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Senate

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

PRAYER

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

Lord, You are our light and salvation, so why should we be afraid? Each day, You provide us with blessings for which we give thanks.

Thank You for the beauty of the Earth and the glory of the skies. Thank You for bringing order out of chaos. Thank You for marriage and family, for homes built upon our trust in You. Thank You for children's laugher and for the roar of the ocean. Thank You for Your love and for the true and free gift of Your salvation. Thank You for Senators and staffers who faithfully labor to keep our Nation strong.

Lord, deliver us from those things that dishonor You. Free us from provincialism, narrowness, and from a shallow tolerance that lacks a studied conviction. Liberate us also from poverty of thought and spirit. We pray in Your Holy Name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable SAM BROWNBACK led the Pledge of Allegiance, as follows:

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

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The bill clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, April 27, 2005.

To the Senate:

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

TED STEVENS,
President pro tempore.

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

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. The majority leader from the great State of Tennessee is recognized.

SCHEDULE

Mr. FRIST. Mr. President, this morning, following our leader time, we will have up to 2 hours of morning business. That time will be divided with the majority controlling the first 30 minutes, the minority controlling the next 60 minutes, and the last 30 minutes under the control of this side of the aisle. Following that time we will resume consideration of the highway bill. Yesterday, we began the amendment process on the highway legislation, and we will continue working through amendments today and over the course of this week. I do expect rollcall votes today on amendments, and we should have a full day of debate on the highway bill.

I do want to take this opportunity to remind my colleagues that we in all likelihood will be considering conference reports this week, as they are made available. One of those will be the budget conference report, which will be debated for up to a 10-hour statutory limit. I hope when we do come to the budget we not find it necessary to use all that time, but Senators should stay on notice that we will complete that very important conference report before we leave for our recess.

Finally, I should also mention there are a number of nominations—actually two specific nominations—that will be completed before adjourning. We are working back and forth across the aisle to see how we can best complete those two nominations. We have three district judges as well that should be voted unanimously. The two nominations that I referred to—one is the Portman nomination, which came out of committee, to be U.S. Trade Representative, and the other is Stephen Johnson, to be Administrator of EPA. Again, we are working on bringing that to conclusion, but we need to complete both of those before we leave. Both of these are Cabinet rank officials, and we should not—will not—adjourn until we have considered these important nominations as well.

Mr. President, I have a brief statement on the bill.

THE HIGHWAY BILL

Mr. FRIST. Mr. President, yesterday the Senate voted overwhelmingly to invoke cloture on the motion to proceed to the highway bill, the highway bill we are now on. The amendment process has begun. It enjoys strong bipartisan support, and I am encouraged by the bipartisan commitment to both go to the bill and move this important bill forward. Time is of essence. The current highway extension from last year expires at the end of next month, on May 31. We are going to have to work together to pass this legislation, then take the bill that we pass to conference to join it with the House bill—I have a feeling there will have to be fairly extensive negotiations at that point—and then send that bill to the President for his signature.

This highway bill that is currently on the floor is a product of a long bipartisan process. It is based on more than 3 years of hard work, over a dozen hearings, testimony from more than 100 witnesses, countless hours of negotiation, all of it supported by a deep

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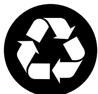
● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.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and broad coalition, from State and local highway authorities to national safety advocates. It was last month that a very similar bill overwhelmingly passed the House of Representatives by a vote of 417 to 9. It is time to get this bill done.

This is what America sees, I know: While we engage in this endless negotiation inside the beltway, outside the beltway people are listening to that as they are sitting in traffic jams which are getting worse and worse by the day. At the same time we are debating, roads and bridges continue to deteriorate, and preventable traffic accidents take the lives of tens of thousands of Americans each year. I will come back to that, because these lives do not have to be lost. The action we take on the floor of the Senate will cause those lives not to be lost.

Car crashes, in fact, are the No. 1 cause of death for every age from 3 years of age to 33 years of age; crashes are their No. 1 cause of death. According to national statistics reported just last week, 43,000 people died in car accidents just last year alone. More than 2.7 million people were injured.

I believe the key point is that one-third of all these traffic-related deaths can be attributed to unsafe roads. One out of every three deaths can be attributed to unsafe roads. In my home State of Tennessee, over 1,000 Tennesseans lost their lives in traffic accidents in 2003. Treasury Secretary Norm Mineta rightly says:

> If this many people were to die from any one disease in a single year, Americans would demand a vaccine.

We do have a medicine of sorts. In fact, we have a cure of sorts. Passing the highway bill will save 4,000 lives each year simply by making those roads safe, by improving those roads, as well as educating the public about road safety. In Tennessee, where seatbelt usage is among the lowest in the country, our State highway department is taking action, but, like transportation departments all across the country, it needs our help. The highway bill will provide Tennessee with more than $3.8 billion over the next 5 years to invest in our State's highway infrastructure.

Safety is a top priority of this legislation. Another serious goal is to get America's highways back on track economically. America is interlaced by nearly 4 million miles of roads and highways. Our transportation infrastructure is worth about $1.75 trillion. Every $1 billion we invest in transportation infrastructure generates twice that much—$2 billion—in economic activity and creates over 47,500 jobs. The interstate highway system has often been called the greatest public works project in history, and for good reason.

Our roads, ports, and railroads are vital to America's economic success. We know that well in Tennessee, where we are home to companies such as Federal Express, U.S. Express, Averitt Express. Unfortunately, America's transportation infrastructure is deteriorating badly and becoming painfully overcrowded. Our roads and highways are not keeping up with demand. Just ask any American commuter—bumper to bumper traffic all day long. Indeed, in our Nation's urban areas, traffic delays have more than tripled over the last 20 years, and not just in the big cities but all over the country. In Raleigh Durham, for instance, commuting time has gone up 25 percent in 10 years. In Charlotte, traffic congestion has added 39 additional commuting hours per year. That is nearly an entire work week that has been added, sitting in traffic. In Tennessee, traffic congestion has increased in all of our major metropolitan areas. In Nashville, my hometown, commuters drive an average of 32 miles per person per day. Metropolitan planning organizations are struggling to meet demand.

Americans suffer the loss of more than 3.6 billion hours in those traffic delays, and that translates down to 5.7 billion gallons per year of fuel being wasted. These transportation delays ripple through our Nation's economic sector and ultimately result in lost wages and lost jobs and lost productivity.

Traffic congestion also generates more pollution. Cars that are caught up in stop-and-go traffic emit far more pollution than they do on a road that is smoothly flowing. The American Highway Users Alliance estimates that if we could free up America's worst bottlenecks, in 20 years carbon dioxide emissions would drop by over three-fourths, and Americans would save 40 billion gallons of fuel.

Time, money, and quality of life are being burned up in traffic jams. The highway bill goes a long way to alleviating many if not most of these problems. The key to that effort is the improvements it will make in our mass transit system. The highway bill provides generous provisions to improve our bus and rail systems that make our urban centers thrive. In Tennessee, it will provide more than $240 million over the next 5 years to improve our transit for our rural and urban commuters. Taking the train or the bus will be more convenient and less time consuming and more comfortable.

As we consider this legislation, keep in mind that oil prices are climbing to historic highs, and the summer driving season is just around the corner. For the sake of every family right now planning their vacation for this summer, every commuter who parks and rides, every minute we spend in a traffic jam, I do urge my colleagues to work quickly to pass this bill.

One final note, and it is a note of caution: We need to stay within our budget limits. We have a rising deficit. We have a President who has clearly laid out his spending parameters, several of which will be spelled out in the budget we will bring to the floor tomorrow. But I am confident by working together we can get this done, and we can demonstrate reasonable fiscal restraint.

Our vast and interconnecting highways are emblematic of our American spirit. They represent what being American is all about. They represent that spirit and love of adventure, our drive for the unknown. Our highways, bridges, roads, trains, and ports are the physical, tangible expression of the United States. I do urge my colleagues in the great American tradition, in every sense of the phrase, to keep America moving forward.

Mr. President, I yield the floor.

RESERVATION OF LEADER TIME

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will be a period for the transaction of morning business up to 120 minutes, the first 30 minutes under the control of the majority leader or his designee, the next 60 minutes under the control of Mr. BIDEN or his designee, and the final 30 minutes under the control of the majority leader or his designee.

The Senator from the great State of Missouri.

Mr. TALENT. My understanding is we are going first in morning business on this side of the aisle.

The PRESIDING OFFICER (Mr. VITTER). The Senator is correct.

JUDICIAL NOMINATIONS

Mr. TALENT. Mr. President, I will claim 20 minutes of the time. I will appreciate it if the Presiding Officer notifies me when 15 minutes are up because Senator HUTCHISON wants to use 10 minutes. I want to make certain everyone knows I do not intend to filibuster this morning. There will be a limit to my remarks.

I appreciated what the leader said about the highway bill. We do need to pass it. We need to pass a robust highway bill for all the reasons he stated. We are all very strongly for reducing the deficit, but spending on infrastructure is dynamic in nature, as I happen to believe tax cuts are dynamic in nature in the sense they produce economic growth. When we reduce the deficit, make this country competitive, help people get to work, Americans will get rid of the deficit if they can get to work in the morning. We need to have that debate in the Senate. Everyone needs to vote their conscience and vote out a robust highway and transportation bill.

That is not what I am here to talk about this morning. I am here to talk about judicial nominations. We have spent altogether too much time on judicial nominations the last 2 years, 150 hours on judicial nominations—not even Supreme Court nominations but court of appeals nominations. We have

been told over and over again how important they are. And they are important. They are the second highest court in the country. There are only three levels of courts in the country so the second highest court is also the second lowest court. They do the day-to-day appellate business of the Federal courts. It certainly is very important, but it is not worth filibustering the Senate and obstructing it to death and preventing the vote on these nominees. That is basically my message today.

For the first 214 years of this Senate, no nominee for the Federal court of appeals was ever successfully filibustered in the Senate. There were runt groups of Senators who in recent years tried filibusters, embryonic filibusters, that were cut off and defeated because the leadership of both parties, majority and minority leadership, opposed those filibusters on the grounds it was a mistake for this Senate to get in the business of filibustering judicial nominees. That was, until a couple years ago, the uniform point of view.

Senator BOXER said—and I am not picking out Senators in any particular area; I guess they are alphabetic:

> According to the U.S. Constitution, the Senate nominates, and the Senate shall provide advice and consent. It is not the role of the Senate to obstruct the process and prevent numbers of highly qualified nominees from even being given the opportunity for a vote on the Senate floor.

Senator Daschle, former Democratic leader:

> I find it simply baffling that a Senator would vote against even voting on a judicial nomination . . . We have a constitutional outlet for antipathy against a judicial nominee—vote against the nominee.

And, I add, let them have a vote.

Senator FEINSTEIN:

> A nominee is entitled to a vote. Vote them up; vote them down . . .

But vote on them.

Senator FEINSTEIN again:

> Our institutional integrity requires an up-or-down vote.

I couldn't agree with that more. I will get to that a little bit later if I do not have so many digressions that I use up my 20 minutes.

Senator KENNEDY:

> We owe it to Americans across the country to give these nominees a vote. If our Republican colleagues do not like them, vote against them. But give them a vote.

Senator LEAHY, now the ranking member on the Judiciary Committee, former chairman of that committee:

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

Yes, he is right.

Senator LEAHY again:

> I . . . do not want to see the Senate go down a path where a minority of the Senate is determining a judge's fate on votes of 41 . . .

With 41 Senators out of 100, if we allow the filibuster in these cases, you can stop a nominee from ever coming to a vote. So nominees with bipartisan majority support in the Senate do not even get a vote if we allow filibusters in these cases. That has been the case with all these nominees.

I could go on and on with quotes. I will not do it.

For 214 years we never had one successful filibuster of a court of appeals nominee, not one supported by the leaders of either party. In the last 2 years we have had 10 successful filibusters and 6 other threatened ones.

What has happened? Is there something extraordinarily wrong with these nominees? No. I will go to two nominees before the Senate.

Justice Priscilla Owen from Texas. I do not know Justice Owen. I did not insist she come in and speak to me before I voted on her nomination. Here is her history.

Before joining the Texas Supreme Court, Justice Owen was a partner with the well-respected Texas law firm of Andrews and Kurth. She made partner. I never did. She practiced commercial litigation for 17 years. She earned a B.A. cum laude from Baylor University and graduated cum laude from Baylor Law School in 1977. After graduating from law school, Justice Owen earned the highest score in the State on the December 1977 Texas bar exam. Lawyers within the sound of my voice know the difficulty of earning the highest score on the bar exam. I am not certain how I ever staggered through the Missouri bar, but I am certain I did not get the highest score.

Justice Owen served on the Supreme Court in Texas since 1995. This person who could not even get a vote for 10 years has been a supreme court judge in Texas. She was reelected to her second term by 84 percent of the vote. Every major newspaper in Texas endorsed her. She cannot get a vote. She has significant bipartisan support, including from three former Democratic judges on the Texas Supreme Court. I will read some of that in a minute.

Justice Janice Rogers Brown from California is the daughter of sharecroppers, born in Greenville, AL, in 1949. She attended segregated schools in the era of Jim Crow. She moved to Sacramento, CA. Her family did. She got a B.A. in economics from California State in 1974 and her law degree from the UCLA Law School. She has received honorary law degrees from Pepperdine University, Catholic University of America Law School, and Southwestern University School of Law—three more honorary degrees than I have. She currently serves and is an associate justice—another justice on the State Supreme Court who cannot get a vote. She has held that position since 1996. Before that, she was on the intermediate State appellate court. She got on the State court of appeals. She cannot get a vote to get on the Federal court of appeals. She is the first African-American woman to serve on California's highest court and was retained with 76 percent of the vote in the last election.

I can go on and on with honorary degrees. She spent 24 years in public life in various legal capacities. She is experienced in judicial matters, in other governmental matters as a lawyer. She cannot get a vote. She is being filibustered.

Some of my colleagues say these and the other eight are too extreme; they are not in the mainstream. I wish every Federal judge on the bench today had the qualifications of these people and the bipartisan support of these people. The people who know them best from their own States do not think they are too extreme.

Raul Gonzalez, former Democratic Justice on the Supreme Court of Texas said of Justice Owen:

> I found her to be apolitical, extremely bright, diligent in her work and of the highest integrity. I recommend her for confirmation without reservation.

I guess he would support a vote since he says we ought to confirm her.

Here is another former Democratic Chief Justice:

> After years of closely observing Justice Owen's work, I can assert with confidence that her approach to judicial decision-making is restrained, her opinions are fair and well reasoned, her integrity is beyond reproach . . . I know personally how impeccable her credentials are.

This is from a Democrat in Texas, one of her colleagues.

Jack Hightower, a former Democratic Justice on the Supreme Court of Texas:

> I am a Democrat and my political philosophy is Democratic, but I have tried very hard not to let preconceived philosophy influence my decision on matters before the court. I believe that Justice Owen has done the same.

A bipartisan group of 15 former presidents of the State Bar of Texas:

> Although we profess different party affiliations and span the spectrum of views of legal and policy issues, we stand united in affirming that Justice Owen is a truly unique and outstanding candidate for appointment to the Fifth Circuit . . . The status of our profession in Texas has been significantly enhanced by Justice Owen's advocacy of pro bono service and leadership for the membership of the State bar of Texas.

They go on and on. These are 15 bipartisan former presidents of the State bar of Texas about Justice Priscilla Owen. She cannot get a vote. The 215-year tradition of not filibustering court of appeals nominees is broken to keep people such as her from not getting a vote.

The same things can be said of Justice Janice Rogers Brown who appears to be an extraordinary person. A bipartisan group of 12 of her current and former judicial colleagues says:

> Much has been written about Justice Brown's humble beginnings, and the story of her rise to the California Supreme Court is truly compelling. But that alone would not be enough to gain our endorsement for a seat on the federal bench. We believe she is qualified because she is a superb judge. We who have worked with her on a daily basis know

her to be extremely intelligent, keenly analytical, and very hard working. We know that she is a jurist who applies the law without favor, without bias and with an even hand.

And she can't get a vote. This 214-year tradition of not filibustering court of appeals judges, we are breaking to keep people such as this woman from getting on the Federal bench and even getting a vote because she is not in the mainstream.

Here is the truth: There is not any one judicial mainstream, as there is no one mainstream of political philosophy in the Senate. Judges disagree about issues as Senators disagree about issues. The point is to disagree without being disagreeable. Disagree while recognizing the other person has a valid point of view. The fact that you do not agree with them does not make them automatically unfit even for a vote to serve on the Federal judiciary.

President Clinton appointed a lot of judges during his time in office who were a lot more liberal than I would have liked. I probably wouldn't have appointed very many of them. I cannot say they are out of the mainstream. They represent the views of tens of millions of people in the country. When you say somebody who disagrees with you is out of the mainstream, you are slandering everyone who supports their views. It is not the right thing to do. It is extremely divisive.

When we hear Members in the Senate say somebody else is not in the mainstream, what they mean is that other person disagrees with me. A confrontational person follows this logic: You say, They do not agree with me; therefore, they are not in the mainstream, and then when you add the filibuster on top of that, you say, therefore, I am not only not going to vote for them—which to me is the first mistake—but I am not even going to let them have a vote. What you are saying is they, and everyone such as them in the whole country and the Senate, do not even deserve a vote on whether they are qualified for public office.

Then we wonder why this place gets divisive and why it is hard to operate because we are not showing respect to many who may disagree with us.

My wife says, when she wants to bring me down to earth when I am on my high horse, JIM, wouldn't the world work wonderfully if everyone would only agree with you all the time about everything? We do not all agree with each other about everything. We have a vote and we go on. And then we try and concentrate on the areas where we do agree, such as the highway bill.

The worst thing about this—and there are a lot of bad things about what is happening with regard to the filibustering of nominations, the breaking of this 214-year tradition—the worst thing about it is the slandering of the credentials and the careers of these qualified people.

There is an old idiom, an old saying: People will forgive you the wrong you do them, but they will never forgive you the wrong they do you. Once, for whatever reason, they have done something that is wrong to you, then they may decide, you know what, I have to make that person out to be a bad person to justify the wrong I did to them in the first place.

A filibuster of these people, breaking the tradition to do that, to not even let them have a vote, these people who have bipartisan majority support on the floor, to justify that, you have to say things about their records. That completely disserves their histories of public service and qualifications, as the people who know them best have said.

The second worst thing about this whole issue is the fact that there are now large parts of the political community in this country, and even here, that, in order to support this effort and to win this battle that is going on, are treating the filibuster like it is a great thing. My heavens, there are groups that have made a mascot out of the filibuster. Filibuster is an extraordinary, obstructive tactic that is not even permitted in most legislative bodies. Even the advocates of it say it should be used sparingly.

The case is actually being made on the floor of this Senate that the filibuster is part of our deliberative process, that it promotes calmness and coolness, compromise, moderation. Is this calmness? Holding these votes up for years, is this coolness? Is this compromise? We have used the filibuster for the first time in 214 years, taking yet another step with the device, making it more common, a device that even the advocates of it say should be used very sparingly.

Do you want to know why? I will explain why. It has to do with the dynamics of a legislative body. If you care passionately about an issue before the Senate—and we should care passionately about these issues—and you know that issue is going to come up for a vote, what are you going to do? If you know it is going to come up for a vote, and a majority is going to win, what are you going to do? You are going to appeal to the middle, aren't you? You are going to seek arguments and amendments and methods that get the middle with you. That encourages compromise. If you do not have the middle with you, and you know it is going to be voted on, and you know a majority is going to win, what is going to happen to your position? Even Senators can figure out that math. You are going to lose.

The majoritarian process promotes compromise and discussion because it empowers the middle. Filibusters empower the extreme, and not just the extreme philosophically; they empower the confrontational people. I have nothing against people who take that point of view. And you need some of them in a legislative body, but you have to be careful how much you empower them. The people who say: Look, if it isn't the way I want it, it is not going to happen at all. It has to be my way or the highway—that is what filibusters empower. I am not saying we should not have it on the legislative calendar. But we have to remember there is a cost to it.

Do you want to know why we don't have an energy bill? Because of the filibuster. There are a lot of other examples of legislation the country has wanted and needed that have been held up with the filibuster. It is a tactic with a cost. It should be used sparingly. It should not be extended in areas where it has not been used in the past with a bipartisan consensus. That is the reason all these distinguished Democratic Senators said, for years on the floor of this body: We are not going to filibuster judicial nominations. It is because they knew what would happen.

We can be certain of one thing: The same standard is going to be applied in this body from President to President. I do not want the filibuster standard applied. I do not want a situation where because I disagree with a judicial nominee of a Democratic President, I am expected, as a matter of course—because that is the protocol and the precedent in this Senate—not to permit a vote. I believe—and it was the tradition here for years—that even if you disagree with a nominee, if they are competent and have integrity, you vote to confirm them out of respect for the process that elected that President and respect for the people and the party that person represents, even if you disagree. If they are a good person, you vote to confirm them. That is what I want to do in this Senate year by year.

The PRESIDING OFFICER. The Senator has consumed 20 minutes.

Mr. TALENT. One more minute, and I will really be done, if the Senator does not mind.

At the very least, we have to allow a vote. Let's keep the tradition of 214 years in the Senate. Let us allow a vote on these people, all of whom have bipartisan, majority support on the floor of the Senate. Let's not continue doing an injustice to the reputation of these fine Americans. Let's preserve the traditions of the Senate, have this vote, and then move on to other issues.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Texas is recognized.

Mrs. HUTCHISON. Mr. President, I rise today in support of Priscilla Owen to serve on the Fifth Circuit Court of Appeals. I want to comment on the constitutional right of Senators to advise and consent to judicial nominations by the President, a right that is now being denied by tactics employed by the minority in the Senate.

Priscilla Owen was nominated to the Fifth Circuit Court of Appeals 4 years ago—4 years ago! She has been serving on the Supreme Court of Texas for 4 years, while awaiting her confirmation by the Senate. Yet she has actually had the votes to confirm her in the

Senate four times. Four times the Senate has voted on her nomination, and four times she has received a majority. On May 1, 2003, a cloture vote: 52 to 45 in her favor; May 8, 2003, 52 to 45; July 29, 2003, 53 to 43; November 14, 2003, 53 to 42.

In all these cases, she had a majority of votes in the Senate for confirmation, but she is not on the Fifth Circuit Court of Appeals today. Why? Because her nomination is being filibustered by Democrats, and she has been held to a standard of 60 votes instead of 51. That is changing the Constitution of the United States.

I know Priscilla Owen. I have watched her through this process. If anything confirmed my admiration for her, it is the incredible calm and measured response she has displayed in response to unfair attacks which have sometimes been personal, unfair, and have had political overtones. Yet she has remained totally professional. She has gone through two hearings with the committee. She has answered every question members asked. Some people have said she is the best witness that has ever come before the Judiciary Committee. It is because she knows what she is doing. She knows the law. And she is very bright.

She earned both her undergraduate and law degrees from Baylor University. She earned the highest score—the No. 1 score—on the Texas bar exam, when she took it. She has had a distinguished career in the private sector for 17 years. And since 1995, she has served on the Supreme Court of Texas.

The American Bar Association unanimously voted for her to have the ''well qualified'' recognition and rating. That is the highest rating they award, as they review judicial candidates—''well qualified.''

I would ask those who are holding up her nomination by putting a 60-vote threshold on it, in a completely partisan vote, what is it that caused her to have the entire Democratic conference come out against her? She has received bipartisan support nationwide.

When she was reelected to the Texas Supreme Court in 2000, she received 84 percent of the vote. Every major newspaper in Texas endorsed her.

Some of her detractors, I have to say, opposed her before they had ever heard one word about her. There were outside groups that decided she should not be a circuit court judge.

Three former Democratic judges, who sat on the Texas Supreme Court, have announced their public support for her. A bipartisan group of 15 past presidents of the Texas Bar Association have come out in open support of Priscilla Owen. I have to come away with the view that this is really not a debate about Priscilla Owen. This is not a debate about this woman who has an impeccable record and an impeccable academic background. No, I do not think it is about Priscilla Owen. I think it is about the Constitution and the requirement of advice and consent.

The minority has changed the Constitution by filibustering judicial nominees, for the first time in the history of the Senate. For the first time in the history of the Senate—over 200 years—we saw, in the last session of Congress, a filibuster of almost one-third of President Bush's circuit court nominees. No President has ever received fewer of his circuit court nominees than President George W. Bush. Almost a third were filibustered to death.

Before the 108th Congress, there were only 17 cloture votes on judicial nominations. But there was never a judge who had the support of the majority who failed to get confirmed. That is the key. For 70 percent of the last century, the same party controlled the Senate and the White House, but there was no use of a partisan filibuster on nominees to prevent an up-or-down vote.

It is not the rule that is being changed in this debate. It is the precedent of the Senate, for 200 years, that was changed in the 108th Congress, by requiring 60 votes for the confirmation of judges. And we are now looking to reaffirm the will of the Senate to do exactly what the Constitution envisions; and that is, a 51-vote majority for judges.

Two hundred years of Senate precedent is being torn apart. Through Democrat majority control and Republican majority control over the years—the filibuster was not used as it was in the last session of Congress.

As recently as March of 2000, more than 80 Senators were on record opposing the filibuster of judicial nominations because the filibuster was never intended to be used this way.

The Senate's original cloture rule, in 1917, did not even apply to nominations because no Senator had ever used a filibuster for nominations. When the cloture rule was rewritten in 1949 to cover all matters, it was used most often for scheduling purposes. History demonstrates that there was no real precedent for the use of the filibuster to permanently block the confirmation of judicial nominations. And there has never been a cloture vote where the person received majority support and still was not confirmed. However, we are not trying to do away with the filibuster on legislative matters. This is a part of our tradition in the Constitution that everyone, I believe, wants to uphold; that is, the right of a minority to filibuster and require three-fifths of the people present and voting in the Senate to overturn it. It is a vital legislative tool. But when it comes to judges, the Constitution never envisioned a super-majority. In fact, where the Constitution has required a super-majority, it has specifically said so. A majority vote ensures the balance of power between the President's right to nominate and the Senate's role to give advice and consent.

We are not only changing the tradition of the Senate with the filibuster of judicial nominations, we are changing the balance of power that was clearly set out in the Constitution and which has been one of the strengths of our democracy. The separation of powers and the balance of powers given to the legislative, executive, and judicial branches of our Government was the genius of the Founding Fathers.

We value three independent branches in our Government and work to prohibit one branch from overruling another, beyond repair. These are the stakes in this debate. That balance of power is going to be disrupted if we allow a super-majority requirement for Presidential nominees or judgeships to be confirmed. It says a minority of 41 Senators, who are not in the majority in the Senate, will have the ability to dictate to the President who is acceptable as a nominee.

That was not envisioned in the Constitution, and it was part of the careful balance between the right of the President to appoint the judiciary and the Senate's right to overturn that appointment by 51 votes, if necessary. But if the nominee gets the majority of 51, that person is confirmed.

We are trying to uphold that constitutional balance. The rules of the Senate can be changed by the Senate. The Supreme Court has been clear. In the United States v. Ballin, the Supreme Court held that only a majority of the lawful quorum is all that is necessary to change the House or Senate rules, practices, and procedures. Moreover, the Supreme Court held that the right to change rules, practices, and procedures is a ''continuous power'' that may be exercised at any time.

Clearly, the Senate has the right to change its rules and practices by the majority. I want the tradition of the Senate, for 200 years, to be upheld without any need for a rule change. For 200 years, Democrats and Republicans had agreed on this principle. It was not until the last session of Congress, when President George W. Bush lost almost one-third of his judicial nominees for the circuit court benches that we saw sudden changes to the traditions of the Senate, with the effort to impose a 60-vote super-majority for nominations by the Democrats.

I am here to talk about someone I know well, someone I have come to admire totally, even more than I did before she took this awesome responsibility to become a nominee of the President. She has withstood the slings and arrows. Her strength and sound judicial temperament has been consistent. Priscilla Owen has had the necessary 51 votes to be confirmed by the Senate four times. But still, we wait and have been waiting for four years. She deserves an up-or-down vote that will allow her to sit on the Fifth Circuit Court of Appeals bench.

I hope we will not let 200 years of tradition go. But if it is the will of the minority to continue to thwart 200 years of tradition and the Constitution of the United States, it is my hope we reinstate the long-standing practice on

nominations in the Senate and adhere to the Constitution. Our Founding Fathers knew what they were doing. We should not change the Constitution without going through the appropriate amending process, which has not been done.

We have unanimous consent for two more speakers, which we intend to continue to hold.

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.

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

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

JUDICIAL NOMINATIONS

Mrs. MURRAY. Mr. President, I come to the floor to talk about the Senate's deliberations on some of the administration's judicial nominees. It is clear this is a debate about basic American values. In drafting the Constitution, the Framers wanted the Senate to provide advice and consent on nominees who came before it to ensure that these very rights and values were protected. I believe, as a Senator, I have a responsibility to stand up for those values on behalf of my constituents in Washington State.

Many activists today are complaining that certain Senators are attacking religious or conservative values. I must argue that it is others—not Democratic Senators exercising their rights—who are pursuing a nomination strategy that attacks basic values outlined in the Constitution.

Our democracy values debate and dissension. Our democracy values the importance of checks and balances. Our democracy values an independent judiciary. But with the nuclear option and the rhetorical assault being launched at Democratic Senators by activists around the country, among others, we see those values under attack.

The nuclear option is an assault on the American people and many of the things we hold dear. It is an attempt to impose on the country, through lifetime appointments, the extreme values held by a few at the cost of the many. It is the tyranny of the majority personified. Confirming these nominees by becoming a rubber stamp for the administration would be an affront to the 200-year-old system of checks and balances, and at the same time it would be an affront to the values I promised to defend when I came to the Senate.

Building and maintaining a democracy is not easy, but our system and the rights and values it holds dear are the envy of the world. In fact, the entire world looks at us as the model for government. It is our values they want to look to. We must protect them not only for us but for those fledgling democracies.

I just returned from a bipartisan trip to Israel, Iraq, Georgia, and the Ukraine, where we saw leaders who were trying to write constitutions, trying to write laws, trying to write policies. They were all working very hard to assure even those who did not vote in the majority that they would have a voice. The challenges were varied in each country. They faced everything from protecting against terrorists to charging people for the first time for electricity, to reforming wholly corrupt institutions. Making sure that democracy survives means having debates, bringing people to the table, and making tough decisions.

In each case, the importance of not disenfranchising any group of people also rings true. So how we in this country accomplish the goal of sustaining a strong democracy and ensuring the participation of all people is very important.

Elections are the foundation of our democracy. They determine the direction of our country. But an election loss does not mean you lose your voice or you lose your place at the table. That is what we must do to keep our democracy strong. That is why we are fighting so hard to keep our voice.

Recently, we have heard a lot from the other side about attacks on faith and on values. In fact, some are trying to say our motive in this debate is somehow antifaith. I argue the opposite is true. We have faith in our values, in American values. We have faith that these values can and must be upheld. It is not an ideological battle between Republicans and Democrats. It is about keeping faith with the values and the ideals our country stands for. Having values and having faith in those values requires that we make sure those without a voice are represented. Speaking up for those in poverty to make sure they are fed is a faith-based value. Making sure there is equal opportunity and justice for the least among us is a faith-based value. Fighting for human rights and taking care of the environment are faith-based values. To now say those of us who stick up for minority rights are antifaith is frightening and it is wrong.

I hope those who have decided to make this into a faith-antifaith debate will reconsider. This should be about democracy. It should be about the protection of an independent judiciary, and it should be about the rights of minorities.

Mr. President, our system of government, of checks and balances, and our values are under attack by this transparent grab for power. They are, with their words and potential actions, attempting to dismantle this system despite the clear intent of the Framers and the weight of history and precedent. They think they know better. I think not.

Mr. President, there is even news this morning that our friends on the other side are unwilling to come to the table to compromise to avoid this crisis. I want to take a second to praise our leader, Senator REID, for his effort to find a reasonable conclusion before the nuclear bomb is dropped.

Unfortunately for him, for all of us on this side of the aisle, and for this institution, that plea has been rejected.

First, yesterday we saw that Karl Rove, one of the President's top advisers, said there would be no deal. Now, in this morning's papers, we read the leadership on the other side of the aisle is falling into line and saying, "No deal."

By rejecting the deal, Republicans are now saying that three nominees—three total nominees—are so important that they must break with the more than 200 years of tradition and 200 years of precedent. We have heard day after day on the floor—even a few moments ago—that this is the most important issue facing this body today.

Well, we have record-high gas prices and deficits, we have 45 million uninsured Americans, and we have far too many veterans without the health care they need and deserve. All the other side is talking about is doing away with the checks and balances so they can get radicals on the bench.

If the other side wants to continue on this destructive course and ignore those real needs of the American people, they can. But this Senator and my colleagues will continue to fight this abuse of power and do the work the people sent us here to do.

It is a sad day when one side refuses to come to the table to negotiate a way out of this impasse. It is even sadder that they refuse to accept our excellent confirmation record in blind pursuit of confirming the most radical of their choices.

Although we have been able to confirm 205 nominees that President Bush sent forward, there are a few that are far outside some basic values.

Let's start close to home with President Bush's nominee to the Ninth Circuit Court. To that court, which overseas appeals from my home State of Washington and five other States, President Bush has nominated William Myers. Mr. Myers is a lifelong lobbyist and anti-environmental activist. He is opposed by over 175 environmental, labor, civil, and women's disability rights organizations. He even drew opposition from Native American organizations and from the National Wildlife Federation. This is a man who has never tried a jury case, who has an anti-environmental record stretching back to his days as a Bush Interior Department official and industry lobbyist. He even received the lowest possible rating from the ABA.

Mr. President, in the Pacific Northwest and in regions around this great country, we hold our environmental values dear. I am not willing to hand a lifetime appointment to such a vehement advocate against the people's interests. This is the perfect example of the check our Framers had in mind when they drafted our Constitution. We can, and we must, use it.

That is just one example of a nominee looking to attack basic values. Bill Pryor, a nominee to the Eleventh Circuit, opposes basic individual liberties and freedoms. He called Roe v. Wade the ''worst abomination of constitutional law in history.''

Janice Rogers Brown, nominated to the DC Circuit Court, called 1937—that was the year this Government enacted many of the New Deal's programs to help lift our country out of the deep depression—''the triumph of our own socialist revolution.'' Mr. President, her disdain for worker and consumer protection values and principles is clear in decision after decision.

Nominee Priscilla Owen's narrow constitutional view was so far outside the mainstream that then-Texas Supreme Court Judge and now Attorney General Alberto Gonzales said that to accept it would be ''an unconscionable act of judicial activism.''

Mr. President, time and time again, these nominees have sided against the American people and the values we hold dear. They have taken extreme positions that run counter to mainstream values. Not one of these nominees has the experience or the temperament to administer justice in an impartial way to the citizens that they would serve.

Today it is fashionable for some of my colleagues on the other side of the aisle to disparage what they call activist judges. But this power grab reveals their true motivation. They want activists on the bench to interpret the law in a way that undermines important American values. We will not let them.

We have a responsibility to stand up and say no to these extreme nominees. But to know that, you don't need to listen to me; just look back at the great Founders of our democracy.

The Framers, in those amazing years when our country was founded, took great care in creating our new democracy. They wrote into the Constitution the Senate's role in the nomination process. They wrote and they spoke about protecting the minority against the tyranny of the majority. Their words ring true today.

James Madison, in his famous Federalist No. 10, warned against the superior force of an overbearing majority or, as he called it, a ''dangerous vice.'' He said:

> The friend of popular governments never finds himself so much alarmed for their character and fate as when he contemplates their propensity to this dangerous vice.

Years prior, John Adams wrote, in 1776, on the specific need for an independent judiciary and checks and balances. He said:

> The dignity and stability of government in all its branches, the morals of the people and every blessing of society, depends so much upon an upright and skillful administration of justice, that the judicial power ought to be distinct from both the legislative and executive, and independent upon both, that so it may be a check upon both, as both should be checked upon that. The judges, therefore, should always be men of learning and experience in the laws, of exemplary morals, great patience, calmness, coolness and attention. Their minds should not be distracted with jarring interests; they should not be dependent upon any man or body of men.

Mr. President, I shudder at the thought of what these great thinkers and Founders of our democracy would say to this attempted abuse of power in the Senate. I think one of the best interpretations of those thoughts was offered to this body by Robert Caro, the great Senate historian, in a letter in 2003. He talked about the need for the Senate to maintain its history and traditions, despite popular pressures of the day, and of the important role debate and dissension plays in any discussion of judicial nominees. In particular, he wrote of his concern for the preservation of Senate tradition in the face of attempted changes by a majority run wild.

In part, he said:

> In short, two centuries of history rebut any suggestion that either the language or intent of the Constitution prohibits or counsels against the use of extended debate to resist Presidential authority. To the contrary, the Nation's Founders depended on the Senate's members to stand up to a popular and powerful President. In the case of judicial appointments, the Founders specifically mandated the Senate to play an active role providing both advice and consent to the President. That shared authority was basic to the balance of powers among the branches.
>
> I am . . . attempting to say as strongly as I can that in considering any modification, Senators should realize that they are not dealing with the particular dispute of the moment, but with the fundamental character of the Senate of the United States, and with the deeper issue of the balance of power between majority and minority rights.

