollar		587.46						587.46
Australia	Dollar		301.00						301.00
United States	Dollar				8,360.82				8,360.82
James Foley:									
New Zealand	Dollar		1,099.00						1,099.00
Australia	Dollar		918.00						918.00
United States	Dollar				8,238.73				8,238.73
John Gilliland:									
New Zealand	Dollar		918.00						918.00
Australia	Dollar		1,505.00						1,505.00
United States	Dollar				7,731.82				7,731.82
Timothy Punke:									
New Zealand	Dollar		812.00						812.00
Australia	Dollar		900.00						900.00
Timothy Punke:									
United States	Dollar				7,681.82				7,681.82
Elizabeth Fowler:									
Cuba	Dollar		500.00						500.00
United States	Dollar				1,145.00				1,145.00
Mexico	Dollar				291.00				291.00
Anya Landau:									
Cuba	Dollar		1,000.00						1,000.00
United States	Dollar				2,048.40				2,048.40
Mexico	Dollar				291.00				291.00
Brian Pomper:									
Cuba	Dollar		350.00						350.00
United States	Dollar				1,393.40				1,393.40
Mexico	Dollar				355.00				355.00
Sara Roberts:									
United States	Dollar				2,063.40				2,063.40
Mexico	Dollar				291.00				291.00
Cuba	Dollar		1,000.00						1,000.00
Total			12,448.90		66,551.81				79,000.71

CHUCK GRASSLEY,
Chairman, Committee on Finance, Feb. 2, 2005.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2004

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Joseph R. Biden, Jr.:									
Israel	Shekel		289.00						289.00
Jordan	Dinar		254.00				272.76		526.76
Egypt	Pound		197.00						197.00
Senator Sam Brownback:									
Kenya	Shilling		268.00						268.00
Uganda	Shilling		287.69		1,250.00				1,537.69
United States	Dollar				8,605.13				8,605.13
Senator Lincoln Chafee:									
Israel	Shekel		215.00						215.00
Jordan	Dinar		137.00				272.76		409.76
Bahrain	Dinar		75.00						75.00
Egypt	Pound		115.00						115.00
Senator Christopher Dodd:									
Nicaragua	Cordoba		452.00						452.00
Dominican Republic	Peso		556.00						556.00
United States	Dollar				1,231.75				1,231.75
Senator Michael Enzi:									
Italy	Euro		2,333.00						2,333.00
United States	Dollar				3,347.86				3,347.86

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON FOREIGN RELATIONS FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2004—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Chuck Hagel:									
Israel	Shekel		289.00						289.00
Jordan	Dinar		254.00				272.76		526.76
Bahrain	Dinar		192.00						192.00
Egypt	Pound		217.00						217.00
Senator Chuck Hagel:									
France	Euro		1,386.00				1,827.75		3,258.75
United Kingdom	Pound		914.00						914.00
United States	Dollar				6,530.22				6,530.22
Senator Richard Lugar:									
Ukraine	Hryvnia		750.00						750.00
Germany	Euro		450.00						450.00
United States	Dollar				5,561.49				5,561.49
Antony Blinken:									
Israel	Shekel		289.00						289.00
Jordan	Dinar		254.00				272.76		526.76
Egypt	Pound		197.00						197.00
Deborah Brayton:									
Israel	Shekel		289.00						289.00
Jordan	Dinar		192.00				272.76		464.76
Bahrain	Dinar		192.00						192.00
Egypt	Pound		217.00						217.00
Andrew Fisher:									
Ukraine	Hryvnia		750.00						750.00
Germany	Euro		100.00						100.00
United States	Dollar				5,561.49				5,561.49
Jennifer French:									
Kenya	Shilling		390.00						390.00
Uganda	Shilling		287.69		1,250.00				1,537.69
United States	Dollar				8,304.13				8,304.13
Heather Flynn:									
Ethiopia	Birr		1,510.00						1,510.00
Kenya	Shilling		1,971.00						1,971.00
United States	Dollar				8,182.00				8,182.00
Michael Haltzel:									
Germany	Euro		1,413.00						1,413.00
United States	Dollar				6,570.99				6,570.99
Frank Jannuzi:									
South Korea	Won		1,023.00						1,023.00
Japan	Yen		1,632.00						1,632.00
United States	Dollar				6,132.12				6,132.12
Lou Ann Linehan:									
Argentina	Peso		1,848.00						1,848.00
United States	Dollar				972.00				972.00
Katherine McGuire:									
Italy	Euro		1,599.00						1,599.00
United States	Dollar				5,316.23				5,316.23
Carl Meacham:									
Mexico	Peso		576.00						576.00
Guatemala	Quetzal		464.00						464.00
United States	Dollar				2,740.42				2,740.42
Carl Meacham:									
Canada	Dollar		792.00						792.00
United States	Dollar				812.82				812.82
Thomas Moore:									
France	Euro		1,620.00						1,620.00
United States	Dollar				5,999.60				5,999.60
Kenneth Myers, Jr.:									
Ukraine	Hryvnia		750.00						750.00
Germany	Euro		450.00						450.00
United States	Dollar				5,561.49				5,561.49
Kenneth Myers, III:									
Russia	Ruble		1,500.00		350.00				1,850.00
United States	Dollar				7,927.30				7,927.30
Kenneth Myers, III:									
Ukraine	Hryvnia		750.00						750.00
Germany	Euro		450.00						450.00
United States	Dollar				5,561.49				5,561.49
Janice O'Connell:									
Nicaragua	Cordoba		452.00						452.00
Dominican Republic	Peso		556.00						556.00
United States	Dollar				1,231.75				1,231.75
Andrew Parasiliti:									
Israel	Shekel		289.00						289.100
Jordan	Dinar		254.00				272.76		526.76
Bahrain	Dinar		192.00						192.00
Egypt	Pound		217.00						217.00
Kim Savit:									
Kuwait	Dinar		1,539.43						1,539.43
Jordan	Dinar		1,539.42						1,539.42
United States	Dollar				7,103.70				7,103.70
Manisha Singh:									
Thailand	Baht		815.00						815.00
India	Rupee		1,542.48						1,542.48
United States	Dollar				6,839.00				6,839.00
Puneet Talwar:									
Israel	Shekel		289.00						289.00
Jordan	Dinar		254.00				272.76		526.76
Egypt	Pound		197.00						197.00
Paul Unger:									
Germany	Euro		676.32						676.32
Poland	Zloty		553.54						553.54
Italy	Euro		923.61						923.61
United States	Dollar				6,254.56				6,254.56
Total			41,426.18		119,197.54		3,782.07		164,405.79

DICK LUGAR,
Chairman, Committee on Foreign Relations, Jan. 28, 2005.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON GOVERNMENTAL AFFAIRS FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2004

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Susan Collins:									
United States	Dollar				8,236.89				8,236.89
South Africa	Rand		36.20						36.20
Senator Richard Durbin:									
United States	Dollar				10,230.00				10,230.00
South Africa	Rand		111.50						111.50
Jane Alonso:									
United States	Dollar				8,236.89				8,236.89
South Africa	Rand		195.33						195.33
Shannon Smith:									
United States	Dollar				8,331.55				8,331.55
South Africa	Rand		89.50						89.50
Dan Berkovitz:									
United States	Dollar				1,020.05		32.13		1,052.18
Switzerland	Franc		1,300.00						1,300.00
Mark Greenblatt:									
United States	Dollar				997.04				997.04
Switzerland	Franc		1,300.00						1,300.00
Steven Groves:									
United States	Dollar				1,039.10				1,039.10
Switzerland	Franc		1,193.99						1,193.99
Zachary Schram:									
United States	Dollar				1,039.10				1,039.10
Switzerland	Franc		1,023.99						1,023.99
Raymond Shepherd:									
United States	Dollar				752.87				752.87
United Kingdom	Pound		914.00						914.00
Netherlands	Euro		417.00						417.00
France	Euro		1,356.00						1,356.00
Laura Stuber:									
United States	Dollar				813.87				813.87
United Kingdom	Pound		914.00						914.00
Netherlands	Euro		417.00						417.00
France	Euro		1,316.00						1,316.00
Total			10,584.51		40,697.36		32.13		51,314.00

SUSAN COLLINS,
Chairman, Committee on Governmental Affairs, Jan. 31, 2005.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), COMMITTEE ON INTELLIGENCE FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2004

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Mike DeWine:									
	Dollar		294.00						294.00
	Dollar				1,376.68				1,376.68
John Livingston:									
	Dollar		294.00						294.00
	Dollar				1,358.50				1,358.50
Barbara Schenck:									
	Dollar		294.00						294.00
	Dollar				1,588.53				1,588.53
Ann O'Donnell:									
	Dollar		294.00						294.00
	Dollar				1,358.50				1,358.50
Laura Parker:									
	Dollar		294.00						294.00
	Dollar				13,558.50				13,558.50
Kristine Poptanich:									
	Dollar		294.00						294.00
	Dollar				1,358.50				1,358.50
Senator Dianne Feinstein:									
	Dollar		952.00						952.00
Peter Cleveland:									
	Dollar		952.00						952.00
Senator Mike DeWine:									
	Dollar		292.00						292.00
Kristine Poptanich:									
	Dollar		352.00						352.00
Ann O'Connell:									
	Dollar		352.00						352.00
Abby Kral:									
	Dollar		252.00						252.00
Total.			4,916.00		20,599.21				25,515.21

PAT ROBERTS,
Chairman, Select Committee on Intelligence, Jan. 11, 2005.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), CODEL FRIST FOR TRAVEL FROM JULY 31 TO AUG. 13, 2004

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Senator Bill Frist:									
United States	Dollar				11,017.50				11,017.50
Chad	Franc		828.00						828.00
Kenya	Shilling		547.00						547.00
Mark Esper:									
United States	Dollar				10,870.58				10,870.58

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), CODEL FRIST FOR TRAVEL FROM JULY 31 TO AUG. 13, 2004—Continued

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Chad	Franc		778.00						778.00
Kenya	Shilling		522.00						522.00
Andy Olson:									
United States	Dollar				10,197.26				10,197.26
Chad	Franc		774.00						774.00
Kenya	Shilling		493.00						493.00
Nick Smith:									
United States	Dollar				10,197.26				10,197.26
Chad	Franc		828.00						828.00
Kenya	Shilling		547.00						547.00
Delegation Expenses:									
Chad	Franc						419.55		419.55
Kenya	Shilling						1,254.57		1,254.57
Total			5,317.00		42,282.60		1,674.12		49,273.72

BILL FRIST,
Majority Leader, Dec. 16, 2004.

CONSOLIDATED REPORT OF EXPENDITURE OF FUNDS FOR FOREIGN TRAVEL BY MEMBERS AND EMPLOYEES OF THE U.S. SENATE, UNDER AUTHORITY OF SEC. 22, P.L. 95–384—22 U.S.C. 1754(b), OFFICE OF THE VICE PRESIDENT FOR TRAVEL FROM OCT. 1 TO DEC. 31, 2004

Name and country	Name of currency	Per diem		Transportation		Miscellaneous		Total	
		Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency	Foreign currency	U.S. dollar equivalent or U.S. currency
Brenda Becker:									
Turkey	Lira		234.00						234.00
Greece	Euro		391.84						391.84
Germany	Euro		352.85						352.85
Luxembourg	Euro		363.09						363.09
Italy	Euro		288.81						288.81
Total			1,630.59						1,630.59

DICK CHENEY,
Vice President, Feb. 4, 2005.

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: No. 13, Robert Zoellick, which was reported today by the Foreign Relations Committee. I further ask unanimous consent that the nomination be confirmed, the motion to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and the Senate then resume legislative session.

Mr. REID. Reserving the right to object, I want the record spread with my satisfaction with Condoleezza Rice selecting this man to be her deputy. He has a tremendously strong resume where he has worked, and he has done a good job. It would have been easy for the Secretary of State to pick somebody, in my opinion, who was more ideological and not as pragmatic as Robert Zoellick, but I think this selection she made is outstanding. I applaud and commend the Secretary of State for selecting this individual.

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

The nomination considered and confirmed is as follows:

DEPARTMENT OF STATE

Robert B. Zoellick, of Virginia, to be Deputy Secretary of State.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

MEASURES READ THE FIRST TIME—S. 397 AND S. 403

Mr. FRIST. Mr. President, I understand there are two bills at the desk. I ask for their first reading en bloc.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (S. 397) to prohibit civil liability actions from being brought or continued against manufacturers, distributors, dealers, or importers of firearms or ammunition for damages, injunctive or other relief resulting from the misuse of their products by others.

A bill (S. 403) 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.

Mr. FRIST. I now ask for their second reading and, in order to place the bills on the calendar under the provisions of rule XIV, I object to my own request, all en bloc.

The PRESIDING OFFICER. Objection is heard.

The bills will be read for the second time on the next legislative day.

DESIGNATING FEBRUARY 25, 2005, AS NATIONAL MPS AWARENESS DAY

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of S. Res. 57, which was submitted earlier today.

The PRESIDING OFFICER. The clerk will state the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 57) designating February 25, 2005, as National MPS Awareness Day.

There being no objection, the Senate proceeded to consider the resolution.

Mr. GRAHAM. Mr. President, I rise today to introduce a resolution recognizing February 25 as ''National MPS Day.'' This resolution enjoys strong bipartisan support in the Senate. I am also pleased that a similar resolution is being introduced this week in the House of Representatives.

MPS, or Mucopolysaccharidosis, is a devastating disease that affects thousands of families in this country. Most often diagnosed in young children, MPS patients lack certain enzymes to break down complex carbohydrates in their bodies. These complex carbohydrates then are stored throughout the patient's body, causing many of the body's' systems to malfunction and, sadly, makes it difficult for these children to live long enough to reach adolescence.

It is a parent's role to make sacrifices for their child; yet, for the parents of a child diagnosed with MPS, the sacrifices are exceptional. I have had the opportunity to meet with a number of parents of MPS children. These parents exhibit amazing hope, love, grace and humor that can often mask the many trials they undergo in caring for

their children. My staff and I are constantly impressed at their ability to advance their cause while also selflessly caring for their children.

The current president of the National MPS Society, Sissi Langford, is a South Carolinian. She and her husband have two children with MPS, Joe and Maggie. Sissi has been a passionate advocate for her children and all those who suffer from MPS. She has worked with my office for the past two years and has proved herself time and again to be knowledgeable, compassionate and committed to helping those who have been diagnosed with MPS. She worked with others in the National MPS Society to help include language in the latest reauthorization of the Individual with Disabilities Education Act (IDEA) to help address the needs of children who have been diagnosed with degenerative diseases. She has met with the National Institutes of Health and other top health policy makers to ensure that diseases in the same class as MPS are given adequate and necessary research attention. I commend Sissi and others like her, for their tireless work on behalf of MPS.

It is my hope that this resolution will help advance the recognition of MPS, and therefore the attention given in the research realm. I am also hopeful that the Senate will pass this resolution marking February 25 National MPS Day.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 57) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 57

Whereas Mucopolysaccharidosis (''MPS'') and Mucolipidosis (''ML'') disorders are genetically determined lysosomal storage disorders that result in the body's inability to produce certain enzymes needed to breakdown complex carbohydrates;

Whereas these complex carbohydrates are then stored in virtually every cell in the body and progressively cause damage to these cells, adversely affecting an individual's body, including an individual's heart, respiratory system, bones, internal organs, and central nervous system;

Whereas the cellular damage caused by MPS often results in mental retardation, short stature, corneal damage, joint stiffness, loss of mobility, speech and hearing impairment, heart disease, hyperactivity, chronic respiratory problems, and most importantly, a drastically shortened life span;

Whereas the nature of the disorder is usually not apparent at birth;

Whereas without treatment, life expectancy of an individual afflicted with MPS is usually very early in life;

Whereas recent research developments have resulted in limited treatments for some MPS disorders;

Whereas promising advancements are underway in pursuit of treatments for additional MPS disorders;

Whereas despite newly developed remedies, the blood brain barrier continues to be a significant impediment to effectively treating the brain, thereby preventing the treatment of many of the symptoms of MPS;

Whereas treatments for MPS will be greatly enhanced with continued public funding;

Whereas the quality of life for individuals afflicted with MPS and the treatments available to them will be enhanced through the development of early detection techniques and early intervention;

Whereas treatments and research advancements for MPS are limited by a lack of awareness about MPS disorders;

Whereas the lack of awareness about MPS disorders extends to those within the medical community;

Whereas the damage that is caused by MPS makes it a model for many other degenerative genetic disorders;

Whereas the development of effective therapies and a potential cure for MPS disorders can be accomplished by increased awareness, research, data collection, and information distribution;

Whereas the Senate is an institution than can raise public awareness about MPS; and

Whereas the Senate is also an institution that can assist in encouraging and facilitating increased public and private sector research for early diagnosis and treatments of MPS disorders: Now, therefore, be it

Resolved, That the Senate—

(1) designates February 25, 2005, as ''National MPS Awareness Day''; and

(2) supports the goals and ideals of ''National MPS Awareness Day''.

PAYING TRIBUTE TO JOHN HUME

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be discharged from further consideration of S. Res. 54 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will state the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 54) paying tribute to John Hume.

There being no objection, the Senate proceeded to consider the resolution.

Mr. FRIST. Mr. President, I ask unanimous consent that the resolution and preamble be agreed to en bloc, the motion to reconsider be laid upon the table, and that any statements relating to the measure be printed in the RECORD, with no intervening action or debate.

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

The resolution (S. Res. 54) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 54

Whereas John Hume is one of the greatest advocates of peace and non-violence of our time;

Whereas throughout the long and difficult years of civil strife and turmoil, John Hume has dedicated his life to achieving a peaceful, just, and lasting settlement of the conflict in Northern Ireland;

Whereas throughout the turbulent years in Northern Ireland, John Hume never lost faith in the belief that violence and terrorism are wrong, that a negotiated settlement is the only realistic hope for peace, and that ancient antagonisms cannot be settled by bombs and bullets;

Whereas John Hume deserves enormous credit for the peace process in Northern Ireland, which led to the 1998 Good Friday Agreement;

Whereas John Hume's enduring vision of reconciliation, based on equal respect and recognition for both the Protestant and Catholic traditions in Northern Ireland, has served as an inspiration to those seeking peaceful resolution of conflicts in many other parts of the world;

Whereas John Hume has worked consistently for the rights of the members of his community, beginning with the launching of a credit union to provide assistance to the minority community to purchase housing;

Whereas John Hume's commitment was to effective programs and peaceful works, at a time when others in his community increasingly urged or acquiesced to bombs and bullets;

Whereas John Hume's ideas and eloquence lit a candle in the darkness of the violence in Northern Ireland, kindled an increasing sense of hope in the minority community, and created new possibilities for understanding between the opposing sides of the conflict;

Whereas John Hume's community activity and involvement led directly to his long and distinguished political career;

Whereas John Hume brought together a broad coalition of leaders who advocated non-violence and together they founded the Social Democratic and Labour Party in 1970, which has been at the forefront of years of significant efforts to achieve peace in Northern Ireland;

Whereas John Hume was the first to emphasize the necessity of establishing an ongoing Anglo-Irish framework as the cornerstone for institutionalizing the process of reconciliation to heal the divisions within Northern Ireland, between North and South in Ireland, and between Great Britain and Ireland;

Whereas in 1983, largely as a result of the efforts of John Hume, the principal political parties in Ireland and the Social Democratic and Labour Party in Northern Ireland established the far-reaching New Ireland Forum;

Whereas the New Ireland Forum developed alternatives for progress and prepared the report that laid the groundwork for an unprecedented new dialogue on Northern Ireland between Britain and Ireland, culminating in November 1985 with the signing of the historic Anglo-Irish Agreement by Prime Minister Margaret Thatcher of the United Kingdom and Taoiseach Garret FitzGerald of Ireland;

Whereas John Hume conducted talks with Gerry Adams, the leader of Sinn Fein, before the Irish Republican Army agreed to a ceasefire, showing great courage by taking significant personal and political risks to achieve a lasting peace;

Whereas those talks, together with the December 1993 Joint Declaration by the British and Irish Governments, led to the August 1994 cease-fire by the Irish Republican Army and the October 1994 cease-fire by the Loyalist paramilitaries and ultimately to the Good Friday Agreement in 1998;

Whereas John Hume served as the Deputy Leader of the Social Democratic and Labour Party in Northern Ireland until 1979, and its leader from 1979 to 2001;

Whereas John Hume's political career has also included serving as a member of the Northern Ireland Assembly, the European Parliament, and the British House of Commons;

Whereas in his many visits to the United States, John Hume has been a consistent

ambassador for peace, urging the cause of reconciliation and educating Congress and the country about the issues in Northern Ireland;

Whereas John Hume is well respected in the United States and has had an important influence on United States policy and on the American dimension of the Northern Ireland question;

Whereas John Hume is a courageous leader of exceptional achievement and was honored for his leadership in the cause of peace in Northern Ireland with the Nobel Peace Prize in 1998, along with the leader of the Ulster Unionist Party, David Trimble;

Whereas respect for John Hume was the single most important influence in the development of the Friends of Ireland in the United States Congress and in convincing leaders of the Irish-American community throughout the United States to oppose political, financial, or other support for the violence in Northern Ireland; and

Whereas John Hume is retiring this year after a long and brilliant career dedicated to the people of Northern Ireland and to the cause of peace: Now, therefore, be it

Resolved, That the Senate—

(1) pays tribute to John Hume for his lifetime commitment to promoting reconciliation and achieving a lasting peace in Northern Ireland; and

(2) calls on all the parties in Northern Ireland to redouble their effort to restore the trust that is necessary to fully implement the Good Friday Agreement and to achieve stable democratic institutions, peace, and justice in Northern Ireland.