Mr. President, protection of minority rights has been a fundamental principle since the infancy of this democracy. It should not—in fact, it cannot—be laid to rest here in this Chamber.

I know many people are out there wondering why we are spending so much time talking about Senate rules and judicial nominations. They are wondering why I am talking about nominees and being on the floor quoting Madison and Adams. They are wondering what this means to them.

Let me make it clear. This debate is about whether we want a clean, healthy environment and the ability to enforce laws to protect it fairly. This debate is about whether we want to protect essential rights and liberties. This debate is about whether we want free and open Government. This debate is about preserving equal protection under the law. This debate is about whether we want to preserve the independent judiciary, whether we want to defend our Constitution, and whether we want to stand up for the values of the American public.

Mr. President, these values are too precious to be abdicated. Trusting in them, we will not let the Republicans trample our rights and those of millions of Americans we are here to represent. We will stand and say, yes, to democracy; yes, to an independent judiciary; yes, to minority rights; and, no, to this unbelievable abuse of power.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. GRAHAM). The Senator from Delaware is recognized.

Mr. BIDEN. Mr. President, I rise today to speak at some length, if time will permit me, about the same subject my friend from Washington State so eloquently addressed. My colleagues know that although when I speak, I sometimes get very passionate, I have not very often, in past years, risen to the floor for any extended period of time. I do that today because so much is at stake.

For over 200 years, the Senate has embodied the brilliance of our Founding Fathers in creating an intricate system of checks and balances among the three branches of Government. This system has served two critical purposes, both allowing the Senate to act as an independent, restraining force on the excesses of the executive branch, and protecting minority rights within the Senate itself. The Framers used this dual system of checks and balances to underscore the independent nature of the Senate and its members.

The Framers sought not to ensure simple majority rule, but to allow minority views—whether they are conservative, liberal, or moderate—to have an enduring role in the Senate in order to check the excesses of the majority. This system is now being tested in the extreme.

I believe the proposed course of action we are hearing about these days is one that has the potential to do more damage to this system than anything that has occurred since I have become a Senator.

History will judge us harshly, in my view, if we eliminate over 200 years of precedent and procedure in this body and, I might add, doing it by breaking a second rule of the Senate, and that is changing the rules of the Senate by a mere majority vote.

When examining the Senate's proper role in our system of Government generally and in the process of judicial nominations specifically, we should begin, in my view, but not end with our Founding Fathers. As any grade school student knows, our Government is one that was infused by the Framers with checks and balances.

I should have said at the outset that I owe special thanks—and I will list them—to a group of constitutional scholars and law professors in some of our great universities and law schools for editing this speech for me and for helping me write this speech because I think it may be one of the most important speeches for historical purposes that I will have given in the 32 years since I have been in the Senate.

When examining the Senate's proper role in our system of Government and in the process of judicial nominations, as I said, we have to look at what our

Founders thought about when they talked about checks and balances.

The theoretical underpinning of this system can be found in Federalist 51 where the architect of our Constitution, James Madison, advanced his famous theory that the Constitution set up a system in which ''ambition must be made to counteract ambition.''

''Ambition must be made to counteract ambition.'' As Madison notes, this is because ''[The] great security against a gradual concentration of the several powers in the same department consists in giving those who administer each department the necessary constitutional means and personal motives to resist encroachments by the other.''

Our Founders made the conscious decision to set up a system of government that was different from the English parliamentary system—the system, by the way, with which they were the most familiar. The Founders reacted viscerally to the aggrandizement of power in any one branch or any person, even in a person or body elected by the majority of the citizens of this country.

Under the system the Founders created, they made sure that no longer would any one person or one body be able to run roughshod over everyone else. They wanted to allow the sovereign people—not the sovereign Government, the sovereign people—to pursue a strategy of divide and conquer and, in the process, to protect the few against the excesses of the many which they would witness in the French Revolution.

The independence of the judiciary was vital to the success of that venture. As Federalist 78 notes:

> The complete independence of the courts of justice is peculiarly essential in a limited Constitution.

Our Founders felt strongly that judges should exercise independent judgment and not be beholden to any one person or one body. John Adams, in 1776, stated:

> The dignity and stability of government in all its branches, the morals of the people, and every blessing of society, depend so much upon an upright and skillful administration of justice, that the judicial power ought to be distinct from both the legislative and executive, and independent upon both, that so it may be a check upon both, as both should be checks upon that.

Adams continues:

> The judges, therefore, should always be men of learning and experience in the laws, of exemplary morals, great patience, calmness and attention; their minds should not be distracted with jarring interests; they should not be dependent upon any one man or any body of men.

In order to ensure that judicial independence, the very independence of which Adams spoke, the Founders did not give the appointment power to any one person or body, although it is instructive for us, as we debate this issue in determining the respective authority of the Senate and the Executive, it is important to note that for much of the Constitutional Convention, the power of judicial appointment was solely—solely—vested in the hands of the legislature. For the numerous votes taken about how to resolve this issue, never did the Founders conclude that it should start with the Executive and be within the power of the Executive. James Madison, for instance, was ''not satisfied with referring the appointment to the Executive;'' instead, he was ''rather inclined to give it to the Senatorial branch'' which he envisioned as a group ''sufficiently stable and independent'' to provide ''deliberative judgments.''

It was widely agreed that the Senate ''would be composed of men nearly equal to the Executive and would, of course, have on the whole more wisdom'' than the Executive. It is very important to point out that they felt ''it would be less easy for candidates''—referring to candidates to the bench—''to intrigue with [the Senators], more than with the Executive.''

In fact, during the drafting of the Constitution, four separate attempts were made to include Presidential involvement in judicial appointments, but because of the widespread fear of Presidential power, they all failed. There continued to be proponents of Presidential involvement, however, and finally, at the eleventh hour, the appointment power was divided and shared, as a consequence of the Connecticut Compromise I will speak to in a minute, between the two institutions, the President and the Senate.

In the end, the Founders set up a system in which the President nominates and the Senate has the power to give or withhold—or withhold—its ''advice and consent.'' The role of ''advice and consent'' was not understood to be purely formal. The Framers clearly contemplated a substantive role on the part of the Senate in checking the President.

This bifurcation of roles makes a lot of sense, for how best can we ensure that an independent judiciary is beholden to no one man or no one group than by requiring two separate and wholly independent entities to sign off before a judge takes the bench?

There is a Latin proverb which translates to ''Who will guard the guardians?'' Our judges guard our rights, and our Founders were smart enough to put both the President and the Senate, acting independently, in charge of guarding our judicial guardians. Who will guard the guardians?

As a Senator, I regard this not as just a right but as a solemn duty and responsibility, one that transcends the partisan disputes of any day or any decade. The importance of multiple checks in determining who our judges would be was not lost on our Founders, even on those who were very much in favor of a strong Executive.

For example, Alexander Hamilton, probably the strongest advocate for a stronger Executive, wrote:

> The possibility of rejection [by the Senate] would be a strong motive to [take] care in proposing [nominations. The President] . . . would be both ashamed and afraid to bring forward . . . candidates who had no other merit, than that . . . of being in some way or other personally allied to him, or of possessing the necessary insignificance and pliancy to render them the obsequious instrument of his pleasure.

Hamilton also rebutted the argument that the Senate's rejection of nominees would give it an improper influence over the President, as some here have suggested, by stating:

> If by influencing the President be meant restraining him, this is precisely what must have been intended. And it has been shown that the restraint would be salutary.

The end result of our Founders was a system in which both the President and the Senate had significant roles, a system in which the Senate was constitutionally required to exercise independent judgment, not simply to rubberstamp the President's desires.

As Senator William Maclay said:

> [W]hoever attends strictly to the Constitution of the United States will readily observe that the part assigned to the Senate was an important one—no less that of being the great check, the regulator and corrector, or, if I may so speak, the balance of this government. . . .The approbation of the Senate was certainly meant to guard against the mistakes of the President in his appointments to office . . . The depriving power should be the same as the appointing power.

The Founders gave us a system in which the Senate was to play a significant and substantive role in judicial nominations. They also provided us guidance on what type of legislative body they envisioned. In this new type of governance system they set up in 1789 where power would be separated and would check other power, the Founders envisioned a special unique role for the Senate that does not exist anywhere else in governance or in any parliamentary system.

There is the oft-repeated discussion between two of our most distinguished Founding Fathers, Thomas Jefferson and George Washington. Reportedly, at a breakfast that Jefferson was having with Washington upon returning from Paris, because he was not here when the Constitution was written, Jefferson was somewhat upset that there was a bicameral legislative body, that a Senate was set up. He asked Washington: Why did you do this, set up a Senate? And Washington looked at Jefferson as they were having tea and said: Why did you pour that tea into your saucer? And Jefferson responded: To cool it.

I might note parenthetically that was the purpose of a saucer originally. It was not to keep the tablecloth clean.

Jefferson responded: To cool it, and Washington then sagely stated: Even so, we pour legislation into the senatorial saucer to cool it.

The Senate was designed to play this independent and, I might emphasize, moderating—a word not heard here very often—moderating and reflective role in our Government. But what aspects of the Senate led it to become this saucer, cooling the passions of the

day for the betterment of America's long-term future? First, the Founders certainly did not envision the Senate as a body of unadulterated majoritarianism. In fact, James Madison and other Founders were amply concerned about the majority's ability, as they put it, "to oppress the minority." It was in this vein the Senate was set up "first to protect the people against their rulers; secondly, to protect the people against the transient impressions into which they themselves might be led. . . .The use of the Senate is to consist in its proceeding with more coolness, with more system, and with more wisdom, than the popular branch."

Structurally, the Founders set up a "different type of legislature" by ensuring that each citizen—now here is an important point, and if anybody in this Chamber understands this, the Presiding Officer does—the Founders set up this different type of legislative body by ensuring that each citizen did not have an equal say in the functioning of the Senate—that sounds outrageous, to ensure they did not have an equal say—but that each State did have an equal say. In fact, for over a century, Senators were not originally chosen by the people, as the Presiding Officer knows, and it was not until 1913 that they were elected by the people as opposed to selected by their State legislative bodies.

Today, Mr. President, you and I do stand directly before the people of our State for election, but the Senate remains to this day a legislative body that does not reflect the simple popular majority because representation is by States.

That means someone from Maine has over 25 times as much effective voting power in this body as the Senator from California. An interesting little fact, and I do not say this to say anything other than how the system works, there are more desks on that side of the aisle. That side has 55. Does that side of the aisle realize this side of the aisle, with 45 desks, represents more Americans than they do? If we add up all the people represented by the Republican Party in the Senate, they add up to fewer people than the Democratic Party represents in the Senate. We represent the majority of the American people, but in this Chamber it is irrelevant and it should be because this was never intended in any sense to be a majoritarian institution.

This distinctive quality of the Senate was part of that Great Compromise without which we would not have a Constitution referred to as the Connecticut Compromise. Edmund Randolph, who served as the first Attorney General of the United States and would later be Secretary of State, represented Virginia at the Constitutional Convention, and in that context he argued for fully proportionate representation in the debates over the proper form of the legislative branch, but ultimately he agreed to the Connecticut Compromise. After reflection, that so seldom happens among our colleagues, myself included, he realized his first position was incorrect and he stated:

> The general object was to provide a cure for the evils under which the United States labored; that in tracing these evils to their origin every man—

Referring to every man who agreed to the compromise—

> had found it in the turbulence and follies of democracy; that some check therefore was to be sought against this tendency of our Governments; and that a good Senate seemed most likely to answer this purpose.

So the Founders quite intentionally designed the Senate with these distinctive features.

Specifically, article 1, section 5 of the Constitution states that each House may determine its own rules for its own proceedings. Precisely: "Each House may determine the Rules of its Proceedings." The text contains no limitations or conditions. This clause plainly vests the Senate with plenary power to devise its internal rules as it sees fit, and the filibuster was just one of those procedural rules of the many rules that vest a minority within the Senate with the potential to have a final say over the Senate's business.

It was clear from the start that the Senate would be a different type of legislative body; it would be a consensus body that respects the rights of minorities, even the extreme minority power of a single Senator because that single Senator can represent a single and whole State. The way it is played out in practice was through the right of unlimited debate.

I find it fascinating, we are talking about the limitation of a right that has already limited the original right of the Founding Fathers. The fact was there was no way to cut off debate for the first decades of this Republic.

Joseph Story, famous justice and probably one of the best known arbiters of the Constitution in American history, his remark about the importance of the right of debate was "the next great and vital privilege is the freedom of speech and debate, without which all other privileges would be comparatively unimportant, or ineffectual." And that goes to the very heart of what made the Senate different.

In the Senate, each individual Senator was more than a number to be counted on the way to a majority vote, something I think some of us have forgotten. Daniel Webster put it this way:

> This is a Senate of equals, of men of individual honor and personal character, and of absolute independence. We know no masters, we acknowledge no dictators. This is a hall for mutual consultation and discussion; not an arena for the exhibition of champions.

Extended debate, the filibuster, was a means to reach a more modest and moderate result to achieve compromise and common ground to allow Senators, as Webster had put it, to be men—and now men and women—of absolute independence.

Until 1917, there was no method to cut off debate in the Senate, to bring any measure to a vote, legislative or nomination—none, except unanimous consent. Unanimous consent was required up until 1917 to get a vote on a judge, on a bill, on anything on the Executive Calendar. The Senate was a place where minority rights flourished completely, totally unchecked, a place for unlimited rights of debate for each and every Senator.

In part this can be understood as a recognition of our federal system of government in which we were not just a community of individuals but we were also a community of sovereign States. Through the Senate, each State, through their two Senators, had a right to extensive debate and full consideration of its views.

For much of the Senate's history, until less than 100 years ago, to close off debate required not just two-thirds of the votes, but it required all of the votes. The Senate's history is replete with examples of situations in which a committed minority flexed its "right to debate" muscles. In fact, there was a filibuster over the location of the Capitol of the United States in the First Congress. But what about how this tradition of allowing unlimited debate and respect for minority rights played out in the nomination context, as opposed to the legislative process?

First, the text of the Constitution makes no distinction whatsoever between nominations and legislation. Nonetheless, those who are pushing the nuclear option seem to suggest that while respect for minority rights has a long and respected tradition on the legislative side of our business, things were somehow completely different when it came to considering nominations. In fact, it is the exact opposite.

The history of the Senate shows, and I will point to it now, that previous Senates certainly did not view that to be the case. While it is my personal belief that the Senate should be more judicious in the use of the filibuster, that is not how it has always been. For example, a number of President Monroe's nominations never reached the floor by the end of his administration and were defeated by delay, in spite of his popularity and his party's control of the Senate.

Furthermore, President Adams had a number of judicial nominations blocked from getting to the floor. More than 1,300 appointments by President Taft were filibustered. President Wilson also suffered from the filibusters of his nominees.

Not only does past practice show no distinction between legislation and judicial nominations in regards to the recognition of minority rights, the formal rules of the Senate have never recognized such a distinction, except for a 30-year stretch in the Senate history, 1917 to 1949, when legislation was made subject to cloture but nominations were not. Do my colleagues hear this? All of those who think a judge is more entitled to a vote than legislation, in 1917 it was decided that absolute unlimited debate should be curtailed, and

there needs to be a two-thirds vote to cut off debate in order to bring legislation to the floor.

But there was no change with regard to judicial nominees. There was a requirement of unanimous consent to get a nominee voted on. So much for the argument that the Constitution leans toward demanding a vote on nominations more than on legislation. It flies in the face of the facts, the history of America and the intent of our Framers. This fact in itself certainly undercuts the claim that there has been, by tradition, the insulating of judicial nominees from filibusters.

In both its rules and its practices, the Senate has long recognized the exercise of minority rights with respect to nominations. And it should come as no surprise that in periods where the electorate is split very evenly, as it is now, the filibustering of nominations was used extensively. For example, my good friend Senator HATCH who is on the Senate floor—as my mother would say, God love him, because she likes him so much, and I like him, too—he may remember when I was chairman of the Judiciary Committee back in the bad old days when the Democrats controlled the Senate during President Clinton's first 2 years in office, a time when the Democrats controlled both the Presidency and the Senate but nonetheless the country remained very divided, numerous filibusters resulted, even in cases not involving the judiciary.

I remind my friends, for example, that the nomination of Dr. Henry Foster for Surgeon General, Sam Brown to be ambassador to the Conference on Cooperation and Security in Europe, Janet Napolitano to be U.S. attorney in the District of Arizona, and Ricki Tigert for the Federal Deposit Insurance Corporation head, were all filibustered. We controlled the Senate, the House, the Presidency, but the Nation was nonetheless divided.

Some may counter that there should be a difference between how judicial nominees should be treated versus the treatment accorded executive branch nominees, the Cabinet, and the rest. Constitutional text, historical practice and principle all run contrary to that proposition.

On the textual point, we only have one appointments clause. It is also instructive to look at a few historical examples. In 1881, Republican President Rutherford B. Hayes nominated Stanley Matthews to the Supreme Court. A filibuster was mounted, but the Republican majority in the Senate was unable to break the filibuster, and Stanley Matthews' Supreme Court nomination failed without getting a vote.

In 1968, the filibuster to block both Justice Abe Fortas from becoming Chief Justice and Fifth Circuit Court Judge Homer Thornberry to occupy the seat that Justice Fortas was vacating was one where the Democrats controlled the Senate, and the Republicans filibustered. The leader of that successful filibuster effort against Justice Fortas was Republican Senator Robert Griffin from Michigan. In commenting on the Senate's rejection of President George Washington's nomination of John Rutledge to be Chief Justice of the Supreme Court, the Republican Senator who mounted a successful filibuster against Fortas on the floor—translated, Fortas never got a vote, even though he was a sitting Supreme Court Justice about to be elevated to Chief Justice—what did the Senator from Michigan who led that fight say about the first fight in the Senate?

> That action in 1795 said to the President then in office and to future Presidents: ''Don't expect the Senate to be a rubberstamp. We have an independent coequal responsibility in the appointing process; and we intend to exercise that responsibility, as those who drafted the Constitution so clearly intended.''

There is also a very important difference between judicial and executive nominees that argued for greater Senate scrutiny of judicial nominees. It should be noted that legislation is not forever. Judicial appointments are for the life of the candidate.

Of course, no President has unlimited authority, even related to his own Cabinet. But when you look at judges, they serve for life.

An interesting fact that differentiates us from the 1800s, when these filibusters took place, and 1968, when they took place: The average time a Federal judge spends on the bench, if appointed in the last 10 years from today, has increased from 15 years to 24 years. That means that on average, every judge we vote for will be on that bench for a quarter century. Since the impeachment clause is fortunately not often used, the only opportunity the Senate has to have its say is in this process.

The nuclear option was so named because it would cause widespread bedlam and dysfunction throughout the Senate, as the minority party, my party, has pledged to render its vigorous protest. But I do not want to dwell on those immediate consequences which, I agree with my Senate Judiciary Committee chairman, would be dramatic. He said:

> If we come to the nuclear option the Senate will be in turmoil and the Judiciary Committee will be in hell.

However serious the immediate consequences may be, and however much such dysfunction would make both parties look juvenile and incompetent, the more important consequence is the long-term deterioration of the Senate. Put simply, the nuclear option threatens the fundamental bulwark of the constitutional design. Specifically, the nuclear option is a double-barreled assault on this institution. First, requiring only a bare majority of Senators to confirm a judicial nominee is completely contrary to the history and intent of the Senate. The nuclear option also upsets a tradition and history that says we are not going to change the rules of the Senate by a majority vote. It breaks the rule to change the rule. If we go down this path of the nuclear option, we will be left with a much different system from what our Founders intended and from how the Senate has functioned throughout its history.

The Senate has always been a place where the structure and rules permit fast-moving partisan agendas to be slowed down; where hotheads could cool and where consensus was given a second chance, if not a third and a fourth.

While 90 percent of the business is conducted by unanimous consent in this body, those items that do involve a difference of opinion, including judicial nominations, must at least gain the consent of 60 percent of its Members in order to have that item become law. This is not a procedural quirk. It is not an accident of history. It is what differentiates the Senate from the House of Representatives and the English Parliament.

President Lyndon Johnson, the ''Master of the Senate,'' put it this way:

> In this country, a majority may govern but it does not rule. The genius of our constitutional and representative government is the multitude of safeguards provided to protect minority interests.

And it is not just leaders from the Democratic Party who understand the importance of protecting minority rights. Former Senate Majority Leader Howard Baker wrote in 1993 that compromising the filibuster:

> would topple one of the pillars of American Democracy: the protection of minority rights from majority rule. The Senate is the only body in the federal government where these minority rights are fully and specifically protected.

Put simply, the ''nuclear option'' would eviscerate the Senate and turn it into the House of Representatives. It is not only a bad idea, it upsets the Constitutional design and it disserves the country. No longer would the Senate be that ''different kind of legislative body'' that the Founders intended. No longer would the Senate be the ''saucer'' to cool the passions of the immediate majority.

Without the filibuster, more than 40 Senators would lack the means by which to encourage compromise in the process of appointing judges. Without the filibuster, the majority would transform this body into nothing more than a rubber stamp for every judicial nomination.

The Senate needs the threat of filibuster to force a President to appoint judges who will occupy the sensible center rather than those who cater to the whim of a temporary majority. And here is why—it is a yes or no vote; you can't amend a nomination.

With legislation, you can tinker around the edges and modify a bill to make it more palatable. You can't do that with a judge. You either vote for all of him or her, or none. So only by the threat of filibuster can we obtain compromise when it comes to judges.

We, as Senators, collectively need to remember that it is our institutional duty to check any Presidential attempt to take over the Judiciary. As the Congressional Research Service, the independent and non-partisan research arm of Congress, stated, the ''nuclear option'' would:

> . . . strengthen the executive branch's hand in the selection of federal judges.

This shouldn't be a partisan issue, but an institutional one. Will the Senate aid and abet in the erosion of its Article I power by conceding to another branch greater influence over our courts? As Senator Stennis once said to me in the face of an audacious claim by President Nixon:

> Are we the President's men or the Senate's?

He resolved that in a caucus by speaking to us as only John Stennis could, saying:

> I am a Senate man, not the President's man.

Too many people here forget that.

Earlier, I explained that for much of the Senate's history, a single Senator could stop legislation or a nomination dead in its tracks. More recent changes to the Senate Rules now require only 3⁄5 of the Senate, rather than all of its Members, to end debate. Proponents of the ''nuclear option'' argue that their proposal is simply the latest iteration of a growing trend towards majoritarianism in the Senate. God save us from that fate, if it is true.

I strongly disagree. Even a cursory review of these previous changes to the Senate Rules on unlimited debate show that these previous mechanisms to invoke cloture always respected minority rights.

The ''nuclear option'' completely eviscerates minority rights. It is not simply a change in degree but a change in kind. It is a discontinuous action that is a sea change, fundamentally restructuring what the Senate is all about.

It would change the Senate from a body that protects minority rights to one that is purely majoritarian. Thus, rather than simply being the next logical step in accommodating the Senate Rules to the demands of legislative and policy modernity, the ''nuclear option'' is a leap off the institutional precipice.

And so here we collectively stand—on the edge of the most important procedural change during my 32-year Senate career, and one of the most important ever considered in the Senate; a change that would effectively destroy the Senate's independence in providing advice and consent.

I ask unanimous consent to be able to continue for another 15 minutes.

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

Mr. BIDEN. The ''nuclear option'' would gut the very essence and core of what the Senate is about as an institution—flying directly in the face of our Founders who deliberately rejected a parliamentary system. A current debate, over a particular set of issues, should not be permitted to destroy what history has bestowed on us.

And the stakes are much, much higher than the contemporary controversy over the judiciary. Robert Caro, the noted author on Senate history, wrote the following in a letter to the Chairman and Ranking Member of the Senate Committee on Rules and Administration:

> [I]n considering any modification [to the right of extended debate in the Senate Senators should realize they are dealing not with the particular dispute of the moment, but with the fundamental character of the Senate of the United States, and with the deeper issue of the balance between majority and minority rights . . ., you need only look at what happened when the Senate gradually surrendered more and more of its power over international affairs to learn the lesson that once you surrender power, you never get it back.

The fight over the nuclear option is not just about the procedure for confirming judges. It is also, fundamentally, about the integrity of the Senate. Put simply, the ''nuclear option'' changes the rules midstream. Once the Senate starts changing the rules outside of its own rules, which is what the nuclear option does, there is nothing to stop a temporary majority from doing so whenever a particular rule would pose an obstacle.

It is a little akin to us agreeing to work together on a field. I don't have to sit down and agree with you that we are going to divide up this field, but I say, OK, I will share my rights in this field with you. But here is the deal we agree to at the start. Any change in the agreements we make about how to run this field have to be by a supermajority. OK? Because that way I am giving up rights—which all the Founders did in this body, this Constitution—rights of my people, for a whole government. But if you are going to change those rules with a pure majority vote, then I would have never gotten into the deal in the first place.

I suffer from teaching constitutional law for the last 13 years, an advanced class on constitutional law at Widener University, a seminar on Saturday morning, and I teach this clause. I point out the essence of our limited constitutional government, which is so different than every other, is that it is based on the consent of the governed. The governed would never have given consent in 1789 if they knew the outfit they were giving the consent to would be able, by a simple majority, to alter their say in their governance.

The Senate is a continuing body, meaning the rules of the Senate continue from one session to the next. Specifically, rule V provides:

> The rules of the Senate shall continue from one Congress to the next Congress unless they are changed as provided in these rules.

I say to my colleague from North Carolina, on the floor, I say to my colleague from South Carolina, I say to my colleague from Utah: If you vote for this ''nuclear option'' you are about to break faith with the American people and the sacred commitment that was made on how to change the rules.

Senate rule XXII allows only a rule change with two-thirds votes. The ''continuing body'' system is unlike many other legislative bodies and is part of what makes the Senate different and allows it to avoid being captured by the temporary passions of the moment. It makes it different from the House of Representatives, which comes up with new rules each and every Congress from scratch.

The ''nuclear option'' doesn't propose to change the judicial filibuster rule by securing a two-thirds vote, as required under the existing rules. It would change the rule with only a bare majority. In fact, as pointed out recently by a group of legal scholars:

> On at least 3 separate occasions, the Senate has expressly rejected the argument that a simple majority has the authority claimed by the proponents of the [nuclear option].

One historical incident is particularly enlightening. In 1925, the Senate overwhelmingly refused to agree to then-Vice President Dawes' suggestion that the Senate adopt a proposal for amending its rules identical to the nuclear option.

On this occasion, an informal poll was taken of the Senate. It indicated over 80 percent of the Senators were opposed to such a radical step.

Let me be very clear. Never before have Senate rules been changed except by following the procedures laid out in the Senate rules. Never once in the history of the Senate.

The Congressional Research Service directly points out that there is no previous precedent for changing the Senate rules in this way.

The ''nuclear option'' uses an ultravires mechanism that has never before been used in the Senate—''Employment of the [nuclear option] would require the chair to overturn previous precedent.

The Senate Parliamentarian, the nonpartisan expert on the Senate's procedural rules—who is hired by the majority—has reportedly said that Republicans will have to overrule him to employ the ''nuclear option''.

Adopting the ''nuclear option'' would send a terrible message about the malleability of Senate rules. No longer would they be the framework that each party works within.

I've been in the Senate for a long time, and there are plenty of times I would have loved to change this rule or that rule to pass a bill or to confirm a nominee I felt strongly about.

But I didn't, and it was understood that the option of doing so just wasn't on the table.

You fought political battles; you fought hard; but you fought them within the strictures and requirements of the Senate rules. Despite the short-term pain, that understanding has served both parties well, and provided long-term gain.

Adopting the ''nuclear option'' would change this fundamental understanding and unbroken practice of

what the Senate is all about. Senators would start thinking about changing other rules when they became ''inconvienent.'' Instead of two-thirds of the vote to change a rule, you'd now have precedent that it only takes a bare majority. Altering Senate rules to help in one political fight or another could become standard operating procedure, which, in my view, would be disastrous.

The Congressional Research Service has stated that adopting the ''nuclear option'' would set a precedent that could apply to virtually all Senate business. It would ultimately threaten both parties, not just one. The Service report states:

> The presence of such a precedent might, in principle, enable a voting majority of the Senate to alter any procedure at-will by raising a point of order . . . by such means, a voting majority might subsequently impose limitations on the consideration of any item of business, prohibiting debate or amendment to any desired degree. Such a majority might even alter applicable procedures from one item of business to the next, from one form of proceeding to a contrary one, depending on immediate objects.

Just as the struggle over the ''nuclear option'' is about constitutional law and Senate history, it is also about something much more simple and fundamental—playing by the rules.

I reiterate that I think Senator FRIST and his allies think they are acting on the basis of principle and commitment, but I regret to say they are also threatening to unilaterally change the rules in the middle of the game. Imagine a baseball team with a five-run lead after eight innings unilaterally declaring that the ninth inning will consist of one out per team.

Would the fans—for either side—stand for that? If there is one thing this country stands for it's fair play—not tilting the playing field in favor of one side or the other, not changing the rules unilaterally. We play by the rules, and we win or lose by the rules.

That quintessentially American trait is abandoned in the ''nuclear option.'' Republican Senators as well as Democratic ones have benefited from minority protections. Much more importantly, American citizens have benefited from the Senate's check on the excesses of the majority.

But this is not just about games, and playing them the right way. This is about a more ethereal concept—justice. In his groundbreaking philosophical treatise, A Theory of Justice, the philosopher John Rawls points to the importance of what he calls procedural justice.

Relying on this predecessors such as Immanuel Kant, Thomas Hobbes, Jean Jacques Rousseau, and John Locke, Rawls argues that, in activities as diverse as cutting a birthday cake and conducting a criminal trial, it is the procedure that makes the outcome just. An outcome is just if it has been arrived at through a fair procedure.

This principle undergirds our legal system, including criminal and civil trials. Moreover it is at the very core of our Constitution. The term ''due process of law'' appears not once but twice in our Constitution, because our predecessors recognized the vital importance of setting proper procedures—proper rules—and abiding by them.

It is also the bedrock principle we Senators rely on in accepting outcomes with which we may disagree. We know the debate was conducted fairly—the game was played by the rules. A decision to change the Senate's rules in violation of those very same rules abandons the procedural justice that legitimates everything we do.

It is interesting to ask ourselves what's different about now, why are we at this precipice where the ''nuclear option'' is actually being seriously debated and very well might be utilized? Why have we reached this point when such a seemingly radical rule change is being seriously considered by a majority of Senators? It's a good question, and I don't have an easy answer.

We have avoided such fights in the past largely because cooler heads have prevailed and accommodation was the watchword.

As Senator Sam Ervin used to say—the separation of powers should not, as President Woodrow Wilson warned, become an invitation for warfare between the two branches.

Throughout this country's history—whether during times of war or political division, for example—Presidents have sometimes extended an olive branch across the aisle. Past Presidents have in these circumstances made bipartisan appointments, selecting nominees who were consensus candidates and often members of the other party.

President Clinton had two Supreme Court nominees, and the left was pushing us as hard as the right is pushing you. What did he do? I spent several hours with him consulting on it. He picked two people on his watch who got 90 or so votes. Moderate, mainstream appointments. He did not appoint Scalias. He did not appoint Thomases. He appointed people acceptable to the Republicans because he was wise enough to know, even though he was President, we were still a divided Nation.

History provides ample examples. During the midst of the Civil War, President Lincoln selected members of the opposition Democratic party for key positions, naming Stephen Field to the Supreme Court in 1863 and Andrew Johnson as his Vice Presidential candidate in 1864.

On the brink of American entrance into WWII, President Roosevelt likewise selected members of the opposition Republican party, elevating Harlan Fiske Stone to be Chief Justice and naming Henry Stimson as Secretary of War.

Other 20th Century Presidents followed suit. In 1945, President Truman named Republican Senator Harold Burton to the Supreme Court. In 1956, President Eisenhower named Democrat William Brennan to the Supreme Court. What has happened to us? What have we become?

Does anyone not understand this Nation is divided red and blue and what it needs is a purple heart and not a red heart or a blue heart.

Lest any of my colleagues think these examples are merely culled from the dusty pages of history, let me remind them that the Senate has witnessed recent examples of consensus appointments during times of close political division. As I already mentioned, President Clinton followed this historic practice during vacancies to the Supreme Court a decade ago.

As explained by my friend, the Senior Senator from Utah, who was then the ranking member of the Senate Judiciary Committee, President Clinton consulted with him and the Republican Caucus during the High Court vacancies in 1993 and 1994. The result was President Clinton's selection of two outstanding and consensus nominees—Ruth Bader Ginsburg and Stephen Breyer—both of whom were confirmed overwhelmingly by the Senate, by votes of 97–3 and 87–9, respectively.

Indeed, the last two vacancies to the Supreme Court are text book examples of the executive branch working in cooperative and collegial fashion with its Senate counterpart to secure consensus appointments, thus averting an ideological showdown. The two constitutional partners given roles in the nomination process engaged in a consultative process that respected the rights and obligations of both branches as an institutional matter, while also producing outstanding nominees who were highly respected by both parties.

To be sure, a careful review of our Nation's history does not always provide the examples of consultation, comity, or consensus in the nomination process. Presidents of both parties have at times attempted to appoint nominees—or remove them once confirmed—over the objections of the Senate, including in some instances where the Senate was composed of a majority of the President's own party. And sometimes the Senate has had to stand strong and toe the line against imperialist Presidential leanings.

Our first President, George Washington, saw one of his nominees to the Supreme Court rejected by this Senate in 1795. The Senate voted 14 to 10 to reject the nomination of John Rutledge of South Carolina to be Chief Justice. What is historically instructive, I believe, is that while the Senate was dominated by the Federalists, President Washington's party, 13 of the 14 Senators who rejected the Rutledge nomination were Federalists.

The Senate also stood firm in the 1805 impeachment of Supreme Court Justice Samuel Chase. President Jefferson's party had majorities in both the House and the Senate, and Jefferson set his sights on the Supreme

Court. Specifically, he wanted to remove Justice Chase, a committed Federalist and frequent Jefferson critic, from the Court.

Jefferson was able to convince the House to impeach Justice Chase on a party-line vote, and the President had enough members of his party in the Senate to convict him. But members of the President's own party stood up to their President; the Senate as an institution stood up against executive overreaching. Justice Chase was not convicted, and the independence of the judiciary was preserved.

The Senate again stood firm in the 1937 court-packing plan by President Franklin Roosevelt.

This particular example of Senate resolve is instructive for today's debates, so let me describe it in some detail. It was the summer of 1937 and President Roosevelt had just come off a landslide victory over Alf Landon, and he had a Congress made up of solid New Dealers. But the ''nine old men'' of the Supreme Court were thwarting his economic agenda, overturning law after law overwhelmingly passed by the Congress and from statehouses across the country.

In this environment, President Roosevelt unveiled his court-packing plan—he wanted to increase the number of Justices on the court to 15, allowing himself to nominate these additional judges. In an act of great courage, Roosevelt's own party stood up against this institutional power grab. They did not agree with the judicial activism of the Supreme Court, but they believed that Roosevelt was wrong to seek to defy established traditions as a way of stopping that activism.

In May 1937, the Senate Judiciary Committee—a committee controlled by the Democrats and supportive of his political ends—issued a stinging rebuke. They put out a report condemning Roosevelt's plan, arguing it was an effort ''to punish the justices'' and that executive branch attempts to dominate the judiciary lead inevitably to autocratic dominance, ''the very thing against which the American Colonies revolted, and to prevent which the Constitution was in every particular framed.''

Our predecessors in the Senate showed courage that day and stood up to their President as a coequal institution. And they did so not to thwart the agenda of the President, which in fact many agreed with; they did it to preserve our system's checks and balances; they did it to ensure the integrity of the system. When the Founders created a ''different kind of legislative body'' in the Senate, they envisioned a bulwark against unilateral power—it worked back then and I hope that it works now.

The noted historian Arthur Schlesinger, Jr., has argued that in a parliamentary system President Roosevelt's effort to pack the court would have succeeded. Schlesinger writes: ''The court bill couldn't have failed if we had had a parliamentary system in 1937.'' A parliamentary legislature would have gone ahead with their President, that's what they do, but the Founders envisioned a different kind of legislature, an independent institution that would think for itself. In the end, Roosevelt's plan failed because Democrats in Congress thought court-packing was dangerous, even if they would have supported the newly-constituted court's rulings. The institution acted as an institution.

In summary, then, what do the Senate's action of 1795, 1805, and 1937 share in common? I believe they are examples of this body acting at its finest, demonstrating its constitutional role as an independent check on the President, even popularly elected Presidents of the same political party.

One final note from our Senate history. Even when the Senate's rules have been changed in the past to limit extended debate, it has been done with great care, remarkable hesitancy, and by virtual consensus. Take what occurred during the Senate's two most important previous changes to the filibuster rule: the 1917 creation of cloture and the 1975 lowering of the cloture threshold.

First, let's examine 1917. On the eve of the United States' entry into WWI, with American personnel and vessels in great danger on the high seas, President Wilson asked that Congress authorize the arming of American merchant vessels. Over three-fourths of the Senate agreed with this proposal on the merits, but a tiny minority opposed it. With American lives and property at grave risk, the Senate still took over 2 months to come to the point of determining to change its rules to permit cloture.

When they did so, they did it by virtual consensus, and in a supremely bipartisan manner. A conference committee composed equally of Democrats and Republicans, each named to the committee by their party leadership, drafted and proposed the new rule. It was then adopted by an overwhelming vote of 76–3.

In 1975, I was part of a bipartisan effort to lower the threshold for cloture from two-thirds to three-fifths. Many of us were reacting against the filibustering for so many years of vital civil rights legislation. Civil rights is an issue I feel passionately about and was a strong impetus for me seeking public office in the first place. Don't get me wrong—I was not calling the shots back in 1975; I was a junior Senator having been in the chamber for only 2 years.

But I will make no bones about it—for about two weeks in 1975—I was part of a slim bipartisan majority that supported jettisoning established Senate rules and ending debate on a rules change by a simple majority.

The rule change on the table in 1975 was not to eliminate the filibuster in its entirety, which is what the current ''nuclear option'' would do for judicial nominations; rather it was to change from the then-existing two-thirds cloture requirement to three-fifths. It was a change in degree, not a fundamental restructuring of the Senate to completely do away with minority rights.

The rule change was also attempted at the beginning of the Senate session and applied across the board, as opposed to the change currently on the table, brought up mid-session concerning only a very small subset of the Senate's business. Nonetheless, my decision to support cutting off debate on a rules change by a simple majority vote was misguided.

I carefully listened to the debate in 1975 and learned much from my senior colleagues. In particular, I remember Senator Mansfield being a principled voice against the effort to break the rules to amend the rules.

Senator Mansfield stood on this floor and said the following:

> [T]he fact that I can and do support [changing the cloture threshold from ⅔ to ⅗] does not mean that I condone or support the route taken or the methods being used to reach the objective of Senate rule 22. The present motion to invoke cloture by a simple majority, if it succeeds would alter the concept of the Senate so drastically that I cannot under any circumstances find any justification for it. The proponents of this motion would disregard the rules which have governed the Senate over the years, over the decades, simply by stating that the rules do not exist. They insist that their position is right and any means used are, therefore, proper. I cannot agree.

Senator Mansfield's eloquent defense of the Senate's institutional character and respect for its rules rings as true today as it did 30 years ago. Senator Mansfield's courage and conviction in that emotionally charged time is further evidence, I believe, of why he is one of the giants of the Senate.

In the end, cooler heads prevailed and the Senate came together in a way only the Senate can. I changed my mind; I along with my Senate colleagues. We reversed ourselves and changed the cloture rule but only by following the rules. Ultimately, over ¾ of the voting Senators—a bipartisan group—voted to end debate. In fact, the deal that was struck called for reducing the required cloture threshold from ⅔ to ⅗; but it retained the higher ⅔ threshold for any future rules changes.

Now I understand that passions today are running high on both sides of the ''nuclear option'' issue, and I can relate to my current Republican colleagues. I agree with my distinguished Judiciary Committee Chairman that neither side has clean hands in the escalating judicial wars.

I also understand the frustration of my Republican colleagues—especially those who are relatively new to this Chamber—that a minority of Senators can have such power in this body.

For me, the lesson from my 1975 experience, which I believe strongly applies to the dispute today, is that the Senate ought not act rashly by changing its rules to satisfy a strong-willed majority acting in the heat of the moment.

Today, as in 1975, the solution to what some have called a potential constitutional crisis lies in the deliberate and thoughtful effort by a bipartisan majority of Senators to heed the wisdom of those who established the carefully crafted system of checks and balances protecting the rights of the minority. It's one thing to change Senate rules at the margins and in degrees, it's quite another to overturn them.

Federalist No. 1 emphasizes that Americans have a unique opportunity—to choose a form of government by ''reflection and choice'':

It has been frequently remarked that it seems to have been reserved to the people of this country . . . to decide the important question, whether societies of men are really capable or not of establishing good government from reflection and choice, or whether they are forever destined to depend for their political constitutions on accident and force.

We need to understand that this is a question posed at the time of the founding and also a question posed to us today. At the time of the founding, it was a question about whether America would be able to choose well in determining our form of government.

We know from the experience of the last 225 years that the founding generation chose well. As a question posed to citizens and to Senators of today, it is a question about whether we will be able to preserve the form of government they chose.

The Framers created the Senate as a unique legislative body designed to protect against the excesses of any temporary majority, including with respect to judicial nominations; and they left all of us the responsibility of guaranteeing an independent Federal judiciary, one price of which is that it sometimes reaches results Senators do not like.

It is up to us to preserve these precious guarantees. Our history, our American sense of fair play, and our Constitution demand it.

I would ask my colleagues who are considering supporting the ''nuclear option''—those who propose to ''jump off the precipice''—whether they believe that history will judge them favorably.

In so many instances throughout this esteemed body's past, our forefathers came together and stepped back from the cliff. In each case, the actions of those statesmen preserved and strengthened the Senate, to the betterment of the health of our constitutional republic and to all of our advantage.

Our careers in the Senate will one day end—as we are only the Senate's temporary officeholders—but the Senate itself will go on.

Will historians studying the actions taken in the spring of 2005 look upon the current Members of this Senate as statesmen who placed the institution of the United States Senate above party and politics?

Or will historians see us as politicians bending to the will of the Executive and to political exigency?

I, for one, am comfortable with the role I will play in this upcoming historic moment.

I hope all my colleagues feel the same.

Mr. President, on behalf of Senator BYRD, I ask unanimous consent to have printed in the RECORD a speech against the nuclear option delivered earlier this week by Senator BYRD to the Center for American Progress.

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

UPHOLDING THE TRADITION OF FREEDOM OF SPEECH—APRIL 25, 2005

''That 150 lawyers should do business together (in the U.S. Congress) ought not to be expected.'' Those are the words of Thomas Jefferson.

Now comes the so-called Nuclear Option, or Constitutional Option to prove him right. You know, I liked Jefferson, but I always thought he borrowed some of my best stuff for that declaration he wrote. This poisoned pill, euphemistically designated ''the nuclear option'', has been around a long time—since 1917, in fact, the year the cloture rule was adopted by the U.S. Senate. It required no genius of Brobdingnagian proportions to conjure up this witch's brew. All that it takes is (1) to have the chair wired; (2) to have a majority of 51 votes to back the chair's ruling; and (3) a determined ruthlessness to execute the power grab.

Over the 88 years since 1917, however, no White House and no party in control of the Senate has ever resorted to the use of this draconian weapon in order to achieve its goal. Until now. Why now? It is because a determined minority in the Senate has refused to confirm only 10 of over 200 nominees to federal judgeships submitted by President George Bush during this first term as President. Since his reelection, President Bush has resubmitted 7 of the 10 nominees who failed to be confirmed in his first term. Hence, a heavy-handed move is about to be made to change the rules by disregarding the standing rules of the Senate that have governed freedom of speech and debate in the Senate for over 200 years. The filibuster must go, they say.

Obstructive tactics in a legislative forum, although not always known as filibusters, are of ancient origin. Plutarch reported that, while Caesar was on sojourn in Spain, the election of Consuls was approaching. ''He applied to the Senate for permission to stand candidate,'' but Cato strongly opposed his request and ''attempted to prevent his success by gaining time; with which view he spun at the debate till it was too late to conclude upon anything that day.'' Hey, the filibuster has only been around 2,064 years, since circa 59 B.C.!

Filibusters were also a problem in the British Parliament. In 19th century England, even the members of the Cabinet accepted the tactics of obstruction as an appropriate weapon to defeat House of Commons' initiatives that were not acceptable to the government. In this country, experience with protracted debate began early. In the first session of the First Congress, for example, there was a lengthy discussion regarding the permanent site for the location of the Capitol. Fisher Ames, a member of the House from Massachusetts, complained that ''the minority . . . makes every exertion to . . . delay the business.''

Senator William Maclay of Pennsylvania complained that ''every endeavor was used to waste time, . . . '' Long speeches and other obstructionist tactics were more characteristic of the House than of the Senate in the early years.

There have been successful filibusters that have benefited the country. For example, in March 1911, Senator Owen of Oklahoma filibustered a measure granting statehood to New Mexico, arguing that Arizona should also be a state. President Taft opposed the inclusion of Arizona's statehood because a provision of Arizona's state constitution permitted the recall of judges. Arizona later attained statehood, at least in part because Senators took time to make the case the year before. Another example occurred in July 1937, when a Senate filibuster blocked FDR's Supreme Court-packing plan until public opinion turned against the plan.

Freedom of speech and debate is enshrined in Article I, Section 6, of the U.S. Constitution. The roots run deep. Before the British Parliament would proclaim William III and Mary as king and queen of England, they were required to swear allegiance to the British Declaration of Rights, which they did on February 13, 1689. They were then declared joint sovereigns by the House of Commons. The declaration was converted into the English Bill of Rights by statute on December 16, 1689, the 9th Article of which guarantees freedom of speech and debate in Parliament in words similar to those in our own Constitution, Article I, Section 6.

So now, for the first time in the 217 years since 1789, the tradition of freedom of speech and debate in the Senate is under a serious threat of extinction by the majority party through resort to the nuclear option.

Marty Gold, deservedly respected for his knowledge of the Senate rules and precedents, and opponents of free speech and debate claim that, during my tenure as Majority Leader in the United States Senate, I established precedents that now justify a proposal for a misguided attempt to end debate on a judicial nomination by a simple majority vote, rather than by a 3/5s vote of all Senators duly chosen and sworn as required by Paragraph 2 of Senate Rule XXII. Their claims are false. Utterly false!

Proponents of the so-called ''nuclear option'' cite several instances in which they inaccurately allege that I ''blazed a procedural path'' toward an inappropriate change in Senate rules. They are dead wrong. Dead wrong! They draw analogies where none exist and create cockeyed comparisons that fail to withstand even the slightest intellectual scrutiny. My detailed response to these false claims and allegations appears in the March 20, 2005, edition of the Congressional Record. But, simply put, no action of mine ever denied a minority of the Senate a right to full debate on the final disposition of a measure or matter pending before the Senate. Not in 1977, not in 1979, not in 1980, not in 1987—the dates cited by critics as grounds for the nuclear option. In none of the instances cited by those who threaten to invoke the nuclear option did my participation in any action deny the minority in the Senate, regardless of party, its right to debate the real matter at hand.

Now why can't reasonable Senators on both sides of the aisle act in the best interests of the Senate, the Constitution, and the country by working together to find a way to avoid this procedural Armageddon? President Gerald Ford always said that he believed in friendly compromise and called compromise ''the oil that makes governments go.''

When I was a mere lad in southern West Virginia, I once accidentally threw a wooden airplane I had crafted through the glass of a window in a neighbor's house. The neighbor's name was Mr. Arch Smith. He was angry, and I was scared. Into the house I went to plead with Mr. Smith not to tell my Dad. I

knew that a belt thrashing awaited me if he did. I promised to pay Mr. Smith .35 cents for the windowpane if he would stay mum about the accident. I would raise the .35 cents by running errands for a friendly lady next door. We struck a deal. We compromised. And my dad never learned of the incident until after I had paid my debt. That compromise saved me a licking, and paid for Mr. Smith's broken window. The sweet art of compromise solved our dispute.

Of course, the Senate itself is the result of a compromise which solved a dispute. The Senate answered the plea of the smaller states for equality and a forum where they could have equal representation and minority views could be heard. Because of that famous action, the Great Compromise of July 16, 1787, the Senate and the House balance each other, reflecting majority rule and minority rights like halves of the same apple in our Republic, and achieving a delicate balance—a finely tuned, exquisitely honed accommodation of tensions which has endured for over 200 years. To paraphrase the words of James Madison, the Republic has been structured to, "guard against the cabals of a few . . .," as well as against the "confusion of a multitude . . ."

The Constitution, under Article II, Section 2, requires a President to submit his selection of Federal judges, members of his own cabinet, and certain other high-ranking officials to the Senate for its "advice and consent." The Framers allowed the Executive only to propose. It was left to the Senate to dispose. There is no stipulation in the Constitution as to how the Senate is to express its advice or give its consent. President Bush incorrectly maintains that each nominee for a federal judgeship is entitled to an up or down vote. The Constitution doesn't say that. It doesn't even say that there has to be a vote with respect to the giving of "its consent." The Senate can refuse to confirm a nominee simply by saying nothing and doing nothing. In Section 2, Article II, it says, " . . . and by and with the advice and consent of the Senate, [He] shall appoint ambassadors . . . Judges of the Supreme Court, and all other Officers of the United States. . . ."

Just as in Article I concerning the setting of Senate rules, Article II allows the Senate the freedom to determine how it will use its advice and consent powers. The choice of the Senate as the single entity to work with the President on the selection of life-tenured federal judges seems strongly to indicate the Framer's desire for scrutiny by the House of Congress uniquely designed for the protection of minority views. The Framers could have selected the majoritarian House of Representatives for such a duty. They did not. In fact, they totally excluded the House. They made a conscious decision to delegate the "advice and consent" function to the United States Senate.

But, suppose the President's party controls the Senate, and therefore controls the votes of a majority in the Senate? Where then, is the check on Presidential power? The filibuster is the minority's strongest tool in providing the Constitutional curb on raw Presidential power when it comes to nominations and the federal courts. Of course, the President's party could occupy 60 seats in the Senate, and that would be enough to break any filibuster except when amending the rules. But, 60 votes is a high threshold, and does provide an effective check on the abuse of power. Why would we ever want to eliminate this important check on Presidential power? Haven't we always had a healthy suspicion of too much power in the hands of a King or any President regardless of party affiliation? The filibuster is the final bulwark preventing a President from stacking the courts (as FDR tried to do in 1937) if his political party holds a majority in the Senate. Without the ability by a minority to defeat cloture by a supermajority vote, that slim wall holding back the waters of destruction of a fair and independent judiciary, ruptures. Other liberties enumerated in the bill of rights can then also be washed away by a President who stacks the courts to reflect a political agenda. Freedom of speech, freedom of religion, all could be gone, wiped out by a partisan court, beholden to one man: the President.

The threat of the so-called "nuclear option" puts us on a dangerous course. Yet, incredibly, today we stand right on the brink, maybe only days away, from destroying the checks and balances of our Constitution. What has happened to the quality of leadership in this country that would allow us to even consider provoking a Constitutional crisis of such major proportions? Where is the gentle art of compromise? Edmund Burke said, "All government—indeed, every human benefit and enjoyment, every virtue and every prudent act—is founded on compromise and barter." As I have said earlier, the nuclear option has been around for years. It could have been employed at anytime. Yet, no leader of either party chose to go down that path because the consequences are so dire. Why have we arrived at such a dangerous impasse?

Reaction to recent decisions handed down by Federal Courts has fueled the drive toward this act of self destruction. Many citizens, religious people, angered by a feeling of years of exclusion from our political process, are deeply frustrated. I am in sympathy with such feelings. I do not agree with many of the decisions which have come from the courts concerning prayer in school, and prohibitions on the public display of religious items. For example, relating to freedom of religion, Article I states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . ." In my opinion, the courts have not given equal weight to both of these clauses but have stressed the first clause while not giving enough weight to the second clause "or prohibiting the free exercise thereof;. . . ." I have always believed that this country was founded by men and women of strong faith, and that their intent was not to suppress religion in the life of our nation, but to ensure that the government favored no one religion over another. I understand the extreme anger of many good people who decry the nature of our popular culture, with its overt emphasis on sex, violence, profanity, and materialism. They have every right to seek some sort of remedy. But these frustrations, as great as they are, must not be allowed to destroy crucial institutional mechanisms which protect minority rights, and curb the power of an overreaching President. Yet, that is exactly what is about to happen, with this very misdirected attack on the filibuster.

The outlook for compromise is dim. The debate has reached a fever pitch and political polarization is at levels I have never seen. Democrats have overreached. Republicans have overreacted. And the White House has poured salt in the wound by sending the same contentious nominations right back to the Senate as if there were not a country full of qualified and talented judges from which to choose. Our two great political parties are not having a national debate. We are simply shouting at each other. I have heard statements of late which cause me to shudder—such things as, "Democrats hate America," or "Democrats hate people of faith," or "Republicans want to eliminate separation of Church and State." Thinking Americans would ordinarily shun such extreme and ridiculous rhetoric. Yet, vituperation and extremism continue to rage on all sides. There have even been overt attempts to physically threaten and intimidate Federal judges. When the nation becomes this divided, when the spin becomes this mean, the destruction of basic principles which have been our guide for more than two centuries looms straight ahead. Moreover, the trashing and trampling of comity leaves ugly scars sure to fester and linger. How can we recover from the venom spewed by this dangerous political ploy and get on with the people's business, especially if the nuclear trigger is actually pulled?

At such times as these, the character of the leaders of this country is sorely tested. Our best leaders search for ways to avert such crises, not ways to accelerate the plunge toward the brink. Overheated partisan rhetoric is always available, although these days it seems to come especially cheap, but the great majority of our people want a healthy two-party system and leaders who know how to work together, despite serious differences.

The current uproar serves only to underscore the mounting number of problems not being addressed by this government. Over forty five million persons in our country, some 15% of our population cannot afford health care insurance. Our infant mortality rate is the second highest of the major industrialized countries of the world. Our deficits are skyrocketing. Poverty in these United States is rising, with 34 million people or 12.4% of the population living below the poverty line. Our veterans lack adequate medical care after they have risked life and limb for all of us. Our education system produces 8th graders ranked 19th out of38 countries in the world in math, and 12th graders ranked 19th out of 21 countries in both math and science. Yet, we debate and seek solutions to none of these critical problems, and instead focus all energy on the frenzy over the selection of judges, and seek as an antidote to our frustration, the preposterous solution of permanently crippling freedom of speech and debate and the right of a minority to dissent in the United States Senate.

It is very important to remember that the Senate has formalized ways of considering changes to our rules. Changes require 67 votes to curtail a filibuster of rules changes. If this nuclear option is employed in the way most frequently discussed, i.e. a ruling from the chair that a supermajority requirement for cloture on a filibuster in respect to amending the rules is unconstitutional, if sustained by 51 votes, cloture will require only a simple majority vote with respect to federal judgeships. There is nothing, then, except good sense, which seems to be in very short supply, to prevent majority cloture of any filibuster on any measure or matter, whether on the legislative or the executive calendar. Think of that! Rules going back for over 200 years and beyond, with roots in the early British Parliament, can be swept away by a simple majority vote. Because of demagoguery, lack of leadership, raw ambition, hysteria, and a state of brutal political warfare that wants no truce and brooks no peacemakers, we may destroy the U.S. Senate, leaving in our wake a President able to select and intimidate the courts like a King, and a system of government finally and irretrievably lost in a last pathetic footnote to Ben Franklin's rejoinder for the ages, "a Republic, if you can keep it." This is scary!

I suspect that at least part of what all of this dangerous sound and fury is about can be explained by the advanced ages of several Supreme Court Justices, and rumors of the Chief Justice's coming retirement due to ill health. The White House does not want a filibuster in the Senate to derail a future choice for the Supreme Court.

Let me step into the brink and propose something that might calm some waters. In the 105th Congress, Senator ARLEN SPECTER and I introduced S. Res. 146, a bill which would establish an advisory role for the Senate in the selection of Supreme Court Justices. Except for a very limited ''floating'' of names shortly before the President sends up a nomination for the Supreme Court, no one gets to weigh in on the choices until after they are made. As in so many instances in Washington, broad consultation is nonexistent. In the case of potential occupants for the Federal Bench, that is a recipe for instant polarization before hearings on nominees are even held. Everyone quickly takes sides, and the steam mounts like in an overheated pressure cooker until the lid is about to blow off.

Therein lies the source of some of the fighting over the make-up of the Courts—no prior consultation, so, in effect, no ''advice'' independent of the White House. Our bill aims to release some of that steam in this way. The Senate Judiciary Committee would establish a pool of possible Supreme Court nominees for the President to consider, based on suggestions from Federal and State judges, distinguished lawyers, law professors, and others with a similar level of insight into the suitability of individuals for appointment to the Supreme Court.

Such a pool would fulfill the Senate's ''advice'' function under Article II, Section 2. In other words, everyone could get their ''oar'' into the prospective judicial waters. The President would of course be free to ignore the pool if he chose to do so. But, the ''advice'' required by the Constitution would be formally available, and the President would know that the individuals in the pool had received a bipartisan nod from the Senate Committee required to do the vetting. Such a pool might even be expanded to include all nominees for our federal judiciary.

Perhaps letting the Senate in on the judicial ''take off'' as well as the landing can help in the future to heal some of the anger which dominates the discussion of the Federal Courts these days.

But for now, like many of you, I simply hope and pray that cooler heads will prevail, and compromise (that fading art) will prevent us from heading over the cliff. There are, at least some efforts in that direction, but time is very short. In just a few days we may see the unbelievable come to pass—one man, the President, able to select the third, unelected branch of government, including the court of last resort, the Supreme Court; the Senate of the United States relegated to a second House of Representatives with six year terms; free speech and unfettered debate rejected; and the Constitutional checks and balances in sad and sorry tatters. Shame! What a shame!

In closing, let us remember the words spoken by Vice President Aaron Burr in 1805 when he addressed the Senate for the last time:

This House is a sanctuary; a citadel of law, of order, and of liberty; and it is here—it is here, in this exalted refuge; here, if anywhere, will resistance be made to the storms of political phrensy and the silent arts of corruption; and if the Constitution be destined ever to perish by the sacrilegious hands of the demagogue or the usurper, which God avert, its expiring agonies will be witnessed on this floor.

Ladies and gentlemen, the clock is running and the hour of fulfillment of Vice President Burr's prophesy is virtually at hand.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I ask unanimous consent we be extended an extra 15 minutes, as well.

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

JUDICIAL NOMINATIONS

Mr. HATCH. The Senator from Delaware a few minutes ago claimed we have never changed our procedures by majority vote. Four times the distinguished Senator from West Virginia led this body to do exactly that when he was acting as majority leader—in 1977, 1979, 1980, and 1987. Using a ruling from the Chair and a majority of all the Senate, a simple majority, we changed procedure relating to both legislation and nominations. The record has to be made clear.

All we are asking is the 214-year tradition of the Senate that judicial nominees not be filibustered be followed. That has been the tradition of the Senate up until President Bush became President. All we are asking is that every one of these qualified nominees who have reached the floor receive an up-or-down vote. That is all we are asking.

These are highly qualified nominees. The ABA has ruled they are qualified in every case. They all have a majority bipartisan vote in their favor. If our colleagues on the other side do not want to vote for them, they can vote against them. That will be their right. I would fight always to maintain that right. But give them a vote, vote up or down. That is what we have always done for 214 years before this President became President.

The actions of our colleagues on the other side amount to changing that 214-year traditional history of this Senate.

By the way, we never called this the nuclear option. It was called the nuclear option by the Democrats. We called it the constitutional option because the Constitution says the President has the right to appoint and nominate these people for judicial positions. We have the right to advise and—it is sometimes left off in this body—consent, which means a vote up and down.

That is what I think our colleagues ignore. This is a dangerous thing. I call it the constitutional option, or I call it the Byrd option because our distinguished friend, the Senator from West Virginia, is the one who used this four times.

If politics is a medicine, an effective prescription gives an accurate diagnosis. I take a step back and offer a diagnosis of our current struggle over how to conduct the judicial confirmation process. I hope this will bring a few pieces together, connect some dots, and provide a little perspective.

The first principle is every judicial nomination reaching the Senate deserves an up-or-down vote.

This principle has constitutional roots, historical precedent, and citizen support. I begin with the Constitution because that is where we should always begin. The Constitution is the supreme law of the land. Along with the Declaration of Independence, it is one of the foundational organic laws of the United States. It is the charter that each of us, as Senators, swears an oath before God to preserve, protect, and defend.

That Constitution separates the three branches of Government, assigning legislation to us in the legislative branch, and assigning appointments to the President in the executive branch. We have heard that the Constitutional Convention considered other arrangements for appointing judges. That may be, but the Constitutional Convention rejected those arrangements. Rejected ideas do not govern us. The Constitution does. And the Constitution makes the President, in Alexander Hamilton's words, the ''principal agent'' in appointments, while the Senate is a check on that power.

Giving judicial nominations reaching the floor an up-or-down vote, that is, exercising our role of advice and consent through voting on nominations, helps us resist the temptation of turning our check on the President's power into a force that can destroy the President's power and upset the Constitution's balance.

Historically, we have followed this standard of everybody who reaches the floor getting an up-or-down vote. When Republicans ran the Senate under President Clinton, we gave each of his judicial nominations reaching the floor a final confirmation decision, an up-or-down vote. We took cloture votes, that is, votes to end debate, on four of the hundreds of nominees reaching us here. All four were confirmed. As a matter of fact, we confirmed 377 judges nominated by President Clinton, almost the same number as the all-time confirmation champion, and that was Ronald Reagan, who got 382. But Ronald Reagan had 6 years of a Republican Senate to help him. President Clinton only had 2 years of a Democrat Senate to help him. Yet, with the aid of the Republicans on the Judiciary Committee and in this body, he got 377 approved.

In fact, even on the most controversial appeals court nominations by President Clinton, the Republican leadership used cloture votes to prevent filibusters and ensure up-or-down votes, exactly the opposite of how cloture votes are being used during President Bush's Presidency.

This principle that every judicial nomination reaching the Senate floor deserves an up-or-down vote not only has constitutional roots and historical precedent, it also has citizen support. I saw in the Washington Post yesterday a poll framed in partisan terms, asking whether Senate rules should be changed ''to make it easier for the Republicans to confirm Bush's judicial nominees.''

With all due respect, this question could easily have been written in the Democrats' new public relations war room. I am actually surprised that such a biased question did not get even more than 66-percent support.

A more balanced, neutral, fair poll was released yesterday, asking whether

Senate procedures should make sure that the full Senate votes up or down on every judicial nomination of any President. The results, not surprisingly, were exactly the opposite of the biased poll, with 64 percent of Americans, including 59 percent of moderates and almost half of all liberals, embracing this commonsense, fair, and traditional standard.

The second aspect of this diagnosis is that the judicial nominees being denied this traditional up-or-down vote are highly qualified men and women, with majority, bipartisan support.

Last week, I addressed how opponents of President Bush's nominees play games with words such as ''extremist.'' Just as they want to talk about a judicial appointment process the Constitution did not establish, these critics want to talk about everything but what these nominees would do on the bench. We know, from abundant testimony by those who know these nominees best, that no matter how provocative their speeches off the bench or strongly held beliefs in their hearts and minds, these nominees are or would be fair, impartial, and evenhanded on the bench.

Yet they are called extremists. All 10 of them—there are only 7 remaining—but all 10 of them had qualified ratings, and most well qualified, the highest rating of the American Bar Association. By the way, that was considered the ''gold standard'' during the Clinton years by our friends on the other side.

Now this is the real standard.

It is hard to believe we are actually arguing about whether we should vote on judicial nominations and whether highly qualified nominees, with majority support—bipartisan, majority support—should be confirmed. Yet the third part of this diagnosis is that Senate Democrats are trying to change our tradition of giving judicial nominations reaching the Senate floor an up-or-down vote. Senators, of course, are free to vote against them for any reason. We must, of course, have a full and vigorous debate about these nominees and their qualifications.

The critics, however, do not want to have that debate. Democrats in this body and the leftwing interest groups that, to a certain extent, seem to control them, want only to seize what they cannot win through the fair, traditional system. Beginning in the 108th Congress, for the first time in American history, they are now using the filibuster not to debate but to defeat majority-supported judicial nominations.

They are trying to rig the confirmation process, to pry us away from our tradition that respected the separation of powers, and force us into a brave, new world which turns the judicial appointment process inside out. They want to turn our check on the President's appointment power into a force that hijacks that power altogether. That would be serious and constitutionally suspect if a Senate majority did it. It is even more serious when, as we see today, a minority of Senators—all partisan Senators—tries to capture the process.

For 2 years now, we have heard claims that these filibusters are nothing new, that they have been part and parcel of how the Senate has long done its confirmation business. While some questions in this debate may be subjective and complex, this is not one of them. The current filibusters target bipartisan, majority-supported judicial nominations, and they defeat them by preventing confirmation votes. Either that happened before the 108th Congress or it did not.

Let us look at what our Democratic colleagues have claimed. On March 11, 2003, the distinguished Senator from Vermont displayed here on the Senate floor a chart titled: ''Republican Filibusters of Nominees.'' He said his list proved that Republicans have ''succeeded in blocking many nominees by cloture votes.'' Anyone can look it up for him or herself. The whole chart is right there on page S3442 of the CONGRESSIONAL RECORD.

It turns out only 6 of the 19 names on the chart were judicial nominations, that the Senate actually confirmed 5 of those 6, and the other one did not have majority support. And there was a real question whether that was a filibuster raised, not in the least sense by the person who conducted the debate on the Republican side, Senator Robert Griffin, who had an impeccably honest—and still does—an impeccably honest reputation. He said there was never a desire to filibuster Justice Fortas. He said they wanted 2 more days of debate to make their case. But, he said, they had enough votes to defeat him up and down. Now, he was here on the Senate floor. He knew it. He led the fight. And the votes were bipartisan, almost equal. It turns out, again, that only 6 of the 19 names on the chart were judicial nominations, that the Senate actually confirmed 5 of them, and the only one they did not was Justice Fortas, because Lyndon Johnson pulled him, not wanting to be embarrassed.

Far from justifying today's filibusters, the chart of the distinguished Senator from Vermont proved no precedent exists at all.

On November 12, 2003, the Senator from Vermont tried again, this time with a list of what he claimed were Clinton appeals court nominees supposedly blocked by Republicans. Once again, the list included nominations the Senate confirmed—every one of them. How can a confirmed nomination be called a blocked nomination? It cannot. Not a single nomination on Senator LEAHY's list is similar to the nominations being filibustered today.

That same day, November 12, 2003, the distinguished Senator from Illinois, Mr. DURBIN, named 5 judicial nominations which he said had been filibustered. Once again, not one of them is a precedent for filibusters happening today. You would think no one with a straight face would claim that ending debate and confirming nominations is somehow precedent for not ending debate and refusing to confirm nominations.

On April 15, 2005, the distinguished assistant minority leader, Senator DURBIN, expanded his previous list, now offering us 12 examples of what he said were judicial nominations requiring at least 60 votes for cloture to end a filibuster. I addressed this in more detail last week. Not one—not one—of those 12 of Senator DURBIN's supposed precedents is any precedent at all.

The first nomination on his list occurred in 1881, 36 years before we even had a cloture rule in the Senate. In fact, if we truly did what he apparently wants us to do, and treated his listed examples as a confirmation guide, we would vigorously debate judicial nominations, invoke cloture if we needed to, and then vote on the confirmations. That is what happened.

This game continued as recently as 2 months ago. On Monday, April 25, on CNN's ''Crossfire'' program, the leader of a prominent leftwing group claimed that more than 30 nominations—here is the list—had been filibustered. I have this list right here in my right hand. It is titled: ''Filibusters of Nominations.'' It lists 13 judicial nominations out of the 30, and not one of them is at all like the filibusters being conducted today—not one. We did not even take a cloture vote on two of them. We invoked cloture on eight of them. We confirmed 12 of the 13. And the one we did not, did not have majority support, the Fortas nomination, but had bipartisan opposition.

Accepting such fraudulent arguments requires believing that ending debate on judicial nominations is the same as not ending debate, that confirming judicial nominations is the same as not confirming them, and that judicial nominations without majority support are the same as those with majority support. As you can see, the liberal propaganda machine has been working overtime.

In addition to these bizarre claims I described, they worked to turn what was once common sense and accepted fairness into something that sounds sinister and unseemly. They manufacture nasty phrases such as ''court packing'' and ominous warnings about ''one-party rule.'' Now, we are told, preventing up-or-down votes on even majority-supported judicial nominations is the only way to prevent our entire constitutional order from imploding. The sky is falling, and we are all about to slide into the abyss.

The purveyors of this fantasy would have us look to President Franklin Delano Roosevelt who, they tell us, wanted to pack the Supreme Court. The Senate rejected his legislative proposal to expand the Court so he could appoint more Justices. By taking this stand, the storytellers say, the Senate kept one-party rule from packing the Court.

Well, as Paul Harvey might say: Here is the rest of the story.

The Senate, even though dominated by President Roosevelt's own party, did not support this legislative plan. And it turns out President Roosevelt did not need any legislative innovations to pack the Supreme Court. He packed it all right, doing it the old-fashioned way, by appointing eight out of nine Justices in 6 years. Mind you, during the 75th to the 77th Congress, Democrats outnumbered Republicans by an average of 70 to 20. Now, that is one-party rule.

In those years, from 1937 to 1943, our cloture rule applied only to bills. This meant that ending debate on other things, such as nominations, required unanimous consent. A single Senator in that tiny, beleaguered minority could conduct a filibuster of President Roosevelt's nominations and thwart the real court packing that was in full swing.

Now, if the filibuster were the only thing preventing one-party rule from packing the courts, and the filibuster were so easily used, surely there must be in history filibusters of President Roosevelt's Supreme Court nominations. If the warnings, frantic pleas, and hysterical fundraising appeals we hear today make any sense at all, the filibuster would certainly have been used in FDR's time.

I hate to burst anyone's bubble, but there were no filibusters, not even by a single Senator, not against a single nominee. In fact, FDR's 8 Supreme Court nominees were confirmed in an average of 13 days, and 6 of the 8 were confirmed without even a rollcall vote.

So if this is to protect the minority, why has it not ever happened before President Bush became President? Even when we look at the very examples and stories the other side uses, we see no support for using the filibuster against majority-supported judicial nominations.

Last week, here on the Senate floor, the distinguished Senator from Illinois repeated a selective version of this FDR story and asked what would happen today in a Senate dominated by the President's party. He asked:

> Will they rise in the tradition of Franklin Roosevelt's Senate?

Well, I hope we do. I hope the Senate does exactly what Franklin Roosevelt's Senate did, by debating and voting on the President's judicial nominations. Franklin Roosevelt's Senate did not use the filibuster, even when the minority was much smaller and the filibuster much easier to use, and this Senate should not do so, either.

Finally, the fourth piece to this diagnosis of our current situation is that Senate Democrats have threatened to shut down the Senate if the majority moves us back to the tradition—the 214-year tradition—of debating and voting on judicial nominations.

To avoid what most Americans believe Senators come to Washington to do—debate and vote—we are now threatened with a party policy of open obstruction, a nuclear option of shutting down the Senate, at least to anything but what they agree to. I said a few minutes ago that the Constitution's separation of powers assigns legislative business to Congress and executive business, including appointments, to the President. Some Senators on the other side of the aisle are saying if they cannot hijack what is not theirs, they will destroy what is theirs. If they cannot abandon Senate tradition and use the filibuster to defeat majority-supported judicial nominations, they will undercut and disable the legislative process. And they call us radical.

The Constitution gives the power of nomination and appointment to the President. The Senate provides a check on that power. I believe we must preserve the system of separated powers and checks and balances and resist those who would radically alter that system, turning the Senate's check on the President's power into a force that can overwhelm the President's power.

Every judicial nomination reaching the Senate floor deserves an up-or-down vote. I argued that during the Clinton years, and I prevailed as chairman of the Judiciary Committee. That principle has constitutional roots, historical precedent, and citizen support. President Bush has sent two highly qualified nominees that we know have bipartisan majority support. They deserve to be treated decently and, after a full and vigorous debate, given an up-or-down vote.

Our colleagues on the other side are trying to change our tradition. For the first time in more than two centuries, they want to use filibusters to block confirmation votes on judicial nominations here on the Senate floor. This radical innovation is not needed to prevent one-party rule from packing the courts. Republicans resisted using the filibuster under Roosevelt and Democrats should resist using it today.

Finally, all Americans should be most concerned with the threat of some of our colleagues on the other side. Because they are unable to seize control of a judicial appointment process that does not belong to the Senate, Democrats say they will shut down the legislative process that does belong to the Senate. This cannot stand. With all due respect, they need to get both their principles and their priorities in order.

Our former majority leader Bob Dole has a thoughtful column in today's New York Times also addressing Senate tradition and the prospect of returning to that tradition. No one loves this institution more than Senator Dole, and I think I am in that category, too.

I ask unanimous consent that his column be printed in the RECORD.

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

[From the New York Times, Apr. 27, 2005]

UP, DOWN OR OUT

(By Senator Bob Dole)

In the coming weeks, we may witness a vote in the United States Senate that will define the 109th Congress for the ages. This vote will not be about war and peace, the economy or the threat from terrorism. It will focus instead on procedure: whether the Senate should amend its own rules to ensure that nominees to the federal bench can be confirmed by a simple majority vote.

I have publicly urged caution in this matter. Amending the Senate rules over the objection of a substantial minority should be the option of last resort. I still hold out hope that the two Senate leaders will find a way to ensure that senators have the opportunity to fulfill their constitutional duty to offer ''advice and consent'' on the president's judicial nominees while protecting minority rights. Time has not yet run out.

But let's be honest: By creating a new threshold for the confirmation of judicial nominees, the Democratic minority has abandoned the tradition of mutual self-restraint that has long allowed the Senate to function as an institution.

This tradition has a bipartisan pedigree. When I was the Senate Republican leader, President Bill Clinton nominated two judges to the federal bench—H. Lee Sarokin and Rosemary Barkett—whose records, especially in criminal law, were particularly troubling to me and my Republican colleagues. Despite my misgivings, both received an up-or-down vote on the Senate floor and were confirmed. In fact, joined by 32 other Republicans, I voted to end debate on the nomination of Judge Sarokin. Then, in the very next roll call, I exercised my constitutional duty to offer ''advice and consent'' by voting against his nomination.