ORDERS FOR THURSDAY, FEBRUARY 17, 2005

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business, it adjourn until 10 a.m. on February 17. I further ask that following the prayer and pledge the morning hour be deemed to have expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate proceed to a period of morning business until 12 noon, with the first 30 minutes under the control of the Democratic leader or his designee and the second 30 minutes under the control of the majority leader or his designee, and the remaining time be equally divided between the two leaders or their designees.

I further ask that at 3 p.m. the Senate resume reconsideration of S. 306, Genetic Nondiscrimination Act, and immediately proceed to the vote on passage, with no intervening action or debate.

Mr. REID. Mr. President, reserving the right to object, if the distinguished majority leader would allow me to direct a question to him through the Chair. I have received a number of calls dealing with an antilynching bill, primarily from Senator LANDRIEU. I wonder if the leader has any indication of whether we can take this matter up sometime in the near future.

Mr. FRIST. Mr. President, the antilynching bill has been referred to the Judiciary Committee, which has not yet considered that bill. I believe there is another bill by Senator ALEXANDER also yet to be considered at the committee level. Over the course of tomorrow, we can discuss how we might handle both of those. Typically, it would be through the regular order, since it has been referred to the Judiciary Committee. Over the course of the morning, I will be happy to have discussions with Senators LANDRIEU and ALEXANDER, as I did yesterday, on the matter. They are both important issues. Both are issues that are a little separate but address the same large issue. I look forward to being able to address those. Not going through regular order would require a unanimous consent on behalf of this body. We can discuss that with the leadership over the course of the morning.

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

PROGRAM

Mr. FRIST. Mr. President, tomorrow, the Senate will be in morning business throughout the morning. At 3 o'clock tomorrow afternoon, the Senate will vote on the Genetic Nondiscrimination Act. We had a number of Senators speak on that today. We had issues that had to be worked out between the committees. There are two committees in the Senate and they were successfully addressed. Thus, we will vote on this important bill tomorrow.

This bill protects Americans from having their genetic information used against them by potential employers, or by their employer, or to be used in a discriminatory fashion by insurance companies, for example. A number of people have been very involved before the Senate over the last 7 years on this bill. I just mentioned Senators SNOWE, ENZI, KENNEDY, and a number of others. Tomorrow, there will be others who wish to discuss the bill, and we encourage them to do so while we are in morning business or later tomorrow afternoon. We will vote on the bill at 3 o'clock tomorrow.

It is my hope that the Senate will also act on the State high-risk health insurance pools bill and the committee funding resolution. We will continue to work with Members on both sides of the aisle in order to clear these items for floor consideration tomorrow.

As a reminder to our colleagues, on Friday morning, Senator BURR will carry out a long-held Senate tradition by reading George Washington's Farewell Address.

Again, I thank all Members for their assistance on the genetic nondiscrimination bill.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. FRIST. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 6:21 p.m., adjourned until Thursday, February 17, 2005, at 10 a.m.

CONFIRMATION

Executive nomination confirmed by the Senate: Wednesday, February 16, 2005.

DEPARTMENT OF STATE

ROBERT B. ZOELLICK, OF VIRGINIA, TO BE DEPUTY SECRETARY OF STATE.

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.

EXTENSIONS OF REMARKS

CELEBRATING THE LIFE OF COUNTRY MUSIC LEGEND MERLE KILGORE

HON. JOHN S. TANNER

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mr. TANNER. Mr. Speaker, I rise today in remembrance of Merle Kilgore, a talented musician, legendary writer, and friend, a fellow West Tennnessean who dedicated his life to entertaining the world.

Merle began his music career in 1948, carrying Hank Williams' guitar at the Louisiana Hayride. He soon began performing, and he wrote and recorded hit songs such as ''Ring of Fire'' and ''Wolverton Mountain.'' Mr. Kilgore was also an actor, appearing in films such as ''Coal Miner's Daughter'' and ''Five Card Stud.'' Apart from his performance skills, he was a fine businessman, managing the legendary career of Hank Williams, Jr. He was named honorary State Senator by the Tennessee General Assembly in 1987, while I had the honor of serving in that body.

Merle Kilgore was more than a music legend. He is remembered by those who knew him best for his loyal friendship and sharp wit. Mr. Kilgore's stories and anecdotes brightened the lives of everyone he touched. Merle's cheerful outlook on life will be deeply missed by his family and friends. A dedicated family man, he is survived by his wife, Judy; two sons; three daughters; eight grandchildren; and a great-granddaughter.

Mr. Speaker, I ask that you join me in honoring the exceptional life of a true legend and dear friend, Mr. Merle Kilgore.

A TRIBUTE TO THE A.P. GIANNINI MIDDLE SCHOOL ON THE OCCASION OF ITS 50TH ANNIVERSARY

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mr. LANTOS. Mr. Speaker, I invite my colleagues to join me in celebrating the 50th Anniversary of the A.P. Giannini Middle School of San Francisco, which is located in my Congressional district. This extraordinary middle school has long been known for its academic promise and delivering students who are well prepared to area high schools.

This school is named after Amaedo Peter (A.P.) Giannini, who started the Bank of Italy in 1904, with the then unheard of concept of providing banking services for the ''little fellows,'' the hard-working immigrants that other banks refused to serve. After the devastating earthquake of 1906, A.P. Giannini immediately set up a temporary bank. Almost every building in the city had been destroyed, and he went about collecting deposits, making loans, and proclaiming to all that San Francisco would rise from the ashes. Mr. Giannini ensured that many hard working immigrants could get their piece of the American dream by loaning them money when no other banks would. Under his watchful eye, this little bank, which started in a converted saloon, expanded rapidly throughout the State of California and in 1930 he renamed his institution the Bank of America.

Mr. Speaker, the middle school, which now bears his name, was opened in the Sunset District of San Francisco in September of 1954, but renamed after Mr. Giannini on January 26, 1955. Although Mr. Giannini had passed away six years earlier, both his widow and daughter Claire were present for the ceremony to dedicate the school. Today the school serves children from grades 6 to 8, with an average enrollment of 1,300 students. It routinely tests well above the California and national average, and over a quarter of the students study in the Gifted and Talented Education (GATE) program.

A.P. Giannini Middle School provides students with a diverse learning environment and as well as a lesson of tolerance. Like A.P. Giannini back in the early 1900's, A.P. Giannini Middle School gives their students a chance to achieve the American dream. The staff of A.P. Giannini Middle School deserves credit for providing their students with the tools they will need in high school and throughout life.

Mr. Speaker, throughout the last 50 years, A.P. Giannini Middle School has proven what dedicated staff members, counselors and teachers can do. The students are exemplars in the community and should be commended. I would also like to thank the Giannini family for their continued support of the school that shared so much of the vision of Mr. Giannini. I urge all of my colleagues to join me in recognizing the A.P. Giannini Middle School Day, with me on February 17, 2005.

BLACK HISTORY TRIBUTE TO ROBERT B. WILSON

HON. BENNIE G. THOMPSON

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mr. THOMPSON of Mississippi. Mr. Speaker, throughout the month of February, I would like to recognize outstanding African Americans of the 2nd Congressional District of Mississippi, and their contribution to Black History. The 23 counties of the 2nd District are well represented from both a local and national perspective.

Americans have recognized black history annually since 1926, first as ''Negro History Week'' and later as ''Black History Month.'' In fact, black history had barely begun to be studied—or even documented—when the tradition originated. Although blacks have been in America as far back as colonial times, it was not until the 20th century that they gained a presence in our history books.

Though scarcely documented in history books, if at all, the crucial role African Americans have played in the development of our Nation must not be overlooked.

I would like to recognize Mr. Robert Bernard Wilson of Carroll County in the State of Mississippi. Born September 10, 1928, in Chicago, IL, Wilson was educated in the Chicago Public Schools, and later at the Mississippi Industrial College (B.S.), and received certification in Science/Biology at Mississippi State University.

Mr. Wilson served in the United States Marine Corps during the Korean Conflict and received an honorable discharge. He was an educator for 32 years in the Carroll County and Montgomery County school districts where he taught science and biology. During his tenure as an educator, Mr. Wilson was the first African American to coach high school football after school integration in Mississippi. He received numerous awards, such as Teacher Award, Coach of the Year Award (Local and State), Senior Class Sponsor Award and the Montgomery County Citizenship Award.

I take great pride in recognizing and paying tribute to this outstanding African American of the 2nd Congressional District of Mississippi who deserves mention, not only in the month of February but year round.

IN HONOR OF LARRY MCREYNOLDS

HON. ROBERT MENENDEZ

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mr. MENENDEZ. Mr. Speaker, I rise today to honor Larry McReynolds for his outstanding leadership and remarkable accomplishments in the field of health care administration. After almost 5 productive years, Mr. McReynolds moved on from his position as executive director of the Jersey City Family Health Center on Friday, January 28, 2005.

A New Jersey resident since 1991, Mr. McReynolds has proven himself to be a valuable asset to health care organizations. During his impressive career, he has held a variety of positions with Clara Maass Medical Center and the Saint Barnabas Healthcare System. Since 2000, he has served as executive director of the Jersey City Family Health Center where he has been instrumental in the expansion and development of a wide range of health programs and initiatives.

Under his strong guidance, the health center has expanded many of its services that aid the underserved or low income populations in the community, including an AIDS treatment center and the Healthcare for the Homeless Program. Additionally, it has established a pharmaceutical program that helps patients access medication, the Reach Out and Read Program for inner-city kids, and many outreach initiatives aimed at helping the Hispanic community. While serving as executive director, Mr. McReynolds has seen the health center almost double its budget and staff size. Other

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

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

positive developments include receiving a March of Dimes grant for research purposes and obtaining funding for a program to assist parolees with re-entry into the community. With the help of contributions from the State, the Susan B. Koeman Foundation, and the banking industry, the Jersey City Family Health Center has established a mobile mammography program. I have had the pleasure of working with Mr. McReynolds, and he has been instrumental in making much needed health care services a reality. I am proud to have secured funding for a pilot program at the health center, and thanks to him and his team, the community enjoys the benefits of a successful program for minorities with cancer.

Apart from working in administration, Mr. McReynolds has taught as an adjunct professor at New York University where he was the author of a course textbook in the Wagner Graduate School of Public Service.

Born and raised in Indiana, Mr. McReynolds spent much of his undergraduate career studying and traveling abroad before graduating from Wheaton College with a degree in English literature. He also holds a master's degree in hospital administration from the Washington University School of Medicine.

Today, I ask my colleagues to join me in honoring Larry McReynolds for his impressive ability to spearhead and develop worthwhile health care programs, his drive to improve access to vital patient services, and his passion to help those in need. His work has touched the lives of countless individuals in Jersey City and the greater community. I am confident that he will continue to have great success in his new position as the executive director of the Sunset Park Health Center Network at the Lutheran Medical Center in Brooklyn, New York, and I wish him all the best.

A NOTE ON PROCESS REGARDING THE CONTINUITY IN REPRESENTATION ACT

HON. F. JAMES SENSENBRENNER, JR.

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mr. SENSENBRENNER. Mr. Speaker, on February 28, 2002, the House Subcommittee on the Constitution held a legislative hearing on H.J. Res. 67, Representative BRIAN BAIRD's proposed constitutional amendment to allow lawmaking by an appointed House of Representatives following a terrorist attack.

During the 107th Congress, a bipartisan working group co-chaired by then-House Republican Policy Committee Chairman CHRISTOPHER COX and House Democratic Policy Chairman Martin Frost, met regularly to discuss the issues surrounding continuity in government, including constitutional amendments. As a result of those working group meetings, the House passed H. Res. 559 during the 107th Congress, expressing the sense of the House that each State should examine its existing procedures governing special elections so that, in the event of a catastrophe, vacancies in the House could be filled in a timely fashion. Unfortunately, only one state, California, responded to that request. Consequently, the House responded precisely as the Founders would have expected the House to respond, namely by acting pursuant to Congress's authority under the Constitution to ensure that the House is repopulated expeditiously through elections in extraordinary circumstances. To that end, H.R. 2844, the Continuity in Representation Act, was introduced in the 108th Congress. The bill received a hearing before the House Administration Committee on September 24, 2003, and it was marked up by both the House Administration (on November 19, 2003) and House Judiciary Committees (January 21, 2004). Amendments adopted on the House floor included one that would protect the rights of military and overseas voters to participate in the expedited elections, and a provision that provided explicitly that all federal laws governing the administration of federal elections would apply.

Because H.R. 2844 was a bipartisan bill that resonates best with America's democratic values, on April 22, 2004, it passed the House on an overwhelming bipartisan basis by a more than 3-to-1 margin, by a vote of 306–97.

As part of a bipartisan agreement, I agreed to a markup of Representative BAIRD's proposed constitutional amendment (H.J. Res. 83 in the 108th Congress) in the Judiciary Committee. That was done on May 5, 2004. Committee Members all had the opportunity to offer amendments to H.J. Res. 83 to either perfect its language or replace it entirely with the text of any other version of the amendment. During the markup, I asked if there were any Members who wanted to offer amendment more than half a dozen times. The Judiciary Committee adversely reported out H.J. Res. 83, so all Members could have an opportunity to vote on it on the House floor.

The constitutional amendment the House voted on was the approach supported by Representative BRIAN BAIRD, the Member who is widely regarded as the most outspoken House proponent of appointed Members. This proposal and a host of others have been extensively studied by scholars both inside and outside of Congress, including during the last Congress, and by previous Congresses, going back some 50 years. It remains a terrible idea because it would introduce into our Founding document, for the first time, the concept that laws can be written by an unelected aristocracy. That is a bad idea now, and it was a bad idea then, when the House of Representatives, controlled by both Democrats and Republicans, rejected all constitutional amendments authorizing appointed House Members sent to it by the Senate, even during the height of the Cold War.

The conclusion of the Continuity in Government Commission's (a privately-funded commission's) report recommending a constitutional amendment that would deny the right to self-government under laws enacted by elected representatives states that "The exact details of a solution are less important than that the problem be addressed seriously and expeditiously." (This is from page 31 of the report, which can be found at http://www.continuityofgovernment.org/report/report.html.)

On June 2, 2004, the House voted on H.J. Res. 83 and generally on the question of whether Americans should be governed by laws passed by an unelected aristocracy. There are only two ways to go on the issue: either you support an appointed House—the "details," by the Continuity in Government Commission's own admission, are relatively unimportant—or you support preserving lawmaking by an elected House. Representative BAIRD, the author of H.J. Res. 83, said of a constitutional amendment—quote—"The more urgent matter is to put that measure before the body." On June 2, 2004, that measure was put before the House, and the House overwhelmingly rejected it by a vote of 63–353, a margin of over 5–1. That margin of defeat of a constitutional amendment is historically large.

The right to self-government under laws passed by the People's chosen representatives has endured since America's birth, through two World Wars, a Civil War, a Cold War, and now a war against terrorism. The terrorists would like nothing more than to make us rewrite our Constitution to reflect their twisted vision of autocratic rule. The Continuity in Representation Act rejects that terrorist vision and would preserve the right to elected representation.

TRIBUTE THE REVEREND LUCIUS WILLIAMS ON HIS TWENTY-FIFTH PASTORAL ANNIVERSARY

HON. DONALD M. PAYNE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mr. PAYNE. Mr. Speaker, I ask my colleagues here in the House of Representatives to join me as I rise to congratulate Reverend Lucius Williams on his 25 years as pastor of Second Baptist Church in Belleville, New Jersey. Second Baptist is indeed fortunate to have the dynamic and creative energy Pastor Williams offers to his congregation. Likewise, Pastor Williams is blessed to have a membership that honors and respects him enough to celebrate this significant milestone with him.

Reverend Williams was installed as pastor of Second Baptist Church in February, 1980. He holds a Bachelor of Science degree in theology from United Bible College in Orlando, Florida. His ministry is filled with love for his congregation and he works tirelessly toward enhancing his members' theocratic experience. Under his pastoral watch, several ministries have been established. They include:

The Sisters Sharing Ministry, a ministry focusing on the needs of women and children; the Eliza B. Goldston Scholarship Foundation, a ministry that raises the awareness and importance of education through scholarship; the Valley Community Development Corporation, a ministry that incorporates community development and neighborhood beautification along with a tutorial program and English as a second language; SBC Praise Ministry, a ministry that lifts the name of Jesus in song; Hosanna Praise Dance Ministry, a ministry that lifts the name of Jesus in dance; the Christian Education Ministry, a ministry that focuses on Christian walk through education and mentorship; the Prison Ministry, a ministry that focuses on the needs of men and women in the penal system.

Pastor Williams' commitment to his church and the surrounding area are evident in his other activities. Along with his wife, the former Patricia Gabriel, the Crossroads of Life Christian Bookstore was established in June, 1976. He has received numerous awards for his outstanding love and passion to the work of the church, business and community.

Mr. Speaker, I know my colleagues join me in letting Pastor Williams' family, friends and congregation know that his 25 years of service are greatly appreciated. I also wish him well in continuing his leadership to both Second Baptist and the community.

ARTHUR STACEY MASTRAPA POST OFFICE BUILDING

HON. ALCEE L. HASTINGS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mr. HASTINGS of Florida. Mr. Speaker, as someone born and raised in the town of Altamonte Springs, Florida, it is a special honor to support the designation of the United States Postal Service located at 321 Montgomery Road in Altamonte Springs, Florida, as the Arthur Stacey Mastrapa Post Office Building.

SGT Arthur Stacey Mastrapa, a former Postal Service employee, was killed in Iraq last June while serving his country as an Army Reservist. Naming the Altamonte Springs Post Office after Sergeant Mastrapa is an honor befitting of a man who dedicated his life to serving his fellow citizens and eventually made the ultimate sacrifice for his nation.

Sergeant Mastrapa was killed in June 2004 after serving nearly 400 days in Iraq as part of a Military Police unit of the Army Reserve. Sergeant Mastrapa joined the Army in 1992 and later joined the Army Reserve in 1998 after leaving active duty. When he was not serving with his reserve unit, he served as a postal worker at the Altamonte Springs Post Office. Sergeant Mastrapa leaves behind his wife Jennifer and two children. Sergeant Mastrapa was a model American.

Mr. Speaker, each of the 24 other members of the Florida Congressional delegation supports this legislation because it not only honors Sergeant Mastrapa's life, but it also thanks his family for their sacrifice and creates a permanent memorial that his coworkers at the post office can remember him by.

HIGHLIGHTING RECENT DEVELOPMENTS IN THE ARMENIAN-AZERBAIJAN CONFLICT

HON. SOLOMON P. ORTIZ

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mr. ORTIZ. Mr. Speaker, as a result of the Armenia-Azerbaijan conflict, Armenian forces occupy the mountainous region of Nagorno Karabagh, as well as seven additional regions, resulting in a million refugees and internally displaced Azerbaijanis.

Located between Russia and Iran, Azerbaijan is an important partner and ally in the international war against terrorism. While bilateral cooperation on terrorism-related issues between the U.S. and Azerbaijan started well before September 11, they intensified with Azerbaijan offering unconditional support to the coalition and becoming the first Muslim country to send troops to Iraq.

While there have been several attempts to find a resolution to the conflict under the Organization for Security and Co-operation in Europe (OSCE) Minsk Process, little progress has been made. However, the U.S. continues to work towards the end. According to a recent State Department statement: ''The United States does not recognize Nagorno-Karabakh as an independent country, and its leadership is not recognized internationally or by the United States. The United States supports the territorial integrity of Azerbaijan and holds that the future status of Nagorno-Karabakh is a matter of negotiation between the parties. The United States remains committed to finding a peaceful settlement of the Nagorno-Karabakh conflict through the Minsk Group process. We are encouraged by the continuing talks between the Foreign Ministers of Armenia and Azerbaijan.''