When I was a leader in the Senate, a judicial filibuster was not part of my procedural playbook. Asking a senator to filibuster a judicial nomination was considered an abrogation of some 200 years of Senate tradition.

To be fair, the Democrats have previously refrained from resorting to the filibuster even when confronted with controversial judicial nominees like Robert Bork and Clarence Thomas. Although these men were treated poorly, they were at least given the courtesy of an up-or-down vote on the Senate floor. At the time, filibustering their nominations was not considered a legitimate option by my Democratic colleagues—if it had been, Justice Thomas might not be on the Supreme Court today, since his nomination was approved with only 52 votes, eight short of the 60 votes needed to close debate.

That's why the current obstruction effort of the Democratic leadership is so extraordinary. President Bush has the lowest appellate-court confirmation rate of any modern president. Each of the 10 filibuster victims has been rated ''qualified'' or ''well qualified'' by the American Bar Association. Each has the support of a majority in the Senate. And each would now be serving on the federal bench if his or her nomination were subject to the traditional majority-vote standard.

This 60-vote standard for judicial nominees has the effect of arrogating power from the president to the Senate. Future presidents must now ask themselves whether their judicial nominees can secure the supermajority needed to break a potential filibuster. Political considerations will now become even more central to the judicial selection process. Is this what the framers intended?

If the majority leader, Bill Frist, is unable to persuade the Democratic leadership to end its obstruction, he may move to change the Senate rules through majority vote. By

doing so, he will be acting in accordance with Article I of the Constitution (which gives Congress the power to set its own rules) and consistently with the tradition of altering these rules by establishing new precedents. Senator Frist was right this past weekend when he observed there is nothing ''radical'' about a procedural technique that gives senators the opportunity to vote on a nominee.

Although the Democrats don't like to admit it, in the past they have voted to end delaying tactics previously allowed under Senate rules or precedents. In fact, one of today's leading opponents of changing the Senate's rules, Senator Robert Byrd, was once a proponent of doing so, and on several occasions altered Senate rules through majoritarian means. I have great respect for Senator Byrd, but Senate Republicans are simply exploring the procedural road map that he himself helped create.

In the coming days, I hope changing the Senate's rules won't be necessary, but Senator Frist will be fully justified in doing so if he believes he has exhausted every effort at compromise. Of course, there is an easier solution to the impasse: Democrats can stop playing their obstruction game and let President Bush's judicial nominees receive what they are entitled to: an up-or-down vote on the floor of the world's greatest deliberative body.

Mr. HATCH. As our current majority leader Bill Frist put it a few days ago: I never thought it was a radical thing to ask Senators to vote. That is what we have traditionally done on judicial nominations that reach the floor, and that traditional standard should apply across the board no matter which party controls the White House and no matter which party controls the Senate. We should bind both parties, Republicans and Democrats, to do what is right.

That is the diagnosis, and I hope we see an effective cure soon so we can get back to doing the people's business.

I started off by saying one of the problems here is that every one of these Presidential nominees who reaches the floor should have an up-or-down vote, especially since they are listed as qualified by the American Bar Association, most of them well qualified, the highest rating you can have. They all have majority bipartisan support. We should not change 214 years of Senate tradition because some in this body don't like President Bush's nominees.

People such as Priscilla Owen—she broke through the glass ceiling for women in this country and became a major partner in a major law firm. Her last election to the Texas Supreme Court was over 75 percent. She had every editorial board in the State of Texas supporting her; 15 former State bar presidents supported her, most of whom were Democrats. Yet they have called her an extremist.

Janice Rogers Brown, a sharecropper's daughter, came up the hard way, put herself through college and law school as a single mother, worked in California State government in a variety of positions, wound up on the California Supreme Court where she wrote, at least in the last number of years, the majority of the majority opinions. She got reelected by 84 percent of the California voters, more votes than any other person running for the Supreme Court that year, including her colleagues. Yet she is called an extremist because she is a conservative African American.

It is very dangerous stuff to say this will create nuclear war because we want to continue 214 years of Senate tradition. That is dangerous stuff. It is the wrong stuff. We ought to give these people a simple, straightforward up-or-down vote.

I notice the distinguished Senator from North Carolina is waiting. I yield the floor.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from North Carolina.

Mr. DURBIN. Madam President, if the Senator will yield briefly for a unanimous consent request, I ask unanimous consent that when the Senator from North Carolina has completed her remarks, I be recognized.

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

The Senator from North Carolina.

Mrs. DOLE. Madam President, today I want to express my strong concern over the judicial nominations process. It is clear this process has completely broken down. Unfortunately, the rhetoric surrounding this important issue has become increasingly bitter over the past several weeks. Sharp words have been exchanged. The intentions of my fellow Republicans have been unfairly characterized and my colleagues on the other side of the aisle have even gone so far as to threaten to shut down the Government if the Senate were to exercise its constitutional right to set its own procedural rules. That is nuclear.

It is time to put aside the rhetoric for a moment and look at the facts. It is a fact that my Democratic colleagues have taken the unprecedented step of blocking not 1, not 2, but 10 nominees of President Bush to the Federal circuit courts of appeal. As a result, President Bush has the lowest appeals court confirmation rate for any first-term President since Franklin Roosevelt. It is a fact that each of these filibustered nominees has the support of a majority of Senators and each has received a rating of qualified or well qualified by the American Bar Association. It is a fact that today for the first time in our Nation's history, a President's nominees to the Federal bench are being required to receive a 60-vote supermajority rather than the traditional majority, the up-or-down vote, that has been the standard for 214 years. That is nuclear.

It is a fact that the ongoing filibuster of the President's nominees has prevented the Senate from fulfilling its constitutional duty to provide advice and consent to the appointment of men and women chosen to sit on our Nation's highest courts.

The former minority leader from South Dakota once lamented he found it simply baffling that a Senator would vote against even voting on a judicial nomination. I completely agree and note that every single one of President Clinton's judicial nominees who reached the Senate floor received an up-or-down vote. And contrary to what my friends across the aisle are so fond of saying, this includes the Paez and Berzon nominations to the Ninth Circuit.

By imposing a supermajority requirement for judicial nominees, the Democrats are disrupting the careful balance struck in the Constitution itself between Congress and the executive branch and allowing political considerations to play an even larger role in the confirmation process. They should heed the words of prominent Democratic legal advisor Professor Michael Gerhardt who, in another context, has written that a supermajority requirement for confirming judges would be ''problematic because it creates a presumption against confirmation, shifts the balance of power to the Senate, and enhances the power of special interests.''

For the last several weeks, instead of engaging in the hard work of compromise, some of my colleagues on the other side of the aisle have chosen to travel down the political road. We have seen pro-filibuster press conferences, other political events, and even an obstruction rally with the extreme liberal group MoveOn.Org. Liberal special interest groups are now spending millions of dollars across the country on television ads in support of judicial filibusters. One cannot help but reach the conclusion that these organizations, having failed to defeat President Bush at the ballot box in November, are now trying to advance their own liberal agenda through the only avenue left open to them—the Federal courts.

The judicial filibuster is their way of establishing a liberal litmus test. If you are not a liberal activist, you cannot serve on a Federal circuit court of appeals, or at least that is what the new standard appears to be.

Until now every judicial nominee with support from a majority of Senators was confirmed. The majority vote standard was used consistently throughout the 18th, 19th, and the 20th century for every President's nominees, Democrat or Republican, even Whig, until George W. Bush's judicial nominations were subjected to a 60-vote standard.

Let me emphasize one additional point. My friends across the aisle are well aware that no Republican—not one—is seeking to eliminate the ability of Senators to filibuster on legislative matters. We all recognize that the legislative filibuster has served an important function in our system of checks and balances. It is ironic, though, that nine of my Senate colleagues who are now working so hard to block President Bush's judicial nominees once advocated the elimination of the legislative filibuster. So who is playing politics?

I commend Majority Leader FRIST for his patience in trying to bring both sides together to develop a reasonable compromise on this difficult issue. Certainly no other majority leader has been faced with such unprecedented tactics in blocking the Senate's ability to fulfill its constitutional duty to provide advice and consent. I know Senator FRIST will continue to do what he feels is right for this body and for our country.

If he decides he is confronted with no other choice but to proceed with the constitutional option, I will fully support him. This approach is consistent with Senate precedent and has been employed in the past by some of the best parliamentary minds in this Chamber.

Our goal is to restore the practice, the tradition of 214 years, a simple majority vote for a President's nominees to the Federal bench.

I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is now closed.

TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.R. 3, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 3) to authorize funds for Federal aid highways, highway safety programs, and transit programs, and for other purposes.

Pending:

Inhofe amendment No. 567, to provide a complete substitute.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Madam President, this is the third day we have been on a bill we have been working on for 2½ years. It is the same bill essentially that was passed last year by a margin of 76 to 21. We are anxious to get people to come down to the floor for amendments. I don't know of anyone coming down at this time. But I encourage all Members on both sides of the aisle to come down and utilize this time so we can get the amendments behind us.

I understand the Senator from Illinois has some comments he wishes to make. I yield to him some of our time at this time.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Madam President, I thank the chairman of the committee. Let me say I share his sense of urgency about the underlying bill. This is a bipartisan bill, a bill Democrats and Republicans want to see passed, a bill to finance the building of roads and bridges and airports, to finance mass transit in what is critical infrastructure for America's economy. I do not have an amendment to the bill, but if I did, I would offer it because I think those who have them should bring them to the floor so we can move and get it done before we take a recess next week. I urge my colleagues on the Democratic side to follow the admonition of the chairman.

What brings me to the floor was a statement made earlier by the Senator from Utah which made reference to me. Senator ORRIN HATCH and I are friends. We disagree on a lot of things.

We vote differently on a lot of issues and we debate furiously, but we get along fine. I think that is what life should be like and what the legislative process should be like. He made a reference earlier to this whole question of the nuclear option, to which I would like to return for a few moments.

First, what is the nuclear option? People who don't follow the Senate on a regular basis have to wonder are they using nuclear weapons on the floor of the Senate? What could it be? ''Nuclear Option'' was a phrase created by Republican Senator TRENT LOTT to describe a procedure that might be used to change the rules of the Senate. The reason Senator LOTT called it the nuclear option was because it is devastating in its impact to the tradition and rules of the Senate.

I will put it into context. The Senate was created to give the minority in the Senate, as well as in the United States, a voice. There are two Senators from every State, large and small. Two Senators from the smallest State have the same vote on the floor of the Senate as Senators from larger States, such as California, New York, Illinois, and Texas. That is the nature of the Senate. The rules of the Senate back that up. The rules of the Senate from the beginning said if any Senator stood up and objected, started a filibuster, the Senate would come to a stop. You think to yourself, how can you run a Senate if any Senator can stop the train? Well, it forces you, if you are going to move something forward in the Senate, to reach across the aisle to your colleagues, to compromise, to find bipartisanship, so that things move through in a regular way and in a bipartisan way. That is the nature of the filibuster.

Over the years, it has changed. You saw the movie ''Mr. Smith Goes to Washington,'' when Jimmy Stewart stood at his desk, with his idealism and his youth, arguing for his cause until he collapsed on the floor. He was exercising a filibuster because he believed in it so intensely. We have said over the years that you can do that to any nominee, bill, or law on the floor of the Senate; but if a large number of Senators, an extraordinary number of Senators, say it is time for the filibuster to end, it would end. The vote today is 60 votes. So if I am perplexed by an amendment offered by one of my colleagues, and I stand up to debate it and decide I am going to hold the floor of the Senate as long as my voice and body can hold out, I can do that, until such point as 60 colleagues, Democrats and Republicans, come together and say: Enough, we want to move to a vote. That is what it is all about.

So what has happened is the Republicans now control the House, Senate, and the White House. What they have said is they want to change the rules. They want to change the rules in the middle of the game because they don't like the fact that Democratic Senators have used the filibuster to stop 10 judicial nominees President Bush has sent to Congress, sent to the Senate.

Now, for the record, the President sent 215 nominees; 205 were approved and only 10 were not. Over 95 percent of the President's judicial nominees have gone through. We have the lowest vacancy rate on the Federal bench in modern memory. So we don't have outrageous vacancies that need to be filled quickly. We decided—those of us who voted for the filibusters—that these 10 nominees went way too far; their political views were inconsistent with the mainstream of America. They were not consistent with the feelings and values of families across the country on issues as diverse as the role of the Federal Government in protecting health and safety, which is an issue nominee Janice Rogers Brown takes a position on that is hard to believe. She has taken a position on a case—a famous case called the Lockner case—which would basically take away the power of the Federal Government to regulate areas of health and safety when it comes to consumers and the environment. It is a radical position.

And then another nominee, William Myers—my concern about him and the concern of many Senators is the fact that he has taken a radical position when it comes to our Nation's treasury and heritage, our natural and public lands. He has taken a position where he backs certain lobby groups, but there is one that we think is inconsistent with mainstream thinking in America. So there is an objection.

Other nominees have taken what we consider to be far-out positions that don't reflect the mainstream of America and we have objected, which is our right. Now the President says: Enough, I am tired of losing any nominee to the Senate. Don't we have 55 Republicans? Should we not get what we want?

He is not the first President who has felt that way. Thomas Jefferson felt that way. Thomas Jefferson, in the beginning of his second term, came to the Senate and said: I am sick and tired of the judges who have been appointed to the Supreme Court. I want to start impeaching them.

You know what Jefferson's party said? No, Mr. President, you are wrong. The Constitution is more important than your Presidential power. They said no to Thomas Jefferson.

Franklin Roosevelt did the same thing at the beginning of his second term. He was unhappy that his New Deal legislation was being rejected. He

came to the Senate and said: Let's change this and make sure we can put more Justices on the Supreme Court and get the votes we want.

His Democratic Party in the Senate said: No, Mr. President, we love you and we are glad you were elected, and we support your New Deal, but you have gone too far. Presidential power is not more important than the Constitution. They said no to him.

So now comes President Bush and Vice President CHENEY, and they have said: We don't like the fact that we only have 95 percent of our nominees approved; we want them all. We want to change the rules of the Senate—in fact, we will break those rules to change them so that President Bush can get every single nominee. Unfortunately, very few on that side of the aisle from the President's party are willing to stand up and say to this President, as Senators have said to President Jefferson and President Roosevelt: You are going too far. What you are doing here, sadly, is going to abuse the Constitution to build the power of the White House.

The Senator from Utah, Mr. HATCH, came in earlier and made a statement. He said every nominee should have an up-or-down vote. On its face, that sounds reasonable. We understand the rules of the Senate allow the filibuster and an extraordinary majority for nominees. What Senator HATCH failed to mention was that when he was chairman of the Judiciary Committee during the Clinton administration—those 8 years—over 60 Presidential nominees for the bench who were sent up by President Clinton to his committee were buried in committee without so much as a hearing. They didn't even have a chance to stand up and defend themselves, explain their point of view. Senator HATCH said, no. Over 60 Presidential nominees for President Clinton were stopped by Senator HATCH on the Judiciary Committee. I know; I served on the committee. I watched it happen. I heard Senator HATCH say every nominee should have an up-or-down vote. He is suffering from political amnesia. He has forgotten when he was in charge, 60 nominees never even had a hearing, let alone an up-or-down vote.

So we come to this point, a point where I think the issues are very clear. The Republicans are prepared, with the help of Vice President CHENEY—who announced over the weekend he supports them—to break the rules of the Senate, which are in a book that is seldom drawn out of our desks. The rules of the Senate say it takes 67 votes to change the rules of the Senate. That is a big number, 67 out of 100. The Republicans know they don't have 67 votes to change the filibuster rule, so they have decided to do it differently. They are going to wait until Vice President CHENEY is in the chair, and they are going to make a point of order that we should just have a simple majority vote on judicial nominees. And Vice President CHENEY is going to rule—he already said he would—and that is that. That is the end of the story.

So they are breaking the rules of the Senate to change the rules of the Senate, to eliminate a tradition and rule that has been around for 200 years. They are changing the rules in the middle of the game. The net result of that is this: The Senate will lose power when it comes to checks and balances. The President will have more power. It will mean that the President—this President, unlike President Jefferson and President Roosevelt—will trump the Constitution and will basically say: I am going to take more power away from the Senate. And his party will go along with that, even though President Jefferson and President Roosevelt had members of their own party stand up and say: Mr. President, you have gone too far.

The net result—the one that troubles me the most—is that we are talking about lifetime appointments to the Federal bench. If you take people who are so far out of the mainstream and stick them on a Federal bench for life, let me tell you, we don't have a clue what that is going to mean. But it is certainly worrisome that they could rule and change laws that we value as Americans—laws that, frankly, cross both political borders and Democrats and Republicans have supported. When you put somebody on the bench with that much power for a lifetime, then you have to worry about them.

So we have tried to come to some conclusion. Senator REID of Nevada, our Democratic leader, came to the floor to describe in general terms what he has been doing. For weeks, he has been negotiating with Senator FRIST and speaking to other Republican Senators about avoiding this constitutional confrontation, avoiding a constitutional crisis, avoiding this effort to change the rules in the middle of the game. He has made an offer—a good-faith offer—to bring some of these judges forward, to talk about rule changes that are in the best interests of this institution; and, frankly, Senator FRIST said yesterday: No, we are not talking about it anymore. It is over.

That is unfortunate.

It is important that we continue a dialog. The good thing about the filibuster is that it brings us together in order to move a nominee or a bill. Republicans have to reach across the aisle to Democrats and Democrats have to reach across to Republicans. That is the way it should be in this Chamber. It should not be a line down the middle and a wall that cannot be breached. That is exactly what we face if the Republicans go forward with the nuclear option.

When I return to Illinois, they say: Senator, can we come together to pass this highway bill Senator INHOFE is bringing to the floor? We will and it will be a good, bipartisan bill. We have been waiting, but let's pass this bill on a bipartisan basis. They say: Senator, can't Democrats and Republicans work together to do something about health insurance? You don't even talk about it on the Senate floor. I think we can. I know that business interests, as well as labor interests, want us to bring up this issue and resolve it. We should do it on a bipartisan basis. They say: Senator, can't you sit down and find a Republican who wants to put more money into our schools for No Child Left Behind, so that we can have better schools, better teachers, better students?

Of course, we should move toward bipartisanship. But the nuclear option, sadly, is going to divide us, split us. Make no mistake, if the nuclear option goes forward, this will be a different Senate and not very good in the process, I am afraid. A lot will happen that will be bad for us. Some have said on the floor, well, certainly at that point the Democrats are going to shut down the Senate and the Government. Trust me, that is not going to happen. We saw that tactic once. Remember the name Newt Gingrich and the Contract with America? He was so emboldened by Rush Limbaugh, he said if we shut down the Federal Government, nobody will notice. We noticed in a hurry and it hurt the Republican Party when they did it. We are not going to make that mistake. We believe that important functions of this Government must move forward. The defense of America, the support of our troops, the passage of critical appropriations bills, the passage of a highway bill—those issues are moving forward. But the ordinary day-to-day business of the Senate, otherwise, is going to be changed a lot.

If the Republicans are prepared to break the rules to change the rules, sadly the Senate Democrats will have to say we must play by the rest of the rules. That means more time on the floor, more debate, Senators spending more time at their desks, more time in session, more time in Washington. You hear the complaint that 5,000-page bills come before us that nobody reads. We will read them. Important amendments will be read. Debate will take place, and instead of the Chamber almost always being empty, it may be almost always full. Things will change.

I think there is a better way. Senator REID has suggested a better way—that cooler heads prevail, that those truly interested in not only the institution of the Senate but the value of the Constitution come forward. We can protect the filibuster. We can make certain that we do it in a sensible way. But we can only do it if we are in a dialog.

Senator FRIST's comments yesterday are worrisome. At this point, I ask unanimous consent to have printed in the RECORD an article from the Chicago Tribune. It is an editorial of April 25, which supports the Democrats and opposes the nuclear option.

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

[From Chicago Tribune, Apr. 25, 2005]

DEMOCRACY AND THE FILIBUSTER

The most surprising thing about the Senate battle over the filibuster is that a dusty 200-year-old procedure could generate such fresh controversy. Republicans say Democrats have abused it so badly to block judicial nominees that it should be removed from their arsenal. Democrats say it is an indispensable tool to prevent the president from turning the federal courts over to extremist judges.

But the debate is really just the latest argument about the central issue of our system of government: how much power the majority should have.

There is no question that Democrats have misused the leverage afforded by the filibuster. This device is supposed to ensure that the Senate gets a full hearing on any controversy before it votes. Facing a Republican president and a Republican majority of 55 senators, however, Democrats have deployed the threat of a filibuster not to delay votes but to prevent them.

Contrary to Republican claims, though, this tactic is not unprecedented, and it wasn't invented by the Democrats. Republicans tried to filibuster several judges named by President Clinton, even though they controlled the Senate at the time.

Democrats were right to complain then, as Sen. Patrick Leahy did in 1999: ''If we don't like somebody the president nominates, vote him or her down. But don't hold them in this anonymous unconscionable limbo, because in doing that, the minority of senators really shame all senators.'' Republicans are equally justified in objecting now.

But changing Senate rules to bar the use of filibusters against judicial nominees, as Republican leader Bill Frist of Tennessee has threatened to do, would be shortsighted and ultimately unhealthy. The filibuster, whatever its potential for misuse, is a vital safeguard against majority excesses. As such, it buttresses a constitutional framework ingeniously designed to keep the many from running roughshod over the few.

Although Americans have great faith in democracy, a Martian political scientist arriving here with no knowledge of our federal framework might think its purpose was not to empower the majority but to frustrate it. The Constitution contains a variety of mechanisms designed to make sure that public sentiment doesn't automatically get translated into policy.

The Bill of Rights, for instance, places certain subjects off-limits. The separation of powers, dividing authority among three different branches of government, serves as another check on the will of the people. A president can overrule the 535-member Congress and sustain a veto with as few as 34 senators. The Senate itself, of course, is at odds with pure democracy, because it allocates equal representation to each state, regardless of population.

The filibuster is merely a Senate rule, not a constitutional provision. But the reason it has survived for so long is that it fits well into the overall structure of our government.

Devices that obstruct the will of the majority can be an awful nuisance. But in the long run, the protections they offer against democratic excesses are worth the price.

Mr. DURBIN. Madam President, the Chicago Tribune, I can tell, is no liberal newspaper. They have a newspaper that takes conservative positions regularly, and they have decided that the nuclear option is the wrong way to go.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Madam President, I am anxious to yield the floor to the distinguished Senator from Indiana, who has an amendment to bring up at this time. But before doing that, I have sat and listened very carefully while Senator HATCH was talking about the constitutional option and the response from the Senator from Illinois. Sometimes you have to leave the individuals and hear what is being said outside this Chamber.

I have a couple editorials I am going to read at this time. The first is from yesterday's Investors Business Daily. Granted, that is generally a fairly conservative publication, and the next editorial I will read certainly is not one that would be identified as even moderate or conservative.

Investors Business Daily says:

Rules of order: The Democrats would have us believe filibustering is a time-honored constitutional and Senate tradition. It's not. And it wasn't that long ago that they felt quite differently.

A showdown now looms after Republicans on the Senate Judiciary Committee used their 10–8 majority to move the nominations of Janice Rogers Brown and Priscilla Owen for federal appeals court seats to the full Senate.

Democrats threaten to filibuster these picks, Majority Leader Bill Frist threatens to employ the unfortunately named ''nuclear option'' restoring the quaint notion that 51 votes constitutes a majority, and Vice President Dick Cheney says he's willing to be the tie-breaking vote to ban filibusters of judicial nominees.

Democrats are trying to portray GOP efforts to restore majority rule to the Senate as it relates to judicial nominations as an assault on the traditions of the Senate and the Constitution itself. As if the filibuster were James Madison's dying wish.

As a practical matter, the filibuster didn't even exist until the 1830s, when it was used to block legislation and not judicial picks. It was used by Democrats to defend slavery and oppose the Civil Rights Act—hardly noble purposes.

In 1841, the filibuster was used by Sen. John Calhoun to defend slaveholding interests. In 1957, then-Democratic Sen. Strom Thurmond held the floor for 24 hours straight to block civil rights legislation. And in 1964, 18 Democrats and one Republican blocked the Civil Rights Act for 2½ months.

In 1916, Senator Robert La Follette, a Republican, used it to block legislation to let merchant ships arm themselves against German U-boats. This prompted the Senate in 1917, at the behest of President Wilson, a Democrat, to adopt the first cloture rule, rule XXII, requiring a two-thirds to end debate.

This was amended 60 years later by none other than Robert Byrd, D–W.Va., the Senate's constitutional guardian and conscience, who reduced it to a three-fifths requirement.

In sum: For the first 200 years of our republic, Senate ''tradition'' never required 60 votes to approve judges. Filibusters are neither an idea of the Founding Fathers nor a historical tradition of the Senate. Cloture rules are a 20th century phenomenon, with the current rule less than 30 years old. Systematic filibustering of a president's appellate-court nominees is totally unprecedented.

Democrats didn't always love the filibuster. In September 1999, in a debate over Clinton appellate-court nominees, Sen. Patrick Leahy of Vermont thundered on the Senate floor: ''Vote them up or down! That is what the Constitution speaks of in our advise-and-consent capacity.'' An up-or-down vote, he said then, was a ''constitutional responsibility.''

The year before, none other than Sen. Ted Kennedy of Massachusetts solemnly intoned: ''We owe it to Americans to give these (judicial) nominees a vote. If our Republican colleagues don't like them, vote against them, but give them a vote.''

In 1995, Sen. Tom Harkin of Iowa proposed a plan to end filibusters identical to one now proposed by Frist. The Harkin plan was supported by 19 Democrats, including Sens. Kennedy, Barbara Boxer of California, Joseph Lieberman of Connecticut, Russell Feingold of Wisconsin and John Kerry of Massachusetts.

Harkin proposed to establish a declining vote requirement for cloture so that by the fourth cloture vote, a simple majority of the Senate would suffice to end debate and allow a floor vote on the matter at hand.

In the Constitution, when the Framers intended more than simple majorities, they explicitly said so. For example, they require a two-thirds majority to convict in an impeachment trial, expel a member, override a presidential veto, approve a treaty or propose a constitutional amendment.

Senate Democrats once opposed the filibustering of judicial nominees; they now support and rail against a ''nuclear option'' they once proposed themselves. Republicans should expose this hypocrisy, stop worrying and learn to love the bomb.

I will not read the whole editorial from the L.A. Times, from yesterday. I will read the first two paragraphs, in deference to my good friend from Indiana.

They said:

These are confusing days in Washington. Born-again conservative Christians who strongly want to see President Bush's judicial nominees voted on are leading the charge against the Senate filibuster, and liberal Democrats are born-again believers in that reactionary, obstructionist legislative tactic. Practically every big-name liberal senator you can think of derided the filibuster a decade ago but now sees the error of his or her ways and will go to amusing lengths to try to convince you that the change of heart is explained by something deeper than the mere difference between being in the majority and being in the minority.

At the risk of seeming dull or unfashionable for not getting our own intellectual makeover, we still think judicial candidates nominated by a president deserve an up-or-down vote in the Senate. We hardly see eye to eye with the far right on social issues, and we oppose some of these judicial nominees, but we urge Republican leaders to press ahead with their threat to nuke the filibuster. The so-called nuclear option entails a finding by a straight majority that filibusters are inappropriate in judicial confirmation battles.

I ask unanimous consent that this entire editorial be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. INHOFE. Madam President, I will say this: It is unprecedented, that for 200 years there has never been a circuit court nominee by any President who had the majority support in the Senate to be filibustered. It never has happened until now.

EXHIBIT 1

[From the LA Times, April 26, 2005]

NUKE THE FILIBUSTER

These are confusing days in Washington. Born-again conservative Christians who strongly want to see President Bush's judicial nominees voted on are leading the charge against the Senate filibuster, and liberal Democrats are born-again believers in that reactionary, obstructionist legislative tactic. Practically every big-name liberal senator you can think of derided the filibuster a decade ago but now sees the error of his or her ways and will go to amusing lengths to try to convince you that the change of heart is explained by something deeper than the mere difference between being in the majority and being in the minority.

At the risk of seeming dull or unfashionable for not getting our own intellectual makeover, we still think judicial candidates nominated by a president deserve an up-or-down vote in the Senate. We hardly see eye to eye with the far right on social issues, and we oppose some of these judicial nominees, but we urge Republican leaders to press ahead with their threat to nuke the filibuster. The so-called nuclear option entails a finding by a straight majority that filibusters are inappropriate in judicial confirmation battles.

But the Senate shouldn't stop with filibusters over judges. It should strive to nuke the filibuster for all legislative purposes.

The filibuster debate is a stark reminder of the unprincipled and results-oriented nature of politics, as senators readily switch sides for tactical advantage. Politicians' lack of consistency on fundamental matters—the debate over the proper balance of power between Washington and the states would be another case in point—is far more corrosive to the health of American democracy and the rule of law than any number of Bush-appointed judges could ever be. For one thing, it validates public wariness about politicians professing deep convictions.

Liberal interest groups determined to keep Bush nominees off the bench are in such a frenzy that they would have you believe that the Senate filibuster lies at the heart of all American freedoms, its lineage traceable to the Constitution, if not the Magna Carta. The filibuster, a parliamentary tactic allowing 41 senators to block a vote by extending debate on a measure indefinitely, is indeed venerable—it can be traced back two centuries. But it is merely the product of the Senate's own rule-making, altered over time; the measure was not part of the founding fathers' checks and balances to prevent a tyranny of the majority. The Senate's structure itself was part of that calculus.

The filibuster is a reactionary instrument that goes too far in empowering a minority of senators. It's no accident that most filibusters have hindered progressive crusades in Washington, be it on civil rights or campaign finance reform. California's Democratic Sen. Barbara Boxer, one of those recent converts to the filibuster, embarrassed herself by hailing Sen. Robert Byrd (D-W.Va.) as her inspiration at a pro-filibuster rally. At least Byrd is being consistent in his support—he filibustered the 1964 Civil Rights Act.

A showdown is looking increasingly likely, though it isn't clear that all Republicans want this fight. Some of them realize they will again be in the minority someday and that the filibuster is a handy brake on the federal government's activism. If their caution prevails, or if Republicans take on the filibuster only in the narrow context of confirmation battles, we will happily weigh in again in the future, still on the anti-filibuster team.

Mr. INHOFE. Madam President, I inquire of the Senator from Indiana, is he going to be offering an amendment?

Mr. BAYH. Madam President, I am.

Mr. INHOFE. I yield the floor.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. BAYH. Madam President, what is the pending business?

The PRESIDING OFFICER. The highway bill is the pending business.

AMENDMENT NO. 568 TO AMENDMENT NO. 567

Mr. BAYH. Madam President, I have an amendment at the desk, No. 568, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Indiana [Mr. BAYH] proposes an amendment numbered 568.

Mr. BAYH. Madam President, I ask unanimous consent that the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To amend title VII of the Tariff Act of 1930 to provide that the provisions relating to countervailing duties apply to nonmarket economy countries)

At the appropriate place, insert the following:

TITLE ____—OVERSEAS SUBSIDIES

SECTION ___01. SHORT TITLE.

This title may be cited as the ''Stopping Overseas Subsidies Act of 2005''.

SEC. ___02. APPLICATION OF COUNTERVAILING DUTIES TO NONMARKET ECONOMY COUNTRIES.

Section 701(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1671(a)(1)) is amended by inserting ''(including a nonmarket economy country)'' after ''country'' each place it appears.

SEC. ___03. EFFECTIVE DATE.

The amendments made by section ___02 apply to petitions filed under section 702 of the Tariff Act of 1930 on or after the date of the enactment of this title.

Mr. BAYH. Madam President, I thank my colleague from Oklahoma for his courtesy.

The highway bill we are currently debating is important, vitally important to building a strong economy for our Nation. It will create jobs today and raise productivity tomorrow, strengthening the American people in the global economic competition we face and, in so doing, offer better prosperity and security for our children.

This is only a small part of a bigger picture. It is only the beginning of what must be done if we are to ensure American prosperity and national security and a future for our children of which we can be proud.

The American people need a debate—a debate that starts today—about how to create that prosperity in a global economy, about what we must do and to what we must commit ourselves, and also about what we have a right to expect from others. It is a debate that will take time—time today, time this week, time repeatedly this year and for the foreseeable future. It is a debate that will define our generation and affect the American people for generations to come. It is a struggle from which our current leaders have all too often been missing, incoherent, naive, and shortsighted, and that must change.

As my colleagues know, I feel so strongly about this subject that I recently placed a hold—the first time I have done such a thing—on the prospective nomination of Ron Portman to be our next trade negotiator. I want to emphasize this action is not personal on my behalf. I met with Mr. Portman. He is a fine man. I have every reason to believe he is eminently qualified for the position for which he has been nominated. But our obligation in this Senate is not merely to confirm him in his new job but, in addition, to confirm that American workers and businesses can labor in a system where, through hard work, ingenuity, and sacrifice, they have a fair chance in the global ''economyplace'' to succeed. That, too often, is not the case, and the indifference and the inaction that has led to this must change.

Our amendment enjoys broad bipartisan support. I am proud to say Senators COLLINS, GRAHAM, and others support this undertaking. They know it is essential. We have bicameral support. Representatives ENGLISH, DAVIS, and many others support this amendment. They too know that something must be done.

Our approach enjoys support by both business and labor—the National Manufacturers Association, and many representatives of organized labor—because they have waited too long for justice, and the time for justice has arrived.

We have the broad support we enjoy because of a building consensus in our country. Even in a divided society, even in this divided institution, action is needed and can no longer be delayed or denied.

What is that consensus, Madam President? It is the American people must devote themselves to succeeding in a global competition, that we must provide for those who are adversely affected by that global competition, and that American workers and businesses have a right to expect that our competitors in this competition will play by the same set of rules as do we.

America must commit itself, we must commit ourselves—it is our obligation—to doing those things that are necessary to succeed in the global marketplace. Nothing else will do. We cannot wall up our country. We cannot shut out those with whom we would compete. We saw the consequences of that in Eastern Europe under communism. So when the walls come down, as they invariably do, they could produce nothing that the rest of the world could consume.

It reminds me, in some ways, of the siren song of protectionism of the Greek king who once sought to turn back the tide and stood on the beach commanding it not to come in, only to drown in the process. We must not follow that path. But to avoid following

that path, we must have a strategy for success in the global marketplace that involves a robust commitment to research and development in the new goods, the new services, the new technologies of the future that will command good wages in the global marketplace, particularly in the area of energy independence.

We have an opportunity, as a society, to create hundreds of thousands of good-paying jobs, to address our imbalance of payments, to strengthen our finances, our economy, our environment, and our Nation's security in the process. That commitment has been missing for too long.

It is penny-wise and pound-foolish when we cut back on our investment in research and development. It demonstrates a lack of national will when we do not commit ourselves to increased energy independence. That must change.

What also must change is an increased commitment to an education for every American child, particularly the less-fortunate third, so they can be economically relevant in the global marketplace of today and tomorrow with the skills and the talents and the abilities to be globally competitive.

For too many of our less fortunate children, that still is simply not the case. So we have to redouble our efforts in K–12 education, and we need to open up the doors of access to college opportunity for every American child who is willing to work hard, play right, and do right themselves to get there.

The growing gap between the haves and have nots in America today increasingly is defined by those who have a college education and those who do not. Over the last 20 years, those who dropped out of high school or got a high school diploma that did not mean very much because the grades were the result of social promotion rather than actual achievement have seen their standards of living decline precipitously. Those in our country who received a college degree have seen their standards of living increase marginally. Those who have gotten an advanced degree have seen a dramatic increase in their prosperity and standard of living. So if we want to be globally competitive, we need to invest in the talents and the skills of our children and ensure that every child can have a college opportunity. That is a debate for another day. More needs to be done. More must be done if we are going to win the battle of global economic competition.

We also must do our part by committing ourselves to a course of fiscal sanity. The current budget imbalances simply are not sustainable, and they exacerbate the trade imbalance and the borrowing we must undertake from abroad. When it comes to our own budget deficits and imbalance, we only have ourselves to blame. We have to summon the national will to restore our finances, to ensure that we have a strong financial, fiscal situation in this country, to ensure that our children will inherit from us something better than our unpaid bills that have to be paid with interest to foreign countries and increasingly foreign banks. That is not right. We need to correct that situation. We need to redouble our efforts to increase our national savings through incentives for Americans to save more in the private sector so that we will increasingly be able to finance our demands at home.

We need to look through the prism of innovation in all that we do to ensure that we can be more rapid, more nimble, in terms of bringing new goods and services to market, and when we do that we need to ensure there is robust protection for our intellectual property rights abroad. All too often, that is not the case. We cannot allow a situation to develop where, when we do our part through research and development, through education, through fiscal sanity, through increasing our own domestic savings, through becoming more competitive and innovative, the fruits of that labor of that American genius are stolen by those abroad through violating our intellectual property rights. That cannot be allowed to continue further.

In addition to having a positive strategy for economic success in a global marketplace, we also have a moral responsibility to those who may be dislocated through no fault of their own as a result of that global economic competition. We must reach out to those Americans who are displaced and ensure that they have an opportunity to get back on the ladder of success, that every American has the prospect of being upwardly mobile in the global marketplace and that we do not just say to them, well, if they grew up 30 or 40 years ago and did not get the education they need, if they happen to be employed in the wrong industry that is suffering dislocations, that is too bad for them; they are in the scrap heap of history; they are on the wrong side of history; tough luck. That is social Darwinism, and we cannot take that path either.

For those of us who will benefit from the fruits of the global marketplace, consumers and industries that are globally competitive and enjoy comparative advantage, we have to take some of that success, some of those benefits, and put it into training, retraining, job placement, pension and health care portability, so that every American has a chance to be upwardly mobile and successful in the global marketplace.

There is also a growing consensus that even when we have done our part, even when we have adopted a strategy to be successful, even when we have defined our comparative advantage, when we provided for those who will be dislocated through no fault of their own, even when we have done all of that, others must do their part, too. We cannot stand idly by and watch the ingenuity, hard work, and sacrifice of the American people undone by the premeditated cheating—and that is what it is—of other countries because of their own narrow self-interests.

American workers and businesses too often are getting the shaft today, and that is not right. It is not right when those of us in the Senate stand idly by. It is not right when those in the administration turn a blind eye to this. That must change. We must enforce the rules of open global competition, and that is what our amendment will do. That is our obligation to our fellow citizens and our children.

The cheating—and as I have said, that is what it is—comes in many forms, such as the theft of intellectual property. I am told that more than 80 percent of the business software in China today is pirated. Barriers to U.S. exports, some in the form of tariffs, some not tariff barriers, such as our beef exports to Japan today—more on that in a moment—through currency manipulation, which we voted on in this Senate not long ago, giving a built-in 25- to 30-percent advantage to countries that do that—in this case, China—not because our workers are not as smart, not because they do not work as hard, not because the products are not as competitive, are simply because of financial engineering. Tens of thousands of Americans, when they get up in the morning, before they get dressed and go to work, start off with that kind of disadvantage through no fault of their own. How can we possibly look them in the face and tell them they are getting an even shake in the global marketplace? How can we possibly call that free trade? It is not. We know it is not. And it has to change.

Illegal subsidies is another form of cheating. Free rent, free power, loans never intended to be repaid—that is not free trade. It is the opposite of free trade. It is economic engineering by other countries to the detriment of American workers and businesses, and that has to stop. It is well known.

In its recent report to the Congress, the congressionally mandated and bipartisan U.S.-China Economic and Security Review Commission stated:

> There was a general consensus in the testimony that China remains in violation of its WTO obligations in a number of important areas.

In a hearing before the Ways and Means Committee 2 weeks ago, a representative of the U.S. Chamber of Commerce highlighted a number of concerns:

> . . . China's post-WTO accession use of industrial policy—

Not free trade, industrial policy—

> including the use of targeted lending, subsidies, mandated technology standards rather than voluntary, industry-led international standards, discriminatory procurement policies, and potentially, antitrust policy—to structure the development of strategic sectors is of mounting concern.

Industrial policy, not free trade. That is what we seek to change, a global competitive marketplace where the

laws of comparative advantage will rule, where citizens of every country will have a right to work hard, think smart, be nimble, bring goods and services to the marketplace, and let the best man and woman win. Too often that is not the case today. It is the case on the part of our workers but not on the part of their competitors, and that is what has to stop. That is what this amendment will do.

Our Government is well aware of this but too often chooses to turn a blind eye. The time for the Senate turning a blind eye has to stop. I think about the case of Batesville Tool and Die in Indiana and the fact that their competitor, in this case from China, sells their product in the United States of America for one-half of a penny above the cost of the raw materials, leaving nothing for labor, nothing for transportation, nothing for marketing. There has to be an illegal subsidy there. It is the laws of physics and the laws of economics. Currently there is nothing in our law that allows us to do anything about it. If the laws of economics are going to make sense, our law better insist that we have a right to end this kind of industrial policy and cheating. That is what our amendment will change.

I think about the National Association of Manufacturers, an organization that embraces free trade, and a pair of pliers they held up when we announced our amendment a few months ago, a pair of pliers sold at the cost of raw materials—the same thing, leaving nothing for anything else. Obviously an illegal subsidy violating the rules of the WTO is in place there, and that has to change.

I think about a foundry I visited in northeast Indiana where they stopped production so that I could address the workers several months ago. A foundry is a dirty business. These guys had soot on their faces and grime on their clothes, and they gathered around to hear me speak. I looked at them, and I in good conscience could no longer look them in the face, knowing the kind of burdens they labor under, the unlevel playing field, the kind of cheating that takes place, knowing they are willing to work hard for a living, and that too often that can be undone by those who are not willing to do the same or are willing to cheat to have their way. That is what has to stop, and that is what this amendment will change.

The time has come to take a stand. Our prosperity is at stake. The global marketplace, the global trading system, cannot work. When our global competitors have a comparative advantage, we buy their goods, but then when we have a comparative advantage, when American workers can produce something quicker, smarter, and cheaper than anybody else, they still do not get to sell their products abroad. They are still defeated at home because of cheating. It just will not work, and that is what this amendment will help to change. Our national sovereignty is at stake, our very sovereignty as a nation.

I do not know how many of my colleagues or the American people noticed several weeks ago that the President of the United States got on the phone and he called his colleague, the Prime Minister of Japan, and he said: You have been keeping our beef exports out of your country for too long. We are pretty good at producing beef in the United States, and you are using the excuse—and it is an excuse now—of the mad cow scare a couple of years ago as an informal trading barrier to keep our products out. You know what, we buy a lot from you. You ought to bring this nontariff barrier down. It is only the right thing to do.

So they had this exchange, and then shortly thereafter, whether by accident or not, the Prime Minister happened to say, well, maybe the time has come for Japan to start diversifying its financial holdings out of dollar-denominated assets, and for the next several hours the value of our currency, the value of our money, began to go into a free fall until some bureaucrat down in the bowels of the Finance Ministry came out and said the Prime Minister did not really know what he was talking about, it is not true.

Well, that is one thing. But a couple of weeks before that, there was a rumor going through Seoul, the same kind of thing—maybe the South Koreans would start diversifying out of dollar-denominated assets. That started a run on our currency, too.

It is not a sign of strength, it is not a sign of independence, it is not a sign of security when something as fundamental as the value of our money can be undermined by a slip of the tongue or a premeditated statement or a rumor sweeping a foreign capital. That is not the sign of a great nation; it is the sign of dependency, of weakness. It is something that can no longer be allowed to continue if we are going to have the kind of security for our children that we want them to have and that they deserve.

Make no mistake, our Nation's security is at stake. A strong military and the current financial imbalances we are running cannot be sustained indefinitely.

There was a book several years ago by Paul Kennedy called ''The Rise and Fall of Great Powers.'' It pointed out that the undoing of great nations had all too often been the result of their economic and financial weakness.

The percentage of GDP we are currently spending on national security and military expenditures substantially outstrips that of our economic competitors, freeing them to invest a substantially greater percentage of their wealth in productive assets.

As the only global superpower and the principal leader in the war against terror, we cannot afford to cut back on our investment in national security. At the very least, we can insist that those who benefit from our efforts in the fight against terror, who benefit from our efforts to provide for global security, play by the same set of economic rules so that we do not undercut the very prosperity that allows us to fight the war on terror and provide for global economic security. The two have to go hand in hand. For the last several years there has been a decoupling that cannot go on indefinitely. If we do not correct this situation, we not only undermine our prosperity and our financial strength, we undermine our very sovereignty and our Nation's security. The debate about leveling the field and enforcing the rules on global trade is very much, in the long run, a debate about national security as well.

Finally, let me sum up by saying two things. First, I know a lot of people want to talk about China. We had a debate on that and a vote with regard to currency manipulation a couple of weeks ago. Our relationship with China is one of the most important relationships over the next 50 to 100 years. They are a great nation with a great culture and a bright future. Our relationship with them will be at times complex and difficult. It is only going to work if the relationship is mutually beneficial in a number of ways, and in the economic arena as well.

The nation of China has its challenges and we want to see them successfully meet those challenges. But we have challenges, too, and they must be committed, equally committed to seeing us meet our challenges if this relationship is going to work as it must. It is simply not right that to ease the absorption of surplus workers in agriculture in China, we are asked artificially to throw out of work and put out of business American workers and businesses in our heartland. That is fundamentally not just. Stability and growth in China are important, and we should help them in that regard but not at the cost of our own. It is time that we insisted we achieve both.

Let me conclude by saying I am optimistic about our future. With the right kind of leadership there is little that the American people cannot accomplish. But as the old saying goes: If you don't know where you are going, well, any road will lead you there. We must have a strategy for success and prosperity. If we do, I am convinced we can get the job done because we have done it before.

If I had been addressing this Senate 100 years ago, more than half of our workers would have been employed in agriculture—more than half. Today it is about 3 or 4 percent. As we made the transition from an agricultural economy to a manufacturing-based economy, the United States of America did not dry up and blow away. There were difficulties but we met the challenge. We reinvented our economy and increased our prosperity and our standing in the world as a result.

If I had been addressing this Senate 50 years ago, more than 30 percent of

the American workers would have been employed in manufacturing. Today it is about 12 percent. Again, as the global economy began to change, as our domestic economy began to change, we did not dry up and blow away. There were difficulties. There were challenges. But we have been growing the service sector of the economy and the innovative and other parts of the economy.

So as we fight to save every kind of manufacturing job where we can be competitive in advanced manufacturing and other sections of the manufacturing sector, we have grown other parts of the American economy as well. We can continue to do that but only if we are willing to stand up for American interests and competitiveness and not allow the genius of our people to be stolen and undermined by the premeditated cheating and self-interest of other nations to which we turn a blind eye, or don't have the stomach to stand up to. That has to stop and that is what our amendment will do.

It will enable the American people to preserve our prosperity—when we are right, when we are competitive, when we have an advantage—and will enable us to go on and grow parts of our economy and grow good jobs at good wages where we have that advantage and allow our consumers to buy products from countries where they have the advantage. It will do right by our children. It will do justice to our workers. It will strengthen our national security, our sovereignty, our finances, and our prosperity. It is the right thing to do, and that is why I propose this amendment and that is why I ask for my colleagues' support.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Madam President, the amendment of the distinguished Senator, it is my understanding, is one that has been in consideration in the Finance Committee. There is a freestanding bill called ''Stopping Overseas Subsidies Act of 2005.'' Is that correct?

Mr. BAYH. That is correct.

Mr. INHOFE. Madam President, the chairman of the committee has advised me that they have been working on this bill for quite some time. As chairman of the Environment and Public Works Committee, and author of the highway bill, I suggest there are titles of the bill that are not within the jurisdiction of my committee. One is the Finance Committee title. The title is not yet here, so we do not have that to consider at this time.

I think it would be more appropriate later on, after we receive the title, to debate that in the normal process of legislation.

Mr. GRASSLEY. Mr. President, I rise in strong opposition to this amendment.

First, let me say I am profoundly disappointed by the way this issue has been handled over the past several weeks.

My staff has been working hard with some of the proponents of this legislation to fully understand the pros and cons of the legislation.

In fact, a meeting was held with the proponents just prior to a press release being issued saying that a hold was being placed on a nominee unless a vote were taken on the bill.

I thought we were making good progress. Needless to say, I was very surprised to learn of that development. No one asked me about it.

Let's be clear, I share concerns about China's economic policies and the impact of those policies on international trade and the U.S. economy.

At this point, however, I'm not convinced that the Bayh amendment is the best possible policy response we can provide to China's economic policies.

The amendment would substantively change United States trade law, and it is imperative that the repercussions be fully understood before we move ahead with the proposed change.

That's why the committee process should not be circumvented. The Finance Committee has jurisdiction over issues of international trade, and its expertise should be brought to bear on any trade issue before its consideration by the full Senate.

When that process is not respected, we run the risk of adopting ill-thought out policy which in the end could undermine the very intent of legislation that is rushed in as an amendment, as Senator BAYH proposes we do in this case.

For starters, I understand that the bill may not even be necessary, as it's possible this change could be implemented administratively rather than legislatively.

We should explore with Administration officials the feasibility of implementing an administrative change, what that would entail and how that might best be accomplished.

The proposed legislation doesn't give the Commerce Department any flexibility to develop appropriate regulations and procedures to implement this provision.

Such a significant change from established practice should at least incorporate sufficient flexibility so that it can be implemented properly. Otherwise, proponents run the risk of undermining their very goal.

Why wouldn't proponents want to ensure that such a significant change in the operation of our trade laws is implemented properly?

Again, that's why the Finance Committee should have the opportunity to address the details.

There are other repercussions that should be examined. How does the proposed legislation relate to China's accession to the WTO for example?

Is it consistent with the terms of our bilateral agreement on China's WTO accession?

Those questions should be answered before we move ahead on this legislation.

Another very serious issue is the relationship between this legislation and existing U.S. trade law.

It's quite possible that by adopting this bill we could undermine the application of U.S. antidumping law, and I doubt any of my colleagues would advocate that result.

It is even possible that this amendment could force us to relinquish application of the nonmarket antidumping methodology in dumping cases.

That question needs to be addressed thoroughly before we move ahead on this legislation. Proponents may offer blanket assertions to the contrary, but that is not sufficient, in my view.

We should not run the risk of undermining our trade laws by pushing this amendment onto a bill today.

I hope Senator BAYH will reconsider his decision and withdraw the amendment.

If not, I hope my colleagues will join with me in opposing his amendment until we can fully appreciate its repercussions.

Mr. President, I yield the floor.

Mr. INHOFE. I will be glad to respond to any questions the Senator has, after I get one thing taken care of here.

Madam President, I ask unanimous consent that at 1:30 p.m. the Senate proceed to executive session for the consideration of Calendar No. 39, the nomination of J. Michael Seabright, to be U.S. district judge for the Southern District of Hawaii; provided further that there be 30 minutes for debate equally divided between the chairman and the ranking member or designees, and that at the expiration or yielding back of the time, the Senate proceed to a vote on the confirmation of the nomination with no intervening action or debate; provided further that following the vote, the President be immediately notified of the Senate's action, and the Senate then resume legislative session.

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

Mr. INHOFE. Madam President, as we said over and over again, I have a list of about eight amendments people have said they want to come down and offer. This is the third day now we have been inviting them to come down. So far only Senator THUNE has brought his amendment in. We did adopt that amendment. I encourage others to come down.

I think this could very well be considered by most people the most significant vote on a bill we will be considering on the floor this entire year. We want to make sure, while we have the time, that we give adequate consideration and time for the amendments that different Members may have. I invite them to come down at any time during this process. With that, I yield the floor.

Mr. BAYH. Did my colleague have a question?

Mr. INHOFE. It is my understanding the junior Senator from Missouri would like to have the floor for consideration of an amendment. But I will yield the floor at this time.

The PRESIDING OFFICER. The Senator from Missouri.

AMENDMENT NO. 582 TO AMENDMENT NO. 567

Mr. TALENT. Madam President, I have an amendment to send to the desk. I ask unanimous consent the Bayh amendment be set aside so I can do that, offer the amendment; and then, at the end of the 3 or 4 minutes I am going to use to offer the amendment, that we would go back to the Bayh amendment. That would be my unanimous consent request.

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Missouri [Mr. TALENT] proposes an amendment numbered 582 to amendment No. 567.

Mr. TALENT. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To direct the Secretary of Transportation to conduct a program to promote the safe and efficient operation of first responder vehicles)

At the appropriate place, insert the following:

SEC. ___. FIRST RESPONDER VEHICLE SAFETY PROGRAM.

(a) IN GENERAL.—Not later than one year after the date of enactment of this Act, the Secretary of Transportation, in consultation with the Administrator, National Highway Traffic Safety Administration, shall—

(1) develop and implement a comprehensive program to promote compliance with State and local laws intended to increase the safe and efficient operation of first responder vehicles;

(2) compile a list of best practices by State and local governments to promote compliance with the laws described in paragraph (1);

(3) analyze State and local laws intended to increase the safe and efficient operation of first responder vehicles; and

(4) develop model legislation to increase the safe and efficient operation of first responder vehicles.

(b) PARTNERSHIPS.—The Secretary may enter into partnerships with qualified organizations to carry out this section.

(c) PUBLIC OUTREACH.—The Secretary shall use a variety of public outreach strategies to carry out this section, including public service announcements, publication of informational materials, and posting information on the Internet.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for fiscal year 2006 to carry out the provisions of this section.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. TALENT. Madam President, I thank my friend from Oklahoma and my friend from Indiana for allowing me to get this amendment pending. I am very hopeful we will eventually get it accepted. I am working with the chairman and ranking members of both the full committee and subcommittee to get that done.

The purpose of the amendment is to address the problem of the increasing number of accidents occurring in which either parked first responder vehicles are rear-ended by other vehicles or the first responder is struck after leaving the vehicle.

In first responders—such an antiseptic term—we are talking about our police officers, our ambulance workers and drivers, our firefighters who are dealing with the issue of a car that is parked on the side of the road, maybe because the police officer pulled the car aside, or because the car has been abandoned, or it is on fire. It is all too often the case in this country that our first responders who are working on those situations are injured or killed by a passing vehicle.

I will share the story of a Missouri law enforcement officer who tragically lost his life this way. I know there have been many more such as him around the country. Michael Newton was a State trooper for the Missouri highway patrol. He stopped a vehicle on Interstate 70 in Lafayette County, MO, for a traffic violation on May 22, 2003. He and the other driver were sitting in the patrol car when they were struck from behind by a pickup carrying a flatbed trailer. Trooper Newton died at the scene. The driver he had stopped suffered serious burns. Trooper Newton was only 25 years old. He left a wife, two young sons, many loving relatives, and a community that deeply mourned his loss and was very grateful for his service to the State of Missouri.

In 2003, 193 other people lost their lives in crashes involving emergency vehicles, including 141 lives lost in crashes involving police vehicles, 29 lives lost in those involving ambulances, and 24 lives lost in crashes involving firetrucks.

According to the National Law Enforcement Officers Memorial Fund, vehicle-related incidents are the No. 1 cause of police officer injuries and the No. 2 cause of police officer deaths. In 2004, 73 out of 153 police officer deaths were vehicle related. Not all of those involved parked cars, but most of them did.

I was very surprised to see those statistics and deeply concerned that we have not informed people and raised their awareness about this problem. That is what this amendment is designed to do. My Pass With Care amendment requires the Secretary to start a nationwide publicity campaign through public service announcements, developing a Web site, providing informational materials, to increase public awareness of this crucial safety issue.

Our first responders, our police, our firefighters, our ambulance workers dedicate their lives to helping protect the rest of us. They save so many lives through their heroic efforts. If more people realize they can help protect our first responders by quickly and safely pulling over when they hear an emergency siren or being more careful when they see a first responder vehicle parked on the road or the shoulder of the road, that will reduce the risks for our law enforcement, health workers, and firefighters.

The amendment requires the Secretary, in consultation with the National Highway Safety Administration, to develop and implement a program to promote compliance with State Pass With Care laws and ''move over'' laws. Those laws govern how motorists pass and yield to first responders' vehicles.

The Secretary, under my amendment, would compile a list of best practices to promote compliance with such laws, would conduct an analysis of the various State and local laws that deal with the safety of first responder vehicles, and from that analysis develop model legislation that States can adopt should they choose to do so.

Unfortunately, only 27 States currently have Pass With Care laws or ''move over'' laws. The amendment would help give guidance to the remaining States on drafting laws that would help save lives. The Secretary would be authorized to enter into partnerships with safety organizations and engage with public outreach to help improve first responder safety.

This is not an amendment that would be coercive on the States. I tried to be sensitive to that in drafting it. It is what we can do as an alternative to mandating the States in this area to help provide a clearinghouse of information for them to help develop model legislation and also in appropriate ways to develop an increased public awareness of this problem.

If people become more aware of this as the bill goes through and as a result of an awareness campaign the Secretary would conduct, that in itself would probably reduce the number of deaths.

I was surprised to hear of the number of first responders who are imperiled. If we can help them by raising awareness, I think we ought to do it. I am pleased to introduce the amendment on behalf of our first responders at risk on our roads and highways. They should not be at risk. I urge the Senate to pass the amendment to help strengthen these laws, and ensure the safety of our first responders.

I certainly am willing to work with the managers of the bill to help deal with any concerns they may have regarding the wording of the amendment.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

EXECUTIVE SESSION

NOMINATION OF J. MICHAEL SEABRIGHT TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF HAWAII

The PRESIDING OFFICER. The clerk will report the nomination.

The legislative clerk read the nomination of J. Michael Seabright, of Hawaii, to be United States District Judge for the District of Hawaii.

The PRESIDING OFFICER. Under the previous order, there are 30 minutes, equally divided, for debate on the nomination.

The Senator from Hawaii.

Mr. INOUYE. Mr. President, I am pleased and hnored to speak in support of J. Michael Seabright of Honolulu, Hawaii, who has been nominated by the President to serve as a Federal district court judge for the District of Hawaii.

Mr. Seabright graduated magna cum laude from his undergraduate alma mater of Tulane University, before going on to attend The National Law Center at George Washington University, where he received his juris doctor and graduated with high honors as a member of the Order of the Coif.

At George Washington, he further distinguished himself by serving as the editor of the George Washington Journal of International Law & Economics.

I have had the pleasure of knowing Mr. Seabright since he arrived in Hawaii 20 years ago, having watched him as he successfully became a member of the Hawaii State Bar Association, and became involved in our community.

Now Mr. Seabright stands out as a leader in the legal side of law enforcement, where he developed the District of Hawaii plan for implementing ''Operation Triggerlock-Hawaii,'' a Federal-local effort aimed at the prosecution of violent armed career criminals in Federal court.

His broad experience in prosecution, from violent crimes to government corruption, have provided him a balanced perspective of the criminal justice system that will continue to serve him well as he prepares for this most recent development in his career of public service.

Mr. Seabright's work for Hawaii goes beyond his professional commitments as an assistant U.S. attorney, however. He has served on the Hawaii Supreme Court's disciplinary board since 1995 and holds the chairmanship of its rules committee, which is charged with the drafting proposed rules for the Hawaii Rules of Professional Conduct.

He was also a member of the Hawaii State Board of Bar Examiners, and has been an adjunct professor at the University of Hawaii William S. Richardson School of Law.

This extraordinary record of achievement has now culminated with his nomination to the Federal bench, and amply supports the favorable reports he has received from the Hawaii State Bar Association, the American Bar Association, and the Federal Bureau of Investigation.

I am confident that his record will prove equally impressive to the full Senate, and I trust that he will become the 206th of Mr. Bush's judicial nominees to be confirmed to the Federal bench. I hope my colleagues will join me in voting in favor of Mr. Seabright.

The PRESIDING OFFICER. The Senator from Hawaii, Mr. AKAKA, is recognized.

Mr. AKAKA. Mr. President, it is with great pleasure that I join Senator INOUYE in support of the nomination of Mr. J. Michael Seabright for the U.S. District Court for the District of Hawaii. The Hawaii State Bar Association has found Mr. Seabright to be highly qualified for the position of U.S. District Court Judge in Hawaii. This is of significant importance to me, as I value the opinion of Hawaii's legal community in evaluating those nominated to serve as judges.

Mr. Seabright has practiced law in the State of Hawaii for over 20 years, in a number of capacities, including both private practice and public service. Mr. Seabright has been employed by the U.S. Attorney's Office for the District of Hawaii for the past 15 years, and he has headed the white-collar and organized crime section since 2002.

I am very pleased that this position, after being vacant for so many years, will now be filled by an individual as qualified as J. Michael Seabright. For the past few years, I have heard from jurists and a number of attorneys in Hawaii about the need to fill this judicial vacancy. I am encouraged to see that with the consideration of this nominee the Senate will continue its tradition of fulfilling its advice and consent role under the Constitution.

I urge my colleagues to vote in favor of Mr. Seabright's nomination.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, it has taken some time, but the Senate Republican leadership will finally allow the Senate to consider the nomination of Michael Seabright to be a United States District Court Judge for Hawaii. I commend the distinguished Senators from Hawaii for their effort in identifying this consensus nominee. When Mr. Seabright is confirmed by an overwhelming, bipartisan vote of the Senate, he will be the 206th nominee of this President confirmed to a lifetime appointment to our Federal courts.

This is only the second judicial nomination Senate Republicans have been willing to consider all year. There has been no filibuster of judicial nominees this year. Instead, it is the Senate Republican leadership that, through its deliberate inaction, is keeping judgeships unnecessarily vacant for months. With this nomination and with the nomination of Judge Crotty, I was the one asking for months for the nomination to be considered, debated, voted, and confirmed. For the last several weeks, I have been calling upon the Republican readership to proceed to the confirmation of Michael Seabright to the District Court of Hawaii.

All Democrats on the Judiciary Committee had been prepared to vote favorably on this nomination for some time. We were prepared to report the nomination last year, but it was not listed by the then-chairman on a committee agenda. I thank Chairman SPECTER for including Mr. Seabright at our meeting on March 17. The nomination was unanimously reported and has been on the Senate Executive Calendar for more than a month. It is Senate Republicans who resisted a vote on this judicial nominee, not Democrats. In their fashion, they did so without any explanation akin to the anonymous ''holds'' that doomed more than 60 of President Clinton's judicial nominees not so long ago.

Once confirmed, Mr. Seabright will be the 206th of 216 nominees brought before the full Senate for a vote to be confirmed. That means that 829 of the 875 authorized judgeships in the Federal judiciary, or 95 percent, will be filled. It is regrettable that Republican delay has now pushed the Senate behind even the pace set by the Republican majority in 1999, when President Clinton was in the White House. That year, the Senate Republican leadership did not allow the Senate to consider any circuit court nominees for the entire session and only 17 district court nominees were confirmed. The Republican Senate has fallen behind that pace.

Of the 47 judicial vacancies now existing, President Bush has not even sent nominees for 29 of those vacancies, more than half. I have been encouraging the Bush administration to work with Senators to identify qualified and consensus judicial nominees and do so, again, today. The Democratic leader and I sent the President a letter in this regard on April 5, but we have received no response.

It is now the last week in April. We are almost one-third through the year and so far the President has sent only one new nominee for a Federal court vacancy all year—only one. Instead of sending back divisive nominees, would it not be better for the country, the courts, the American people, the Senate, and the administration if the White House would work with us to identify, and for the President to nominate, more consensus nominees such as Michael Seabright who can be confirmed quickly with strong, bipartisan votes?

I commend the Senators from Hawaii for their efforts to work cooperatively to fill judicial vacancies. I only wish Republicans had treated President Clinton's nominees to vacancies in Hawaii with similar courtesy. Had they, there would not have been the vacancies on the Ninth Circuit and on the District Court. The work of the Senators from Hawaii is indicative of the type of bipartisan efforts Senate Democrats have made with this President

and remain willing to make. We can work together to fill judicial vacancies with qualified, consensus nominees. The vast majority of the more than 200 judges confirmed during the last 3½ years were confirmed with bipartisan support.

The truth is that in President Bush's first term, the 204 judges confirmed were more than were confirmed in either of President Clinton two terms, more than during the term of this President's father, and more than in Ronald Reagan's first term when he was being assisted by a Republican majority in the Senate. By last December, we had reduced judicial vacancies from the 110 vacancies I inherited in the summer of 2001 to the lowest level, lowest rate and lowest number in decades, since Ronald Reagan was in office.

The Hawaii judgeship at issue here has been vacant for more than 4 years, since December of 2000 when Judge Alan Kay took senior status. President Clinton made a nomination to that seat in advance of the vacancy, but the Republicans in control of the Senate refused to act on it. They preserved the vacancy for a Republican President.

In 2002, President Bush nominated James Rohlfing to the vacancy. That nomination failed, however, because in the view of his home State Senators and the American Bar Association, he was not qualified for the position. It took the White House more than 2 additional years to agree. Finally, in May 2004 that nomination was withdrawn by President Bush.

The administration finally got it right after consultation with the Hawaii Senators. The President sent Michael Seabright's name to the Senate last September. An outstanding attorney who has experience in private practice as well as a sterling reputation as an Assistant United States Attorney, Mr. Seabright merited consideration and swift confirmation. Despite his reputation as a law-and-order Republican, Republicans would not move on Mr. Seabright's nomination last Congress. The President took his time renominating Mr. Seabright and even then it took repeated requests to get his nomination included on the agenda of the committee. When he was considered on March 17, he was reported with unanimous support. Senate Democrats have long supported and requested action on this nomination.

I have been urging this President and Senate Republicans for years to work with all Senators and engage in genuine, bipartisan consultation. That process leads to the nomination, confirmation, and appointment of consensus nominees with reputations for fairness. The Seabright nomination, the bipartisan support of his home State Senators, and the committee's action by a unanimous bipartisan vote is a perfect example of what I have been urging.

I have noted that there are currently 29 judicial vacancies for which the President has delayed sending a nominee. In fact, he has sent the Senate only one new judicial nominee all year. I wish he would work with all Senators to fill those remaining vacancies rather than through his inaction and unnecessarily confrontational approach manufacture longstanding vacancies. It is as if the President and his most partisan supporters want to create a crisis.

Over the last weeks, we have heard some extremists call for mass impeachments of judges, court-stripping, and punishing judges by reducing court budgets. Now we are seeing an effort at religious McCarthyism by which Republican partisans inject religion into these matters. Rather than promote crisis and confrontation, I urge the President to disavow the divisive campaign and, instead, do what most others have and work with us to identify outstanding consensus nominees. It ill serves the country, the courts and, most importantly, the American people for this administration and the Senate Republican leadership to continue down the road to conflict.

The Seabright nomination shows how unnecessary that conflict really is. Let us join together to debate and confirm consensus nominees to these important lifetime posts on the Federal judiciary.

It is the Federal judiciary that is called upon to rein in the political branches when their actions contravene the constitutional limits on governmental authority and restrict individual rights. It is the Federal judiciary that has stood up to the overreaching of this administration in the aftermath of the September 11 attacks.

It is more and more the Federal judiciary that is being called upon to protect Americans' rights and liberties, our environment and to uphold the rule of law as the political branches under the control of one party have overreached. Federal judges should protect the rights of all Americans, not be selected to advance a partisan or personal agenda. Once the judiciary is filled with partisans beholden to the administration and willing to reinterpret the Constitution in line with the administration's demands, who will be left to protect American values and the rights of the American people?

The Constitution establishes the Senate as a check and a balance on the choices of a powerful President who might seek to make the Federal judiciary an extension of his administration or a wholly-owned subsidiary of his political party. Today, Republicans are threatening to take away one of the few remaining checks on the power of the Executive branch by their use of what has become knows as the nuclear option. This assault on our tradition of checks and balances and on the protection of minority rights in the Senate and in our democracy should be abandoned. Eliminating the filibuster by the nuclear option would destroy the Constitution's design of the Senate as an effective check on the Executive. The elimination of the filibuster would reduce any incentive for a President to consult with home State Senators or seek the advice of the Senate on lifetime appointments to the Federal judiciary. It is a leap not only toward one-party rule but to an unchecked executive.

Rather than blowing up the Senate, let us honor the constitutional design of our system of checks and balances and work together to fill judicial vacancies with consensus nominees. The nuclear option is unnecessary. What is needed is a return to consultation and for the White House to recognize and respect the role of the Senate appointments process.

The American people have begun to see this threatened partisan power grab for what it is and to realize that the threat and the potential harm are aimed at our democracy, at an independent and strong federal judiciary and, ultimately, at their rights and freedoms.

Mr. President, I commend the two Senators from Hawaii, Mr. INOUYE and Mr. AKAKA, for their support and their work with the White House in getting this nominee to the floor. I commend the White House for working with them.

This nominee was confirmed unanimously in the Senate Judiciary Committee, Republicans and Democrats joined alike. I urge on our side of the aisle that all Senators vote for him.

I have been advised by the distinguished members of the Republican side of the aisle that they are willing to yield back their time. So I ask that all time on either side on this nominee be yielded back so we can go to a vote.

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

Mr. LEAHY. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is, Will the Senate advise and consent to the nomination of J. Michael Seabright, of Hawaii, to be United States District Judge for the District of Hawaii?

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Montana (Mr. BAUCUS) and the Senator from Delaware (Mr. BIDEN), are necessarily absent.

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

The result was announced—yeas 98, nays 0, as follows:

[Rollcall Vote No. 111 Ex.]

YEAS—98

Akaka	Bunning	Cochran
Alexander	Burns	Coleman
Allard	Burr	Collins
Allen	Byrd	Conrad
Bayh	Cantwell	Cornyn
Bennett	Carper	Corzine
Bingaman	Chafee	Craig
Bond	Chambliss	Crapo
Boxer	Clinton	Dayton
Brownback	Coburn	DeMint

DeWine	Kennedy	Reid
Dodd	Kerry	Roberts
Dole	Kohl	Rockefeller
Domenici	Kyl	Salazar
Dorgan	Landrieu	Santorum
Durbin	Lautenberg	Sarbanes
Ensign	Leahy	Schumer
Enzi	Levin	Sessions
Feingold	Lieberman	Shelby
Feinstein	Lincoln	Smith
Frist	Lott	Snowe
Graham	Lugar	Specter
Grassley	Martinez	Stabenow
Gregg	McCain	Stevens
Hagel	McConnell	Sununu
Harkin	Mikulski	Talent
Hatch	Murkowski	Thomas
Hutchison	Murray	Thune
Inhofe	Nelson (FL)	Vitter
Inouye	Nelson (NE)	Voinovich
Isakson	Obama	Warner
Jeffords	Pryor	Wyden
Johnson	Reed	

NOT VOTING—2

Baucus	Biden

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the President shall be immediately notified of the Senate's action.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

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

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

TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS—Continued

Mr. INHOFE. Mr. President, I ask unanimous consent that we set aside the pending Bayh amendment for the purpose of adopting an agreed-to amendment, the Talent amendment, and go immediately back to the Bayh amendment.

Mr. BAYH. With that understanding, I do not object.

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

AMENDMENT NO. 582

The PRESIDING OFFICER. Is there further debate on the Talent amendment?

If not, the question is on agreeing to amendment No. 582.

The amendment (No. 582) was agreed to.

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

The motion to lay on the table was agreed to.

AMENDMENT NO. 568

The PRESIDING OFFICER. Under the previous order, the Bayh amendment will be the pending amendment.

The Senator from Michigan.

Ms. STABENOW. Mr. President, I rise today to show my strong support for the Bayh amendment on countervailing duties, and I ask unanimous consent to be added as a cosponsor.

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

Ms. STABENOW. I commend my friend and colleague from Indiana for his vision on the issue of what we need to do to create a level playing field for our businesses and workers. This is an important amendment.

I have spoken forcefully about our need to address the unfair trade practices of those with whom we trade. A necessary step in this process is to change those U.S. laws that hinder our industries from operating on a level playing field. That is what this amendment addresses. Our businesses, our workers have an expectation that we will provide a level playing field for them, and we need to deliver on that. This amendment is a good step in that direction.

Unfair trade practices are hurting our U.S. manufacturers and costing jobs. In my State of Michigan, I regret to say, we now have the highest unemployment rate in the country. At the time when our Nation's countervailing duty laws were approved in 1979, the Department of Commerce decided it was impracticable to apply those laws to nonmarket economies such as China due to the difficulty of determining what defines a government subsidy within the context of a state-controlled economy.

However, since that time, many nonmarket economies have undertaken significant economic reforms that have liberalized the state control over their economies. Unfortunately, however, some of these nations, such as China, refuse to comply with standard international trading rules and practices and use subsidies and other economic incentives to give their producers an unfair competitive advantage. This has a direct impact on job loss in Michigan, as well as in other States.

As we all know—and it has been documented—these subsidies range from currency manipulation, to providing below interest rate loans to less than creditworthy companies, to providing preferential access to raw materials and other input. I should mention that I was very proud to be a part of the effort to get a very strong vote a few weeks ago; 67 Members on both sides of the aisle joined to send a message both to the White House and to China that we expect China to stop manipulating their currency, which means it costs more for us to sell to them than for them to sell to us. It is part of what we need to do to level the playing field. I hope that because we have joined together in the vote we had on a very strong bipartisan basis, we will see the same kind of vote on this Bayh amendment.

I will give you a few examples of how this hurts Michigan manufacturers and workers directly. Counterfeit automotive products are a very big problem in Michigan. Not only does it kill American jobs, but it has the potential to kill Americans as cheap, shoddy automotive products replace legitimate ones of higher quality. The American automotive parts components industry loses an estimated $12 billion in sales on a global basis to counterfeiting. This must stop. We don't even keep statistics on the potential loss of life.

The United States is losing manufacturing jobs as a direct result of China's policies. China's policies have cost our economy 1.5 million jobs in the last 15 years and 51,000 jobs alone in Michigan. These job losses are hurting all of our manufacturers, from apple juice, to auto parts, to clothing, to furniture.

At this stage, U.S. industries have no direct recourse to combat subsidies used by nonmarket economies. They must rely upon the Federal Government to negotiate a settlement, or on the dispute settlement processes of international organizations, such as the WTO.

Why do we put such a strain on our own businesses? The remedies available currently might eventually lead to relief, but it takes years to see relief. We are losing jobs every day. There are headlines every day in Michigan about job loss. We have to have a sense of urgency here in the Senate and in the Congress and in the White House.