On January 25, 2005, the Parliamentary Assembly of the Council of Europe adopted a resolution on the Nagorno Karabagh conflict, which concluded that ''considerable parts of Azerbaijan's territory are still occupied by the Armenian forces and separatist forces are still in control of the Nagorno-Karabakh region.'' Additionally it asked the co-chairs of the OSCE Minsk Group to expedite an agreement on the issue and urged the parties concerned to comply with U.N. Security Council resolutions by refraining from any armed hostilities and ''by withdrawing military forces from any occupied territories.''

Mr. Speaker, this shows the international community is ready for a resolution of the conflict. I welcome the initiatives by the Council of Europe and the statement by the U.S. Administration, and I urge my colleagues to support a peaceful resolution to the conflict.

BLACK HISTORY TRIBUTE TO JULIA THOMAS

HON. BENNIE G. THOMPSON

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mr. THOMPSON of Mississippi. Mr. Speaker, throughout the month of February, I would like to recognize outstanding African Americans of the 2nd Congressional District of Mississippi, and their contribution to Black History. The 23 counties of the 2nd District are well represented from both a local and national perspective.

Americans have recognized black history annually since 1926, first as ''Negro History Week'' and later as ''Black History Month.'' In fact, black history had barely begun to be studied—or even documented—when the tradition originated. Although blacks have been in America as far back as colonial times, it was not until the 20th century that they gained a presence in our history books.

Though scarcely documented in history books, if at all, the crucial role African Americans have played in the development of our nation must not be overlooked.

I would like to recognize Mrs. Julia Thomas of Washington County. Mrs. Thomas has been an advocate for young African Americans throughout her life. She has been instrumental in getting young African-Americans elected to public office. She is a member of the Progressive Art and Civic Club that provides scholarships to African-American students to help further their education.

Mrs. Thomas' dedication to the citizens of Washington County is also recognized through the sponsorship of twenty to thirty girls to participate in Literacy Bowls, and workshops on etiquette, attitude, mannerism, drugs, health, politics, etc.

Mrs. Thomas also volunteers 85 percent of her time going to schools to talk to students about the contributions that African-Americans have made and are still making in the State of Mississippi and throughout the nation. Some examples of Mrs. Thomas hard work and dedication to having African Americans represented in the political arena include Mr. Davis Weathersby (African-American) serving as Election Commissioner for 2 terms and Mr. Mark Seard being elected to the Office of Supervisors.

Even though she has not been the ''1st'' she has made numerous contributions to her race. Throughout her lifetime she has kept the motto to ''lift as she climbs.''

I take great pride in recognizing and paying tribute to this outstanding African American of the 2nd Congressional District of Mississippi who deserves mention, not only in the month of February but year round.

IN HONOR OF ROTARY INTERNATIONAL'S 100TH ANNIVERSARY

HON. ADAM B. SCHIFF

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mr. SCHIFF. Mr. Speaker, I rise today to congratulate Rotary International on 100 years of outstanding service worldwide.

Founded on February 23, 1905 in Chicago, Illinois, Rotary International is an organization of business and professional leaders that provides humanitarian service, encourages high ethical standards in all vocations, and helps build goodwill and peace in the world. Today, there are nearly 1.2 million Rotarians belonging to more than 31,000 Rotary clubs located in 166 countries. We are very fortunate to have 11 Rotary Clubs in the 29th Congressional District. The Burbank, Burbank Sunrise, Alhambra, Altadena, San Gabriel, Pasadena, Pasadena Sunrise, South Pasadena, Glendale, Glendale Sunrise, and Monterey Park Rotary clubs have individually contributed to Rotary International's mission and have united in the ideal of service.

More than one million Rotary members have volunteered their time and personal resources to protect over 2 billion children in 122 countries from polio. Rotary has contributed over $500 million to the global polio eradication campaign and spearheaded the polio rededication efforts of the Centers for Disease Control and Prevention (CDC), the United Nations Children's Fund (UNICEF), and the World Health Organization (WHO). It is also a proud supporter of educational opportunities for students, teachers, and other professionals. These clubs are community gems that have wholeheartedly donated their time, effort, and passion to causes of worldwide importance.

I ask all Members of Congress to join me today in honoring Rotary International on their 100th Anniversary and recognizing their important services to local communities and the world.

INTRODUCING THE PHARMACEUTICAL RESEARCH AND MANUFACTURERS ACCOUNTABILITY (PHRMA) ACT

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mr. STARK. Mr. Speaker, people are dying because the drug industry is making billions marketing drugs they know to be unsafe. Today I propose a bill that will end this dangerous practice by increasing accountability for pharmaceutical manufacturers and their executives who withhold evidence of drug risks.

The Pharmaceutical Research and Manufacturers Accountability (PhRMA) Act would impose criminal penalties and fines on those who fail to disclose evidence of serious adverse drug experiences. It is unfortunate we need this legislation, but the only way to make manufacturers accountable for drug safety is to hit them where it hurts—putting executives in jail and imposing large individual and corporate fines for wrongdoing.

In the past six months alone, Vioxx has been taken off the market for causing heart attacks and strokes, and a new ''black box'' warning has been added to antidepressants due to increased risk of suicide in children. What's worse, evidence suggests the manufacturers knew about these deadly safety issues, but masked or withheld the information from consumers and the FDA because they were making so much money on these drugs.

Profit before public safety is the modern mantra of pharmaceutical manufacturers. These companies continued to market drugs that caused individuals to be severely physically disabled or die. While the companies have been civilly sued for their actions, their typical response has been to pay enormous monetary settlements that don't even put a dent in their outrageously high drug profits. Even worse, the manufacturers never admit guilt and require injured parties to sign nondisclosure agreements as part of the settlement, effectively hiding from the public the horrific tales of death and disability.

The PhRMA Act will put an end to this irresponsible corporate citizenship by placing responsibility for the knowing concealment of serious adverse drug experiences on the pharmaceutical executives who ultimately decide to place profits over people's lives. In the wake of Enron and other corporate accounting scandals, the Sarbanes-Oxley Act created 10–year prison terms for withholding financial information from shareholders and regulators. The PhRMA Act would impose a minimum jail term of 20 years and fines of up to $2 million on executives who withhold information, proving once and for all that life is more valuable than the almighty dollar.

The bill would also require CEOs to annually attest that they have disclosed all evidence of serious adverse drug experiences to the FDA. Failure to meet this requirement would result in fines up to $100,000 per month for the CEO and $1 million per month for the Corporation.

Under today's fast track process at FDA, drugs are often approved with the caveat that manufacturers complete specified post-marketing studies of safety and effectiveness. Unfortunately, drug companies currently ignore these requirements because they know FDA will not revoke approval of a drug unless it is clearly unsafe. This perverse system actually provides an incentive for manufacturers to ignore required post-marketing studies so there is no new safety evidence available for FDA to justify a market withdrawal.

The PhRMA Act ameliorates this problem by requiring post-marketing studies to be completed in a time-period specified by the FDA. Failure to complete these studies can lead to fines of $5 million for each month the study goes unfinished. As always, FDA retains the authority to pull a drug from the market, but the PhRMA Act would give them an important intermediate sanction to make drug companies accountable for meeting their obligations.

The influence of the drug industry has infiltrated every aspect of society. The Bush Administration gave drug manufacturers a huge windfall in the Medicare prescription drug bill, the FDA bows to the industry while ignoring the science, and millions are taking unnecessary prescriptions because of TV commercials or doctors bribed by manufacturers.

The PhRMA Act can begin to turn the tide on an industry that continually puts profit and shareholder earnings above patients' lives and health. By holding pharmaceutical manufacturers and their executives responsible for the safety of their products we can ensure prescription drugs save lives, not destroy them.

RECOGNITION OF NATIONAL BLACK HIV/AIDS AWARENESS DAY

HON. CHARLES B. RANGEL

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mr. RANGEL. Mr. Speaker, I rise before you today to join with many of my colleagues in recognizing the fifth anniversary of National Black HIV/AIDS Awareness Day.

African Americans have been disproportionately affected by HIV/AIDS since the epidemic's very beginning, and there's no evidence to show that trend is changing. National Black HIV/AIDS Awareness Day not only calls attention to how HIV/AIDS disproportionately affects the Black community, but the extreme disparities in healthcare access for African Americans.

Although African Americans represent only 13 percent of the U.S. population, they account for 40 percent of the 929,985 AIDS cases diagnosed since the start of the epidemic and approximately half of the 43,171 cases diagnosed in 2003 alone. The epidemic has also had a disproportionate impact on subgroups of African Americans including women and youth.

African American women accounted for a greater proportion of new AIDS cases among African Americans overall than their white counterparts. And although African American teens (ages 13–19) represent only 15 percent of U.S. teenagers, they accounted for 65 percent of new AIDS cases reported.

Although treatment advances, along with prevention efforts, have led to the decline in new AIDS diagnoses and deaths, these declines were not as sharp for African Americans and appear to have ended.

We must continue to push for a comprehensive prevention policy that highlights the ABCs—Abstain, Be Faithful, and use Condoms. We must strongly encourage destigmatization of the disease among African Americans, and increase funding that will allow for extensive outreach not only in our communities, but to our international neighbors as well.

We must support the goals and ideals of National Black HIV/AIDS Awareness Day and ''Get Educated, Get Involved, and Get Tested.''

BLACK HISTORY TRIBUTE TO MILDRED JUANITA SCOTT

HON. BENNIE G. THOMPSON

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mr. THOMPSON of Mississippi. Mr. Speaker, throughout the month of February, I would like to recognize outstanding African Americans of the 2nd Congressional District of Mississippi, and their contribution to Black History. The 23 counties of the 2nd District are well represented from both a local and national perspective.

Americans have recognized black history annually since 1926, first as ''Negro History Week'' and later as ''Black History Month.'' In fact, black history had barely begun to be studied—or even documented—when the tradition originated. Although blacks have been in America as far back as colonial times, it was not until the 20th century that they gained a presence in our history books.

Though scarcely documented in history books, if at all, the crucial role African Americans have played in the development of our Nation must not be overlooked.

I would like to recognize Ms. Mildred Juanita Scott of Sunflower County, Mississippi. A native of Indianola, MS, Scott attended Indianola Elementary School and later graduated from Booker T. Washington High School located in Memphis, Tennessee. She continued her education at Coahoma Community College in Clarksdale, Mississippi, where she received an AA Degree in Library Science. Ms. Scott also has worked extensively towards a degree at Delta State University, located in Cleveland, Mississippi.

Ms. Scott has worked diligently with grassroots organizations in and around Sunflower County. At an early age Ms. Scott joined the Sunflower County Branch of NAACP where she served as Secretary for this great organization. It was during this time Ms. Scott and others participated in sit-ins and boycotts throughout Sunflower County. Ms. Scott served as chairperson of the Sunflower County Democratic Executive Committee. She served as Den Mother for Boy Scouts of America and is a member of the National Council of Negro Women. For the past 11 years Ms. Scott has served as County Coordinator for the Friends of Bennie Thompson campaign committee. She recently became the treasurer for the Sunflower CO-OP for Community Improvement.

In addition to her long list of volunteer services, Ms. Mildred Juanita Scott has worked for over 38 years as an Administrative/Finance Assistant. She currently works in the Accounts Payable Department at the Bolivar County Community Action Agency.

I take great pride in recognizing and paying tribute to this outstanding African American of the 2nd Congressional District of Mississippi who deserves mention, not only in the month of February but year round.

IN HONOR OF THE MARINE CORPS JROTC AT EMERSON HIGH SCHOOL

HON. ROBERT MENENDEZ

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mr. MENENDEZ. Mr. Speaker, I rise today to honor the Marine Corps Junior Reserve Officers' Training Corps (JROTC) on its tenth anniversary of training at Emerson High School in New Jersey. The JROTC hosted a dinner celebrating the event on February 10, 2005.

The JROTC has spent a decade instructing, guiding, and inspiring students to push themselves both physically and mentally. Throughout their rigorous training, they learn valuable skills such as discipline, commitment, and perseverance. The JROTC also instills in the students a sense of honor and citizenship. By participating in the program, students grow in strength and character and are well-prepared for a wide range of pursuits after high school.

Today, I ask my colleagues to join me in honoring the JROTC for its years of outstanding work and positive leadership training in Emerson, New Jersey.

TECHNICAL CORRECTIONS TO THE UNITED STATES CODE

HON. F. JAMES SENSENBRENNER, JR.

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mr. SENSENBRENNER. Mr. Speaker, today I am introducing a bill to make technical corrections to the United States Code. The bill updates cross references, corrects typographical errors, and makes stylistic changes such as conforming the capitalization of certain words.

The Office of Law Revision Counsel has prepared the bill and submitted it to the Committee on the Judiciary as a part of the responsibilities of the Office under section 285b of Title 2, United States Code that have been enacted into positive law so that those titles may be kept current.

Anyone with questions about the bill should contact Robert Sukol, Assistant Counsel, Office of the Law Revision Counsel, U.S. House of Representatives, H2–304 Ford House Office Building, Washington, DC, 20515–6711. The telephone number is (202) 226–9060.

TRIBUTE TO R.W. WILLIAM J. EWING, 32ND WORSHIPFUL MASTER

HON. DONALD M. PAYNE

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mr. PAYNE. Mr. Speaker, it gives me a great deal of pleasure to recognize Worshipful Master R.W. William J. Ewing for his leadership of Jephthah Lodge No. 56 in Montclair, New Jersey. Under Worshipful Master Ewing's leadership, overall membership increased and acknowledgments of community initiatives improved. His unwavering dedication and passion have inspired the brothers of Jephthah Lodge No. 56 to increase their own commitments to do more within their designated communities.

Worshipful Master Ewing performed his duties as caretaker of the East, not only by word, but more importantly, through his deeds. He has made in-kind donations by extending the use of his business office, including his office manager and staff, consistently throughout his tenure. He has also made substantial financial contributions to assist the lodge. These unselfish acts have contributed significantly to the success of the lodge.

In addition to his lodge activities, Worshipful Master Ewing is a good citizen, a former Assistant Prosecutor, an attorney and an excellent role model. He is a dedicated family man, a member of Trinity Presbyterian Church in Montclair and a life member of the NAACP. As a former student, he is also supportive of keeping the legacy of the Bordentown Boarding School alive. Worshipful Master Ewing is an ardent traveler and is a dedicated annual Super Bowl participant.

Mr. Speaker, as Jephthah Lodge No. 56 celebrates its annual event on Friday, February 11, 2005 at the Ridgefield Regency in Verona, New Jersey, I urge my colleagues here in the House of Representatives to join me in honoring Worshipful Master Ewing for his dedicated service. As he concludes his term in office, his ongoing commitment to Jephthah Lodge No. 56, its brothers and Prince Hall Masonry in general is truly worthy of recognition and acclaim.

SUPPORT OF BURMA'S DEMOCRACY MOVEMENT

HON. JOSEPH R. PITTS

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mr. PITTS. Mr. Speaker, on February 17, 2005, Burma's ruling military junta, a regime that Secretary of State Rice has rightly called an ''outpost of tyranny,'' will reconvene a national convention to draft a new constitution. Sadly, this convention, which excludes anyone interested in democracy and freedom of expression, appears to be yet another attempt to place a veneer of legitimacy on the dictatorship's rule. General Than Shwe, the recognized leader of Burma's military and the dictatorship, must understand that the international community and the people of Burma are not fooled by this latest attempt to establish legitimacy.

On February 14th, Burma's Committee for the Restoration of the People's Parliament (CRPP), an umbrella organization including over 200 Members of Parliament elected in 1990, called for all of Burma's ethnic groups to boycott the military's convention. The CRPP includes Nobel Peace Prize Laureate Aung San Suu Kyi's National League for Democracy (NLD). The statement by CRPP demonstrates once again the incredible bravery of the Burmese people in their battle against the ruling generals.

Mr. Speaker, it is time for the international community to face the facts: Than Shwe and other leading participants of this rogue regime have shown that they have no desire to seek political accommodation or peaceful dialogue with the Burmese people. Their actions show that they have chosen the path of tyranny and terror—the impact of this decision will increasingly be felt throughout the region.

The Association of Southeast Asian Nations (ASEAN) must realize that Burma's military junta is an iron anchor wrapped around the neck of this important organization. The actions of the military junta are draining economic growth from regional states, promoting the spread of HIV/AIDS throughout Asia, protecting indicted drug smugglers and flooding Thailand with methamphetamines and heroin, that eventually makes its way to the shores of the U.S. The regime fundamentally promotes regional instability and obstructs regional growth.

Recently, the U.S. Federal Court in New York City indicted eight drug traffickers from Burma in absentia. According to court documents, they are leaders of the United Wa State Army, one of the largest drug producers and traffickers in the world. This group is responsible for importing $1 billion worth of heroin into the U.S. between 1985 and 2004. These criminals could not operate without the active collusion of the ruling generals. Moreover, the legendary drug kingpin known as Khun Sa, also under indictment in the U.S. on heroin trafficking charges, is living under the protection of the dictatorship of Rangoon. On November 18, 2003, the Department of the Treasury announced the designation of Burma and two Burmese banks to be of ''primary money laundering concern'' under Section 311 of the USA PATRIOT Act. In addition, The Department of Treasury, acting through the Financial Crimes Enforcement Network (FinCEN), has instituted sanctions against two Burmese financial institutions, Myanmar Mayflower Bank and Asia Wealth Bank, due to money laundering concerns.

ASEAN is serving in a critical role in the recovery and rebuilding efforts after the horrible tsunami that devastated parts of Asia. As a leader in the international community, ASEAN must come to understand that the organization must actively challenge Burma's military regime to work with Aung San Suu Kyi and the NLD. It must not be forgotten that the NLD won over 80 percent of the seats in the 1990 parliamentary election. A stable and democratic Burma is good for the entire region and the world. I would like to strongly commend and welcome the work of the Burma Caucus members in the Indonesian and Malaysian parliaments who are pressing for greater involvement by their countries in pressing the Burmese junta to bring positive change.

ASEAN cannot afford to have its leadership role sidetracked as it is forced to account for the acts of terror and oppression a member nations, Burma's junta, inflicts on the Burmese people. Last year's Asia-Europe meeting (ASEM) was delayed for months due to negotiations surrounding the participation of Burma. ASEAN is heading for another diplomatic fiasco as Burma is set to assume the chairmanship of ASEAN in 2006. ASEAN must understand that when the group spends more time addressing the latest crisis created by the junta, instead of focusing on plans to promote economic growth, fight the war on terror, and

develop collective solutions to the region's social problems, that is not good for ASEAN or any of its individual members. ASEAN immediately needs to put significant, meaningful pressure on the regime. Ejecting Burma's junta or at the very least suspending their membership from ASEAN would be a powerful statement of ASEAN's determination to deal with the problems Burma's dictatorship creates.

The United States government and citizens have long stood side-by-side with Burma's democracy movement. I look forward to legislation that will continue the U.S. economic sanctions imposed on the country in 2003. In addition to action that we take as a nation, we must also press the United Nations to do more. Secretary General Kofi Annan should use his office to bring the issue of Burma before the Security Council for immediate action. Further, the Secretary General should request a formal investigation to examine evidence of crimes against humanity by Burmese military officials and senior regime leaders in order to hold responsible parties accountable for the widespread use of rape and ethnic dislocation as weapons of war.

Mr. Speaker, I look forward to working with my colleagues in the House, the Senate and the Administration to see that Burma's military regime soon joins the Soviet Union, Ceausescu's Romania, Milosevic's Yugoslavia and other regimes and dictatorships that now reside in the ashbin of world history.

And, Mr. Speaker, I say to the people of Burma: You are not forgotten. We stand with you and will continue to work with you for as long as it takes to ensure that the people of your nation are able to live in peace and freedom.

VERMONT'S GREAT JAZZ MASTER

HON. BERNARD SANDERS

OF VERMONT

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mr. SANDERS. Mr. Speaker, Vermont's great jazz saxophonist, Big Joe Burrell, died on February 2 at the age of 80. He was born and spent his early years in Port Huron Michigan. The story of his start in music is legendary. Here is how Brent Hallenbeck recounted it in the Burlington Free Press:

''As a shy 10-year-old, he approached his mother's boss and asked to borrow $5 so he could buy a saxophone.

'Saxophone?' the man asked. 'What are you going to do with a saxophone?'

'I'm going to play it,' little Joe Burrell told him.'' And he did, mastering his instrument in the next few years. After serving in the U.S. Army during World War II, his musical career took off. At an Akron dance he played the opening act for a B.B. King performance, and King thereafter asked Big Joe to play saxophone in his orchestra. He would go on to tour with King for almost two years before meeting up with another major figure in American music, Count Basie.