The Bayh amendment would change the situation to ensure that nonmarket economies are subject to the same countervailing duty laws as all other trading nations.

At a recent Finance Committee hearing on his nomination, Congressman PORTMAN said he thinks "we . . . need an additional focus on China. After a top-to-bottom review, I would plan to shift some resources, including some people to that effort."

I certainly encourage him to do that. I also want to indicate at this time that Congressman PORTMAN indicated support for a focus on creating an international trade prosecutor, or some people in his office who would focus on the role of prosecutor more broadly on those other countries that are violating rules. Senator BAYH has been a champion of that effort, and I am very proud he has joined with me and Senator GRAHAM in South Carolina in introducing specific legislation that relates to creating an international trade prosecutor as well. All of these pieces are important. We have taken one step to sending a message to China and to the administration that we expect them to address the issue of currency manipulation.

Now, this amendment is a very important piece in leveling the playing field for our businesses and our workers. I also urge that we incorporate an international trade prosecutor who will be our American voice for business and for workers on the broad issue of continuing to make sure the rules are fair. I think these pieces together create hope for the people we represent, whom we, in fact, would stand up for and stand up for American jobs.

While I have the floor, I want to speak briefly about something else that also relates to American jobs. In addition to this important amendment, we will be focusing on the broader issue of a strong SAFETEA Transportation bill. I am hopeful that we are going to get this done as quickly as possible. I am pleased that we have begun the process of debating this critical issue.

The snow finally has melted in Michigan—at least for the moment—and we are in the beginning of a new construction season. During the budget debate, I was pleased to join with Senator TALENT to lead an effort on an amendment to help the Senate produce a well-funded Transportation bill. I know Senator GRASSLEY and Senator BAUCUS are working hard to help strengthen this bill that is in front of us.

As my colleagues know, this bill isn't just about improving roads and transit systems and buses, but it is about creating jobs. Again, it is absolutely critical that we do everything possible to create American jobs and do it as quickly as possible. The Transportation bill is one of the fastest ways that we can bring good-paying jobs back to our States.

The Department of Transportation estimates that every $1 billion of highway spending creates 47,500 new, good-paying jobs, and it generates more than $2 billion in economic activity.

Mr. President, we need this bill now. If there are efforts to extend it, we need to have it be a short extension beyond May 31. My preference is to get this done before the end of May because we are going to lose another construction season if we do not. We in Michigan have projects ready to go the minute this bill is signed. It is absolutely critical that we get this done as soon as possible.

Over the last 4 years, Michigan has lost jobs. This bill, as I said, would create good-paying jobs that would help thousands of our families in Michigan. We are not talking about minimum wage jobs, we are talking about well-paying jobs, good-paying jobs that help families pay their mortgages and save for retirement and put their children through school.

Last year's bipartisan Senate bill that passed overwhelmingly would have created over 99,000 jobs in Michigan alone. It is my hope that the Senate will pass another strong bill. I understand that the House and the White House did not support the effort that we passed. Even though it was an important bipartisan effort and it showed in the Senate the best about governing, in my opinion, and people worked very hard on both sides of the aisle, it is very unfortunate that this was not supported by the House or the White House. Now we have a bill back in front of us and we need to make it the best we can possibly make it so that we are creating jobs and meeting the needs of our communities. We cannot fix the problems that we have in our States in terms of infrastructure and traffic congestion and issues of jobs and so on without the very best bill possible.

I am very hopeful—and I will do everything within my power, working with colleagues on both sides of the aisle—to get the fairest, best bill that we can for the people we represent and to get that as quickly as we possibly can.

Mr. President, I urge my colleagues to support the Bayh amendment and to move on to put together the final bill in the best way possible for both those States such as mine, which are donor States, as well as for the other States around the country, so that we can create the jobs that are needed as quickly as possible.

I yield the floor.

The PRESIDING OFFICER (Mr. MARTINEZ). The Senator from Indiana.

Mr. BAYH. Mr. President, I thank my friend and colleague, the Senator from Michigan, for her generous words, but for her leadership as well on both of these important issues. She understands very well the Transportation bill will create jobs for our construction workers in the short run and will improve our productivity in the long run but that it is just part of a bigger piece of improving America's economic competitiveness, and a big part of that, in Michigan and Indiana and the other 48 States, is when workers want to work hard, be smart, play by the rules, do the right thing, they need to be rewarded for those efforts and not have their hard-working sacrifices unfairly taken from them by global competitors who do not play by the rules, who cheat, and are not willing to make the tough decisions our businesses and workers are asked to make.

I thank her for her leadership and for her kind words and look forward to working with her on these and other issues.

Ms. STABENOW. Mr. President, I thank the Senator.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. INHOFE. 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. INHOFE. Mr. President, right now the pending business is the Bayh amendment. I stress again that both Senator JEFFORDS and I are inviting anyone to come down with amendments they have. Senator BAYH has graciously agreed to set his aside for the consideration of any other amendments, and then we would go back to his amendment. So I would not want any Members who are watching the proceedings to believe they cannot get their amendment in. We do encourage them to bring their amendments down. I would hate to have all of these stacked up at the last minute. Now is the time to get consideration for amendments.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, I rise today, our third day of debate on the highway bill.

As we have stated before, this is vital legislation that will have an impact on every American.

I join Senator INHOFE in calling on my colleagues to come to the floor to offer amendments. With that said, I would like to address some of the important provisions in this bill.

I would like to spend a minute talking about bridges and our need to make sure that adequate funding exists to maintain these structures.

As many of my colleagues know, I have a passion for bridges and specifically covered bridges.

While covered bridges are no longer critical parts of our Nation's infrastructure, they provide an important link to our collective past and are feats of engineering and longevity.

The National Covered Bridge Preservation Program, which I authored in 1998, has been a great success, albeit a slightly underfunded success.

From the Thetford Center Covered Bridge to the Weathersfield Falls Covered Bridge, I have taken great pride in being able to work to rehabilitate these bridges in Vermont.

Given my passion for the topic, many members may think that Vermont has the Nation's largest number of these bridges.

In fact, Pennsylvania has 220 covered bridges, Ohio has 144 covered bridges, and Vermont has only 99 covered bridges.

Even California has 12 covered bridges and Missouri has 5.

It is my great regret that I do not believe Oklahoma has any of these fine structures.

While I may seem like a broken record talking about bridges, it is critical that we pass a bill that adequately funds bridge maintenance and repair.

While I do not have the national statistics at my fingertips, those of you that travel around our Nation's Capital can readily attest to the fact that the bridges in this city are choke points for commuters and commerce.

The DC Department of Transportation estimates that about $300 million is needed to repair 11 major bridges.

If we do not provide at least some of these funds, our economy will suffer.

Senator LEAHY and I have been working for years to provide funds to rehabilitate the Missisquoi Bay Bridge in Vermont.

This bridge links New York and Vermont and serves as an international corridor to Canada.

In 1998, Vermont's congressional delegation secured funds in the highway bill to begin the project, and unfortunately we are still at it.

I can hardly imagine how long it would take to upgrade the George

Washington or Chesapeake Bay Bridges.

It is my hope that the Congress will send the President a bill with a robust bridge program.

Our Nation's bridges, whether historic or not, are in a state of disrepair and this bill is an important step in the right direction.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, the Senator from Vermont brings up a very sensitive subject to me, and that is one of bridges. It seems to me we do have one covered bridge in Oklahoma. I am going to have to check on that to make sure they get a share of this, whatever it is.

We do have a serious problem. The FHWA ranks various States and the conditions of their bridges, roads, and highways. Oklahoma is ranked dead last in the condition of its bridges, and it is a very serious matter. It is also a very serious problem in terms of the number of deaths we have.

One of the considerations that was involved in putting together a formula—and I state again how much work goes into a formula approach. I have said several times that it would be very easy to do it the other way where we just come up with a bunch of projects and satisfy 60 Senators and pass a bill and go home. That is not what we tried to do. One of the considerations we have is the risk in the various States, the number of mortalities.

Once again, at this point it is important to stress why we need to have a bill. We are now on our sixth extension, and extensions do not work. There is not a State of all 50 States that is not very anxiously awaiting this bill because with extensions there can be no planning. If we do not get this done, we will not have any chance to improve our donor States.

Oklahoma is a donor State. We have many donor States, and that is probably the most sensitive single issue in the formulas, is how the donor States are treated. But if we do not get this done, there is not going to be any change. We are right now at 90.5 percent. If we had passed the bill we had last year, which was a little more robust than this bill, by the end of that 6-year period, every State would have achieved at least a 95-percent return. That is the return of money they have paid into the trust fund.

As it is right now, in a lower amount, this would raise it a modest amount but not that much further above 90.5 percent. It would be an improvement, though.

If we do not have a bill and are operating under extensions, there will not be any new safety core programs to help the States respond to the thousands of deaths each year on the highways. In that respect, I think you have to acknowledge that this bill is a matter of life and death. There will be many more deaths if we do not have a good highway bill.

If we don't have a highway bill, there will not be any streamlining of the environmental reviews. Critical projects will still be subjected to avoidable delays that can be avoided with the passage of this bill.

Along that line, I think with all the provisions of this bill that was 2½ years in the making, there are a lot of provisions that my good friend from Vermont accepted that he would have preferred not to accept. There are many provisions I accepted that I would have preferred not to accept. But this was a give and take in a spirit of bipartisan cooperation, and I think that is something people are starving for right now. That is what they have in this bill.

If we do not have a bill, there is not going to be an increase in the ability to use innovative financing, giving us a chance to do something differently than we have been doing it before. Where innovative partnership types of financing have taken place, it has extracted a lot of money from the private sector that is willing to get in there and participate in the TIFIA provisions of this bill, allowing them to do that very thing.

There are a lot of members on our committee who were concerned about the Safe Routes to Schools Program. That is in here. Again, if we are operating under an extension, if we do have an extension, if we do not have the bill, we will not have that. It could be we will have young people killed and injured on the way to school without this bill.

Without this bill, with just another extension, States would continue to have uncertainty in planning and delay in projects. I hope this doesn't need much elaboration. It is only logical. If you know in advance what is going to happen over the next 5 years or so, you can start planning. You can plan your resources, plan your labor, plan the amount of construction that is going to go on in each State so each State will get far more for each dollar spent than they would get on just an extension.

If we just get an extension, we are not going to have any new border program. I think the border States, many of them, should be the first ones down here to encourage that this bill be passed, particularly those who are affected by NAFTA traffic. We have a special provision in here that takes care of borders as well as corridors. In the absence of this, with just an extension, we are not going to have any of these provisions.

Without the bill, we are going to have delay in the establishment of the national commission to score how to fund transportation in the future. We have been doing it the same way for many years. There are better ways of doing it. This bill establishes this commission to study what innovative suggestions might come from the States, ways we can do a better job of financing and getting private participation and get a lot more efficiency into the system.

When you look at what we are faced with today, we have an unusually high price of gasoline. As a result of that, people are not driving as much. If we had a gas tax that was geared to a percentage basis, it would not make any difference. In fact, we would probably increase revenues. But that is not the way it is. It is just a number of cents per gallon, so if there are fewer gallons bought, then there is less money that goes into it.

If we do not have a bill, if we just go on an extension, there will not be any opportunity to address the chokepoints at intermodal connectors. People think this is just a highway bill. They think back in the early days, back when Eisenhower, in World War II, was a major, he realized the inefficiencies we had in this country in transportation when he was trying to move troops and move military equipment around the country. When he became President, he drew upon that experience and established, for that reason, this National Highway System.

This goes all the way back to the Eisenhower administration, but this goes further than it went at that time. Now we have chokepoints. A lot of people are not aware that my State of Oklahoma actually has a port. We have the port of Catoosa, about 10 miles from my home in Tulsa. But there are chokepoints in any transportation system. You can have a channel, air transportation, rail transportation; it has to marry up and be consistent with the movement on the roads. This bill does that. That is why we call it intermodal.

Last, the firewall protection of the highway trust fund would not be continued, thereby making the trust fund vulnerable to raids in order to pay for other programs. In every State, all 50 States, we have experienced problems of people seeing an opportunity to steal money out of the trust fund and raid it, and they do it. They have certainly done it in my State of Oklahoma—not just the highway trust fund but other trust funds, too. I know there are many States that have their own individual highway trust fund where money is coming out of it. This is something we can protect at the national level by having firewalls. The firewalls are intact in this bill.

There are a lot of reasons we have to do this other than just having a highway bill and getting more construction. We have had the opportunity to talk about the complexities of a formula and all the things that are in a formula. I believe it is worthwhile repeating some of them.

Formulas are not just, Are you a large State or are you a small State? They take into consideration many things. There are the interstate maintenance programs that are a part of the formula, as are the interstate lanes, the number of miles to be maintained, your National Highway System miles—

that is part of the formula—the Surface Transportation Program, the total lane miles, the Highway Bridge Replacement and Rehabilitation Program, the Congestion Mitigation and Air Quality Improvement Program, which is very important. It has taken a lot of time in committee to come up with something on which we could agree.

We have low-income States. Oklahoma is a low-income State. We have low-population States, such as Wyoming and Montana. We have low-population-density States. We have high-fatality-rate States. Everything I mentioned is part of the formula we are working on. We have guaranteed minimum growth States, where growth is very slow, but there is a factor that provides for a floor. We have guaranteed minimum rate of return donor States.

All are part of the consideration of a very complex, very difficult formula that is the proper way to do it. Again, we have said several times in the last 3 days, it would have been a lot easier for Senator BOND and Senator BAUCUS and Senator JEFFORDS and myself to have put together a bill that did not have a formula; it just would do projects. But we elected not to do that in order to get the most miles for our money and to be the most fair with all 50 States.

Our forefathers were great when they talked about putting together this system where you have the House and the Senate. One is on population, the other is geographic areas. It is our responsibility to be sure that each of these States is treated properly, is treated fairly. This bill has done that.

The Senator from Indiana, Mr. BAYH, has the pending amendment on the floor. As I stated before, he has agreed to set his amendment aside as soon as there are any coming down. We have a list of about seven or eight amendments that different Members wish to offer. This is the time to offer them.

As Senator JEFFORDS said, come on down. We want you to come down and offer it. You have much more time to spend on your amendments. You can explain them. We have all day today, and we need to have these amendments on the floor and considered. I know what is going to happen if we do not. We are going to get down toward the end of it. Who knows, there may be cloture invoked where you are almost out of time and everyone is going to be yelling and screaming and crying they didn't have adequate time to consider their amendments. So let me get on record right now and say you have adequate time. We invite you to come down and present your amendments for consideration. As I said, Senator BAYH has agreed to set his amendment aside should you come down and want an amendment considered. Come on down. We are open for business.

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. INHOFE. 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. INHOFE. Mr. President, it has been agreed that anyone who wants to seek the floor can seek the floor, and we will be returned to the amendment under consideration, which is the Bayh amendment. We move to temporarily set the Bayh amendment aside for the purpose of the Senator's statement.

Mr. THOMAS. I thank the chairman.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. THOMAS. Mr. President, I come to the Senate to urge we move forward with our highway bill. We have worked on this for a very long time. I was on the committee 6 years ago when we passed the original bill. We have not passed it the last couple of years but have simply extended it. I hope we can move forward.

There are a number of issues before the Senate that have immediate impact. One of them is this highway bill, as well as the Energy bill.

There are other conversations going on, disputes about a number of issues, but overall we are here to do some work. This is something that is most important. Six extensions is six too many. We need a highway bill.

One of the problems is all of our highway departments, as they work on highways, use contractors. Therefore, they need to make contracts ahead of time. They have to know what funds are available. So it is even more important for this particular activity to know what the funding is going to be over time than it is in any other agency of the Government.

Our State DOTs cannot make long-term plans unless they have some idea of what the funding is going to be. So projects are delayed in Wyoming, as I am sure they are in other States. One of our problems, of course, is we have a short construction season. So it is particularly important we be able to plan ahead and know when the construction is going to happen.

Federal funds account for nearly 70 percent of Wyoming's Department of Transportation highway construction budget. Even though we are relatively low in population, we have a large State and, therefore, lots of highways, and so on.

The long-term reauthorization of the bill, of course, will create jobs. Contractors have to have the assurance necessary to commit themselves to equipment and hiring people. It has been said that $1 billion invested in Federal highways equals 47,500 jobs. We are talking about, in this bill, $280, $290 billion over time, so think of the number of jobs that are involved. Of course, it also creates jobs in related industries, such as those for engineers and those involved with stone, concrete, and fuel, and so on.

So there are so many reasons we should move forward with this bill. It deals with transportation, jobs, standard of living, quality of life. All these things are touched in this bill. Yet we seem to be awfully slow in moving it.

I am hopeful that as much time as has been spent on this bill in the committees, in the House, and so on, that we will be able to move forward and not have a whole series of amendments that seek to change everything. We have already been through that. We passed a bill in the Senate last year that was substantially higher. But because of the administration, because of the ability to raise funds, it has to be lower. So it is there for a reason.

This idea that somehow we can change it again, I am sorry, but there is some realism in terms of funding, regardless of what the program is. These programs, of course, are to come from gas taxes and the highway system. So I think it is very important.

I happen to be chairman of the Parks Subcommittee. This bill is very important for park roads. They currently receive about $165 million per year. This bill will change that. So it will be about $1.4 billion over 5 years. Of course, the highways are an essential element, particularly in the large parks we have in the West. They do not have the State things, and so on. So it is very important.

I am not going to take a lot of time, but I wanted to try to emphasize how important this bill is to most of us, and how important it is to get this bill done, and also how much effort has gone into the bill to bring it to this point, and to discourage anyone from trying to make too many changes in this bill because it has already been reviewed. It has already been bargained. Concessions have already been made.

So we are ready to move forward. Quite frankly, it seems to me like that is what we ought to be doing. So I urge everyone to give some thought to this bill. If they have ideas, let's talk about them, but let's get this job done. Let's get it out.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. DAYTON. Mr. President, I concur with the remarks of the Senator from Wyoming. I also represent a Northern State with a very short construction season. We were severely impacted last year by the inability to reach an agreement with the House and with the President. But in fairness to all of us in the Senate, we were not the holdup in that matter.

As I said on numerous occasions to the distinguished chairman of the committee, Senator INHOFE, and to the ranking member, Senator JEFFORDS, we had a bipartisan agreement in the Senate that was best for Minnesota and I think for virtually every other State. I have not heard anybody say they have too much Federal highway or transit money and don't know what to do with it. But, unfortunately, we ran

into the intransigence of the administration a year ago, and with the insistence of the President, the concurrence of the House, and were unable to get what the chairman of the Senate Finance Committee, Senator GRASSLEY, said was a fiscally sound and balanced—in terms of the highway trust fund revenues—measure in the Senate.

So while I concur with the Senator from Wyoming, I might also point out, as it relates to this particular legislation, the Democratic leader, Senator REID, last week wrote to the Senate Republican leadership and urged that this measure be brought up this week. I commend Senator FRIST and Senator MCCONNELL for deciding to proceed on this very important matter for the people of this country rather than some of the shenanigans that others were urging upon them. So we are proceeding on a measured basis, but not with any resistance or opposition by anybody on this side of the aisle.

We voted overwhelmingly to proceed on the motion to proceed earlier in the week. It is unfortunate timing that our long-planned Senate recess for next week will truncate the process. But I share the Senator's view that this bill needs to be enacted as expeditiously as possible. I hope the conference committee will be able to proceed as quickly as possible thereafter, while recognizing the Senate bill has been, and continues to be, vastly superior to the House version in terms of additional funding. Those are matters worth arguing about and, hopefully, prevailing on because Minnesota needs the money even as much as we need the bill to be completed.

Mr. President, if there is no immediate business related to this measure—I spoke earlier with the bill's manager—I ask unanimous consent that I have up to 10 minutes to speak as in morning business. Is this a propitious time to do so?

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

(The remarks of Mr. DAYTON are printed in today's RECORD under ''Morning Business.'')

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

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

The legislative clerk proceeded to call the roll.

Mr. INHOFE. 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. INHOFE. Mr. President, some people are not aware that when you have something as massive as a highway bill, it is not just the committee I chair, the Environment and Public Works Committee, but other committees are involved, including the Finance Committee, the Banking Committee, and the Commerce Committee. As of right now, we don't have the titles that come from those three committees, but we will have one right now.

AMENDMENT NO. 573 TO AMENDMENT NO. 567

Mr. INHOFE. Mr. President, on behalf of Senator SHELBY, I send an amendment to the desk, the Federal Public Transportation Act of 2005, and ask for its immediate consideration.

The PRESIDING OFFICER. Without objection, the pending amendment is set aside.

The clerk will report.

The legislative clerk read as follows:

The Senator from Oklahoma [Mr. INHOFE], for Mr. SHELBY and Mr. SARBANES, proposes an amendment numbered 573.

Mr. INHOFE. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

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

(The amendment is printed in the RECORD of April 26, 2005 under ''Text of Amendments.'')

Mr. INHOFE. Mr. President, let me reemphasize to my friend from Indiana, as soon as this amendment is disposed of, we will return to the regular order, which is the pending Bayh amendment.

This amendment, which was crafted on a bipartisan basis in the Senate Banking Committee, provides $51.6 billion to address growing public transportation needs across the country.

It provides for record growth for public transportation and for the first time recognizes the growing needs in rural communities across the country, including my State and the State of the Presiding Officer, Oklahoma, which has a rural population of greater than 57 percent. In fact, in the final year of this bill, the rural transportation program is doubled over its TEA–21 levels.

Additionally, it creates a new formula within the urbanized area formula called the ''Rural Low Density'' formula. Rural transit is as challenging to provide as the distances between employment centers and health care centers are great.

This amendment also creates a formula to recognize ''growing States''—those locations which are forecast to grow more quickly than the average over the course of the next 15 years. This change will allow those States, which includes Oklahoma, to be proactive with regard to their transportation needs.

Finally, this amendment makes several modifications to enhance the role of the private sector in public transportation. By creating opportunities for competition, public transportation services can be provided more efficiently.

I am happy to have had the opportunity to work with Senator SHELBY on the development of this amendment. I look forward to working with him on final passage and a successful conference report.

I ask unanimous consent that the amendment be agreed to, that the language be considered as original text as part of the substitute for the purpose of further amendment.

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

The amendment (No. 573) was agreed to.

Mr. INHOFE. Mr. President, I thank Senators SHELBY and SARBANES because we cannot really entertain amendments that affect these titles until we have them done. We are anxious to get the other two titles on the bill.

I will repeat our plea for people to come over with their amendments because the Senator from Indiana has agreed that he would set his amendment aside when people come down, with the understanding we would return to his amendment upon completion of those amendments.

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

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

Mr. INHOFE. Mr. President, let me repeat one more time, we are going to be open for business, as we were today, tomorrow. We will invite people to come down.

I want to get on the record right now, very often we go through this exercise and when we get close to the end of the consideration of the bill, when cloture has been filed, everyone comes running and screaming, saying they want to offer an amendment. Now is the time to do it. Members can bring them down anytime tomorrow. I certainly invite any Member to come down and offer the amendment tomorrow.

MORNING BUSINESS

Mr. INHOFE. Mr. President, I ask unanimous consent we now go into a period of morning business, where each Senator may speak for up to 10 minutes.

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

NATIONAL SMALL BUSINESS WEEK

Mr. KERRY. Mr. President, this week, the Nation celebrates National Small Business Week. It is a time when all of us join together, without any partisanship at all, to celebrate the hard work of millions of American entrepreneurs. At the Small Business Administration Expo last night at the Smithsonian, we recognized countless Americans who have had the courage to put everything they have on the line in order to turn an idea into a business. We celebrated the business people of the year from all of the 50 States in the country.

Today, these Americans, I think all of us recognize, are much more than small business owners. They are employers, community leaders, and they

are the people who give life to the American dream. Our small business owners not only remind us of the opportunities that America provides to those who are willing to work for it, but they remind us how much opportunity small business itself provides to all Americans. They drive our economy, compromising over 99 percent of all firms and over half of our GDP.

Two-thirds of all new American jobs are created by small businesses, and a majority of Americans depend on their small business employer for health insurance. Our small businesses are responsible for countless inventions and innovations that have elevated the standards of living in our country and for people around the world.

The entrepreneurial spirit I am talking about is alive and well in our country, though it faces a number of particular challenges: rising health care costs, imports, a reduction in the numbers of people going into innovative jobs and pursuing careers in the sciences and in research and development. Nevertheless, three out of four adults in America have considered starting a small business. With the advent of the Internet, those numbers are rapidly going up.

I know my colleagues are familiar with the Small Business Administration in a lot of different ways. We all understand how it is charged with defending small business interests in the country. It helps small businesses tackle issues ranging from initial development issues and startup issues and access to capital to Federal contracting and trade assistance. Those efforts are working relatively well. Businesses such as Staples, Intel, Nike, America Online, Eskimo Joe's, Callaway Golf, FedEx, Hewlett-Packard, Jenny Craig, Ben and Jerry's, Winnebago, Sun Microsystems, Outback Steakhouse—you don't think of them as small businesses in need of Federal assistance. But the fact is every one of those businesses, and many more that have become household names in America, got their initial startup with Federal assistance, with venture capital or loans from the SBA, which they could not have gotten otherwise and couldn't get from traditional sources. Their owners have proven that sometimes outstanding business ideas deserve a chance, even when traditional lenders or venture capitalists won't take that chance.

So we can ask the question, how many of these businesses may not have made it without help from the SBA? How many jobs would have been lost? How much tax revenue would have been lost to communities and the country? The benefits of small business expansion are numerous: a stronger economy, higher paying jobs, better prospects for women and minorities, innovation, cutting-edge products, increased opportunities for countless Americans.

What is unique about the SBA investments is they pay for themselves and they pay for the SBA budget many times over with the tax revenues to the country. So supporting our small business is a win-win proposition for Americans. We can afford it. The people want it. Our economy needs it.

That is why it is very hard to understand why this administration does not provide the full measure of support to the SBA and to those businesses. The SBA budget has been cut by over one-third since 2001—the largest reduction of any Federal agency, despite the fact that it is one of the few Federal agencies that completely pays for itself. Those cuts would have been far greater if Congress had not intervened. I am pleased to say, on a bipartisan basis with Senators on both sides of the aisle, we joined together to intervene. The chairwoman of the Small Business and Entrepreneurship Committee, Senator SNOWE, and I have worked with Members of both sides in order to provide the funding that was necessary and to prevent further cuts from taking place. Time and again we have received unanimous support in the Senate to rebuff proposed administration cuts that would have gone further. That is because supporting small businesses is not a partisan issue, and it never should be. We should not have to fight so hard to provide support for something that so obviously benefits all of us.

The administration loves to claim the pro-business mantle, but if they were candid with the American people, they would clarify that most of that support, as we see in the Energy bill or the tax bill, means big business, not small business.

If you look at the tax cuts, the administration claims the tax cuts primarily benefit small businesses, but in reality, only the biggest small businesses get the majority of those cuts. More than half of small business owners received less than $500 in tax cuts, and almost a quarter of those businesses got no tax cuts at all.

If you look at energy policy, you can see that while American families and small businesses have struggled with gas prices, oil companies earned record profits in the fourth quarter of 2004. Exxon-Mobil was up 218 percent. Conoco-Phillips was up 145 percent. Shell was up 51 percent. ChevronTexaco was up 39 percent. BP was up 35 percent.

Show me the small business in America, except the rare small business, that saw that kind of growth in the fourth quarter of last year.

You can also look at this disparity at what is happening with respect to Federal contracts right now. Congress set the goal of the Federal government awarding at least 23 percent of its contracting dollars to small businesses. So what did the administration do? They allowed $2 billion worth of contracts to be reported as going to small businesses when, in fact, they went to some of the largest businesses in the country. The money went to Raytheon, in my State, Northrop Grumman, General Dynamics, and Hewlett-Packard. Even the State of Texas was treated as a small business.

An administration concerned with small business ought to be outraged by these facts, and it ought to do something about it. This administration has facilitated the distortion of that Federal agency contracting goal of 23 percent and, in fact, allowed a process to go forward that has undermined our ability to help the small businesses that need it.

In addition, the administration has refused requests for an audit. They have not taken substantive steps to reform the contracting process. They have not prosecuted anyone for misrepresenting their organization as a small business. And now the administration is supporting efforts to make it easier for the Energy Department to shift money away from small businesses.

A bipartisan Senate has repeatedly stood up to the administration and called them to account for being too willing to ignore the challenges that face small businesses. It is time to again join forces to assure that this new challenge to small businesses, which is the diversion of federal contracts and the distortion of the standards that apply to what is a small business and what is a large business, ought to be appropriately adjusted.

Small businesses are also particularly hard hit by health care. Most small business owners want to do right by their employees. They try hard to do that, but too many of them just cannot afford to offer health care anymore. Premiums are rising faster than inflation or wages, with double-digit increases in each in the last 4 years.

Since 2000, the premiums for family coverage have gone up 59 percent compared with inflation increases of nearly 10 percent and wage growth of over 12 percent. Some small businesses have reported premium increases of as much as 70 percent in one year. As a result, 5 percent fewer small businesses offered health benefits to their workers in 2004 than in 2001. By contrast, 99 percent of the businesses with 200 or more employees offer their workers health insurance. Of 45 million uninsured Americans, almost two-thirds are small business owners, their employees and their families.

So I think all of us understand that in a nation founded on equity and equality of opportunity, it is important for us to address the question of health care costs. We need a plan that gives small business access to the range of plan choices and consumer product protections that are offered through the Federal Employees Health Benefits Program. And we need to give these small businesses affordable options through refundable tax credits and Federal reinsurance plans that will reduce premiums for everyone.

Small businesses and entrepreneurs are America's single greatest economic resource. There is not a big business in

America that did not begin in someone's garage, someone's attic, someone's basement, where people did not work out of a car for a period of time in an effort to try to grow that business. Time and again small businesses, not large corporations, have pulled our economy out of trouble by creating the jobs and the products of the future.

For many entrepreneurs, the SBA is their only chance to earn their fair share of the American dream. As we celebrate small businesses and entrepreneurship this week, we all have a responsibility to defend that dream. We need to ensure that the SBA is adequately funded. We need to ensure legislation never shortchanges small businesses, and we need to provide a real plan for small business health care. The doors of opportunity must be open to everyone.

ALBERT EISELE'S ARTICLES ON IRAQ

Mr. DAYTON. Mr. President, when I went to work in the Washington office of then-Senator Walter Mondale from Minnesota as a young, beginning legislative assistant in 1975, Al Eisele was a Washington correspondent for the St. Paul Dispatch and Pioneer Press, Duluth Herald and News-Tribune, and other Knight-Ridder newspapers. In 1976, after Senator Mondale was elected as Jimmy Carter's Vice President, he named Mr. Eisele as his press secretary and senior adviser, a position that Mr. Eisele held for the next 4 years.

''He previously covered me as a Washington correspondent for Minnesota newspapers during my 11 years in the Senate, so I obviously know him well,'' Senator Mondale later explained. ''He was one of the most well-respected and knowledgeable reporters in Washington, with a reputation for even-handedness, incisive reporting, and personal integrity, which is why I asked him to join my staff.''

After the Carter-Mondale administration, Mr. Eisele helped found the Center for National Policy in Washington; was a fellow at the Institute of Politics at Harvard; served as an assistant to Mr. William C. Norris, the founder and chief executive officer of Control Data Corporation in Minnesota; and started his own literary agency and international consulting firm, Cornerstone Associates.

For the past 10½ years, this native Minnesotan has been instrumental in the success of The Hill, a nonpartisan, nonideological newspaper covering Congress, that he helped found. Indeed, the April 27, 2005, issue of The Hill includes the 500th column Mr. Eisele has written since the newspaper's inaugural issue of September 21, 1994. In addition, he has acted as a mentor for more than 50 young journalists whom he helped train and who now work for many major newspapers, magazines, and broadcast organizations.

Last month, Mr. Eisele traveled to Iraq to get, as he wrote, ''a firsthand look at what the American military is up against in this greatest projection of American power since Vietnam.''

With his customary dedication, he did not just visit Iraq; rather, he traveled throughout the country for 10 days and interviewed everyone, from generals to privates, high-ranking Iraqi officials to ordinary citizens, visiting Members of Congress, fellow journalists covering the war, and private contractors involved in rebuilding Iraq's infrastructure.

His subsequent articles and columns in The Hill provided many compelling accounts of personal realities there, as well as very valuable insights.

Mr. President, I ask unanimous consent that those articles be printed in the RECORD.

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

SENATORS ENCOURAGED BY PROGRESS IN IRAQ

BAGHDAD, Mar. 23, 2005.—Senate Minority Leader Harry Reid (D–Nev.) led a bipartisan Senate delegation to Baghdad Tuesday and left little doubt that the Senate will soon approve an $81 billion supplemental appropriation passed by the House last week, most of which will go to pay for rebuilding Iraq's war-torn economy and countering insurgent violence.

Reid and his six colleagues held a news conference at the end of a whirlwind one-day visit during which they met with top U.S. military and diplomatic officials in Iraq and leaders of the three internal factions competing for control of the government being established in the wake of the January elections.

Reid, who was making his first trip to Iraq, said the Senate will take up the supplemental appropriations bill when it returns after the Easter recess, and indicated there is little real opposition to it. He stressed the need for continued U.S. support for reconstruction efforts, along with training Iraqi security forces to replace U.S. military personnel and help bolster the Iraqi economy and political structure.

''Everyone understands that reconstruction is an important part of the U.S. mission here,'' he declared.

Reid and his colleagues, who included four Democrats and two Republicans, all indicated they are encouraged by signs of progress in carrying out the three-pronged U.S. strategy of support for bolstering Iraq's security forces, economy and political system.

''One of the people we met with today called Iraq 'an infant democracy,' and we can't leave this infant alone,'' said Minority Whip Dick Durbin (D–Ill.). ''I believe what we are seeing here is good.''

Sen. Robert Bennett (R–Utah) compared this visit with an earlier visit he made last year. ''I find a quiet optimism instead of a cautious optimism,'' he said. He added, ''I think that the elections and the strengthening of the Iraqi security forces have given us hope that the seed of democracy has been planted here. There's still a lot to do and we still have a lot to worry about, but the signs are more optimistic now than before.''

Even Sen. Barbara Boxer (D–Calif.), who has been a leading critic of the Bush administration's Iraq policy, seemed upbeat about the future of the new Iraq government.

Declaring that the success of Iraq's future stability ''greatly depends on the training of Iraqi security forces,'' she said, ''we got a very, very upbeat report'' from the top U.S. military officials, including Gen. George Casey Jr., who commands the multinational coalition forces, and Lt. Gen. David Petraeus, commander of the NATO training mission here.

She added that it's essential that the new government, which will be put together in the coming months, include all elements of Iraqi society, especially women. ''I think it's fair to say that all of us today gave that message'' to the leaders of the three main ethnic factions in Iraq, the majority Shiites, the minority Sunnis and the Kurds.

However, Boxer also indicated after the group's meeting with the man who is expected to be Iraq's next prime minister, Ibriham al-Jaafari, that he is not as upbeat about the quality of the Iraqi police and security forces.

''My sense was that he was certainly in no rush to hand over security to his new police force,'' she said.

Other members of the Senate delegation included Patty Murray (D–Wash.), Lamar Alexander (R–Tenn.) and freshman Ken Salazar (D–Colo.).

Salazar, who was making his first visit to Iraq, said, ''This trip has enforced the enormity of the challenge in Iraq and the need to help the Iraqi people.''

''TRANSLATORS ARE A SPECIAL TARGET''

BAGHDAD, Mar. 25, 2005.—After 38 years in the United States, Paul Oraha is back in his native Baghdad and working only a short distance from the neighborhood where he grew up. But he's not about to look up any old friends who might still be around.

''We are a target now,'' said Oraha, who works as a translator for the U.S. Embassy and U.S.-led Multinational Coalition. ''Translators are a special target because many Iraqis feel we are traitors because we're working for Americans against Iraq.

Oraha, 65, left Baghdad with his family in 1966 for Detroit, where his father, a Mercedes Benz parts supplier, found work in the auto industry. While his personal history is different, Oraha's situation is the same as thousands of other Iraqis whose lives are at risk because they work for, or cooperate with, the Multinational Coalition.

Many Iraqi civilians, as well as military and security personnel, government officials and civic leaders have been killed or wounded by Iraqi insurgents and foreign Islamic extremists since the March, 2003 invasion that ousted Saddam Hussein.

Oraha, who later moved from Detroit to San Diego and served in the U.S. Navy, returned to Iraq in July, 2004, now works and lives in the heavily guarded international enclave in the middle of Baghdad known as the Green Zone. A nearby bridge that commemorates the bloody 1958 coup in which Saddam's Baathist Party took power links the Karada neighborhood across the Tigris River where he grew up.

And even though there are constant reminders of the terrorist threat—several mortar rounds hit the bridge on Monday night but did not injure anyone—Oraha feels the security situation is improving.

''This area used to get hit almost every day, but now it's almost every other week,'' he said while smoking a cigarette and drinking coffee one recent morning outside the Rasheed Hotel where and he and many other Americans and foreigners live. ''Security is the biggest problem here, but I think we're making tremendous progress because the attacks have slowed down.