Basie invited Big Joe to play in his club in New York, and would become the major musical influence in Big Joe's life. ''Count Basie was the predominant influence on me until the day he died, and still is today,'' Burrell said in 2002.

Ten years of playing in Canada eventually brought him to Montreal, from where it was an easy journey to play a date in Burlington, Vermont. There he discovered his nephew, Leon Burrell, was a professor of education at the University of Vermont. The meeting was doubly fortuitous: Leon invited Big Joe to live with him, and he made Leon's home his own for many years. And Vermont gained its most well-known, most well-beloved jazz musician.

Big Joe jammed with fellow musician Paul Asbell, and out of their collaboration was formed an ensemble called The Unknown Blues Band. The core of The Unknown Blues Band included Asbell, Chuck Eller on keyboard, Tony Markellis on bass, and Russ Lawson on drums. And of course, Big Joe. Not only did they make music, but they shaped a whole new generation of musicians. Big Joe, who played with B.B. King and Count Basie, Etta James and Little Richard, was a formative influence on Trey Anastasio, the guitarist for Phish. In fact, Burrell played guest appearances with Anastastio's band in recent years.

Last year, the Unknown Blues Band celebrated its twenty-fifth anniversary. The band was a Burlington staple, playing at gigs everywhere, and most especially at a weekly performance at Halvorson's Upstreet Café in Burlington. Even as age seemed outwardly to slow him down, Big Joe kept performing at his customary high level. Café owner Tim Halvorson told the Free Press, ''He'd shuffle in with his walker or a cane, but, boy, as soon as the music started and he got a glass of Canadian Club and he grabbed his saxophone, he was 30 years younger.'' As his nephew Dr. Leon Burrell said, speaking of his last performance just a month ago, ''He went out doing what he did best. It's like a cowboy dying with his boots on.''

Big Joe was a big man—not only in physical stature, but big in heart. He loved music, he loved people, he loved playing in Vermont. And Vermont loved him back: He was an emblem of the amazing power of jazz, our nation's preeminent form of music. He showed all who lived in the Green Mountain State how jazz can speak to each of us, directly, deeply; he showed us that the music born in the South and in the big cities of the Mid-west has flowed, like a mighty river, all through our nation. He was an important tributary of that river, and all of us in Vermont who love music will remember Big Joe for that, and for the wonderful performances he gave us, time and again.

BLACK HISTORY TRIBUTE TO ANDREW AND MARY LOU HAWKINS

HON. BENNIE G. THOMPSON

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mr. THOMPSON of Mississippi. Mr. Speaker, throughout the month of February, I would like to recognize outstanding African Americans of the 2nd Congressional District of Mississippi, and their contribution to Black History. The 23 counties of the 2nd District are well represented from both a local and national perspective.

Americans have recognized black history annually since 1926, first as ''Negro History Week'' and later as ''Black History Month.'' In fact, black history had barely begun to be studied—or even documented—when the tradition originated. Although blacks have been in America as far back as colonial times, it was not until the 20th century that they gained a presence in our history books.

Though scarcely documented in history books, if at all, the crucial role African Americans have played in the development of our nation must not be overlooked.

I would like to recognize Andrew Hawkins, Sr. (1918–2000) and Mary Lou Hawkins (1907–1972) of Shaw, MS which is located in Bolivar County. Andrew and Mary Lou ''Mae Lou'' were married in 1937 until her murder in 1972. Being children of slaves and having grown up in the Mississippi Delta during the Jim Crowe era and when the Mississippi Sovereignty Commission was active, they set out on an expedition against segregation and discrimination to improve life for black folks. Their stubborn will would not allow them to accept the unfair treatment imposed by white folks. In fact their willingness to lead and step out front brought death; alienation, planned house fires, and increased harassment upon the family but that did not stop the Hawkins.

In 1969 Andrew along with Mae Lou and twenty other African American plaintiffs sued the Town of Shaw for violating their rights as spelled out in the 14th Amendment. They had lawyers representing them from the NAACP Legal Defense Fund. These were their rights to parallel living conditions in black neighborhoods as experienced by whites in their neighborhoods. Photographed and statistical evidence of both black and white neighborhoods pointed to the disparities between the two of inadequate water supply, unsanitary sewage exposure and disposal, water line pipes, rock roads, natural gas supply, street lights, and more. Hawkins first loss came when he appeared in District Court before Judge Keady. Then on January 23, 1971, the United States Fifth Circuit Court of Appeals overturned Judge Keady's decision making the case a precursor for lawsuits against the inequalities of services provided by municipalities. Careful examination of the evidence presented by the NAACP Legal Defense Fund Lawyers overrode all evidence presented by the Town of Shaw helping to establish a prima facie case of racial discrimination. The court prohibited the Town of Shaw from further spending of monies to improve conditions in white neighborhoods until they improve conditions in the black neighborhoods thus creating a better living environment for the entire Town. The Hawkins v. Town of Shaw case is often equated with such paramount cases as Brown v. Board of Education for being one of the great pillars in African American History.

In May 1972 two months after the 5th Circuit en banc affirmed the decision of Hawkins v. Town of Shaw, Mary Lou Hawkins was shot and killed by a black ''white controlled'' police officer for the Town of Shaw. In the first fire set to their home, no one was injured but in the second fire, their son Andrew, Jr. and two granddaughters were killed. Mr. Andrew Hawkins and his family has certainly been in a storm and faced tragedies as a consequence.

I take great pride in recognizing and paying tribute to these outstanding African Americans of the 2nd Congressional District of Mississippi who deserve mention, not only in the month of February but year round.

HONORING SUSAN B. ANTHONY

HON. BARBARA CUBIN

OF WYOMING

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mrs. CUBIN. Mr. Speaker, this week we celebrate the birthday of one of the true heroines of our country, Susan B. Anthony. Best known for being a pioneer of the women's movement, Susan B. Anthony dedicated her life to fight for equal rights for women and was instrumental in helping women gain the right to vote.

Unfortunately, it is often forgotten that Susan B. Anthony was a strong pro-life advocate. Her respect for the rights of the unborn sprung from her profound belief that all humans deserve equal protection under the law.

As a pro-life woman, I can identify with Susan B. Anthony. I too wish to protect and nurture human life in every stage of development.

Susan B. Anthony embodied true compassion as a defender of women and protector of children. In honoring the memory of Susan B. Anthony, let us acknowledge that to be pro-life is to be pro-woman.

HONORING THE TUSKEGEE AIRMEN

SPEECH OF

HON. BRIAN HIGGINS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 9, 2005

Mr. HIGGINS. Mr. Speaker, I rise today in strong support of H. Con. Res. 26 as offered by my colleague, Mr. ROGERS of Alabama, in acknowledgement and appreciation of the contribution of the Tuskegee Airmen to our Air Force and our nation. Their example of breaking racial boundaries in order to contribute to the Allied efforts in WWII is still valuable today in our war against global terrorism. I thank Mr. ROGERS of Alabama for bringing this important resolution to the floor today.

The lessons we can learn from these men are numerous. In a time when the world was threatened by fascism, they stood among the many to repel its force. They demonstrated to their countrymen that skin color does not define the quality or the character of the man, but rather the sense of duty to the ideals they hold and their willingness to do what it takes to defend those ideals.

The Tuskegee Airmen not only fought against enemies in the air, but they engaged in a struggle within their own country. They were the first African-Americans to qualify as military pilots in any branch of the armed forces, as a result of years of pressure on the military to further integrate the Air Force. These men took a big step in the fight for equal civil rights, and made a major impact in the war as a result of their superior skill as pilots.

As we face the challenges of today, we must remember their contribution to the U.S. Air Force and to the American civil rights movement. We must honor their dedication to the values of justice, equality and democracy as we go forth in our war against terrorists. The men and women that protect the citizens of this country come from many racial backgrounds. Because of the example of the Tuskegee Airmen, the aviation industry and the armed forces have been able to benefit from the contributions of many talented people from all different origins.

In the promotion of democratic values abroad, the Tuskegee Airmen helped to promote the ideal of racial equality. We must remember their honorable service as well as the message that they promoted through their example. The lessons that can be taken from history must be remembered and practiced every day. In our war on terror, in our global humanitarian assistance, and in our domestic fight against crime, it is vital that we apply our national values to the conduct of our everyday lives.

The memory of the deeds of the Tuskegee Airmen must not be forgotten. The fight against discrimination and evil is ongoing, and it is only by learning from our past that we can successfully achieve our goals of the future.

Mr. Speaker, I am proud to stand with my colleagues in appreciation for the service of the Tuskegee Airmen and support of this resolution, and I would like to thank my colleague, Mr. ROGERS of Alabama for his leadership on this issue.

INTRODUCTION OF THE SOCIAL SECURITY FOR AMERICAN CITIZENS ONLY ACT

HON. RON PAUL

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mr. PAUL. Mr. Speaker, today I introduce the Social Security for American Citizens Only Act. This act forbids the federal government from providing Social Security benefits to noncitizens. It also ends the practice of totalization. Totalization is where the Social Security Administration takes into account the number of years an individual worked abroad, and thus was not paying payroll taxes, in determining that individual's eligibility for Social Security benefits.

Hard as it may be to believe, the United States Government already provides Social Security benefits to citizens of 17 other countries. Under current law, citizens of those countries covered by these agreements may have an easier time getting Social Security benefits than public school teachers or policemen.

Obviously, this program provides a threat to the already fragile Social Security system, and the threat is looming larger. A little-noticed part of the administration's immigration ''reform'' proposal would make hundreds of thousands of Mexican citizens eligible for U.S. Social Security benefits. Totalization is the centerpiece of this proposal, so even if a Mexican citizen did not work in the United States long enough to qualify for Social Security, the number of years worked in Mexico would be added to bring up the total and thus make the Mexican worker eligible for cash transfers from the United States.

Mr. Speaker, press reports also indicate that thousands of foreigners who would qualify for U.S. Social Security benefits actually came to the United States and worked here illegally. That's right: the federal government may actually allow someone who came to the United States illegally, worked less than the required number of years to qualify for Social Security, and then returned to Mexico for the rest of his working years, to collect full U.S. Social Security benefits while living in Mexico. That is an insult to the millions of Americans who pay their entire working lives into the system and now face the possibility that there may be nothing left when it is their turn to retire.

The proposed agreement is nothing more than a financial reward to those who have willingly and knowingly violated our own immigration laws. Talk about an incentive for illegal immigration. How many more would break the law to come to this country if promised U.S. government paychecks for life? Is creating a global welfare state on the back of the American taxpayer a good idea? The program also establishes a very disturbing precedent of U.S. foreign aid to individual citizens rather than to states.

Estimates of what this latest totalization proposal would cost top $1 billion per year. Supporters of the Social Security to Mexico deal may attempt to downplay the effect the agreement would have on the system, but actions speak louder than words: According to several press reports, the State Department and the Social Security Administration are planning to enact a new building in Mexico City to handle the expected rush of applicants for this new program. As the system braces for a steep increase in those who will be drawing from the Social Security trust fund while policy makers seriously consider cutting Social Security benefits to American seniors and raising payroll taxes on American workers, it makes no sense to expand Social Security into a global welfare system. Social Security was designed to provide support for retired American citizens who worked in the United States. We should be shoring up the system for those Americans who have paid in for decades, not expanding it to cover foreigners who have not.

It is long past time for Congress to stand up to the internationalist bureaucrats and start looking out for the American worker. I therefore call upon my colleagues to stop the use of the Social Security Trust Fund as yet another vehicle for foreign aid by cosponsoring the Social Security for American Citizens Only Act.

Original Cosponsors of the Social Security for American Citizens Only Act: ROSCOE BARTLETT (MD–06), JOHN DUNCAN (TN–02), SCOTT GARRETT (NJ–05), VIRGIL GOODE (VA–03), THADDEUS MCCOTTER (MI–11), ZACH WAMP (TN–03).

BLACK HISTORY TRIBUTE TO REVEREND VICTOR DIXON

HON. BENNIE G. THOMPSON

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mr. THOMPSON of Mississippi. Mr. Speaker, throughout the month of February, I would like to recognize outstanding African Americans of the 2nd Congressional District of Mississippi, and their contribution to Black History. The 23 counties of the 2nd District are well represented from both a local and national perspective.

Americans have recognized black history annually since 1926, first as ''Negro History

Week'' and later as ''Black History Month.'' In fact, black history had barely begun to be studied—or even documented—when the tradition originated. Although blacks have been in America as far back as colonial times, it was not until the 20th century that they gained a presence in our history books.

Though scarcely documented in history books, if at all, the crucial role African Americans have played in the development of our nation must not be overlooked.

I would like to recognize Reverend Victor Dixon of Copiah County in the State of Mississippi. Born September 27, 1957, Dixon was educated in the Copiah County School District.

Rev. Dixon is the pastor of the Egypt Hill M.B. Church, where he has been pastor for twelve years. Presently he serves as Moderator of the Brushy Creek-New Hope Association. He is the President of the Copiah County Minister Alliances, Executive Board Member for the Copiah County Fair Association and Board Member for the Copiah County Boys and Girls Club. Additionally, Rev. Dixon is the owner and President of Dixon Body & Auto Sales, Inc.

Previously, Rev. Dixon ministered at Greater Mt. Olive M.B. Church of Oma, Mississippi for 8 years. Rev. Dixon served also served as the Vice-Moderator of Lawrence County Association for four years and Vice-Moderator of the Brushy Creek-New Hope Association for 10 years.

I take great pride in recognizing and paying tribute to this outstanding African American of the 2nd Congressional District of Mississippi who deserves mention, not only in the month of February but year round.

IN HONOR OF STEPHEN R. GREGG

HON. ROBERT MENENDEZ

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mr. MENENDEZ. Mr. Speaker, I rise today to honor Stephen R. Gregg, a distinguished Congressional Medal of Honor winner whose life was devoted to serving the community and his country. Mr. Gregg was remembered at a memorial service on February 11, 2005, in Bayonne, New Jersey.

A decorated veteran of World War II, Mr. Gregg began his army service in 1942 and joined the Weapons Platoon, Company L, 143rd Infantry, 36th Infantry Division. After training in Algeria, his unit was sent to Italy, where he suffered shrapnel injuries to his back and leg. During a battle in France, Mr. Gregg, then a technical sergeant, single-handedly slowed the advance of German soldiers. This enabled medics to recover and treat seven wounded soldiers from his platoon. His valiant counterattack also allowed the platoon to successfully reposition itself and continue fighting. Mr. Gregg's bravery, quick thinking, and combat instincts helped save the lives of many fellow soldiers that day and earned him the Congressional Medal of Honor. He was also promoted to second lieutenant and awarded a Purple Heart, Combat Infantryman's Badge, Oak Leaf Cluster, and the Silver Star.

Respected and admired by the community, Mr. Gregg was frequently asked to appear at presidential inaugurations, remembrance events, and on TV shows. For 25 years, he attended Hudson County's ceremonies to honor the fallen at Pearl Harbor. Known by his family and friends for his great humility, Mr. Gregg rarely spoke of his combat experiences at home and said a nightly prayer for his fallen comrades who did not survive the war.

Raised in Bayonne, he attended the Bayonne Technical and Vocational High School and later spent time working at an art gallery in New York and the shipyards in Kearny, before serving in the Armed Forces. After being discharged from the Army, he worked as a deputy Hudson County court clerk and a county court attendant. He later became the Sheriff Department's chief court officer.

Today, I ask my colleagues to join me in honoring Stephen R. Gregg, a man of exceptional character, whose dedicated service and humble nature won him the respect and love of all who knew him. Mr. Gregg was an important figure in the community's military history, and he will be greatly missed.

PERSONAL EXPLANATION

HON. GENE GREEN

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mr. GENE GREEN of Texas. Mr. Speaker, I was unable to attend several votes late last week due to personal business, and I ask unanimous consent to include this personal explanation in the record.

On February 10, 2005, I was unable to be present for Rollcall votes #28–#31.

On Rollcall vote #28 on agreeing to the Nadler of New York amendment to H.R. 418, I would have voted ''nay.''

On Rollcall vote #29 on agreeing to the Farr of California amendment to H.R. 418, I would have voted ''yea.''

On Rollcall vote #30 on the Motion to Recommit H.R. 418 with Instructions, I would have voted ''yea.''

On Rollcall vote #31 on final passage of H.R. 418, the REAL ID Act, I would have voted ''nay.''

DR. CARL KUTTLER, JR. DAY IN ST. PETERSBURG, FLORIDA

HON. C. W. BILL YOUNG

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mr. YOUNG of Florida. Mr. Speaker, every once in a while you have the opportunity to work with an individual who touches a community in a special way. For me, that person is Dr. Carl Kuttler, Jr., the President of the St. Petersburg College in St. Petersburg, Florida.

As President of the College for the past 26 years, Carl has touched the lives of thousands of students. He has made college an option for many students who otherwise due to cost or scheduling conflicts would not have been able to attend. He also has responded to the needs of our community by creating programs of study to fulfill labor demands, such as qualified teachers, nurses, pharmacists, law enforcement personnel, and most recently specialists in the field of orthotics and prosthetics.

Carl is one of those public servants who lead by example and with vision and commitment. He has been such a strong and consistent force for change in our community that the St. Petersburg City Council recently honored him by declaring January 31, 2005 as Dr. Carl Kuttler Jr. Day.

Following my remarks, I would ask that the city's resolution be included so that my colleagues in the House can see what a dynamic leader Carl Kuttler is. He is an example for all public officials and college Presidents to follow in leading with a creative energy that not only enhances the quality of education but the quality of life for an entire community.

Mr. Speaker, Dr. Carl Kuttler Jr. is a unique individual, a man with more energy and ideas than any person I know. It is an honor to share his story with you today.

Whereas, Dr. Carl Kuttler is a long time St. Petersburg citizen and has led St. Petersburg College for 26 years as President; and

Whereas, Recently Dr. Kuttler has helped St. Petersburg College evolve into a four-year school, offering baccalaureate degrees, the first community college in Florida to be given such a privilege; and

Whereas, Dr. Kuttler has been an advocate for Community Colleges everywhere; and

Whereas, Dr. Kuttler has worked with the City of St. Petersburg to develop a joint use library at Gibbs High School, the largest public library in the city; and

Whereas, Dr. Kuttler agreed to oversee the 300–100 year anniversary celebration between St. Petersburg, Russia and St. Petersburg, Florida, culminating with the two cities signing a twin city agreement; and

Whereas, Dr. Kuttler has led efforts to establish St. Petersburg College campuses in Midtown and Downtown St. Petersburg; and

Whereas, January 31, 2005 is Dr. Kuttler's 65th birthday.

Now, therefore, I, Rick Baker, Mayor of the City of St. Petersburg, Florida, proclaim January 31, 2005 as Dr. Carl Kuttler Jr. Day in St. Petersburg, and I urge residents to join with me in recognizing the great and proactive impact he is making on our community.

HONORING THE LIFE OF GREENWOOD COUNTY SHERIFF MATT SAMUELS

HON. JERRY MORAN

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mr. MORAN of Kansas. Mr. Speaker, Congressman TIAHRT and I join together today to honor the life of fallen Greenwood County Sheriff Matt Samuels. On Wednesday, January 19, Sheriff Matt Samuels was shot while serving a search warrant and an arrest warrant near Virgil, Kansas. He died in the line of duty while serving his community.

Protecting and serving was in Matt's nature. His father had served as county sheriff before him, so he grew up around the principles of law and justice. As a second-generation sheriff, Matt took service beyond just his job. He was seen as a leader, involved in the Special Olympics and serving as President of the local Kiwanis Club.

Sheriff Samuels was devoted to law enforcement, but more than that, he was devoted to the people of Greenwood County. While still in high school, Samuels began working as a part-time jailer. After graduation, he married Tamara Bechtle, then attended the

Kansas Law Enforcement Training Center. He was elected to his first term as sheriff in 2000.

1979 to 2005. That's 26 years of public service. As Sheriff Samuels was only 42 years old at his death, it means he spent over half of his life serving the citizens of Greenwood County.

As his friend, John Lehnherr said, ''Matt lived to be a sheriff, and he died being a sheriff.''

Hundreds of law enforcement officers from across Kansas turned out on Sunday, January 23, for Sheriff Samuels's funeral. The service was held in the local junior-senior high school gymnasium, and it was standing room only—plus an additional packed room, where the crowd watched the service on television.

It was fitting that Sheriff Samuels's casket traveled its route from the memorial service to his final resting place in a white pickup truck owned by the sheriff's department. The motorcade following that white truck included government and law enforcement vehicles of all kinds, from all over the area. It took half an hour for the entire procession to pass by.

People like Matt Samuels put on their uniforms every day, and go out to try and make their communities better and safer. They know, whenever they wear their badges, that they may face danger. But they take that risk. For us. For our children and our families. For all of us.

Matt Samuels made the ultimate sacrifice. At first glance, it seems unfair that Matt met his end while delivering warrants. After all, he was just doing his job. Who knew that gunfire would erupt and a daylong standoff would ensue? Who knew that anyone would be hurt, much less killed? Let us all remember that Sheriff Samuels did not die a senseless death. His job—even the routine duties—all of his duties carried great importance.

Those questions are the key to what makes us call law enforcement officers brave. No one knows what will happen when an officer confronts a suspect, whether that confrontation occurs at a house in the country or in the middle of a burglary. Law enforcement officers face the unknown. They apprehend suspects, for the good of their fellow citizens, despite the danger, despite the possibility of being injured, or even killed.

Being killed in the line of duty carries with it a certain nobility. But all the nobility and honor in the world can't ease the pain of losing Matt Samuels. His wife, son, and daughter are in pain. His community grieves. Rare are men like Matt Samuels, and we all feel he was taken too soon.

Congressman TIAHRT and I pray for the Samuels family. We pray for Eureka, Kansas, and for Greenwood County. We mourn the death of Matt Samuels and know he will be missed.

BLACK HISTORY TRIBUTE TO KING T. EVANS, SR.

HON. BENNIE G. THOMPSON

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mr. THOMPSON of Mississippi. Mr. Speaker, throughout the month of February, I would like to recognize outstanding African Americans of the 2nd Congressional District of Mississippi, and their contribution to Black History. The 23 counties of the 2nd District are well represented from both a local and national perspective.

Americans have recognized black history annually since 1926, first as ''Negro History Week'' and later as ''Black History Month.'' In fact, black history had barely begun to be studied—or even documented—when the tradition originated. Although blacks have been in America as far back as colonial times, it was not until the 20th century that they gained a presence in our history books.

Though scarcely documented in history books, if at all, the crucial role African Americans have played in the development of our nation must not be overlooked.

I would like to recognize Mr. King T. Evans, Sr. of Sharkey County in the State of Mississippi. Mr. Evan has dedicated his life to community services as an advocate, member, and president of the Sharkey County branch of NAACP. During the Civil Rights era, Mr. Evans was instrumental in securing the return of a high school in the City of Anguilla for black students that was originally constructed for white students in the community. As a result of his longevity during the Civil Rights Era, Mr. Evans was recognized as a ''Long Distance Runner'' by the Mississippi Conference of the NAACP.

Mr. Evans is also known as the co-founder of one of the oldest funeral homes in Greenville, Mississippi, Edwards & Evans Funeral Home (1944). In addition, Mr. Evans recorded oral family history and the history of the Mississippi Delta Region on CD–ROM for the University of Southern Mississippi along with filming historical pleas and contemporary culture of the MS Delta Region to preserve the rich history of this area in the 2nd Congressional District.

He has received numerous awards for his outstanding contribution to the African American Race-Received ''Outstanding Volunteer Award,'' Service Award, and Appreciation Award. For his hard work and dedication to African Americans, the City of Greenville has honored him with a street being named ''King T. Evans Street'' and the South Delta School District has named their resource room the ''King T. Evans Resource Room'' in his honor. Mr. Evans has been a true trailblazer for the African-American community.

I take great pride in recognizing and paying tribute to this outstanding African American of the 2nd Congressional District of Mississippi who deserves mention, not only in the month of February but year round.

IN MEMORY OF JOSEPH CLYDE ROBINSON

HON. JOE WILSON

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mr. WILSON of South Carolina. Mr. Speaker, I rise in memory of Joseph Clyde Robinson, who recently passed away after a long battle with cancer. I am honored to remember his great life today.

Born in Statesboro, Georgia, and settled in Beaufort, South Carolina, Joe Robinson was a charitable and special member of South Carolina's Second Congressional District. His life was a full one, dedicated to helping, protecting, and improving the lives of those around him. As a Coast Guard veteran, firefighter, church elder, and Boy Scouts leader, Joe abided by his personal motto to ''live a life of no regrets.''

Described as ''Beaufort County's best,'' Joe possessed a spirit and purpose which profoundly impacted the lives of those around him. At his funeral, the procession of his friends who came to celebrate his life and mourn his passing stretched a mile long. Joe will be greatly missed throughout our community. My prayers and condolences are with the entire Robinson family.

HONORING GARY PLUMMER

HON. GEORGE RADANOVICH

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mr. RADANOVICH. Mr. Speaker, I rise today to honor Gary Plummer, Former President/CEO of the Modesto Chamber of Commerce. For the past four years, Mr. Plummer dutifully served the business community of Modesto, CA. In January 2005, Gary Plummer went on to become President/CEO of the Greater Springfield (IL) Chamber of Commerce.

Gary Plummer has held numerous executive positions with many chambers of commerce. Since 1979, Gary has served as CEO of chambers of commerce in Shenandoah, Iowa; Waterloo, Iowa; Maryville, Missouri; Jefferson City, Missouri; and Cheyenne, Wyoming.

As a chamber executive, Mr. Plummer has been involved in a variety of public/private partnerships involving governmental affairs, education, transportation, tourism and economic development.

Mr. Speaker, I urge my colleagues to join me in honoring Gary Plummer for his service to the business community of Modesto, CA. I invite my colleagues to join me in wishing Mr. Plummer many years of continued success.

CONGRATULATING THE ORGANIC TRADE ASSOCIATION ON THEIR 20 YEAR ANNIVERSARY

HON. RON KIND

OF WISCONSIN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mr. KIND. Mr. Speaker, I rise today on behalf of myself and Representatives GILCHREST, DEFAZIO, FARR, WALSH and our more than 30 fellow members of the bipartisan Congressional Organic Caucus, to offer our sincere congratulations to the Organic Trade Association on achieving their 20 year anniversary.

Formed in 1985 by a handful of individuals determined to build a trusted identity for organic products, this original group blossomed into the nearly 1,500 member Organic Trade Association today. The Organic Trade Association, North America's only organization dedicated to representing the views of all segments of the organic industry, has become an important source of information about the challenges and successes of the organic industry to the Congressional Organic Caucus and the public.

Mr. Speaker, millions of consumers are choosing organically grown food and fiber. Over the last decade, the consumer marketplace for organic products has risen exponentially. Moreover, thousands of family farmers have discovered the environmental and ecological benefits of organic farming methods and technologies. Working together, the Congressional Organic Caucus and the Organic Trade Association will continue to promote the importance of organic farming and organic products to both consumers and the overall health of our country's agriculture industry for the next 20 years and beyond.

STOP UNDERAGE DRINKING LEGISLATION

HON. FRANK R. WOLF

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mr. WOLF. Mr. Speaker, underage drinking is a serious national health and safety matter. In the United States, alcohol is the primary substance abused by young people. It is a major contributor to the three leading causes of death among this population—unintentional injuries; homicide; and suicide. Young people who start drinking at the age of 15 are four times more likely to become alcoholics than those who start drinking at 21 and are more likely to try marijuana and cocaine.

Many parents don't realize the enormity of this problem and often underestimate the prevalence of alcohol use by teens. More young people consume alcoholic beverages than use tobacco or illegal drugs. Sadly, by high school graduation, most students have used alcohol.

It's tough for children to withstand the regular exposure to the alcohol industry's advertisements encouraging them to purchase and use alcohol. The industry's aggressive marketing of its products has led to children seeing regular—often daily—images promoting drinking.

I am pleased to be joining in a bipartisan effort in both houses of Congress to introduce The STOP Underage Drinking Act. This important legislation will help establish federal coordination and reporting of underage drinking information and coordinate the efforts and expertise. It also mandates annual report to Congress on efforts to combat underage drinking and an annual ''report card'' to track State efforts.

The legislation also authorizes a national media campaign to fight underage drinking and would provide additional resources to prevent underage drinking through the Drug Free Communities program. It would create a new program to providing competitive grants to states, non-profit entities, and institutions of higher education to create state-wide coalitions to prevent underage drinking and alcohol abuse by college and university students.

Finally, it would expand research and data compilation on the prevalence of underage drinking, specifically: reporting on the types and brands of alcohol that kids consume and the impact of underage drinking upon adolescent brain development.

Mr. Speaker, I am pleased to be a part of this effort to draw attention to this important national problem that is confronting our young people. I look forward to continuing this work with my colleagues on both sides of the aisle and on both sides of the Capitol to see that this important legislation is enacted.

BLACK HISTORY TRIBUTE TO FRANK DAVIS

HON. BENNIE G. THOMPSON

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mr. THOMPSON of Mississippi. Mr. Speaker, throughout the month of February, I would like to recognize outstanding African Americans of the 2nd Congressional District of Mississippi, and their contribution to Black History. The 23 counties of the 2nd District are well represented from both a local and national perspective.

Americans have recognized black history annually since 1926, first as ''Negro History Week'' and later as ''Black History Month.'' In fact, black history had barely begun to be studied—or even documented—when the tradition originated. Although blacks have been in America as far back as colonial times, it was not until the 20th century that they gained a presence in our history books.

Though scarcely documented in history books, if at all, the crucial role African Americans have played in the development of our Nation must not be overlooked.

I would like to recognize Mr. Frank Davis of Claiborne County, Mississippi. Mr. Davis was born March 22, 1947. Upon his completion of high school, he served two years in the United States Army, where he developed a passion to protect and serve. Afterwards, Mr. Davis attended Alcorn State University and obtained his B.S. degree in 1971. Davis continued his educational studies at the University of Southern Mississippi in 1973 in Criminal Justice and Alcorn State University in 1988 in Business Education. Following his extensive educational studies, Mr. Frank Davis became the first elected black Sheriff for the State of Mississippi.

Sheriff Davis has served in many capacities throughout Claiborne County. His long standing commitment in law enforcement has lead him to hold the position of First Sergeant of the 114th Military Police Company and Deputy Sheriff of Claiborne under the leadership of the late and former Sheriff Dan McCaa. In addition, Mr. Davis has held the position of Assistant Chief of Police for the City of Port Gibson, Director of Claiborne County Civil Defense, Acting Superintendent of Education for the Claiborne County Public Civil Defense, and Acting Superintendent of Education for the Claiborne County Public School District.

Sheriff Davis has not only held several key positions throughout his career, but he has held key positions with civic organizations throughout the county. Sheriff Davis was elected president of the Mississippi Sheriff Association from 2000–2001, making him the first black to hold this position. He is a founding father of NOBLE (National Organization of Black Law Enforcement) Chapter in Mississippi, and served as president in 1990. He is a member of the Young Men of America, a member of the Heritage Corridor Study and served on the Boys and Girls Ranch Board of Mississippi Sheriff's Association Boys and Girls Ranch. Additionally, his compassion for people and their rehabilitation while incarcerated led him to continue studying. Ultimately, he became certified in jail management, criminal investigations, mentally ill inmates, street survival and rural homicide to name a few. Today, he continues his devotion to justice by serving as Sheriff of Claiborne County with 25 years of dedicated service.

I take great pride in recognizing and paying tribute to this outstanding African American of the 2nd Congressional District of Mississippi who deserves mention, not only in the month of February but year round.

HONORING THE IDAHO FALLS POST REGISTER ON ITS 125 YEARS OF SERVICE TO EASTERN IDAHO

HON. MICHAEL K. SIMPSON

OF IDAHO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mr. SIMPSON. Mr. Speaker, I rise today to honor the Post Register Newspaper for providing 125 years of service to eastern Idaho. I'm proud to recognize and congratulate the Post Register for this achievement.

The Post Register can trace its roots to the founding of the Idaho Register in Blackfoot, Idaho in 1880. J. Robb Brady, son of former Idaho Governor and Senator James H. Brady, purchased the Daily Post in Idaho Falls in 1925. In 1931, The Post and Times-Register merged to create the Post-Register.

The Post Register is a longstanding corporate citizen committed to following its stated mission of being fair, ethical, accurate and courageous. The Post Register covers an area that stretches the miles from the Salmon River area, east into Montana, into western Wyoming including Jackson and south to Blackfoot, Idaho. Citizens who reside within these areas have benefited from the Post Register's 125 years of community journalism.

The Post Register is a newspaper that moves quickly to adjust to readers needs. In 1995, the first online pages were posted at www.postregister.com. In 1997, the newspaper hit another milestone when it changed to morning publication and added a Saturday edition.

Currently, the Post Register is owned by its employees and the descendants of James H. and J. Robb Brady. The Post Register's values are to serve ''this special place, our home, now and in future generations,'' and they have held true to these values for the last 125 years. To the Post Register and all their employees, I congratulate you on such a successful business and look forward to the years to come.

REAL ID ACT OF 2005

SPEECH OF

HON. GARY G. MILLER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, February 10, 2005

The House in Committee of the Whole House on the State of the Union had under consideration the bill (H.R. 418) to establish

and rapidly implement regulations for State driver's license and identification document security standards, to prevent terrorists from abusing the asylum laws of the United States, to unify terrorism-related grounds for inadmissibility and removal, and to ensure expeditious construction of the San Diego border fence.

Mr. GARY G. MILLER of California. Mr. Chairman, I rise today in strong support of the REAL ID Act. I am pleased to join my colleagues in supporting a bill that not only tightens lax standards and loopholes in the current driver's license issuance process, but strengthens a judge's ability to determine whether or not an asylum seeker is truthful, and provides for the completion of the 14 mile long San Diego Border fence that has been halted by radical environmentalists. This bill will help implement the recommendations of the 9/11 Commission and complete the intelligence reform we started during the last session of Congress.

The 9/11 Commission found that travel documents were as important to the terrorists as were their weapons. The simple fact is that if the 9/11 terrorists had not been able to enter the United States and operate freely—to obtain driver's licenses, open bank accounts, rent homes and cars, and board airplanes—they would not have been able to commit mass murder on that fateful day. To ensure that future terrorists no longer have access to legal loopholes to enter and remain at large in the United States, the REAL ID Act will establish minimum document and issuance standards for Federal acceptance of driver's licenses and State-issued personal identification cards. In addition, this legislation will require applicants to provide proof they are in the country legally, and tie the expiration date of the documents with the expiration of an alien's authorized term of stay. I believe that this bill enhances the security of all our Nation's identity documents so we are able to establish that people are who they say they are.

The bottom line is that our current laws fail to prevent those who may be harmful to the security of our Nation from operating freely and undetected in the United States. The ongoing stories of how terrorists took advantage of our broken immigration system provide the strongest evidence that we need to pass the REAL ID Act to make America safer. If the war on terrorism is to be ultimately successful, it is more important than ever that we take the necessary steps to strengthen security at our borders and provide law enforcement agencies the tools they need to identify those individuals who enter or remain in the United States illegally. I urge my colleagues to vote in favor of the REAL ID Act and demonstrate that the security of our Nation is our top priority.

CONTINUITY IN REPRESENTATION ACT OF 2005

HON. DAVID DREIER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mr. DREIER. Mr. Speaker, today we are addressing another important Issue for the Continuity of Congress by introducing the Continuity in Representation Act of 2005. This is an important part of our efforts since the 107th Congress to assure the American people that their democracy will continue in the face of any attack or any catastrophe.

The service of our men and women in uniform to protect our democracy is exemplary, and we honor them. But police and military alone will not protect this institution. We, the elected representatives, also must act to protect the House.

At the start of this Congress, we acted by adopting a House rule to help us function if we have mass incapacitations.

I know there are a few who still wonder whether we need to amend the Constitution to deal with mass incapacitation.

As I announced on January 4th, the Rules Committee will be vigorously considering continuity issues throughout the 109th Congress. We may ultimately decide that more action on mass incapacitation is needed. In the meantime, we have already put into place a procedure that will ensure that this body will be able to function if there have been mass incapacitations of Members due to a catastrophe.

Today, we are acting by re-introducing a bill to deal with mass vacancies—created when large numbers of Members are killed.

Last year, after considering how to deal with mass vacancies in the various committees, we passed the exact same bill that we are introducing today. The House adopted last year's bill with a large, bipartisan majority of 306 votes.

This bill, the Continuity in Representation Act of 2005, protects the ''People's House.'' It fits the Founders' vision of America—a House directly elected by the people and a Senate answerable to the states. And though we've done away with the old system of state legislatures electing Senators, we maintain that historic connection to the states by allowing for governors to fill vacant Senate seats in times of death.

Mr. Speaker, James Madison, a Founding Father and former Member of the Rules Committee, addressed the importance of an elected House when he said ''The right of suffrage is certainly one of the fundamental articles of [democratic Government] . . . A gradual abridgement of this right has been the mode in which Aristocracies have been built on the ruins of popular forms.''

In short, James Madison valued an elected House of Representatives, and so do we. This bill guarantees that the House will always be, as it always has, a body composed only of elected Members.

The Continuity in Representation Act provides that if more than 100 Members are killed, the Speaker can announce that extraordinary circumstance and trigger a uniform, 45-day special election to replace Members in affected districts.

Some have been concerned about the 45-day period for special elections. Not too long ago, I had the opportunity to assist in a major statewide election in California.

It saw a field of 135 candidates running to represent over 34 million people. That election went off without a hitch in just 55 days. Poll workers, polling places, and ballots all came together, and voter turnout was very high. Given the smaller scope of congressional district elections, 45 days is certainly enough time.

Mr. Speaker, we need to act now. We need to ensure that we are doing our part to protect our democracy. We need to pass the Continuity in Representation Act of 2005.

BLACK HISTORY TRIBUTE TO JOHN AUSTIN JAMES, JR.

HON. BENNIE G. THOMPSON

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mr. THOMPSON of Mississippi. Mr. Speaker, throughout the month of February, I would like to recognize outstanding African Americans of the 2nd Congressional District of Mississippi, and their contribution to Black History. The 23 counties of the 2nd District are well represented from both a local and national perspective.

Americans have recognized black history annually since 1926, first as ''Negro History Week'' and later as ''Black History Month.'' In fact, black history had barely begun to be studied—or even documented—when the tradition originated. Although blacks have been in America as far back as colonial times, it was not until the 20th century that they gained a presence in our history books.

Though scarcely documented in history books, if at all, the crucial role African Americans have played in the development of our Nation must not be overlooked.

I would like to recognize Mr. John Austin James, Jr., of Leflore County. From 1942–1946, Mr. James was enlisted in the U.S. Army and fought in World War II, where he later received an Honorable Discharge. He also spent three years in the U.S. Army Reserve.

Mr. James departure from the military sparked the beginning of his career in education. He was formally educated and later became Department Head for the Science and Mathematics Department at Mississippi Valley State University (MVSU). In 1971, he was named the Director for the Office of Institutional Research at MVSU, a position he retired from in 1992.

Mr. John A. James has been active in several civic and professional organizations. He is currently Treasurer for the Leflore County Democratic Executive Committee and former Chairman of the Board of Authority for the Delta Correctional Facility located in Greenwood, Mississippi. He is the past Basileus for the Beta Rho Chapter of Omega Psi Phi Fraternity, Inc. Mr. James is Co-Chairman of the MVSU Pioneers and Life Associate Member of MVSU Alumni.

Mr. John A. James has received several awards and recognitions for his outstanding community involvement and volunteer services. To name a few, Mr. James has a building on the campus of MVSU named in his honor, received the Outstanding Service Award at his church, Meritorious Service for his leadership as the Board Chairman, Omega Man of the Year, MVSU 25th Anniversary Meritorious Service plaques and others.

I take great pride in recognizing and paying tribute to this outstanding African American of the 2nd Congressional District of Mississippi who deserves mention, not only in the month of February but year round.

RECOGNITION OF MR. KEVIN F. KAST OF ST. CHARLES, MISSOURI

HON. W. TODD AKIN

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mr. AKIN. Mr. Speaker, I rise today to recognize Kevin F. Kast, an exceptional leader from my district in St. Charles, Missouri. Kevin recently announced his retirement as President of three major health facilities—SSM St. Joseph Health Center, SSM Joseph Hospital West and SSM Joseph Medical Park in St. Charles County.

I have known Kevin for many years, and I want to take this opportunity to acknowledge and praise him for his years of service, not only to SSM St. Joseph, but also to the St. Charles community at large. Kevin is a visionary and a compassionate, energetic, and inspiring leader.

Under Kevin's leadership, SSM St. Joseph has earned a variety of local, state and national honors. It is the first recipient of the MissouriPRO Quality Award, and twice has been named by Solucient as one of the 100 Top Hospitals™ in the country. SSM St. Joseph is a member of SSM Health Care, the first health care winner of the Malcolm Baldrige National Quality Award.