Oraha said he thinks most Iraqis ''want us to be here and stay here. They're very appreciative that we got rid of Saddam and they look forward to having a better life. But they're very concerned about the security

situation. They feel if it improves, they will have an opportunity to rebuild their country and enjoy the benefits of democracy.''

However, Oraha cautioned that many Iraqis are concerned that the U.S. will not take the drastic steps they feel are needed to discourage future terrorist activity.

''They think the U.S. is not going to be tough enough in dealing with the terrorists, that they're too concerned about the human rights of terrorists who are blowing up people. They feel they will take that as a sign of weakness and operate with impunity.

He added, ''As an American, I believe in the Constitution and its guarantees of the rights of those accused of crimes. But I agree with Iraqis that we have to be tougher with terrorists. Many Iraqis think some of these people should be executed and the world should know about it.''

However, Oraha predicts that the new government that soon will be elected ''is going to get tougher on terrorists because they're going to have to answer to the Iraqi people, who are tired of terrorism.''

IMPROVISED EXPLOSIVES BECOMING MORE DEADLY IN IRAQ

MOSUL, IRAQ, Mar. 28, 2005.—They're one of the worst nightmares for American military personnel or anyone traveling with them on the dangerous roads of Iraq, even if you're surrounded by tons of armor plate and moving at high speed.

They're called IED's, military speak for Improvised Explosive Devices, and they're the devil's own invention.

These fearsome homemade weapons are responsible for many of the more than 1,700 deaths and 15,000 plus casualties suffered by U.S. and coalition forces since the invasion of Iraq two years ago this month. And they're getting more deadly and numerous.

''They've gone up exponentially in number and they're getting more powerful all the time,'' said Lt. Col. Michael Kurilla, whose 24th Infantry Regiment's First Battalion patrols the western half of this northern Iraq city that has the highest number of attacks by insurgents of any city in Iraq.

Col. Kurilla was among some 50 Army officers who briefed Gen. John Abizaid, commander of U.S. forces in the Gulf region, and Sen. Jack Reed (D–R.I.) on the military situation in Ninevah province on Easter Sunday at a coalition base near this city of two million, the third largest in Iraq.

Afterwards, the tall, handsome West Point graduate from Elk River, Minn., explained the challenge these devilish devices present to his 800-man unit.

When his battalion arrived in Iraq last October from Fort Lewis, Wash., it didn't find a single IED while patrolling the streets of Mosul. But in November, it found three, followed by 15 in December, 50 in January, and 134 in February. One of his soldiers was killed when one of his unit's heavily armored Stryker vehicles was destroyed, and many more have been injured.

''We're still getting plenty of detonations, it's almost constant,'' said Col. Kurilla, whose battalion has already earned 182 Purple Heart medals, given to those injured in combat.

Sgt. Loren Kirk, a member of the 25th Infantry Division's First Brigade Stryker combat team, described the constant danger posed by the IEDs.

''We go all over Mosul and everybody gets hit, even in the nice neighborhoods,'' he said. ''We can go a week without getting hit. It just depends on where we are. We drive side-by-side with cars on the street. They tend to give us a wide berth, and because of VBEDS [Vehicle-based Explosive Devices], we try to keep them at least 50 yards away.''

Kirk added, ''It's all timing. We could roll down the road and drive by an IED and a minute later, a vehicle behind us will get hit.''

Kirk, 37, took his unit's commander through the city's crowded streets to the briefing from its base about 15 minutes away. ''Our mission is to get him where he needs to go, safely, escort troops or check on soldiers at a checkpoint.''

The heavily armed 36,000-pound, eight-wheel vehicles were first introduced to Iraq in 2003 as a replacement for the 1980s era Abrams tanks and the less well-armored Hummers, which many units are still using while they wait for Strykers to be delivered.

Every one of the Strykers in Kirk's battalion has been hit by an IED at least twice, according to Specialist Seth Christie, who rides in a partially exposed position atop Kirk's Stryker.

So what's it like to take a hit from an IED?''

It scares the s--- out of you,'' said Christie, 24, who was slightly injured when his vehicle was hit by an IED in January and he was knocked back into the vehicle. ''You feel it in your chest, you feel it in your teeth. Your lungs fill with smoke and everything goes black.''

Christie's buddy, Specialist Donald Armino, also 24, agrees that IEDs are more numerous and powerful than a few months ago. ''They're getting a lot bigger and a lot more sophisticated,'' he said, often concealing them more cleverly and magnifying their power by tying a half dozen or more 120-mm mortar shells together and setting them off by remote control, or using shaped charges that can penetrate six inches of steel.

An even more vivid description of the destructive power of IEDs was provided by four young Marine reservists from Chicago who were relaxing at the coalition's main base near the Baghdad airport while preparing to return home last weekend.

''What's it like?'' said Cpl. Johnny Lebron, 31, whose unit driving armored Hummers found and disarmed 19 IEDs and was hit by 21 during six-and-a-half months in the northern province of Babil, a part of the Sunni triangle dubbed ''the triangle of death.''

''Well, it really rattles your cage. It's an experience you can't describe. For four or five seconds, time seems to stand still.''

Sgt. Timothy Jensen, 26, added, ''The explosion hits and then everything goes black and the breath is sucked out of your lungs. You feel like you're dead, floating in timeless space. The first thing you worry about is the Marine next to you. Once I know my Marines are good to go, we act on our objective.''

But Sgt. Jensen conceded that it's hard to find those who place and detonate the IEDs. ''You're really not going to be able to get on them because they use remote devices from a distance, and they're really hard to find.''

Unlike the Marines, the soldiers in Mosul who are equipped with the heavily armed Strykers are thankful they have them.

''The Stryker is a fantastic vehicle, much better than an up-armored Hummer,'' said Sgt. Kirk. ''We're really lucky to have them. I've got a lot of faith in this vehicle.''

U.S. FORCES THWART MAJOR ESCAPE IN SOUTHERN IRAQ

CAMP BUCCA, IRAQ, Mar. 25, 2005.—U.S. military police Friday thwarted a massive escape attempt by suspected insurgents and terrorists from this southern Iraq Army base that houses more than 6,000 detainees when they uncovered a 600-foot tunnel the detainees had dug under their compound.

''We were very close to a very bad thing,'' Major Gen. William Brandenburg said Friday after troops under his command discovered the tunnel that prisoners had painstakingly dug with the help of makeshift tools.

Within hours of the discovery on the first tunnel, a second tunnel of about 300 feet was detected under an adjoining compound in the camp, which holds 6,049 detainees.

The discoveries came just hours before Brandenburg, who commands Multinational Force detainee operations in Iraq, toured the camp with Gen. George Casey Jr., the top Army general in Iraq and commander of the Multinational Coalition, who was making his first visit to this remote desert camp in southwestern Iraq near the Kuwaiti border.

Brandenburg said the prisoners, who include Iraqis and suspected terrorists from other Arab countries, probably were waiting for the dense fog that often rolls in at night from the nearby Persian Gulf before attempting their escape.''

We get fog after midnight in which you can't see 100 feet,'' he said. ''I think they were waiting on poor visibility and I think there was a good chance they would have gotten out of the camp.''

Brandenburg, whose command also includes the better known but smaller Abu Ghraib camp near Baghdad, said soldiers in charge of Camp Bucca suspected that an escape attempt might be in the offing because they had found a small tunnel in another part of the camp about five days ago, and had been told by detainees that other tunnels were being dug.

Brandenburg also said that in recent days there were ''people outside the camp who we're not used to seeing,'' which was another indication that ''something was going on.''

Brandenburg, who was spending the night at the nearby Basrah airport while waiting for Gen. Casey to arrive from Baghdad Friday morning, said he was awoken at 1:30 a.m. by an officer from Camp Bucca who said, ''Sir, you won't believe what we've found.''

When Brandenburg and Casey arrived at Camp Bucca, they were shown the tunnel's exit point, which was outside the chain link fence and concertina wire that surrounds the camp's eight compounds, each of which contains more than 600 prisoners, and several smaller compounds.

The prisoners had used a cut-away five-gallon gas can attached to a 60-foot-long rope to haul the sandy soil out of the tunnel. They apparently used makeshift tools to dig and reinforce the tunnel, and covered the entry point inside the compound with a false floor made from wooden slats from their beds, which in turn they concealed under two feet of dirt.

The detainees disposed of the dirt they had dug from the tunnel by flushing it down their latrines, which gave camp officials another clue that something was amiss when workers emptying the latrines complained that the filters on their trucks were getting jammed.

Col. James Brown, the commander of the 18th Military Police Brigade that is in charge of Camp Bucca and Abu Ghraib, said two detainees tried to escape 10 days ago but were caught. He said the latest escape attempt was clearly planned to allow more than 100 prisoners to flee the camp.

Brown said it is reasonable to assume that other tunnels will be discovered in other parts of the camp.

Col. Brown said he made his troops view the movie, ''The Great Escape,'' starring Steve McQueen, about a group of American prisoners in a World War II German POW camp, so they would think like people who were bent on escaping from his facility.''

It's a great movie,'' he said. ''The trouble is we tend to view life through the lens of who we are and not who somebody else is. There are a lot of good lessons for us there.''

During Casey's tour of the camp, thousands of the prisoners watched silently and sullenly as he and his entourage walked past them, and as he climbed a watchtower for a panoramic view.

As Casey walked past the compound where the second tunnel was discovered, a soldier drove a large backhoe into the camp and began digging up the tunnel.

Camp officials also showed Casey a large collection of makeshift weapons taken from the detainees, including knives, slingshots, and even a fake flak jacket made from Muslim prayer shawls that resembled the real thing.

''I am never amazed at what I see,'' Brandenburg said of the ingenious technique used by the detainees in their escape attempt.

At the end of his tour, Casey presented a special medal to the young woman soldier, Specialist Lisa Wesson of Asheville, N.C., who discovered the larger tunnel during a routine investigation.

Camp Bucca is almost twice the size of Abu Ghraib, which was the scene of last year's prisoner abuse scandal that has prompted widespread changes in the handling of detainees. There are 3,243 detainees at Abu Ghraib, and another 114 after a camp near Baghdad International Airport, where Saddam Hussein and members of his deposed government are being held pending trials for crimes against humanity.

EMBED CAVALLARO SEES WAR FROM THE INSIDE

Baghdad, Mar. 31, 2005.—After four trips to report on the war in Iraq, no one understands the pluses and minuses of being embedded with the U.S. military better than Gina Cavallaro.

On the one hand, the former congressional aide and staff writer for the Army Times knows it would be impossible to do her job without relying on the military for logistical support and protection in the dangerous combat zones she routinely visits.

At the same time, she knows that the bonds she forms with soldiers and Marines make it more difficult to be an objective reporter, especially when one of them is killed or wounded.

So it's not surprising that the 45-year-old Hillary Swank look-alike was still trying to come to grips last week with the death of a 20-year-old soldier who had become her ''buddy'' and ''little brother.'' Spc. Francisco Martinez, a forward observer in a field artillery unit, was killed by a sniper the day before while she was standing a few feet away.

''I haven't processed much of it yet,'' she said, struggling with her emotions as she prepared to return to Washington after nine weeks in Iraq.

''It's very difficult to write about. When we go out on a patrol, I feel that I need to get on the ground with the soldiers, and I have done that dozens of times, knowing it was dangerous. But I always know I'm here voluntarily, and the last thing I wanted to see was a soldier getting killed.''

But Martinez, who was with a Second Infantry Division brigade combat team that was transferred from Korea last September, wasn't just another soldier.

''There's always one gregarious soldier who hangs out with reporters,'' she said. ''He was my buddy, my shadow, my escort. He was like a little brother. He stuck by me to make sure I was safe. He was so young and so outgoing, and so proud of what he was doing.''

She added, ''I only knew him for a couple of days, but we had a lot in common. We both grew up in Puerto Rico, and when you are with someone in a combat environment, it doesn't take long to get to know them.'' The two often conversed in Spanish and talked about life in their native Puerto Rico.

Cavallaro had spent eight days with Martinez's unit in Ramadi, a hotbed of insurgent resistance 75 miles west of Baghdad in an area the soldiers call the ''Wild West.'' While she was there, an IED (Improvised Explosive Device) killed four soldiers in an armored Humvee. ''It was huge, a big bomb,'' she said. ''They are using more and more of them, and they are also more snipers. I have to admit, I felt in danger out there. I felt I was also a target.''

It was a routine patrol on a Sunday afternoon as Alpha Company searched a dangerous neighborhood for a sniper who had killed three soldiers and wounded several more. Cavallero was taking a photograph when she heard a shot, very close by.

''I was probably six feet in front of him,'' she said. ''I turned around and was horrified to see him lying on the ground.''

Martinez was wearing body armor, but the bullet seemed to go under it, on the right side of his back. He was bleeding heavily and told her he couldn't feel his legs.

Medics quickly put Martinez in an armored Humvee and took him to an aid station only minutes away. Cavallera rode with him, holding his hand and pleading with him in Spanish to keep breathing and not fall asleep.

The medics told her Martinez probably would make it and she watched as a medical evacuation helicopter took him to a field hospital. But a few hours later, she learned that he had died.

''It was a little bit more of an exclamation point to this trip than I wanted,'' she said. ''It just hurts when you lose a friend. It really hurts.

For Cavallero, who visited Iraq twice in 2003 and once in 2004, it was a brutal reminder of how much more dangerous Iraq has become for both soldiers and embedded journalists.

''Absolutely, it's become more dangerous,'' she said. ''When I first came here, the IED's hadn't started and the insurgency didn't exist in any substantial way. I may be out of line saying this, but I agree with the military that only a small percentage of people are disrupting things here, but they're doing a pretty good job of it. There's never not a combat patrol. Whenever you go on patrol, it's always a combat situation.''

Cavallaro, who writes for a predominantly military readership, has mixed feelings about journalists being embedded with troops.

''I don't know,'' she said when asked if it affects how she and other journalists report on the military. ''I just think it makes it more difficult. I find the media is afraid to get around on its own in Iraq, and rightly so. They're relying more on the military to get them where they want to go, and as a result, the military is getting smarter about getting its own story told. It almost seems like a little bit of quid pro quo.''

She added, ''I don't necessarily consider that a bad thing. The military will get you around but it always wants to show you its new sewage plant.''

Cavallaro was a reporter for the San Juan Star when she got a job as press secretary to then-Del. Carlos Romero Barcelo (D–P.R.), but decided her heart was still in reporting and answered an ad in the Army Times.

She says she still hears complaints from soldiers about negative coverage of the war. ''The most frequent question I get is, 'Do people back home care about us? Do they know we're still here?'''

Asked for her view of how the war is going, Cavallaro says she's ''not in a position to judge, but I do see the concept of Iraqi security forces being the key to what happens here.''

However, she added that ''there are some really impressive Iraqi army troops and some really shoddy ones. But I've seen some American soldiers who get it. They're taking the Iraqis by the hand and showing them what the right looks like.''

If there's one aspect of war reporting that Cavallaro is critical of, it's television. ''I don't know why it is, but most soldiers tend to get their news from TV. Images are so strong. They are projected in chow halls all over Iraq, but it takes a dedicated effort for a soldier to look up news on the Internet.

And when Cavallaro returns to her newspaper's Springfield, Va., office, what will she be thinking about her last assignment?

''How much I hate leaving those soldiers behind,'' she said. ''You can't be here and be embedded with soldiers and not care about them, no matter how hard core you are. It would take a really cynical person not to see them as individuals.

''I've seen reporters who are clearly anti-military, and I don't begrudge them that. It's their right. But in my writing and reporting here, I consider my readership—what would be of interest to the soldiers' families and relatives? I get a lot of emails from readers who want me to go hug their kids.''

When she returns home, Cavallaro will continue to concentrate on the lives of the men and women in uniform she has left behind. ''I see myself as chronicling their time here—their triumphs, their tragedies, their quality of life. I find the military as a fascinating theme for a writer. The stakes and risks are high, but it's incredibly rewarding.''

A SECOND TRIANGLE IS BUILT IN IRAQ

BAGHDAD.—Much of the violence that has plagued Iraq in the two years since U.S. forces toppled Saddam Hussein has been planned and carried out by insurgents and terrorists based in the Sunni triangle north and west of this city of seven million people.

But another triangle, which had its origins in a chance meeting in Washington last June, appears to be paying off for the Bush administration's effort to create a fledgling democracy in Iraq, after Sunday's election of a prominent Sunni Arab as speaker of the newly elected national assembly. The meeting between the two men who were preparing to take over as America's top military and diplomatic officials in Baghdad set in motion a three-pronged strategy involving the U.S.-led coalition forces, the American Embassy and the Iraqi government.

The men are Gen. George Casey Jr., the Army vice chief of staff who had just been named commander of the multinational forces in Iraq, and John Negroponte, who was about to trade his job as U.S. ambassador to the United Nations for that of U.S. ambassador to Iraq.

Casey spoke about the meeting late last month. He was returning to Iraq after a short vacation that ended with him briefing President Bush and Secretary of Defense Donald Rumsfeld at the White House. Casey flew back to Iraq aboard a 12-passenger C–37, the military version of the business jet favored by corporate CEOs and celebrities.

''Right after I found out I was going to Iraq, John was in town and we agreed to get together,'' Casey said. ''He stayed over on a Saturday, and we met in the morning at the Pentagon.''

The purpose of their meeting was to develop a plan to build on the Jan. 20 national assembly elections that would restore a measure of stability, allow the Iraqis to create a post-Saddam democratic government and begin to rebuild their devastated economy and infrastructure. They agreed to focus on the elections as the organizing point for their plan.

When Casey arrived June 28 at Camp Victory, the sprawling coalition headquarters

base outside of Baghdad, the first thing he and Negroponte did was put together a ''red team'' composed of top aides from Casey's staff, the U.S. Embassy, the State Department and the Central Intelligence Agency and its British counterpart.

''We felt we had to have a firm understanding of the enemy and the war we were fighting,'' Casey said. ''I had our staff working on a plan that focused on the same basic questions, the nature of the enemy and its capabilities and intentions. After about 30 days, we both came up with a product and we merged them together and they pretty much reinforced each other.''

The end result, Casey explained, was a plan that consisted of four elements.

First, it was decided that ''the greatest threat, apart from the insurgents and foreign fighters, was people hoping for a return to Sunni dominance'' of the Shiite majority and Kurdish minority. But it was clear that threat couldn't be eliminated by military force alone.

''You don't win a counterinsurgency [war] by military means,'' Casey said. ''You win by integrating the political, economic and military to produce a common outlook, by cutting off the insurgents from popular support.

A second element was to build up the Iraqi security forces, which called for creating 27 Iraqi Army battalions. The first phase of that plan, ''a huge training and equipping operation that is still going on,'' Casey said, was completed last month, and the next phase, creating the Iraqis' own command structure, is under way.

''We felt we had to bring the insurgency to a level that could be contained by Iraqi security forces while we helped them build a sufficient capacity to deal with it. But it was clear that Iraqi security forces were not ready to do that.''

The third part of the plan was aimed at rebuilding Iraq's ruined economy.

''On the economic side, we inherited a hugely complicated and bureaucratic—I don't want to use the word 'mess,' but I guess I will. There were so many different [U.S.] agencies that had their fingers in it, we felt we had to get ourselves organized to deliver on the $18 billion aid package'' approved by Congress. ''I'm not being critical of these guys, but they put the package together in Baghdad without consulting the people in the field.''

The Casey-Negroponte plan increased the 230-plus economic aid and reconstruction projects that existed in June, 2004 to more than 2,000 last month, and Casey predicts projects to spend all $18 billion will be in place by this fall.

The fourth part of the plan was a two-part communications strategy. ''One was to drive a wedge between the insurgents and the population, to demonstrate that the insurgents and terrorists have nothing good to offer for Iraq,'' Casey said. ''The other part was to try to change the image of the population toward the Coalition.

''People always want to know, are we winning the hearts and minds of the Iraqi people, and I say, 'No, that's not what we're here to do.' The people of Iraq will never welcome an occupying force. What we need is their consent.''

Casey added, ''All four of these lines of operation are working together in an integral way between us, the embassy and the Iraqi government. That triangle—we actually have a triangle in our plan—has the Iraqi government at the top, us at one corner and the embassy at the other.

But while Casey said he is encouraged by early progress in carrying out the ''triangle strategy,'' he cautioned that success is far from certain. Casey, who earlier commanded the 1st Division in Kosovo, said he asked his predecessor, Lt. Gen. Ricardo Sanchez, to compare the two countries.

''He said Iraq is 10 times harder.''

FOR RHODE ISLAND'S REED, CODELS ARE SOLITARY AFFAIRS

KUWAIT CITY, Apr. 6, 2005.—During the Easter Week recess, when three other congressional delegations, consisting of 21 senators and House members, were visiting Iraq, the codel led by Sen. Jack Reed (D–R.I.), was conspicuous for several reasons.

First, Reed, a West Point graduate and former company commander in the 82nd Airborne, was the only member of Congress in his codel.

Second, instead of traveling with a battalion of aides like those with the other codels, he was accompanied only by his legislative assistant for military and foreign affairs, Elizabeth King; Lt. Col. Vic Samuel, an Army legislative liaison officer; and John Mulligan, the Washington bureau chief of the Providence Journal.

Third, instead of flying into Baghdad for a few hours of official briefings and then flying to Jordan or Kuwait at day's end, Reed spent the better part of four days hopscotching across Iraq, often aboard Blackhawk helicopters manned by National Guard units from Rhode Island; meeting with troops in some of the most dangerous parts of Iraq; and questioning top U.S. military and diplomatic officials, and Iraqi security forces as well.

Fourth, Reed—unlike Senate Minority Leader Harry Reid (D–Nev.)—wasn't making his first visit to this war-torn country, where some 150,000 American troops and 24,000 troops from 23 other member nations of the U.S.-led multinational coalition are battling Muslim insurgents and terrorists while trying to help create a new government and rebuild Iraq's shattered infrastructure.

And finally, none of the other congressional visitors can claim to have attended the U.S. Military Academy with Gen. John Abizaid, the overall commander of U.S. forces in the Persian Gulf region, or served in the Army with Maj. Gen. William Brandenburg, who oversees detainee operations in Iraq, including the infamous Abu Ghraib prison.

This was the fifth visit to Iraq for Reid, a 55-year-old Harvard lawyer and former instructor at West Point. All but the first, in 2002, have been solo affairs. And it may have been that one that convinced Reed to shun multimember codels.

He was traveling with a half-dozen other senators to Afghanistan, Iraq and Pakistan and nearing the end of the long, exhausting trip when the other members decided they didn't want to get up early the next morning to visit an Army special forces unit near the Pakistan border.

But Reed insisted they go, he recalled during an early-morning interview here before returning to the United States on Monday. ''I got a little annoyed because these troops were expecting us to come.''

Reed said he feels he can learn more about the actual progress, or lack of it, by traveling alone.''

You can see a lot of places you couldn't necessarily go with others'' because of security needs, he said as he wolfed down a breakfast of baked beans, scrambled eggs, fried potatoes and olives. ''It helps me to be able to do it on my own. You can't substitute firsthand experience.''

He added, ''I like to characterize myself as someone who comes out here on a fairly frequent basis to look at what's happening on the ground and then reach judgments about what we can do to succeed.''

Reed always makes it a point to visit troops from his native state. There are about 400 in Iraq, and he visited many of them, including Army troops in Baghdad, Marines in Fallujah, the helicopter crews and a field artillery unit in Mosul, and soldiers at a remote desert base in Kuwait.

Reed, a member of the Armed Services Committee, makes no apologies for being a critic of the administration's policy in Iraq, and to a lesser extent, Afghanistan.

''My job is to be critical about what's going on and what needs to be improved,'' he said, adding, ''I think my criticism has been accurate, certainly in the operations in the region, in that we didn't organize ourselves for the appropriate occupation and stabilization'' after Saddam Hussein was toppled, which happened two years ago this month.

''It took a long time to get the needed equipment in here for our troops. We made some serious errors in terms of de-Baathification efforts, rather than trying to incorporate the Sunnis, and disbanding the Iraq Army. There's a litany of problems.''

And although Reed has high praise for the military effort here, he added, ''You have to understand that this is not over yet, militarily. And the notion that everything's fine disregards the resilience of this insurgency and the deep-seated political, historical and social forces that are at work.

''I think one of the greatest errors and misjudgments would be at this point, so to speak, to get out, because the area has one or two months of relative quiet—this is a long-term effort, and, in a way, the hardest part, even now, is to revamp an economic and political structure that doesn't have that many democratic tendencies.''

Reed said Iraq has been ''brought right back to almost where we began two years ago. And now we have the obligation to reinforce military success with political and economic progress, and the question is, do we have the resources and the capability to do that?''

Reed also said he feels that civilian agencies haven't done enough to rebuild Iraq's battered infrastructure by providing ''the soft power that you need to stabilize the country.''

''This is a major effort,'' he declared. ''We've got to get it right. There are things that we're doing very well and again I'd say that if we don't, if we take our eye off the ball, we could find ourselves right back where we were six months or a year ago. This place has the annoying habit of every time you turn the corner, there's another corner. We might be turning the corner, but watch out.''

BATTERED FALLUJAH KEY TO IRAQ

FALLUJAH, IRAQ, Apr. 7, 2005.—This devastated former insurgent stronghold west of Baghdad, where some of the worst violence—and one of the grisliest scenes—of the two-year war in Iraq took place, is shaping up as the key to the success or failure of the Bush administration's historic effort to reinvent Iraq.

That was evident last week as James Jeffrey, deputy chief of mission of the U.S. Embassy in Baghdad, came here to confer with the commander of the 23,000 Marines who still patrol this dangerous region and to meet with some two dozen local police and government officials, Arab sheiks and Sunni clerics.

''This is the future of Iraq,'' Lt. Gen. John Sattler, commander of the 1st Marine Expeditionary Force that drove Iraqi insurgents and foreign Muslim fighters out of the city in an epic 11-day battle last November, told the local leaders as Jeffrey stood by.

The salty-tongued Sattler, who was reassigned to Camp Pendleton, Calif., at the end of March, portrayed Fallujah as a crucial test of the U.S.-led multinational coalition's

ability to provide security, assure political stability and rebuild Iraq's shattered urban centers.

"If you can make Fallujah work, it becomes a status symbol and the whole Arab world will be looking at what they have done for Fallujah," he said.

Sattler and Jeffrey also made it clear that the prospects of reducing and eventually ending the commitment of some 175,000 U.S. and coalition troops in Iraq will be greatly enhanced if Iraqi security forces can be trained and equipped in sufficient numbers.

At the same time, they said, hundreds of millions of dollars must be spent in Fallujah on economic reconstruction by creating jobs and restoring basic services, including water, sanitation facilities and electricity.

"We're at the very beginning stages now," Sattler said. He and about a dozen other senior Marine officers gave Jeffrey an update on the military situation in their region and, in turn, heard Jeffrey describe the political situation and economic reconstruction effort before they met with the local leaders.

The meetings in Fallujah came almost exactly a year after the world was subjected to the ghastly scenes of the charred remains of several American contractors whose bodies were hung from a Fallujah bridge. The scene was the prelude to the bloody battle in November that drove insurgents from their fortified and well-armed base in Fallujah.

Jeffrey is running the U.S. Embassy until the arrival of Zalmay Khalilzad, the current ambassador in Afghanistan whom President Bush nominated Tuesday to replace John Negroponte as ambassador to Iraq. Jeffrey gave the Marines an update on the overall military, political and economic situation in Iraq.

He said coalition forces have made "tremendous progress" toward defeating the insurgent and al Qaeda elements in most areas of Iraq, although the violence directed against coalition forces and Iraqis who are cooperating with the coalition "is still very worrisome."

And he said that 100 50-man units of Iraqi Army and security forces, including local police, are in place, of which about 50 are ready to be deployed nationwide. "That's a huge difference and huge investment," he said, with between $5 billion and $6 billion already spent and about an additional $10 billion committed by the end of this year.

But it's not the money, he said, "it's the mentoring and training that are important."

On the political front, he said the successful outcome of the Jan. 30 elections has provided important momentum, but he expressed concern about the vacuum that exists until the newly elected national assembly and its leaders are chosen.

The problem, he said, is that "the old government is not willing to take action, and the new government doesn't exist yet. We're a bit frustrated, but that's democracy."

Finally, on the economic reconstruction front, Jeffrey said $100 million has already been spent on Fallujah, with another $100 million in the pipeline.

"Let's face it: We're winning," he said. "It needs to be said that we are winning. This is a very, very, very difficult thing we're undertaking, but we're winning and we need to continue pouring resources into Fallujah."

Sattler acknowledged the difficulty of finding the right local officials and working with them. "There's dust on everyone here," he said. "So you have to go down until you find somebody without blood on his hands. That's the person you have to deal with."

But one Agency for International Development official said more and more local leaders are willing to cooperate in the rebuilding effort.

"We're beginning to see them at the table now, and they're beginning to ask questions. We're shifting from one level to another. We're dealing with the Iraqi mind and not the U.S. mind. We're trying to deliver the goods, but it's going to be a long process. It's water running into one more house. It's electricity going into one more house."

Sattler pointed out that more than 2,000 government workers showed up for work in Fallujah the day before and "15,000 people came into town yesterday. There were less than a thousand in December."

A few days later, Sattler repeated his message while hosting Gen. John Abizaid, commander of all U.S. forces in the Persian Gulf region, and Sen. Jack Reed (D–R.I.).

"A year ago, we had an insurgency that operated with impunity inside Fallujah," Sattler said. But now there's a growing partnership between U.S. troops and Iraqi security forces that he said bodes well for the future.

Sattler said, "We get a lot of visitors here, but you haven't visited Iraq if you haven't visited Fallujah."

REGULATION OF 527 ORGANIZATIONS

Mr. DAYTON. Mr. President, earlier today, as a member of the Senate Rules Committee, I participated in a markup of legislation that purports to regulate the so-called 527 organizations. What started out as campaign finance reform legislation in the view of many, both Democrats and Republicans, in this body, unfortunately, turned, through the amendment procedure and the markup, into a very different kind of legislation.

I commend Senator LOTT, chairman of the Rules Committee. He was eminently fair throughout and gave each one of us an opportunity to present our amendments to be fully considered and voted upon. But one amendment that was introduced at the very outset, that was voted favorably upon by all members of the majority caucus as well as I believe one or two Democrats, but not nearly enough to carry the legislation, drastically shifted the bill to one that opens vast new opportunities for political action committees, special interests, to increase their contributions and for Members of Congress, Members of the Senate to direct those moneys to other political campaigns.

Specifically, the amendment that was adopted increased the contributions allowed to political action committees from $5,000 to $7,500. That is a 50-percent increase.

The amendment increased the amount of money that political action committees could contribute to national political parties from $15,000 to $25,000. That is a 67-percent increase. And it eliminated the restrictions on trade associations soliciting member companies for those contributions without prior approval of those companies as well as limitations on the number of times each year they could be solicited.

Most egregious, the amendment that was adopted allows Members of Congress to transfer unlimited amounts of money from their leadership political action committees to national parties and to the political committees that are established and maintained by a national political party which includes such enterprises as the Democratic and Republican senatorial campaign committees, congressional campaign committees, and other subdivisions and political committees of the national parties that are used to directly attack Members of Congress for their reelections or to assist challengers or to assist incumbents.

It opened the door widely, broadly, in allowing Members of Congress to use their positions of power and influence to solicit these contributions from special interests on a year-round, round-the-clock basis and then turn those moneys over in unlimited amounts to all of these other political activities.

So at the same time this legislation purported to restrict the ability of individuals to make these kinds of large expenditures on behalf of political causes and candidates, it threw the door wide open for special interest groups to do exactly what they said they were prohibiting. It is a terrible step in the wrong direction. It is evidence, again, of why allowing incumbents to be involved in so-called election law regarding their own self-interest is akin to giving a blowtorch to a pyromaniac. They simply cannot resist the abuses that are available to them.

I urge my colleagues to look at this legislation cautiously as it proceeds to the Senate floor. It is a step in the wrong direction. I regret the action taken today.

HONORING OUR ARMED FORCES

SERGEANT JOHN W. MILLER

Mr. GRASSLEY. Mr. President, I wish to recognize today the passing of a fellow Iowan who has fallen in service to this country. Sergeant John W. Miller, of the Iowa Army National Guard Company, A, 224th Engineer Battalion, was killed by a sniper on April 12 in Ar Ramadi, Iraq, while providing security for a road-clearing operation. He was 21 years old and is survived by a father, Dennis, two brothers, James and Nathan, and a sister, Jessica, who live in the Burlington, IA area.

John Miller attended West Burlington High School and received his high school diploma from Des Moines Area Community College. He joined the Iowa Army National Guard in March of 2002 and was mobilized to go to Iraq in October of 2004. He was posthumously awarded the Bronze Star, Purple Heart, Global War on Terrorism Expeditionary Medal, Global War on Terrorism Service Medal, National Defense Service Medal, Army Good Conduct Medal, Army Service Ribbon, Army Reserve Component Achievement Medal and the Armed Forces Reserve Medal with "M" device for Mobilization. He was also promoted to sergeant posthumously.

I offer my condolences to John's family and friends. Sergeant Miller's battalion leader wrote that John "will

never be forgotten.'' I ask all of my colleagues and fellow Americans to join me in fulfilling that promise of remembrance. We must remember John and his comrades who have fallen, their lives, and their sacrifices; for a Nation that forgets her heroes will lose her direction, her strength, and her spirit.

NURSE ANESTHESIA PROGRAM

Mr. AKAKA. Mr. President, so often we talk about collaboration between the Departments of Veterans Affairs and Defense. Today, we have a terrific example of such sharing. I specifically want to call attention to an innovative training program for nurse anesthetists. In an attempt to maximize scarce resources, VA and the U.S. Army have pulled together their resources to help prepare VA for fields in anesthesia.

Out of this joint VA/DOD effort has transpired one of the top Certified Registered Nurse Anesthetist programs in the country. The program offered at the U.S. Army Medical Department Center and School at Fort Sam Houston, TX, has been said by its students to provide top of the line Army training in the field of nurse anesthesia. This type of training can be carried over to VA and will promote a seamless transition for those servicemembers that need continued treatment upon return from active duty.

In addition to the clinical training, during the second phase of the program, the students also receive invaluable lessons that simply cannot be taught in just any training facility. By sitting side by side with Army and Air Force classmates, the students are able to gain a greater appreciation and understanding for the different branches of the armed services and the culture of the military. Knowing that they are being cared for by someone who understands their background and by someone who speaks their language, veterans are provided with a level of comfort that can only be beneficial as they receive health care treatment.

This VA/DOD nurse anesthesia training program only provides a glimpse of the strides VA is making and hopefully will continue to make in training and educating current and future health care workers—despite budget constraints. I applaud VA for its leadership to the health care community and for its collaborative efforts to ensure quality health care. As ranking member of the Committee on Veterans Affairs, I will continue to fight for veterans and make sure that they receive the health care that they deserve.

CHINESE TARIFFS

Mr. DOMENICI. Mr. President, on April 6, 2005, I voted against a motion to table amendment, No. 309, otherwise known as the Schumer amendment, to the fiscal year 2006–2007 Foreign Affairs authorization bill. Upon careful consideration of this issue I have come to the conclusion that this amendment will be ineffective at best and harmful at worst. As it is currently written, the Schumer amendment will impose a tariff on all Chinese imports. Sponsors of the amendment claim this measure is necessary in order to compel the Chinese Government to revalue its currency.

I am a supporter of free trade. I also believe that the benefits of free trade must be weighed against any harm that could be done to vital American interests. Understandably, there is considerable angst over the expanding trade deficit between the United States and China. Still, this body should not be hasty to repeat a mistake of the 106th Congress when it acted to support a similar amendment to the 2000 China trade bill.

Similar to what the Schumer amendment proposes, provisions in the China trade bill allowed the Federal Government to impose a de facto tariff in the form of dumping penalties against foreign companies. The collected penalties were distributed to the companies that filed complaints in the U.S. It should be noted that the WTO defines ''dumping'' as a situation where goods are sold below price normally charged in home market. By contrast, and to the consternation of our trade partners, domestic American companies have thought of dumping as goods being sold below price normally charged in the U.S. market. Over the past 4½ years since the bill was enacted, American companies have collected over $1 billion in penalties from suits filed in the United States.

While that might not seem like such a bad thing, other governments have been busy filing complaints with the World Trade Organization. They are now determined to impose 15 percent tariffs against American exporters as punishment for the American ''dumping'' penalties. The costs of these tariffs will be borne by all sorts of American manufacturers and exporters. These tariffs will also punish American workers by making their work products uncompetitive in the global market.

I raise this parallel because it reveals to us the dangers of not seeking resolution through an agreed-to and effective framework provided by the WTO. The strength of the American economy has always been based on the openness of our markets. Unilaterally imposing tariffs on Chinese imports will act as an unfair tax on American exporters and that is a price we cannot afford to pay.

FREEDOM TO TRAVEL TO CUBA ACT OF 2005

Mr. ENZI. Mr. President, on Monday, April 25, I introduced a bill, S. 894, with Senator DORGAN that will make a small change in Cuba policy. It deals only with travel provisions to Cuba.

I have been watching Cuba since the 1960s. I went to college at George Washington University and was there at the time of the Cuban missile crisis. I have had the opportunity to watch what has happened with Cuba through the years and I am reminded of something my dad used to say: If you keep on doing what you have always been doing, you are going to wind up getting what you already got.