Kevin has been active in St. Charles County and our larger region with memberships in many civic, professional and volunteer organizations, and has an impressive list of personal accomplishments.

Again, I am pleased to be able to honor Kevin Kast today. He is a shining example of the great leadership we have in Missouri and I know all of my colleagues join me in wishing him the very best as he begins the next chapter in his life and career.

HONORING MICHAEL R. BLAKEY, LAKE COUNTY, CALIFORNIA

HON. MIKE THOMPSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mr. THOMPSON of California. Mr. Speaker, I rise today to recognize Mike Blakey, Lake County Victim Witness Administrator, who is being honored on the occasion of his retirement. He has been an exceptional public servant throughout his long and prestigious career.

Since November 1984, when Mike Blakey started the Victim-Witness Division, he has planned and organized the activities of that division to improve the safety of Lake County residents. Mike was instrumental in preparing the original grant application for the Victim-Witness Program and over the years he has actively expanded and enhanced assistance programs for victims of crime. Due to his efforts, Lake County has enjoyed one of the top programs in the State of California.

Over the years, Mike has received numerous letters of recognition from local and state agencies acknowledging his accomplishments in protecting and enhancing the rights of victims of crime. In early 2000, Mike and his office were formally commended by a federal auditor as the Best Rural Counties Program in the Nation for compliance with the Violence Against Women Act.

For the past 20 years, Mike has been a leader in California's victim's rights and advocacy movement. He provided leadership for California as President of the California Victim-Witness Coordination Council, as Chairman of California's Victim-Witness Rural Coalition, as President of Lake County's Service Coordinating Council, as Chairman of the Lake County Crime Victims for Court Reform Committee, and as Treasurer of Lake County's AWARE program. In addition, he worked with the National Organization for Victim Assistance, Governor's Training Conference on Crime Victims, and AGAPE Shelter for Battered Women and Children.

Mike's personal dedication, vision, leadership abilities, and commitment have given victims of crime the resources and protection they need.

Mr. Speaker, it is appropriate at this time that we recognize Mike Blakey for his commitment and dedication to his profession and for his service to the people of California.

BLACK HISTORY TRIBUTE TO TIMAKA JONES AND LAWRENCE BROWDER

HON. BENNIE G. THOMPSON

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mr. THOMPSON of Mississippi. Mr. Speaker, throughout the month of February, I would like to recognize outstanding African Americans of the 2nd Congressional District of Mississippi, and their contribution to Black History. The 23 counties of the 2nd District are well represented from both a local and national perspective.

Americans have recognized black history annually since 1926, first as "Negro History Week" and later as "Black History Month." In fact, black history had barely begun to be studied—or even documented—when the tradition originated. Although blacks have been in America as far back as colonial times, it was not until the 20th century that they gained a presence in our history books.

Though scarcely documented in history books, if at all, the crucial role African Americans have played in the development of our nation must not be overlooked.

I would like to recognize Ms. Timaka Jones and Mr. Lawrence Browder of Humphreys County in the State of Mississippi. Ms. Jones and Mr. Browder are unique in that they are one of the few father and daughter duos, elected officials in the State of Mississippi. Before Jones began her political career, she assisted her father in becoming the first African American elected to the Office of Chancery Clerk in Humphreys County. Prior to Mr. Browder being elected Chancery Clerk, he was the first African-American Alderman in the City of Belzoni, where he served for 9 years.

As the daughter of a political father, Ms. Jones was influenced to spread her wings. After being requisitioned by former-Supervisor Arvell Bullock, she announced her candidacy for Justice Court Judge. In 1999, she won this office, being the first and youngest African-American Justice Court Judge in Humphreys County. In 2003 she fulfilled her ambition to become the first female African American Circuit Clerk.

Ms. Timaka Jones and Mr. Lawrence Browder have both been influential in helping others who have decided to run for political office in Humphreys County.

I take great pride in recognizing and paying tribute to these outstanding African Americans of the 2nd Congressional District of Mississippi who deserve mention, not only in the month of February but year round.

HONORING THE 90TH BIRTHDAY OF MRS. GEORGIA VICKERY

HON. JEB HENSARLING

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mr. HENSARLING. Mr. Speaker, today I would like to honor Mrs. Georgia Vickery on the occasion of her 90th birthday on March 1. Mrs. Vickery was born in Edgewood, Texas to Thomas and Willie Ann Vickery. In February of 1946, she and her husband, Marion Pugh, opened up Pugh Hardware and Furniture in downtown Grand Saline, Texas. From 1970 to 1982 Mrs. Vickery managed this store while her husband served as Grand Saline's City Manager.

A mother to three children, Mrs. Vickery was also very active in the community, serving as a Sunday school teacher, a member of the United Methodist Women's organization, and a member of her Church Council. Today, at ninety years old, Georgia Vickery continues to work for Pugh Hardware by preparing and sending out its monthly statements. She also exercises five days a week, keeps an eye on her farm, and continues her work at the Methodist church.

As a mother, a wife, a devout churchgoer, a small businesswoman, and a community leader, Mrs. Georgia Vickery's life has embodied the values of family, faith, and hard work that lie at the core of American society. As her representative in Congress, it is my distinct pleasure to honor her today on the floor of the United States House of Representatives.

INTRODUCTION OF THE RESTORE SCIENTIFIC INTEGRITY TO FEDERAL RESEARCH AND POLICYMAKING ACT OF 2005

HON. BART GORDON

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mr. GORDON. Mr. Speaker, today, Representative WAXMAN and I are introducing a bill to protect the integrity of science conducted and utilized by the federal government: The Restore Scientific Integrity to Federal Research and Policymaking Act of 2005.

The Restore Scientific Integrity to Federal Research and Policymaking Act makes it illegal for any federal official to tamper with research findings, censor findings of research or to disseminate findings known to be false or misleading. It extends whistleblower protections to federal scientists who disclose incidents of political interference with science.

The Restore Scientific Integrity to Federal Research and Policymaking Act codifies the

recommendations made by the Government Accountability Office in their April 2004 report to Representative JOHNSON and Representative BAIRD. These provisions will improve the process for evaluating appointees to federal scientific advisory committees and make the advisory committee appointment and deliberation process more transparent to the public.

We need this legislation. The Administration has turned a deaf ear on the science community's call to restore scientific integrity in policymaking, including the voices of 48 Nobel Laureates, 62 National Medal of Science recipients, and 135 members of the National Academy of Sciences. While it is true that no Administration has been immune from the temptation to politicize science or has failed to succumb on occasion to this illness, the chronic condition displayed by this Administration requires strong medicine.

Two years ago, the Administration suggested that the incidents raised by the press, by Representative WAXMAN's Government Reform Committee staff report, and in the February 2004 report by the Union of Concerned Scientists were a series of misunderstandings or a partisan effort to defame the Bush Administration's science policies.

However, reports of the manipulation of science and information by the Administration have continued unabated. The diversity of complaints and their sources is unprecedented. Incidents have been reported by the non-governmental science community, former appointees of both Republican and Democratic administrations, Inspectors General of federal agencies, and career federal scientists.

Just this past week, two additional incidents have emerged. EPA's Inspector General issued a report indicating the Agency's senior management instructed EPA staff to produce a standard to fit a pre-determined national emission limit for mercury from power plants. And a survey of federal scientists at the Fish and Wildlife Service released by the Union of Concerned Scientists and Public Employees for Environmental Responsibility indicates a serious morale problem and a disturbing pattern of suppression and manipulation of scientific results by political appointees at the Agency.

Federal scientists should be free to conduct their research without fear of political censorship. Federal scientists should be active participants in the larger scientific community. Scientific progress occurs when we foster the open exchange of ideas and information. We must maintain a culture of openness and freedom of inquiry if we are to maintain the preeminent status of this nation in the world scientific community, develop new technologies, and to safeguard our environment and public health.

It is common in Washington to talk about the importance of basing government policy on reliable scientific and technical information and analyses. We can only accomplish that if politics does not unduly influence the objectivity and independence of our nation's scientific enterprise. The Restore Scientific Integrity to Federal Research and Policymaking Act of 2005 will ensure that scientific integrity remains the hallmark of all science conducted in this nation. I urge all my colleagues to join Representative WAXMAN and me in support of this legislation.

EXPRESSING SADNESS UPON THE PASSING OF JUDGE HENRY LATIMER

HON. ALCEE L. HASTINGS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mr. HASTINGS of Florida. Mr. Speaker, I rise today to express great sadness about the tragic death of my good friend, former Broward Circuit Court Judge Henry Latimer.

Known by his friends as 'Lat', Henry Latimer was an extraordinary gentleman who achieved great success as a teacher, lawyer, judge, and trial attorney. Growing up in Jacksonville's projects, he attended segregated schools and was initially unable to supplement scholarship offers he had received from colleges around the country. Instead, he chose to serve in the U.S. Marines for 3 years and went on to teach economics and history at Dillard High School in Fort Lauderdale.

From humble beginnings, Judge Latimer proved himself to be a hard-working and scholarly professional. He received a bachelor's degree at Florida A&M University, a master's degree from Florida Atlantic University, was employed by the U.S. Labor Department, and in 1970, enrolled as the only Black law student at the University of Miami.

In 1979, Judge Latimer was appointed to the Broward Circuit Court, only the third African-American to do so, and was soon after rated the ''most qualified'' judge in the Circuit. Twice nominated for a federal judgeship, Lat stepped down from the bench to work for a large firm and established the Laura Latimer Free Legal Clinic in memory of his late sister.

Most recently, Henry Latimer was a trial attorney and shareholder in the law firm of Greenberg Traurig. There he had become very involved in cases of civil rights, wrongful discharge, sexual harassment, age discrimination and legal malpractice. In all these areas, judges and lawyers alike have relied on him for his legal expertise and professionalism.

Many, as I did, also relied on him as a mentor and a friend. Judge Latimer and I became close personal friends while serving on the bench and he has been an invaluable source of support. He has made a profound contribution to the legal community as exemplified by his impressive achievements. I will greatly miss his wise counsel, compassion and unwavering personal support during the good times and the bad. As a friend, the loss is simply immeasurable.

Listing his many achievements does little to encompass Henry Latimer's exceptional life. He succeeded in the face of adversity through sheer determination, hard work and a faith in the law. This country has lost a great man in Judge Latimer, and he will be sorely missed by all.

Mr. Speaker, let me conclude by again expressing my great sadness. On behalf of the House of Representatives, I offer my deepest sympathies to Judge Latimer's family, his wife Mildred, and his two daughters.

BLACK HISTORY TRIBUTE TO MILDRED J. CAIN BURKS

HON. BENNIE G. THOMPSON

OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mr. THOMPSON of Mississippi. Mr. Speaker, throughout the month of February, I would like to recognize outstanding African Americans of the 2nd Congressional District of Mississippi, and their contribution to Black History. The 23 counties of the 2nd District are well represented from both a local and national perspective.

Americans have recognized black history annually since 1926, first as ''Negro History Week'' and later as ''Black History Month.'' In fact, black history had barely begun to be studied—or even documented—when the tradition originated. Although blacks have been in America as far back as colonial times, it was not until the 20th century that they gained a presence in our history books.

Though scarcely documented in history books, if at all, the crucial role African Americans have played in the development of our nation must not be overlooked.

I would like to recognize Mrs. Mildred J. Cain Burks, of Carroll County, Mississippi. Though small of stature, Burks was very powerful in her speech and way of life. Ms. Burks founded the Senior Citizens Lunch Program and the Boys and Girls Club in Carroll County. In addition, Ms. Burks, along with her husband, Winston Burks, started the Burks No. 506 Order of the Eastern Star.

Ms. Burks was a member of the NAACP for many years and very active during the civil rights movement of the 1960s. Ms. Burks was a very humble and dedicated woman with a purpose. She worked tirelessly for the betterment of her community especially with the younger generation.

It is with this vision that she purchased property for the children in the community to use as a park for them to play. Although she had no children, she felt she was blessed to have so many children in the community that were just like her own. Despite chronic health problems, she never gave up in trying to make a difference in the community. One of her last quotes was, ''I am not as fast as I used to be, but I'll do what I call. I have no regrets of what I've done in my life or how I used my time.''

I take great pride in recognizing and paying tribute to this outstanding African American of the 2nd Congressional District of Mississippi who deserves mention, not only in the month of February but year round.

INTRODUCTION OF H.R. 838—THE HOPE AT HOME ACT

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mr. LANTOS. Mr. Speaker, it is clear that the role of the National Guard and Reserve in our military forces has changed. The days of these forces simply providing replacement manpower for active duty personnel in the event of a conflict are no more. Since September 11, 2001 more than 400,000 members

of the Reserve Component have been activated for either homeland security or overseas missions. As of January 5, 2005 there are 180,000 citizen soldiers currently on active duty and it is well documented that the Guard and Reserve comprise more than 40% of the American forces in Iraq.

The Guard and Reserve have performed their patriotic services admirably. However, as these forces were utilized more there was an initial concern that increased mobilizations would lead to a fall off in recruitment and retention. Now, after three years, these fears are coming true. This past January the Army National Guard failed to achieve its recruiting goal by falling shy of its target by 44% and last year the Army Reserves fell about 10% short of its recruiting goal. Equally distressing was a memo written in early January 2005 by Lt. General James Hemly, Chief of the Army Reserves, that stated his belief that the United States Army Reserve was degenerating into a broken force because of dysfunctional military policies.

While the problems that are causing these drops in recruitment and retention are varied, one complaint that has been voiced is that the activations are occurring more frequently and for longer periods of time, and that the resulting stress on the soldier's family is causing him or her to leave the force. In particular, it is the lost income that many citizen soldiers encounter as a result of their activation that places significant stress on families.

Mr. Speaker, as you are aware, our citizen soldiers are asked to make many sacrifices; sometimes they make the ultimate sacrifice in defense of freedom. In addition for each National Guardsman and Reservist serving abroad, there is also a family at home who is also making sacrifices for their country. Husbands and wives, sons and daughters, mothers and fathers, sisters and brothers—all are asked to endure the temporary absence of a loved one and the fear that they may not return.

Unfortunately, many of these families also suffer from a loss of income. This is because when a National Guardsman or Reservist is called to active duty, their civilian job—and civilian salary—is placed on hiatus and they begin receiving military pay for their service, an amount that is often significantly less than their civilian salary. According to the General Accountability Office (GAO) more than 40% of the Guard and Reserves suffer from a loss in income as a result of their activation.

This ''pay gap'' forces National Guard and Reservists' families to pinch to make ends meet. Grocery budgets are trimmed, rent or mortgage payments are paid late, credit cards are run up, and other important purchases are postponed. Many family members of Reservists are forced to work overtime, dip into savings, borrow, or even go on welfare to pay the bills.

Mr. Speaker, too many members of our reserve components are faced with the difficult choice of defending their country or providing for their family, a choice that I am certain you will agree with me is unconscionable.

This pay gap, which is causing so much unnecessary stress, can be easily mitigated if the employer of the activated soldier suffering from a pay gap contributes differential payments to their employee. Already there are over 500 conscientious employers who have taken it upon themselves to commence these payments and Secretary of Defense Rumsfeld was correct in applauding them in an open letter dated September 11, 2002, a copy of which I am placing in the CONGRESSIONAL RECORD. Unfortunately, it was recently reported that many of these employers are now being forced to scale back or even to cease making these payments to their activated employees. Mr. Speaker, in order to help those employers, to encourage others, and to protect the financial security of more than 40% of our citizen soldiers, I am pleased to be joined by my distinguished colleagues, SAM GRAVES, JIM MCGOVERN and CHRIS SHAYS in introducing bipartisan common-sense legislation to fix the problem of the pay gap.

Our legislation, H.R. 838, entitled the Help Our Patriotic Employers at Helping our Military Employees, or HOPE at HOME Act provides numerous incentives to all of the employers in our country to make it financially attractive to make up any pay gaps that their citizen soldier employee faces as a result of his or her activation. Furthermore, by eliminating the pay gap and protecting the financial security of the families of activated Reservists and National Guard our legislation will reduce the stress of activation and ensure that our nation's military reserve components are able to maintain appropriate retention and recruitment levels.

Mr. Speaker, H.R 838 is designed to provide hope for the citizen soldier that is suffering from a pay gap. The hope is that his home will remain financially secure in his absence. In order to accomplish this, the legislation provides numerous tax incentives to non-federal employers. As I previously mentioned, there are numerous private employers that have taken the conscientious initiative of paying their employees the difference between their civilian and military salary. In fact, according to the Employee Support for Guard and Reserve—an outreach organization run by the Office of Secretary of Defense—there are currently over 500 private employers, state governments and municipal jurisdictions that have undertaken differential payments for their employees. As a reward for these conscientious employers and as an incentive for others to join them, The HOPE at HOME Act creates a tax credit equal to 50% of the amount the employer pays to the Reservist, capped at $30,000 per employee.

H.R. 838 also recognizes that smaller companies are disproportionately adversely affected by an employee's activation, since losing two people of 10-person business is akin to losing 100 people at a 500-person plant. In addition smaller companies often encounter greater difficulty in distributing an activated employees' responsibilities amongst the remaining employees and may need to hire temporary replacement workers. In order to provide relief to these small businesses, which H.R. 838 defines as those with 50 or fewer employees, as well as to ensure that the small business employers can make differential payments for their activated employees the legislation provides an additional tax credit of $12,000 for the costs associated with hiring/training the temporary replacement worker contingent on the small business employer making pay differential payments to their activated employee.

The HOPE at HOME act also recognized the difficulties that those reservists who are self employed face when they are activated. These soldiers often face the most grievous setbacks as their carefully built companies lose business, struggle to survive or are forced to close due to their prolonged absence. Mr. Speaker, our legislation creates an important tax incentive designed to assist the self-employed citizen soldier in defraying the costs of hiring someone to keep their business running in their absence.

The HOPE at HOME Act also recognizes that because the Federal government is the single largest employer of citizen soldiers it should lead by example. Mr. Speaker, as you are aware, the Federal government is the civilian employer for more than 13% of the Reserve Component. That is why the HOPE at HOME act requires the Federal government to eliminate the pay gap for its employees.

Mr. Speaker, the bill also makes some technical changes about how these differential pay payments are to be recorded. Currently the Internal Revenue Service (IRS) treats these payments as benefits requiring reporting on the 1099 form. This is a burden for the employee and the employer, as it requires quarterly filing of estimated tax burdens. Our legislation requires the IRS to treat these payments as wages, which means that employers would be able to use the more accessible W2 form, thereby reducing a possible burden that may have prevented employers from making these types of payments in the past.

Finally the HOPE at HOME Act makes it easier for employers to contribute to their activated employees retirement plans while the employee is serving our country. As our colleagues are aware, under The Uniformed Services Employment and Reemployment Rights Act (USERRA) the law that governs the activations and deactivations of Guard and Reserves, an employee who is activated to serve is ''separated'' from his civilian employer and therefore, if that employer wanted to contribute to its activated employees' retirement fund (IRA, 401(k) etc) the employer would not receive the tax benefit anymore because of the fiction of the employees separation. The HOPE at HOME act removes this barrier and allows employers to continue to contribute to the retirement funds of their activated citizen soldier employee's.

Mr. Speaker, our citizen soldiers are a valuable and essential component of our military and we can ill afford to continue down this path of overextending these brave men and women. Clearly, those citizens who enlist in the Guard or Reserve do so because of an admirable sense of patriotism to our country. However, we cannot ask these citizen soldiers to sacrifice their families' financial security in order to carry out their patriotic duty. I urge all of our colleagues to join Mr. GRAVES, Mr. SHAYS, Mr. MCGOVERN and myself in supporting this bipartisan effort and join us in working for its expedited passage.

SECRETARY OF DEFENSE,
1000 DEFENSE PENTAGON,
Washington, DC, September 11, 2003.

AN OPEN LETTER TO AMERICA'S EMPLOYERS: Since the tragic events of September 11, 2001, the Department of Defense has mobilized more than 295,000 Reservists and National Guardsmen in response to the ongoing Global War on Terrorism. These dedicated men and women—citizen Soldiers, Sailors, Airmen, Marines and Coast Guardsmen—have been engaged in and around the conflicts in Afghanistan and Iraq, as well as providing security here at home and in other critical locations around the world.

This would not have been possible without the strong backing of America's employers. I

want to express my gratitude to all employers who have demonstrated support for this national crisis by swiftly releasing your valuable employees for military service. It is equally gratifying to see how you are welcoming back these returning warriors and reinstating them in their jobs. During the period of mobilization, many of you did more than was required by law by voluntarily offering continued benefits, pay differentials, and additional, creative forms of family support which made the period of separation so much easier to bear. I know of no other time in our nation's history when so many employers have voluntarily offered this level of support and benefits.

I recognize that these generous actions have not been without sacrifice. Each of you has earned the deepest appreciation of this Department and the United States Government for your unswerving support of our nation's military. Without this continued support, we could not maintain a strong military or sustain the current effort to overcome the international terrorist threat directed at our country, our citizens, and all who love freedom.

You have my deepest thanks. Your direct contributions and support are another illustration of America's greatness as a nation.

Sincerely,

DONALD RUMSFELD,
Secretary of Defense.

DEDICATED TO THE ''COWBELLES''

HON. JIM COSTA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mr. COSTA. Mr. Speaker, I rise today to honor and congratulate Ramona Snow, of Bakersfield, California. Ramona has been designated the Kern County ''Cattlewoman of the Year'' by Kern County Cattlemen and Cattlewomen Associations.

Ramona was born into a family of nine siblings and attended schools in Bakersfield until her senior year in high school when she transferred to Ventura. Shortly thereafter the family returned to Bakersfield, Ramona married Robert Snow, and began her life as a cattlewoman.

She became adept at pulling calves and doctoring ailing stock, as well as everyday ranch chores. Between raising her four children and ranch chores, Ramona found time to become active in 4–H as a sewing and cooking leader. In 1964 Ramona was asked to become a member of CowBelles, which led to a long and active career within what is now known as the Cattlewomen's Association.

Upon joining, Ramona became highly involved and chaired many committees. Such committees included, ''Beef for Father's Day,'' and ''Beef for Mother's Day.'' Ramona served as Vice President in 1976 and was elected President the following year. She was elected as President again in 1991.

Mrs. Snow has been an inventive member of CowBelles. She came up with the idea of a children's cookbook to be handed out at the Kern County Museum. Ramona was responsible for prize winning fair booths including the ''Best Dressed Table'' that promoted beef at the Kern County Fair for over 30 years. In the 1950s the CowBelles started awarding leather halters and now silver buckles to the winners of the Reserve Champion Steers at the Fair. Ramona designs these buckles each year so they are always different. While Ramona was Vice President she introduced the idea of a Beef Cook-Off and with the help of fellow members the Cook-Off was held in Kern County that year.

Ramona's efforts have been exhaustive. Throughout her tenure as a member and officer of the Cattlewomen's Association she has been instrumental in nearly every aspect of the organization. This award is reflective of her dedication.

IWG 2-YEAR EXTENSION

HON. CAROLYN B. MALONEY

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mrs. MALONEY. Mr. Speaker, today, I, along with 12 of my bipartisan colleagues, including Chairmen DAVIS and HOEKSTRA and Ranking Members WAXMAN, HARMAN, and CONYERS, introduce a bill that will extend the term of the Nazi War Crimes Interagency Working Group by 2 years. This is the companion bill of S. 384, a bill introduced by Senator DEWINE and passed in the Senate today. Mr. Speaker, I am very proud of the history and the impact of this legislation. I would like to thank Senator DEWINE and his staff for their tireless work and for the energy they have put forth to ensure that we know as much as we can about our Government's past involvement with Nazi War criminals.

In 1998, Congress passed the Nazi War Crimes Disclosure Act, a law that was enacted to explain the relationship between the U.S. Government and former Nazis. The act required the release of all previously classified information on the topic to the Interagency Working Group on Nazi War Crimes, IWG. The documents provided thus far to the IWG have revealed that there was a closer relationship between the U.S. Government and Nazi war criminals than previously known, a revelation that is crucial to the understanding of history. This significant knowledge would not have been possible without the cooperation of many agencies including the Department of Justice, Department of Defense, and the Federal Bureau of Investigation.

Until recently, the CIA had not complied with the law and did not release the documents needed to complete the IWG's task, as defined by law. Fortunately, after discussions with Senator DEWINE and myself and under the leadership of Director Porter Goss, the CIA agreed to release the requisite documents. With the term of the IWG set to expire at the end of March 2005, we are now at a critical juncture.

This bill is simple. It extends the term of the IWG so that it can complete its work, write a comprehensive report, and send it to Congress. We hope to move this quickly in the House, as they did in the Senate, to avoid a lapse in this important work. History, and the memory of the millions who perished in the Holocaust, deserve nothing less than full disclosure.

CELEBRATION OF THE 80TH BIRTHDAY OF CONGRESSMAN LOUIS STOKES

HON. STEPHANIE TUBBS JONES

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mrs. JONES of Ohio. Mr. Speaker, it gives me great pleasure to rise today to commemorate the 80th birthday of a living legend here in the United States Congress and a man who is revered and respected throughout this country, my predecessor, Congressman Louis Stokes.

Born February 23, 1925, in Cleveland, Ohio, Louis Stokes was educated in the Cleveland Public Schools, graduating from Central High School. He went on to serve honorably in the United States Army during the Second World War. After three years of service he returned to Cleveland where he attended Western Reserve University and later earned his Doctor of Laws Degree from Cleveland Marshall Law School in 1953.

On November 6, 1968, Louis Stokes was elected to the United States Congress, becoming the first African American member of Congress from the State of Ohio. He served 15 consecutive terms in the U.S. House of Representatives, ranking 11th overall in House seniority. Louis Stokes played a pivotal role in the quest for civil rights, equality and social and economic justice throughout his tenure in the United States Congress. He served on numerous committees throughout his tenure including the House Select Committee on Assassinations, the Ethics Committee, and the House Intelligence Committee.

He was the dean of the Ohio Congressional Delegation and a founding member of the Congressional Black Caucus. His work in the area of health led to his appointment as a member of the Pepper Commission on Comprehensive Health Care, and he was the founder and chairman of the Congressional Black Caucus Health Braintrust. His resume in its entirety is too lengthy to be recorded in this resolution as it is adequately recorded in the CONGRESSIONAL RECORD.

On behalf of the people of the 11th Congressional District, I join with his wife Jay, children, Shelley, Angela, Louis and Lori, grandchildren, family and friends in wishing Congressman Louis Stokes a very happy and blessed 80th birthday. You have been a trailblazer for so many who have followed in your footsteps. I thank you for your continued support and guidance throughout my career. May you have many, many more.

DEDICATED RANCHER

HON. JIM COSTA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, February 16, 2005

Mr. COSTA. Mr. Speaker, I rise today to honor and congratulate Fred David Lavers II, of Glennville, California. Mr. Lavers is being recognized by the Kern County Cattlemen and Cattlewomen Association as the ''Cattleman of the Year.''

Born in Bakersfield, Mr. Lavers has lived on the ranch at Glennville nearly his whole life.

David attended North High School, upon graduation he continued his education at California State University, San Luis Obispo where he majored in Agricultural Business Management. After he received his degree, David pursued his dream to study law and attended California Pacific School of Law and graduated with his Juris Doctorate degree.

While David pursued his goals away from home, he never forgot his family and the ranch. He came home every other weekend to work the ranch and once he graduated from Cal Poly he became employed by Tejon Ranch Feedlot. While at Tejon, David drove the water truck, ran the feed mill, cowboyed, and worked as a bookkeeper. Since then David has worked as a landscaper, a brakeman for Southern Pacific Railroad, and at various cattle ranches. Besides being a rancher, he currently works as a HIPAA and Corporate Compliance Consultant.

Despite his active work schedule, David has a long history of community involvement. He has been President of the Poso Creek Cattleman's Association, a committee member of Ad Hoc Committee for the Kern County Board of Supervisors, a board member of the Linns Valley School District, Director California Cattleman's Association, Vice President of the Kern county Cattleman's Association, and is current Director for the Kern County Cattleman's Association.

David not only dedicates himself to the community, and to his work, but he also puts his family first. He married his college sweetheart, Cynthia Sanchez in 1978 and their son Jack Justin was born in 1983. David and Cynthia's dream is that Jack can continue the long tradition of ranching from which David hails.

Mr. Lavers has contributed to the community in many ways and this award is recognition of such contributions.

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Thursday, February 17, 2005 may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

MARCH 1

9:30 a.m.
Armed Services
To hold hearings to examine military strategy and operational requirements from combatant commanders in review of the Defense Authorization Request for fiscal year 2006.
SH–216

Judiciary
To hold hearings to examine judicial nominations.
SD–226

10 a.m.
Energy and Natural Resources
To hold hearings to examine the President's proposed budget request for fiscal year 2006 for the Department of the Interior.
SD–366

MARCH 2

10 a.m.
Energy and Natural Resources
To hold hearings to examine the President's proposed budget request for fiscal year 2006 for the Forest Service.
SD–366

MARCH 3

9:30 a.m.
Armed Services
To resume hearings to examine the proposed Defense Authorization Request for Fiscal Year 2006 and the Future Years Defense Program.
SH–216

10 a.m.
Energy and Natural Resources
To hold hearings to examine the President's proposed budget request for fiscal year 2006 for the Department of Energy.
SD–366

MARCH 8

9:30 a.m.
Armed Services
To hold hearings to examine military strategy and operational requirements in review of the Defense Authorization Request for fiscal year 2006.
SH–216

10 a.m.
Agriculture, Nutrition, and Forestry
To hold hearings to examine the reauthorization of the Commodity Futures Trading Commission.
SD–106

2 p.m.
Veterans' Affairs
To hold joint hearings with the House Committee on Veterans Affairs to examine the legislative presentation of the Disabled American Veterans.
345 CHOB

MARCH 9

10 a.m.
Veterans' Affairs
To hold joint hearings with the House Committee on Veterans Affairs to examine the legislative presentation of the Veterans of Foreign Wars.
SH–216

MARCH 10

10 a.m.
Veterans' Affairs
To hold joint hearings with the House Committee on Veterans Affairs to examine the legislative presentations of the Blinded Veterans Association, the Non-Commissioned Officers Association, the Military Order of the Purple Heart, the Paralyzed Veterans of America and the Jewish War Veterans.
345 CHOB

MARCH 15

9:30 a.m.
Armed Services
To resume hearings to examine military strategy and operational requirements from combatant commanders in review of the Defense Authorization Request for fiscal year 2006.
SD–106

MARCH 17

9:30 a.m.
Armed Services
To hold hearings to examine current and future worldwide threats to the national security of the United States; to be followed by a closed hearing in SH–219.
SD–106

APRIL 14

10 a.m.
Veterans' Affairs
To hold joint hearings with the House Committee on Veterans Affairs to examine the legislative presentations of the Military Officers Association of America, the National Association of State Director of Veterans Affairs, AMVETS, the American Ex-Prisoners of War, and Vietnam Veterans of America.
345 CHOB

APRIL 21

10 a.m.
Veterans' Affairs
To hold joint hearings with the House Committee on Veterans Affairs to examine the legislative presentations of the Fleet Reserve Association, the Air Force Sergeants Association, the Retired Enlisted Association, and the Gold Star Wives of America.
345 CHOB

SEPTEMBER 20

10 a.m.
Veterans' Affairs
To hold joint hearings with the House Committee on Veterans Affairs to examine the legislative presentation of the American Legion.
345 CHOB

Daily Digest

HIGHLIGHTS

The House agreed to H. Con. Res. 66, Adjournment Resolution.

Senate

Chamber Action

Routine Proceedings, pages S1439–S1579

Measures Introduced: Twenty-two bills and four resolutions were introduced, as follows: S. 391–412, S.J. Res. 1, and S. Res. 55–57. **Pages S1513–14**

Measures Reported:

S. 63, to establish the Northern Rio Grande National Heritage Area in the State of New Mexico, with amendments. (S. Rept. No. 109–1)

S. 163, to establish the National Mormon Pioneer Heritage Area in the State of Utah, with amendments. (S. Rept. No. 109–2)

S. 200, to establish the Arabia Mountain National Heritage Area in the State of Georgia, with an amendment. (S. Rept. No. 109–3)

S. 203, to reduce temporarily the royalty required to be paid for sodium produced on Federal lands. (S. Rept. No. 109–4)

S. 204, to establish the Atchafalaya National Heritage Area in the State of Louisiana. (S. Rept. No. 109–5)

S. 249, to establish the Great Basin National Heritage Route in the States of Nevada and Utah. (S. Rept. No. 109–6)

S. 125, to designate the United States courthouse located at 501 I Street in Sacramento, California, as the ''Robert T. Matsui United States Courthouse''. **Page S1513**

Measures Passed:

Nazi War Crimes Working Group Extension Act: Senate passed S. 384, a bill to extend the existence of the Nazi War Crimes Working Group. **Pages S1445–48**

National MPS Awareness Day: Senate agreed to S. Res. 57, designating February 25, 2005 as ''National MPS Awareness Day''. **Pages S1577–78**

Honoring John Hume: Committee on Foreign Relations was discharged from further consideration of S. Res. 54, paying tribute to John Hume, and the resolution was then agreed to. **Pages S1578–79**

Genetic Information Nondiscrimination Act: Senate completed consideration S. 306, to prohibit discrimination on the basis of genetic information with respect to health insurance and employment, after agreeing to the committee amendment in the nature of a substitute, and taking action on the following amendment proposed thereto: **Pages S1459–86**

Adopted:

Enzi Amendment No. 13, in the nature of a substitute. **Page S1486**

A unanimous-consent agreement was reached providing that at 3 p.m., on Thursday, February 17, 2005, Senate will continue consideration of the bill, with a vote on final passage to occur thereon. **Page S1579**

Messages From the President: Senate received the following message from the President of the United States:

Transmitting a report, pursuant to section 203(a) of the International Emergency Economic Powers Act and section 201(a) of the National Emergencies Act declaring national emergencies in Executive Orders 13224 of 9–23–01, as amended, and 12947 of 01–23–95, as amended with a new Executive Order Clarifying Certain Executive Orders Blocking Property and Prohibiting Certain Transactions; referred to the Committee on Banking, Housing, and Urban Affairs. (PM–5) **Page S1504**

Nominations Confirmed: Senate confirmed the following nomination:

Robert B. Zoellick, of Virginia, to be Deputy Secretary of State. **Pages S1577, S1579**

Measures Referred: **Page S1504**

Measures Read First Time: **Page S1504**

Executive Communications: **Pages S1504–13**

Executive Reports of Committees: **Page S1513**

Additional Cosponsors: **Pages S1514–15**

Statements on Introduced Bills/Resolutions: Pages S1515–61

Additional Statements: Pages S1503–04

Amendments Submitted: Pages S1561–69

Authority for Committees to Meet: Pages S1569–70

Privilege of the Floor: Page S1570

Adjournment: Senate convened at 9:30 a.m., and adjourned at 6:21 p.m., until 10 a.m., on Thursday, February 17, 2005. (For Senate's program, see the remarks of Majority Leader in today's Record on page S1579.)

Committee Meetings

(Committees not listed did not meet)

EMERGENCY SUPPLEMENTAL

Committee on Appropriations: Committee concluded a hearing to examine on proposed legislation making emergency supplemental appropriations for the fiscal year ending September 30, 2005, after receiving testimony from Donald Rumsfeld, Secretary, and Tina W. Jonas, Under Secretary, Comptroller, both of the Department of Defense; and General Richard B. Myers, Chairman, Joint Chiefs of Staff.

MONETARY POLICY REPORT

Committee on Banking, Housing, and Urban Affairs: Committee concluded a hearing to examine the semiannual monetary policy report to Congress, focusing on the Federal Reserve's objectives of price stability and maximum sustainable employment, after receiving testimony from Alan Greenspan, Chairman, Board of Governors of the Federal Reserve System.

BUDGET: 2006

Committee on the Budget: Committee held a hearing to examine the transparency of budget measures, focusing on the economic costs of long-term federal obligations, receiving testimony from Douglas Holtz-Eakin, Director, Congressional Budget Office.

BUSINESS MEETING

Committee on Energy and Natural Resources: Committee ordered favorably reported the following bills:

S. 48, to reauthorize appropriations for the New Jersey Coastal Heritage Trail Route, with an amendment;

S. 52, to direct the Secretary of the Interior to convey a parcel of real property to Beaver County, Utah;

S. 54, to amend the National Trails System Act to require the Secretary of the Interior to update the feasibility and suitability studies of four national historic trails, with an amendment;

S. 55, to adjust the boundary of Rocky Mountain National Park in the State of Colorado;

S. 56, to establish the Rio Grande Natural Area in the State of Colorado;

S. 57, to further the purposes of the Sand Creek Massacre National Historic Site Establishment Act of 2000;

S. 97, to provide for the sale of bentonite in Big Horn County, Wyoming;

S. 99, to authorize the Secretary of the Interior to contract with the city of Cheyenne, Wyoming, for the storage of the city's water in the Kendrick Project, Wyoming;

S. 101, to convey to the town of Frannie, Wyoming, certain land withdrawn by the Commissioner of Reclamation;

S. 128, to designate certain public land in Humboldt, Del Norte, Mendocino, Lake, and Napa Counties in the State of California as wilderness, to designate certain segments of the Black Butte River in Mendocino County, California as a wild or scenic river;

S. 136, to authorize the Secretary of the Interior to provide supplemental funding and other services that are necessary to assist certain local school districts in the State of California in providing education services for students attending schools located within Yosemite National Park, to authorize the Secretary of the Interior to adjust the boundaries of the Golden Gate National Recreation Area, with an amendment;

S. 152, to enhance ecosystem protection and the range of outdoor opportunities protected by statute in the Skykomish River valley of the State of Washington by designating certain lower-elevation Federal lands as wilderness, with an amendment;

S. 161, to provide for a land exchange in the State of Arizona between the Secretary of Agriculture and Yavapai Ranch Limited Partnership;

S. 182, to provide for the establishment of the Uintah Research and Curatorial Center for Dinosaur National Monument in the States of Colorado and Utah, with an amendment;

S. 272, to designate certain National Forest System land in the Commonwealth of Puerto Rico as components of the National Wilderness Preservation System, with an amendment;

S. 276, to revise the boundary of the Wind Cave National Park in the State of South Dakota; and S. 301, to authorize the Secretary of the Interior to provide assistance in implementing cultural heritage, conservation, and recreational activities in the Connecticut River watershed of the States of New Hampshire and Vermont, with an amendment.

BUSINESS MEETING

Committee on Environment and Public Works: Committee ordered favorably reported S. 125, to designate the United States courthouse located at 501 I Street in Sacramento, California, as the "Robert T. Matsui United States Courthouse".

DEPARTMENT OF HEALTH AND HUMAN SERVICES BUDGET

Committee on Finance: Committee held a hearing to examine the President's proposed budget request for fiscal year 2006 for the Department of Health and Human Services, receiving testimony from Michael O. Leavitt, Secretary of Health and Human Services.

Hearings recessed subject to the call.

DEPARTMENT OF STATE BUDGET

Committee on Foreign Relations: Committee concluded a hearing to examine the President's proposed budget request for fiscal year 2006 for foreign affairs, after receiving testimony from Condoleezza Rice, Secretary of State.

BUSINESS MEETING

Committee on Foreign Relations: Committee ordered favorably reported the nomination of Robert B. Zoellick, of Virginia, to be Deputy Secretary of State.

OIL-FOR-FOOD PROGRAM

Committee on Homeland Security and Governmental Affairs: on Wednesday, February 15, Permanent Subcommittee on Investigations resumed hearings to examine the United Nations management and oversight of the Oil-for-Food Program (OFF Program), focusing on the operations of the independent inspection agents retained by the United Nations and their role within the OFF Program, including the administration of the OFF Program by the U.N. Office of the Iraq Program and the findings of the U.N. Office of Internal Oversight Services, after receiving testimony from Ambassador Patrick F. Kennedy, U.S. Representative for U.N. Management and Reform, United States Mission to the United Nations; Joseph A. Christoff, Director, International Affairs and Trade Team, Government Accountability Office; Robert M. Massey, Andre E. Pruniaux, and Milan Radenovic, all of Cotecna Inspection S.A., Geneva, Switzerland; John Denson, Saybolt Group, Houston, Texas; Arthur Ventham, Kinross, Western Australia; Stafford Clarry, Syracuse, New York; and Verne Kulyk, Dar es Salaam, Tanzania.

FEDERAL GOVERNMENT

Committee on Homeland Security and Governmental Affairs: Committee concluded a hearing to examine transforming government for the 21st century, focusing on the report of the Government Accountability Office entitled 21st Century Challenges: Reexamining the Base of the Federal Government, including addressing the nation's long-term fiscal gap, deciding on the appropriate role and size of government, and financing the government, after receiving testimony from David M. Walker, Comptroller General of the United States, Government Accountability Office.

DRUG IMPORTATION

Committee on Health, Education, Labor, and Pensions: Committee concluded a hearing to examine the realities of safety and security regarding drug importation, after receiving testimony from Richard H. Carmona, Surgeon General, Public Health Service, Department of Health and Human Services; Minnesota Governor Tim Pawlenty, St. Paul; John M. Gray, Healthcare Distribution Management Association, Reston, Virginia; Carmen A. Catizone, National Association of Boards of Pharmacy, Mount Prospect, Illinois; and Peter Rost, Pfizer, Inc., New York, New York.

BUDGET: INDIAN PROGRAMS

Committee on Indian Affairs: Committee concluded a hearing to examine the President's fiscal year 2006 budget request for Indian programs, after receiving testimony from James Cason, Associate Deputy Secretary for Indian Affairs, and Ross O. Swimmer, Special Trustee for American Indians, both of the Department of the Interior; Charles W. Grim, Assistant Surgeon General, Director, Indian Health Service, Department of Health and Human Services; Michael Liu, Assistant Secretary of Housing and Urban Development for Public and Indian Housing; Victoria Vasques, Assistant Deputy Secretary and Director of Education for Indian Education, Department of Education; Tex G. Hall, National Congress of American Indians, Chester Carl, National American Indian Housing Council, and John Thomas Petherick, National Indian Health Board, all of Washington, D.C.; and David Beaulieu, National Indian Education Association, Alexandria, Virginia.

WORLD THREAT

Select Committee on Intelligence: Committee concluded a hearing to examine the national security threats to the interests of the United States, focusing on terrorism, Iraq, nuclear weapons proliferation, and North Korea, after receiving testimony from Porter J. Goss, Director of Central Intelligence; Robert S. Mueller III, Director, Federal Bureau of Investigation, Department of Justice; Admiral James Loy, U.S. Coast Guard (Ret.), Deputy Secretary of Homeland Security; Vice Admiral Lowell E. Jacoby, U.S.

Navy, Director, Defense Intelligence Agency, Department of Defense; and Carol Rodley, Principal Deputy Assistance Secretary of State for Intelligence and Research.

House of Representatives

Chamber Action

Measures Introduced: 37 public bills, H.R. 836–872; and 19 resolutions, H.J. Res. 21; H. Con. Res. 66–69, and H. Res. 105–118, were introduced. **Pages H717–19**

Additional Cosponsors: **Pages H719–20**

Reports Filed: No reports were filed today.

Speaker: Read a letter from the Speaker wherein he appointed Representative Culberson to act as Speaker Pro Tempore for today. **Page H633**

Chaplain: The prayer was offered today by Rev. John H. Parker, Pastor, Central Baptist Church in Washington, DC. **Page H633**

Broadcast Decency Enforcement Act of 2005: The House passed H.R. 310, to increase the penalties for violations by television and radio broadcasters of the prohibitions against transmission of obscene, indecent, and profane material, by a yea-and-nay vote of 389 yeas to 38 nays, Roll No. 35. **Pages H653–64**

Agreed to the Upton amendment that makes seven changes to various provisions of the bill by a voice vote. **Pages H662–64**

H. Res. 95, the rule providing for consideration of the rule, was agreed to by voice vote, after agreeing to order the previous questions by a yea-and-nay vote of 230 yeas to 198 nays, Roll No. 34. **Pages H635–43, H652–53**

Class Action Fairness Act of 2005—Rule for Consideration: The House agreed to H. Res. 96, the rule providing for consideration of S. 5, to amend the procedures that apply to consideration of interstate class actions to assure fairer outcomes for class members and defendants, by voice vote. **Pages H643–52**

Committee Vacation: Read a letter from Representative Lofgren (CA) wherein she asked permission to vacate her seat on the Committee on Science. **Pages H664–65**

Committee Election: Agreed to H. Res. 111, electing Members to the following standing committees: Committee on House Administration: Representative Lofgren (CA); and Committee on Small Business: Representative Moore (WI). **Page H665**

Suspensions: The House agreed to suspend the rules and pass the following measure:

Recognizing the commitment of the U.S. to the recovery of and accounting for American POWs or MIAs: H.J. Res. 18, recognizing the historic commitment of the United States to the recovery of and full accounting for Americans who are prisoners of war or in a missing status. **Pages H665–69**

Suspension—Proceedings Postponed: The House began consideration of the following measure. Further consideration will resume tomorrow, February 17:

Honoring the life and legacy of former Lebanese Prime Minister Rafik Hariri: H. Res. 91, amended, honoring the life and legacy of former Lebanese Prime Minister Rafik Hariri. **Pages H669–73**

President's Day District Work Period: The House agreed to H. Con. Res. 66, providing for a conditional adjournment of the House and conditional recess or adjournment of the Senate. **Page H673**

Committee Election: Agreed to H. Res. 112, electing Representative Musgrave to the Committee on Resources. **Page H673**

Commission on Civil Rights—Appointment: The Chair announced the Speaker's appointment of Mr. Michael Yaki of San Francisco, California to the Commission on Civil Rights to fill the remainder of the term expiring on May 3, 2005. **Page H691**

Presidential Message: Read a message from the President wherein he notified Congress of a new Executive Order that amends existing Executive Orders and clarifies certain measures taken to address certain national emergencies—referred to the Committee on International Relations and ordered printed (H. Doc. 109–10). **Pages H673–74**

Senate Message: Message received from the Senate today appears on page H633.

Senate Referral: S. Con. Res. 13 was ordered held at the desk.

Quorum Calls—Votes: Two yea-and-nay votes developed during the proceedings of today and appear on pages H652–53 and H664. There were no quorum calls.

Adjournment: The House met at 10 a.m. and adjourned at 6:43 p.m.

Committee Meetings

COMMITTEE ORGANIZATION; OVERSIGHT PLAN; BUDGET VIEWS AND ESTIMATES

Committee on Agriculture: Met for organizational purposes.

The Committee approved the following: an Oversight Plan for the 109th Congress; and Budget Views and Estimates for Fiscal Year 2006 for submission to the Committee on the Budget.

AGRICULTURE, RURAL DEVELOPMENT, FDA AND RELATED AGENCIES APPROPRIATIONS

Committee on Appropriations: Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies held a hearing on Secretary of Agriculture. Testimony was heard from Michael Johanns, Secretary of Agriculture.

DEFENSE APPROPRIATIONS

Committee on Appropriations: Subcommittee on Defense met in executive session to hold a hearing on Force Protection. Testimony was heard from the following officials of the Department of Defense: Benjamin P. Riley III, Assistant Deputy Under Secretary (Protection) and Chairman, Combating Terrorism Technology Task Force; LTG. David F. Melcher, USA, Deputy Chief of Staff, Department of the Army; and LTG. James N. Mattis, USMC, Commanding General, Marine Corps Combat and Development Command and Deputy Commandant for Combat Development, HQMC.

FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS APPROPRIATIONS

Committee on Appropriations: Subcommittee on Foreign Operations, Export Financing, and Related Programs held a hearing on Secretary of State. Testimony was heard from Condoleezza Rice, Secretary of State.

LABOR, HHS, EDUCATION, AND RELATED AGENCIES APPROPRIATIONS

Committee on Appropriations: Subcommittee on Labor, Health and Human Services, and Education, and Related Agencies held a hearing on the Social Security Administration. Testimony was heard from Jo Anne B. Barnhart, Commissioner of Social Security.

MILITARY QUALITY OF LIFE, AND VETERANS AFFAIRS, AND RELATED AGENCIES APPROPRIATIONS

Committee on Appropriations: Subcommittee on Military Quality of Life, Veterans Affairs, and Related Agencies held a hearing on Quality of Life. Testimony was heard from the following officials of the Department of Defense: Sgt. Major, Kenneth O. Preston, USA; Master Chief Petty Officer, Terry D. Scott, USN; Sgt. Major John L. Estrada, USMC; and Chief Master Sgt. Gerald R. Murray, USAF.

NATIONAL DEFENSE AUTHORIZATION BUDGET REQUEST FISCAL YEAR 2006

Committee on Armed Services: Continued hearings on the Fiscal Year 2006 National Defense budget request. Testimony was heard from the following officials of the Department of Defense: Donald H. Rumsfeld, Secretary; and GEN Richard B. Myers, USAF, Chairman, Joint Chiefs of Staff.

Hearings continue tomorrow.

HOMELAND SECURITY NEEDS

Committee on the Budget: Held a hearing on National and Homeland Security: Meeting the Needs. Testimony was heard from public witnesses.

JOB TRAINING IMPROVEMENT ACT OF 2005

Committee on Education and the Workforce: Began mark up of H.R. 27, Job Training Improvement Act of 2005.

Will continue tomorrow.

SPY ACT

Committee on Energy and Commerce: Subcommittee on Commerce, Trade and Consumer Protection approved for full Committee action, as amended, H.R. 29, Spy Act.

ENERGY POLICY ACT OF 2005

Committee on Energy and Commerce: Subcommittee on Energy and Air Quality continued hearings entitled ''Energy Policy Act of 2005: Ensuring Jobs for Our Future with Secure and Reliable Energy.'' Testimony was heard from public witnesses.

''TERRORIST RESPONSE TO IMPROVED U.S. FINANCIAL DEFENSES''

Committee on Financial Services, Subcommittee on Oversight and Investigations held a hearing entitled ''Terrorist Responses to Improved U.S. Financial Defenses.'' Testimony was heard from Juan C. Zarate, Assistant Secretary, Terrorist Financing, Department of the Treasury; and public witnesses.

SAFE DRUG ABUSE

Committee on Government Reform: Subcommittee on Criminal Justice, Drug Policy, and Human Resources held a hearing entitled ''Is There Such a Thing as Safe Drug Abuse?'' Testimony was heard

from Peter L. Beilenson, M.D., Commissioner, Department of Health, Baltimore, Maryland; and public witnesses.

OMB MANAGEMENT

Committee on Government Reform: Subcommittee on Government Management, Finance, and Accountability held a hearing entitled "Improving Internal Controls—A Review of Changes to OMB Circular A–123." Testimony was heard from Christopher B. Burnham, Acting Under Secretary, Management, Assistant Secretary, Resource Management, and Chief Financial Officer, Department of State; John P. Higgins, Jr., Inspector General, Department of Education; Otto J. Wolff, Chief Financial Officer and Assistant Secretary, Administration, Department of Commerce; and Jeffrey C. Steinhoff, Managing Director, Financial Management and Assurance, GAO.

DHS—BUILDING INFORMATION ANALYSIS CAPABILITY

Committee on Homeland Security, Subcommittee on Intelligence, Information Sharing, and Terrorism Risk Assessment held a hearing entitled: "The Proposed Fiscal Year 2006: Building the Information Analysis Capability of DHS." Testimony was heard from Patrick Hughes, Acting Under Secretary, Information Analysis and Infrastructure Protection, Department of Homeland Security.

U.S. POLICY TOWARD IRAN: NEXT STEPS

Committee on International Relations: Held a hearing on United States Policy Toward Iran: Next Steps. Testimony was heard from public witnesses.

COMMEMORATIVE RESOLUTION; TRANSATLANTIC RELATIONS

Committee on International Relations: Subcommittee on Europe and Emerging Threats approved for full Committee action H. Res. 108, Commemorating the life of the late Zurab Zhvania, Prime Minister of the Republic of Georgia.

The Subcommittee also held a hearing on An Overview of Transatlantic Relations Prior to President Bush's Visit to Europe. Testimony was heard from public witnesses.

IRAN STATE-SPONSORED TERROR

Committee on International Relations: Subcommittee on the Middle East and Central Asia and the Subcommittee on International Terrorism and Nonproliferation held a joint hearing on Iran: A Quarter-Century of State-Sponsored Terror. Testimony was heard from public witnesses.

OVERSIGHT—INDIAN TRUST FUND LAWSUIT STATUS

Committee on Resources: Held an oversight hearing on the Status of the Indian Trust Fund Lawsuit, Cobell v. Norton. Testimony was heard from Jim Cason, Acting Assistant Secretary, Indian Affairs, Department of the Interior; and a public witness.

OVERSIGHT—PAPER INDUSTRY ENERGY COSTS

Committee on Resources: Subcommittee on Energy and Mineral Resources and the Subcommittee on Forests and Forest Health held a joint oversight hearing on the Impact of High Energy Costs on the Competitiveness of America's Pulp and Paper Industry. Testimony was heard from public witnesses.

FEDERAL R&D BUDGET OVERVIEW

Committee on Science: Held a hearing An Overview of the Federal R&D Budget for Fiscal Year 2006. Testimony was heard from John Marburger III, Director, Office of Science and Technology; Samuel Bodman, Secretary of Energy; Arden Bement Director, NSF; Charles McQueary, Under Secretary, Science and Technology, Department of Homeland Security; and Theodore Kassinger, Deputy Secretary of Commerce.

BUDGET VIEWS AND ESTIMATES; OVERSIGHT PLAN

Committee on Transportation and Infrastructure: Approved the following: Budget Views and Estimates for Fiscal Year 2006 for submission to the Committee on the Budget; and an Oversight Plan for the 109th Congress.

OVERSIGHT—AGENCIES BUDGETS AND PRIORITIES FISCAL YEAR 2006: EPA AND NOAA

Committee on Transportation and Infrastructure: Subcommittee on Water Resources held an oversight hearing on the following Agency Budgets and Priorities for Fiscal Year 2006: EPA; and the NOAA. Testimony was heard from the following officials of the EPA: Benjamin H. Grumbles, Assistant Administrator, Water; and Thomas P. Dunne, Deputy Assistant Administrator, Solid Waste and Emergency Response; and Richard W. Spinrad, Assistant Administrator, National Ocean Service, NOAA, Department of Commerce.

DEPARTMENT OF VETERANS AFFAIRS BUDGET FISCAL YEAR 2006

Committee on Veterans' Affairs: Held a hearing on the Department of Veterans Affairs Budget for Fiscal Year 2006. Testimony was heard from R. James

Nicholson, Secretary of Veterans Affairs; representatives of veterans organizations; and public witnesses.

THREATS

Permanent Select Committee on Intelligence: Met in executive session to continue hearings on Threats. Testimony was heard from departmental witnesses.

COMMITTEE MEETINGS FOR THURSDAY, FEBRUARY 17, 2005

(Committee meetings are open unless otherwise indicated)

Senate

Committee on Appropriations: Subcommittee on VA, HUD, and Independent Agencies, to hold hearings to examine the President's proposed budget request for fiscal year 2006 for the National Science Foundation, 9 a.m., SD–138.

Full Committee, to hold hearings to examine the President's proposed budget for fiscal year 2006 for the Emergency Supplemental, 10 a.m., SD–106.

Committee on Armed Services: to resume hearings to examine the proposed Defense Authorization Request for Fiscal Year 2006 and the Future Years Defense Program, 9:30 a.m., SH–216.

Committee on the Budget: to hold hearings to examine rising health care costs and the impact on future generations relating to Medicare and Medicaid, 10 a.m., SD–608.

Committee on Energy and Natural Resources: Subcommittee on National Parks, to hold hearings to examine National Park Service's implementation of the Federal Lands Recreation Enhancement Act, 2:30 p.m., SD–366.

Committee on Finance: to hold hearings to examine the nominations of Daniel R. Levinson, of Maryland, to be Inspector General, Department of Health and Human Services, Harold Damelin, of Virginia, to be Inspector General, Department of the Treasury, and Raymond Thomas Wagner, Jr., of Missouri, to be a Member of the Internal Revenue Service Oversight Board, 10 a.m., SD–215.

Committee on Foreign Relations: to hold hearings to examine democracy in retreat in Russia, 9:30 a.m., SD–419.

Committee on Health, Education, Labor, and Pensions: to hold hearings to examine the price of drug reimportation, 10 a.m., SD–430.

Committee on Homeland Security and Governmental Affairs: Oversight of Government Management, the Federal Workforce, and the District of Columbia, to hold hearings to examine an overview of the Government Accountability Office high-risk list, focusing on ensuring Congressional oversight by bringing attention to government-wide management challenges and high-risk program areas, 10 a.m., SD–342.

Committee on the Judiciary: business meeting to consider S.256, to amend title 11 of the United States Code, 9:30 a.m., SD–226.

Committee on Small Business and Entrepreneurship: to hold hearings to examine the President's budget request for fiscal year 2006 for the Small Business Administration, 10 a.m., SR–428A.

Select Committee on Intelligence: to hold closed hearings to examine certain intelligence matters, 2:30 p.m., SH–219.

House

Committee on Appropriations: Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies, on Office of the Inspector General, Agriculture, 9:30 a.m., 2362–A Rayburn.

Committee on Appropriations: Subcommittee on Defense, on the Secretary of Defense, 2 p.m., 2359 Rayburn.

Committee on Appropriations: Subcommittee on The Department of Homeland Security, hearing on Department of Homeland Security Management and Operations, 10 a.m., 2359 Rayburn.

Committee on Appropriations:, Subcommittee on Labor, Health and Human Services, Education and Related Agencies, on Corporation for Public Broadcasting.

Committee on Armed Services, to continue hearings on the Fiscal Year 2006 National Defense budget request, 9 a.m., 2118 Rayburn.

Committee on the Budget, hearing on Domestic Entitlements: Meeting the Needs, 10 a.m., 210 Cannon.

Committee on Education and the Workforce, to continue mark up of H.R. 27, Job Training Improvement Act of 2005, 9:30 a.m., 2175 Rayburn.

Committee on Energy and Commerce, hearing entitled: "A Review of the Administration's FY2006 Health Care Priorities," 2 p.m., 2123 Rayburn.

Subcommittee on Telecommunications and the Internet, hearing entitled "The Role of Technology in Achieving a Hard Deadline for the DTV Transition," 9:30 a.m., 2123 Rayburn.

Committee on Financial Services, to consider pending Committee business, and to hold a hearing on Monetary Policy and the State of the Economy, 10 a.m., 2128 Rayburn.

Committee on Government Reform, to consider the following: Budget Views and Estimates for Fiscal Year 2006 for submission to the Committee on the Budget; and H. Res. 41, Expressing the sense of the House of Representatives that a day should be established as "National Tartan Day" to recognize the outstanding achievements and contributions made by Scottish-Americans to the United States; followed by a hearing entitled "Wounded Army Guard Reserve Forces: Increasing the Capacity to Care," 10 a.m., 2154 Rayburn.

Committee on International Relations,, hearing on the International Relations Budget for Fiscal Year 2006, 2 p.m., 2172 Rayburn.

Subcommittee on Asia and the Pacific and the Subcommittee on International Terrorism and Nonproliferation, joint hearing on the North Koran Nuclear Challenge: Is There a Way Forward? 10 a.m., 2172 Rayburn.

Committee on the Judiciary, Subcommittee on Courts, the Internet, and Intellectual Property, hearing on H.R. 683, Trademark Dilution Revision Act of 2005, 9:30 a.m., 2141 Rayburn.

Committee on Resources, Subcommittee on Forests and Forest Health, oversight hearing on GAO Five Year Update on Wildland Fire and Forest Service/Bureau of Land Management Accomplishments in Implementing the Healthy Forests Restoration Act, 11 a.m., 1324 Longworth.

Committee on Science, hearing on NASA's Fiscal Year 2006 Budget Proposal, 10 a.m., 2318 Rayburn.

Committee on Small Business, to hold a hearing entitled "Medical Liability Reform: Stopping the Skyrocketing Price of Health Care," 10 a.m., 2360 Rayburn.

Committee on Veterans' Affairs, to consider Budget Views and Estimates for Fiscal Year 2006 for submission to the Committee on the Budget, 10 a.m., 334 Cannon.

Committee on Ways and Means, to consider Budget Views and Estimates for Fiscal Year 2006 for submission to the Committee on the Budget; and to hold a hearing on the President's Fiscal Year 2006 Budget for the Department of Health and Human Services, 11 a.m., 1100 Longworth.

Subcommittee on Trade, to meet for organizational purposes, 1:30 p.m., 1129 Rayburn.

Permanent Select Committee on Intelligence, executive, Briefing on Global Updates, 9 a.m., H–405 Capitol.

Next Meeting of the **SENATE**

10 a.m., Thursday, February 17

Senate Chamber

Program for Thursday: Senate will be in a period of morning business until 12 noon. At 3 p.m., Senate will continue consideration of S. 306, Genetic Information Nondiscrimination Act, with a vote on final passage to occur thereon. Also, Senate expects to consider the State High-Risk Health Insurance Pools Act and the Committee Funding Resolution.

Next Meeting of the **HOUSE OF REPRESENTATIVES**

10 a.m., Thursday, February 17

House Chamber

Program for Thursday: Rolled votes on Suspension:

(1) H. Res. 91, Honoring the life and legacy for former Lebanese Prime Minister Rafik Hariri.

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