That is kind of been the situation with Cuba. We have been trying the same thing for 40 years—over 40 years—and it has not worked. So I am suggesting a change to get a few more people in there to increase conversation for people that understand the way the United States works and the way Cuba works and how they ought to drift more rapidly towards where we are.

Castro's cruelty to his own people has tempted us to tighten the already strong restrictions on the relations between our two countries, and we did. We need to be successful in bringing about a better way of life for the Cuban people.

When we stop Cuban-Americans from bringing financial assistance to their families in Cuba, and end the people to people exchanges, and stop the sale of agricultural and medicinal products to Cuba, we are not hurting the Cuban Government, we are hurting the Cuban people. We are diminishing their faith and trust in the United States and reducing the strength of the ties that bind the people of our two countries.

If we allow more and freer travel to Cuba, if we increase trade and dialogue, we take away Castro's ability to blame the hardships of the Cuban people on the United States. In a very real sense, the better we try to make things for the Cuban people, the more we will reduce the level and the tone of the rhetoric used against us by Fidel Castro.

As I mentioned before, it seems foolish to do the same thing over and over again and expect different results. That is what we are doing in Cuba. We are continuing to exert pressure from our side and, as we do, we are giving Castro a scapegoat to blame for the poor living conditions in his country in the process. It is time for a different policy, one that goes further than embargoes and replaces a restrictive and confusing travel policy with a new one that will more effectively help us to achieve our goals in that country.

The Freedom to Travel to Cuba Act is very straightforward. It states that the President shall not prohibit, either directly or indirectly, travel to or from Cuba by United States citizens or transactions incident to such travel.

In 1958 the Supreme Court affirmed our constitutional right to travel, but the U.S. Government then prohibited Americans from spending money in Cuba. We simply said, OK, you have a right to travel, but try traveling without spending a dime.

One of the reasons I became involved in this issue is because a Cuban-American from Jackson, WY, had been in Cuba visiting his family, doing his one

visit a year. As he left and was on the plane coming back to Wyoming, one of his parents died. He could not go back there for a year. Under the recent changes, he now would be unable to go back for 3 years. This is not a good situation for any family.

I must ask my colleagues why we are continuing to support a policy that was basically implemented 40 years ago. Why are we supporting a policy that has had little effect on the government we oppose? Why don't we improve our policy so that it will improve conditions for the Cuban people and their image of the United States?

The bill we are introducing makes real change in our policy toward Cuba that will lead to real change for the people of Cuba. What better way to let the Cuban people know of our concern for their plight than for them to hear it from their friends, and extended family from the United States. Or let them hear it from the American people who will go there. The people of this country are our best ambassadors and we should let them show the people of Cuba what we as a Nation are all about. One thing we should not do is to play into Castro's hands by continuing to enact stricter and more stringent regulations and create a situation where the United States is easy to blame for the problems in Cuba.

Unilateral sanctions will not improve human rights for Cuban citizens. The rest of the world isn't doing what we are doing. They are being supplied by the rest of the world for everything that they need. Open dialogue and exchange of ideas and commerce can move a country toward democracy.

What better way to share the rewards of democracy than through people to people exchanges. Unilateral sanctions stop not just the flow of goods, but the flow of ideas. Ideas of freedom and democracy are the keys to positive change in any nation.

Some may ask why we want to increase dialogue right now, why open the door to Cuba when Castro behaves so poorly. No one is denying that the actions of Castro and his government are deplorable, as is his refusal to provide basic human rights to his people. But if you truly believe that Castro is dictator with no good intentions, how can you say we should wait for him to behave before we engage. He controls all the media in Cuba. The entire message that is coming out unless we have people interacting is his message. Keeping the door closed and hollering at Castro on the other side does nothing. Let's do something, let's open the door and talk to the Cuban people.

I encourage all of my colleagues to take a look at S. 894 and join me in this effort.

COMMEMORATING HOLOCAUST REMEMBRANCE DAY

Mr. BROWNBACK. Mr. President, in light of the upcoming Holocaust Remembrance Day, I want to pay tribute to the men, women, and children who suffered and were murdered at the hands of the Nazis in the death camps across Europe. In 1951, the Israeli Knesset designated an official day on the Hebrew calendar, called Yom ha-Shoah, to commemorate the Shoah or Holocaust. This important day falls on May 5th.

''Shoah'' is the Hebrew word meaning ''catastrophe,'' which speaks to the tragic destruction of nearly the entirety of European Jewry during World War II. Perhaps no other place has been so linked to the Shoah than Auschwitz, the liberation of which was solemnly marked earlier this year.

Auschwitz now symbolizes the horror suffered by millions in an expansive network of camps and sub-camps that stretched throughout much of Europe. Millions of people were deported to these camps throughout the war. Many were summarily executed. Others were worked to death. Some were subjected to sadistic medical experimentation.

The death camp at Auschwitz was at the heart of the ''final solution,'' the slaughter of innocents for no other reason than that they were Jews. In addition, Poles, Roma and other minorities were transported to Auschwitz and elsewhere for elimination. To put this staggering human suffering into some scale, the equivalent of roughly half the current population of my home State of Kansas was murdered at Auschwitz alone.

I have had the privilege of visiting Yad Vashem in Jerusalem to honor the memory of the victims of Shoah. The legacy of the Holocaust encompasses the memory of those that perished as well as those who survived. The testimonies of those who survived Auschwitz and other death camps attest to the capacity of evil. At the same time, the lives of the survivors underscore the resilience of the human spirit and the fact that good can and must prevail over evil.

Six decades after the smoldering flames of the Shoah were extinguished, we are still confronted with reality that the embers of anti-Semitism could today be fanned into a consuming fire. As chairman of the Commission on Security and Cooperation in Europe, I am committed to confronting and combating manifestations of anti-Semitism and related violence at home and abroad. I look forward to the upcoming OSCE conference in Cordoba, Spain, as it will assess what measures countries are or are not taking to confront anti-Semitism. As a member of the Senate, I have and will continue to support the vital educational work of the United States Holocaust Memorial Museum and other institutions.

While the world professed shock at the scope of the atrocities and cruelty of the Holocaust, it has not prevented genocides elsewhere, Bosnia, Rwanda, and now Darfur. We I can best honor the memory of those killed during the Holocaust and the survivors by giving real meaning to ''never again.''

ADDITIONAL STATEMENTS

TRIBUTE TO DAN TANG—SBA SMALL BUSINESS OWNER OF THE YEAR

• Mr. ALLARD. Mr. President, I rise today to pay tribute to Mr. Dan Tang, who has been named by the Small Business Administration the Small Business Owner of the Year.

Dan was born in China in 1962 and was raised in Canton, China. At 19 years of age, Dan was forced to escape China. After eleven months in a refugee camp, he finally received a visa to travel to the United States. His dream of becoming an American citizen began in California. He worked hard, saved his money and found his way to Colorado.

After moving to Aurora, CO, he met up with some friends who owned a local Chinese restaurant. He accepted a job offer to be the dish washer and began working his way up in the business. He went from washing dishes, then bussing tables and eventually was promoted to become a cook. Always working long days and saving his money, Dan was eventually able to open his own restaurant in 1990. The opening of the Heaven Dragon was an enormous achievement for him and his family.

Today the Heaven Dragon is one of the best known family owned restaurants in the Denver metro area. His reputation is so well known that on a recent visit to Denver, President Bush requested his speciality, Peking Duck.

Dan Tang is a true American success story. He is a role model for hard-working small business owners across the country who are creating their own American dream.•

TRIBUTE TO CONSTABLE BILL BAILEY

• Mrs. HUTCHISON. Mr. President, there is something in the Texas soil that produces colorful characters. From Judge Roy Bean, the law west of the Pecos, to Admiral Chester Nimitz, to racecar driver Richard Petty, Texas has raised up men and women whose achievements and personal flair have made our world not only a better place, but more interesting.

One of Texas' most popular people is Harris County constable Bill Bailey. Constable Bailey heads up a big operation, with 77 employees and a $4.3 million annual budget. He has been a constable for 21 years, whose leadership was recognized when he was named president of the Texas Association of Counties.

This is a big achievement for anyone.

But Bill Bailey is not just anyone. Born Milton Odom Stanley, he was always a gregarious attention-seeking youth. Before he graduated from high school, he landed his first job on a radio station in Temple. He called himself ''The Lone Wolf.''

When he graduated from high school in 1957, his career began to take off. He

was hired by a station first in Round Rock, then in El Paso, where he enrolled at Texas Western College. Radio was so good, he dropped out of college and took a job with a chain. He ended up in Des Moines, IA, broadcasting as Lee Western. During his job there, he had his first child, who was born over Texas soil even though the birth took place in a Des Moines hospital. Bill Bailey's mom sent him some dirt from his hometown which he wrapped in sterile cloth and placed under the delivery table. That is an authentic Texan.

On New Year's Day, 1960, he tuned in to listen to the University of Texas play in the Cotton Bowl.

''They cranked up 'The Eyes of Texas,' and I just cried,'' Bill said. ''I came home to Texas without a job.''

Later, he walked into Houston radio station KTHT to apply for a position. The station had recently hired a man from St. Louis by the name of Bill Bailey and had invested heavily in a promotion using the song, ''Won't you come home Bill Bailey, Won't you come home?'' The problem was, the new man decided after two weeks to do just that and went back home to St. Louis.

The station was desperate to recoup the cost of the advertising, so the deal presented to young Milton Odom Stanley was to become Bill Bailey. He kept the name ever since.

Two years later, Bill Bailey was hired by KIKK, known as KIKKer Country in Houston, not long before the Urban Cowboy nationwide country music craze. By 1979, Bill Bailey was honored as the number one country music broadcaster in a major market, and Billboard magazine named him Program Director of the Year.

At the top of his profession, Bill Bailey noted that radio personalities were beginning to coarsen their acts to get higher ratings. This went against the grain, because he knew young girls and grandmothers would listen to his show. Since he was opposed to using off-color humor, Bill Bailey began looking for a way to switch careers.

The opportunity came when a vacancy opened for constable in Harris County Precinct 8. By this time, Bill had a law enforcement commission as a reserve officer in the Galena Park Police Department. In this respect, he was following in the footsteps of his great, great, great grandfather, Williamson County Sheriff Milton Tucker, who captured the legendary outlaw Sam Bass in 1878 the day after Bass had been mortally wounded by Texas Rangers in Round Rock.

After winning a run-off election, he worked hard to make his office more professional and improved every aspect of its operations. Bill started many initiatives in his office, not least of which is guarding the homes of astronauts while they are in space.

Another measure was to provide powered impact wrenches with all his patrol cars so deputies can rapidly change tires for stranded motorists.

''I've gotten more mail from citizens who have had flats fixed than all the other cops-and-robbers stuff we do,'' he said.

I have known Bill for years. We rode horses together on the Salt Grass Trail and in the Houston Rodeo. He is a fine and good man.

Bill Bailey's other activities include serving part-time as an announcer at the Texas Prison Rodeo for 15 years, and calling the calf scramble and grand entry salute at the Houston Livestock Show and Rodeo. He has been active in that charity for 43 years.

It is no surprise that a man this talented has had so many names: Milton Stanley, ''Poogie'', his nickname as he grew up in Galena Park, ''Lone Wolf'', Lee Western, Buffalo Bill Bailey and, finally, plain old Bill Bailey.

Constable Bill Bailey may have had many names, but he has always been a devoted family man, a believing Christian and a colorful credit to our State. Please join me in congratulating him as the City of Pasadena and the Pasadena Rotary Club host Bill Bailey Day on April 29, 2005.●

GEORGE KALLAS

● Ms. MURKOWSKI. Mr. President, my State of Alaska is small in population but huge in territory, warmth and generosity. In a State with a population of somewhat over 655,000 people, whose largest community, the municipality of Anchorage, has a population of about 275,000, the good deeds of people stand out.

The high level of civic engagement exhibited by the people of Alaska is impressive. Many Alaskans begin their morning with Rotary, take lunch at the Chamber of Commerce, the World Affairs Council or Commonwealth North, and spend their evenings supporting one of our many cultural, charitable and civic organizations.

Alaskans, whether life long residents of the State as I am, or people transplanted to The Great Land, like George Kallas, play an active role in the life of our communities. The difference between a sourdough and a cheechako, a newcomer, is not measured in longevity of residence. It is measured in contributions to the community.

Last Saturday, I joined with Alaskans in celebrating the life of George Kallas who passed away at the age of 81 on April 19, 2005. George Kallas came to Alaska in 1971. He was a native of Kansas City and will be buried there. A U.S. Army veteran of World War II, he was a member of American Legion Post 28.

George's business, the Beef and Sea Restaurant, on the Old Seward Highway was a favored dining spot of Alaskans and visitors alike. Located close to the heart of Alaska's oil and gas industry, it offered a touch of Alaska hospitality and a taste of Alaska crab to thousands who came to develop the Prudhoe Bay oilfield and the Trans Alaska Pipeline System. George participated in the growth of Anchorage from small town to cosmopolitan metropolis. He operated the restaurant until 1999 when he retired.

At Christmas George opened the restaurant to feed all of those who cared to come free of charge. At least 1,500 people, probably more, took advantage of this wonderful Christmas present.

He was not merely a successful small businessperson, but a leader of the small business community. George was proudest of his leadership role in the Alaska Coalition of Small Business which advocated for the interests of small business on issues from local to national importance. He was also an active member of the Holy Transfiguration Greek Orthodox Church.

George was what we in Alaska refer to as a ''super voter,'' someone who never missed the opportunity to vote. Even in his final months as a resident of the extended care facility at Providence Hospital, he insisted that he be brought to the polls to perform his duty as a citizen of Alaska and the United States.

I will miss George Kallas. Alaska will miss George Kallas.●

TRIBUTE TO BOB LIGOURI

● Mr. HARKIN. Mr. President, 7 years ago, Senator JIM JEFFORDS recruited me to join him as a volunteer for a literacy program in Washington, DC, called Everybody Wins! The program is simple—spend one lunch hour a week at an elementary school reading with a child. This is the ultimate power lunch.

It didn't take long and I was hooked. It is the most important and rewarding hour of my week. I also thought this was a program we needed in Iowa.

Three years ago, under the leadership of Bob Ligouri, Everybody Wins! Iowa was launched. The Iowa program started as a small pilot program in three central Iowa elementary schools involving 15 students and 15 adults. From those humble beginnings, Everybody Wins! Iowa has grown to over 200 volunteers in 12 central Iowa schools.

Starting a brand new non-profit organization is not easy. There were volunteers to recruit, schools to identify, a board to create, paperwork to file and money to raise. Bob Ligouri built a solid foundation for Everybody Wins! Iowa. He adapted the national program to better fit our State and put the organization on the right track for future growth.

Everybody Wins! Iowa was fortunate to have the opportunity to work with Bob. He has long experience working with children as a coach of various athletic teams. He also led Special Olympics here in Iowa for 10 years building it into an organization with 10,000 volunteers and athletes.

Bob Ligouri served as the executive director and later, as president of the board of directors for Everybody Wins! Iowa for over 3 years. He planted the seeds, nurtured them and watched

them blossom into a strong literacy and mentoring organization.

As Bob Ligouri moves on to dedicate more time to a new business venture, I express my sincere gratitude for the outstanding job he has done for Everybody Wins! Iowa. His dedication and leadership was critical to the Iowa program and he will be missed.●

COMMENDING PATRICIA POLAND

● Mrs. CLINTON. Mr. President, I am pleased today to recognize the outstanding service of Patricia ''Judy'' Poland, who retires in May after 30 years of dedicated efforts on behalf of the U.S. Army. For three decades, Miss Poland has worked at the Army's Recruiting Battalion in Albany, NY. She retires as the Battalion's Chief of Advertising and Public Affairs.

Miss Poland began her Government service in 1973 and has spent her entire career in the field of public affairs. It is fitting to note, therefore, that she entered Federal service at the same time that the Army began its daring initiative to become an All-Volunteer Force. Miss Poland's career spanned the full gamut of recruiting slogans, each of which reflected the changing temperament of the Nation, from ''Today's Army Wants to Join You,'' through ''Be All You Can Be'' to the current ''Army of One.'' She leaves an All-Volunteer Army sustained by successful recruitment.

Judy Poland's efforts in Albany, NY, contributed greatly to the Army's success. Recognized for her leadership, for most of her service she has headed her department, she has held the unconditional trust of several thousand recruiters, and her institutional knowledge has eased the way for more than a dozen battalion commanders.

From her early service pounding a manual typewriter under leaking steampipes in a basement, she has not only seen the Army change and grow into a service on the cutting edge of technology but she has facilitated that growth.

As Judy Poland leaves Government service to pursue goals and hobbies postponed for 30 years, I offer not only congratulations on her accomplishments but heartfelt thanks for her selfless service to our great Nation. I send to her my best wishes for continued success.●

TOM RUSSO AND THE SCHOLAR-RESCUE PROGRAM

● Mr. LEAHY. Mr. President, today I wish to make a short statement on the work of Tom Russo. Mr. Russo is a vice chairman of Lehman Brothers, making his time some of the most valuable time in the world. But, it is precisely what Mr. Russo does with this time that I would like to speak about here today—in particular his work with the Institute of International Education—IIE—and the scholar-rescue program.

Mr. Russo has played a leadership role in working with IIE to establish a program that helps to bring scholars, whose lives are in danger in their home countries, to the United States. Once in the United States, the scholars are matched with host universities according to their academic specialty and the needs of the university. In many ways, this program is a win-win. The scholars, and in some cases their families, are removed from harm's way. Universities in the U.S. get top-rate scholars to teach and conduct research, while IIE helps to defray some of the costs to these institutions.

Of course, everyone would prefer that these scholars were able to remain in their home countries shaping the intellectual culture there, especially the scholars themselves. But, these are cases where there is no other option. It is either leave or be killed. And we have a moral responsibility to help these scholars escape and continue their work, in hopes of one day returning and advancing the knowledge base in their home nations.

One only has to look at the newspaper to see that there is virtually unlimited demand for this program. Let me read a few sentences from an article in last Wednesday's Washington Post, entitled ''Attacks Across Iraq kill 12, Wound Over 60''. The article reads: ''Elsewhere in the capital, masked men shot and killed a professor, Fuad Ibrahim Mohamed Bayati, as he left home for the University of Baghdad, police said.''

Tom Russo and his colleagues, including Henry Jarecki, a board member of IIE, and Alan Goodman, the president of IIE, have worked tirelessly to build this program. I know this because on several different occasions I have met with Henry, Alan, or Tom about the scholar-rescue program. It is abundantly clear from our conversations that they are deeply involved with the program and are passionate about the good work that it is doing around the world. While the scholar-rescue program cannot prevent every tragedy, I can attest it is making a difference. I also know that, instead of resting on their laurels, Mr. Russo, Dr. Jarecki, Dr. Goodman, and others are laboring day and night to expand the program to come to the aid of more scholars and their families.

I appreciate all Mr. Russo is doing and wanted to bring his work to the attention of the Senate. I encourage all of my colleagues to read about Tom Russo and the scholar-rescue program. I ask that an article from the New York Sun on Mr. Russo be printed in the RECORD.

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

[From the New York Sun, Apr. 11, 2005]

LEHMAN'S RUSSO: ''CREATE A CULTURE OF DOING THE RIGHT THING''

(By Pranay Gupte)

Thomas Russo, vice chairman of Lehman Brothers Incorporated and the 155-year-old investment bank's chief legal officer, had started this day with a meeting at 7:30 a.m. By the time he came to lunch, he'd had three more meetings, and taken several overseas and domestic calls in his additional role as head of Lehman's corporate advisory division, with responsibility for compliance, internal audit, government relations, and the documentation group.

There was also some work in connection with Lehman's new products committee and also the operating exposures committee, both of which he chairs. There were a couple of matters related to the Institute of International Education, which administers the State Department's Fulbright Program, and whose executive committee he heads.

And yes, there was a one-hour workout at a gym before his workday started.

Were there enough hours in the clock for him, the reporter—whose own deadline driven schedule had spawned portliness, in contrast to his guest's dapper trimness—asked Mr. Russo,

''In everything I do, I always ask myself, 'Am I doing the best that I can?' '' Mr. Russo said. ''If you feel good about what you do, then you can be at peace with yourself.''

He's handsomely compensated for what he does. Lehman gave him $3 million last year, making him the highest-paid corporate legal counsel in America after General Electric's chief lawyer, Benjamin Heineman Jr., who drew $4.3 million, according to a survey by Corporate Legal Times.

Mr. Russo certainly earns his salary and bonuses, especially these days when Wall Street is under increased scrutiny by regulatory institutions on account of assorted scandals concerning corporate behavior. As Lehman's chief legal officer, its Mr. Russo's responsibility to ensure strict compliance with the law—particularly the 2002 Sarbanes-Oxley Act on accounting and governance—on the part of the firm's 20,300 employees.

Indeed, Mr. Russo was a key player in bringing about the record $1.4 billion settlement by 10 Wall Street companies in April 2003. Lehman, which paid $80 million in fines—Citigroup paid $400 million—was among those accused by the Securities and Exchange Commission and New York State Attorney General Eliot Spitzer of conflicts of interest while aiming to increase their investment-banking business.

''The whole episode was bad for the industry, it was bad for business,'' Mr. Russo said. ''It could be cited as an example of us being our own worst enemy. While some have accused regulators for being excessively zealous, for the most part the industry brought this upon itself.''

What about the continuing tensions and torque of his work, the reporter asked. How does he go about ensuring compliance with the law in such a large organization as Lehman?

''The only way to regain investors' trust is to create a culture of doing the right thing,'' Mr. Russo said. ''I always say to my colleagues, 'If it feels wrong, just don't do it.' You cannot compromise your integrity. Everyone in financial services always needs to keep in mind that, first and foremost, customers must be served to the best of our ability. I cannot emphasize enough the importance of doing the right thing.''

Mr. Russo's emphasis on ''doing the right thing,'' and his probity, has acquired an almost mythic dimension in the financial services industry. Some 84 million Americans have invested more than $14 trillion in the equities markets in the United States; more than 3.2 billion shares are typically traded on the New York Stock Exchange and Nasdaq every day.

That emphasis on morality is transmitted by Mr. Russo not only to his associates at Lehman (which he joined in January 1993). It's a message that he conveys to hundreds of

other professionals, students, and young people with whom he comes into contact each year through institutions such as the IIE, the Economic Club of New York, the Foreign Policy Association, the Fellows of the Phi Beta Kappa Society, and U.S. Council for International Business.

He's not a proselytizer, nor is his style preachy. The soft-spoken Mr. Russo learned the art of subtlety from his late father, Lucio, a Staten Island lawyer who was also a member of the state Assembly for 22 years. He also learned forthrightness and resourcefulness from his late mother, Tina, who encouraged him to get summer jobs on the floor of the American Stock Exchange; it was his mother who elicited his continuing involvement with the March of Dimes, where he's vice chairman. (His parents died in a car accident last year.)

''I figured out early in life that success is a matter of focus and energy,'' Mr. Russo said. ''If you find something that you like to do, then you've got to do it with all your passion.''

It's an attitude that helped him ace undergraduate studies at Fordham University, and Cornell University, where he earned an MBA as well as a law degree. Mr. Russo was also elected to the honor societies Phi Beta Kappa and Phi Kappa Phi. It's an attitude that helped him distinguish himself as a young lawyer at the SEC, which he joined after Cornell.

It's an attitude that helped him become partner and member of the management committee of the prestigious law firm Cadwalader, Wickersham & Taft. And it's an attitude that most certainly helped land him the job of the first director of the Commodity Futures Trading Commission's Division of Trading and Markets. (Mr. Russo is also the author of two books on federal securities and commodities laws, and frequently writes for trade and mainstream publications on commodities, securities, banking, and financial market regulation.)

His career has fetched him numerous honors. The National Law Journal listed him as one of the ''100 Most Influential Lawyers in America.'' Not long ago, Mr. Russo was an inaugural inductee into the Futures Industry Association Hall of Fame. These honors are to be savored, of course, but Mr. Russo isn't one to brag about them. During lunch, in fact, he credited his colleagues and parents, and averred: ''I've been enormously lucky in my life.''

There's one aspect of his luck that Mr. Russo chooses to highlight—his wife, Marcy, who helps run a Jewish educational foundation; and his children: twin daughters Alexa and Morgan, 15, and son Tyler, 9.

The reporter obtained a sense of how much Mr. Russo's family shares his dedication to education and cultural bridge-building—which he said were essential not only for sustaining America's economic might but also for engendering enhanced awareness overseas of the homespun values of tolerance, friendship, and hospitality that serve as underpinnings of American society.

On the evening after the lunch with Mr. Russo, he'd invited several young Fulbright scholars from Iraq, India, China, Syria, and other countries to his Fifth Avenue apartment for a reception. The view of Central Park was stunning; the food was scrumptious. But the highlight of the evening was clearly violin renditions of Bach by Alexa and Morgan, accompanied on the piano by their fellow student from the Dalton School, Gennifer Tsoi.

They often give such performances, Mr. Russo said, they visit senior citizens' homes and hospices to give comfort and spread good will through their music. The reporter thought: Like father, like daughters.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 11:12 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House disagree to the amendment of the Senate to the resolution (H. Con. Res. 95) establishing the congressional budget for the United States Government for fiscal year 2006, revising appropriate budgetary levels for fiscal year 2005, and setting forth appropriate budgetary levels for fiscal years 2007 through 2010, and agree to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and appoints the following Members as the managers of the conference on the part of the House, Mr. NUSSLE, Mr. RYUN of Kansas.

The message also announced that the House disagree to the amendments of the Senate to the bill (H.R. 1268) making emergency supplemental appropriations for the fiscal year ending September 30, 2005, 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, to ensure expeditious construction of the San Diego border fence, and for other purposes, and agree to the conference asked by the Senate on the disagreeing votes of the two houses thereon; and appoints the following Members as the managers of the conference on the part of the House: Mr. LEWIS of California, Mr. YOUNG of Florida, Mr. REGULA, Mr. ROGERS of Kentucky, Mr. WOLF, Mr. KOLBE, Mr. WALSH, Mr. TAYLOR of North Carolina, Mr. HOBSON, Mr. BONILLA, Mr. KNOLLENBERG, Mr. OBEY, Mr. MURTHA, Mr. DICKS, Mr. SABO, Mr. MOLLOHAN, Mr. VISCLOSKY, Mrs. LOWEY and Mr. EDWARDS.

At 3:00 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. 28. An act to amend the High-Performance Computing Act of 1991.

H.R. 749. An act to amend the Federal Credit Union Act to provide expanded access for persons in the field of membership of a Federal credit union to money order, check cashing, and money transfer services.

H.R. 1158. An act to reauthorize the Steel and Aluminum Energy Conservation and Technology Competitiveness Act of 1988.

H.R. 1236. An act to designate the facility of the United States Postal Service located at 750 4th Street in Sparks, Nevada, as the ''Mayor Tony Armstrong Memorial Post Office''.

H.R. 1524. An act to designate the facility of the United States Postal Service located at 124333 Antioch Road in Overland Park, Kansas, as the ''Ed Eilert Post Office Building''.

The message also announced that the House has agreed to the following concurrent resolutions, in which it requests the concurrent of the Senate:

H. Con. Res. 41. Concurrent resolution recognizing the second century of Big Brothers Big Sisters, and supporting the mission and goals of that organization.

H. Con. Res. 96. Concurrent resolution recognizing the significance of African American women in the United States scientific community.

The message further announced that pursuant to section 101(f)(3) of the Ticket to Work and Work Incentives Improvement Act of 1999 (Public Law 106–170), and the order of the House of January 4, 2005, the Speaker appoints the following member on the part of the House of Representatives to the Ticket to Work and Work Incentives Advisory Panel: Mr. J. Russell Doumas of Columbia, Missouri to a 4-year term.

The message also announced that pursuant to 40 U.S.C. 188a, and the order of the House of January 4, 2005, the Speaker appoints the following Members of the House of Representatives to the United States Capitol Preservation Commission: Mr. LEWIS of California.

The message further announced that pursuant to 40 U.S.C. 188a, and the order of the House of January 4, 2005, the Minority Leader appoints the following Member of the House of Representatives to the United States Capitol Preservation Commission: Ms. KAPTUR of Ohio.

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 28. An act to amend the High-Performance Computing Act of 1991; to the Committee on Commerce, Science, and Transportation.

H.R. 749. An act to amend the Federal Credit Union Act to provide expanded access for persons in the field of membership of a Federal credit union to money order, check cashing, and money transfer services; to the Committee on Banking, Housing, and Urban Affairs.

H.R. 1158. An act to reauthorize the Steel and Aluminum Energy Conservation and Technology Competitiveness Act of 1988; to the Committee on Energy and Natural Resources.

H.R. 1236. An act to designate the facility of the United States Postal Service located at 750 4th Street in Sparks, Nevada, as the ''Mayor Tony Armstrong Memorial Post Office''; to the Committee on Homeland Security and Governmental Affairs.

H.R. 1524. An act to designate the facility of the United States Postal Service located at 12433 Antioch Road in Overland Park, Kansas, as the "Ed Eilert 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. 96. Concurrent resolution recognizing the significance of African American women in the United States scientific community; to the Committee on the Judiciary.

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–1947. A communication from the General Counsel of the Department of Defense, transmitting, a report of proposed legislation relative to the National Defense Authorization Bill for Fiscal Year 2006; to the Committee on Armed Services.

EC–1948. A communication from the Principal Deputy, Personnel and Readiness, Office of the Under Secretary of Defense, transmitting, pursuant to law, a report entitled "Aviation Career Incentive Pay and Aviation Continuation Pay Programs for Fiscal Year 2004"; to the Committee on Armed Services.

EC–1949. A communication from the Director, Administrative Office of the United States Courts, transmitting, pursuant to law, a report entitled "2004 Wiretap Report"; to the Committee on the Judiciary.

EC–1950. A communication from the Acting Assistant Secretary, Legislative Affairs, Department of State, transmitting, pursuant to law, a notification of the Department's intent to obligate funds for purposes of Nonproliferation and Disarmament Fund activities and funds to cover Nonproliferation and Disarmament Fund Fiscal Year 2005 Administration and Operation costs; to the Committee on Foreign Relations.

EC–1951. A communication from the Federal Register Certifying Officer, Financial Management Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Salary Offset" (RIN1510–AA70) received on April 26, 2005; to the Committee on Banking, Housing, and Urban Affairs.

EC–1952. A communication from the Regulatory Contact, Grain Inspection, Packers and Stockyards Administration, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Export Inspection and Weighing Waiver for High Quality Specialty Grains Transported in Containers" (RIN0580–AA87) received on April 26, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1953. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of rule entitled "West Indian Fruit Fly; Regulated Articles" (APHIS Docket No. 04–127–1) received on April 26, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1954. A communication from the Congressional Review Coordinator, Animal and Plant Health Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of rule entitled "Asian Longhorned Beetle; Removal of Regulated Areas" (APHIS Docket No. 05–011–1) received on April 26, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC–1955. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Amendment of Class E Airspace; Cocoa Beach Patrick AFB, FL and Class E4 Airspace Cocoa Beach Patrick AFB, FL" ((RIN2120–AA66) (2005–0084)) received on April 26, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1956. 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 E2 Airspace; and Modification of Class E5 Airspace; Newton, KS" ((RIN2120–AA66) (2005–0081)) received on April 26, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1957. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Revocation of Class E Airspace; Palmer, MA; Direct Final Rule; Request for Comments" ((RIN2120–AA66) (2005–0087)) received on April 26, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1958. 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 CF34–8C1 Series and CF34–8C5 Series Turbofan Engines" ((RIN2120–AA64) (2005–0188)) received on April 26, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1959. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Boeing Model 757–200 and 200PF Series Airplanes" ((RIN2120–AA64) (2005–0189)) received on April 26, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1960. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: British Aerospace Model BAe 146 and Model Avro 146–FJ Series Airplanes" ((RIN2120–AA64) (2005–0181)) received on April 26, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1961. 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) (2005–0182)) received on April 26, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1962. 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 CF6–80A1/A3 and CF6–80C2A Series Turbofan Engines, Installed on Airbus Industrie A300–600 and A310 Series Airplanes" ((RIN2120–AA64) (2005–0183)) received on April 26, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1963. 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) (2005–0184)) received on April 26, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1964. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Fairchild Aircraft, Inc., SA226 and SA227 Airplanes" ((RIN2120–AA64) (2005–0185)) received on April 26, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1965. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Boeing Model 747–100, 100B, 100B SUD, 200B, and 300 Series Airplanes; and Model 747SR and 747SP Series Airplanes" ((RIN2120–AA64) (2005–0186)) received on April 26, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1966. 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 9–10, 20, 30, 40, and 50 Series Airplanes; and Model DC 9–81 and DC 9–82 Airplanes" ((RIN2120–AA64) (2005–0187)) received on April 26, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1967. 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 Limited, Bristol Engine Division Model Viper Mk.601–22 Turbojet Engine" ((RIN2120–AA64) (2005–0176)) received on April 26, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1968. 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 777–200 and 300 Series Airplanes" ((RIN2120–AA64) (2005–0177)) received on April 26, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1969. 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 CF6–45A, –50A , –50C, and –50E Series Turbofan Engines" ((RIN2120–AA64) (2005–0178)) received on April 26, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1970. A communication from the Program Analyst, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives: Boeing Model 747–100, –100B, 100B SUD, –200B, 300, 747SP, and 747SR Series Airplanes" ((RIN2120–AA64) (2005–0179)) received on April 26, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1971. 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) (2005–0180)) received on April 26, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1972. 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 (46); AMDT No. 3116 [2–18/4–7]" ((RIN2120–AA65) (2005–0008)) received on April 26, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1973. 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 (49); AMDT. No. 3117 [3–11/4–7]'' ((RIN2120–AA65) (2005–0009)) received on April 26, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1974. 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 (94); AMDT. No. 3118 [3–18/4–7]'' ((RIN2120–AA65) (2005–0010)) received on April 26, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1975. 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; Nevada, MO; Confirmation of Effective Date'' ((RIN2120–AA66) (2005–0086)) received on April 26, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1976. 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; Parsons, KS; Direct Final Rule; Request for Comments'' ((RIN2120–AA66) (2005–0083)) received on April 26, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1977. 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; Rolla, MO; Confirmation of Effective Date'' ((RIN2120–AA66) (2005–0082)) received on April 26, 2005; to the Committee on Commerce, Science, and Transportation .

EC–1978. 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; Ozark, MO; Confirmation of Effective Date'' ((RIN2120–AA66) (2005–0085)) received on April 26, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1979. 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; Boonville, MO'' ((RIN2120–AA66) (2005–0088)) received on April 26, 2005; to the Committee on Commerce, Science, and Transportation.

EC–1980. A communication from the Deputy Assistant Secretary for Fish and Wildlife and Parks, National Park Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Delaware Water Gap National Recreation Area, Pennsylvania and New Jersey; U.S. Route 209 Commercial Vehicle Fees'' (RIN1024–AD14) received on April 26, 2005; to the Committee on Energy and Natural Resources.

EC–1981. A communication from the Deputy Assistant Secretary for Fish and Wildlife and Parks, National Park Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Snowmobile Use, Yellowstone and Grand Teton National Parks'' (RIN1024–AD29) received on April 26, 2005; to the Committee on Energy and Natural Resources.

EC–1982. A communication from the Deputy Assistant Secretary for Fish and Wildlife and Parks, National Park Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Apostle Islands National Lakeshore; Designation of Snowmobile and Off-Road Motor Vehicle Areas, and Use of Portable Ice Augers or Power Engines'' (RIN1024–AD26) received on April 26, 2005; to the Committee on Energy and Natural Resources.

EC–1983. A communication from the Deputy Assistant Secretary for Fish and Wildlife and Parks, National Park Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''National Park System Units in Alaska'' (RIN1024–AD13) received on April 26, 2005; to the Committee on Energy and Natural Resources.

EC–1984. A communication from the Deputy Assistant Secretary for Fish and Wildlife and Parks, National Park Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Rocky Mountain National Park Snowmobile Routes'' (RIN1024–AD15) received on April 26, 2005; to the Committee on Energy and Natural Resources.

EC–1985. A communication from the Deputy Assistant Secretary for Fish and Wildlife and Parks, National Park Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Chickasaw National Recreation Area, Personal Watercraft Use'' (RIN1024–AC98) received on April 26, 2005; to the Committee on Energy and Natural Resources.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. STEVENS for the Committee on Commerce, Science, and Transportation.

*Maria Cino, of Virginia, to be Deputy Secretary of Transportation.

*Phyllis F. Scheinberg, of Virginia, to be an Assistant Secretary of Transportation.

*Joseph H. Boardman, of New York, to be Administrator of the Federal Railroad Administration.

*Nancy Ann Nord, of the District of Columbia, to be a Commissioner of the Consumer Product Safety Commission for the remainder of the term expiring October 26, 2005.

*Nancy Ann Nord, of the District of Columbia, to be a Commissioner of the Consumer Product Safety Commission for a term of seven years from October 27, 2005.

*William Cobey, of North Carolina, to be a Member of the Board of Directors of the Metropolitan Washington Airports Authority for a term expiring May 30, 2010.

*Nomination was reported with recommendation that it be confirmed subject to the nominee's commitment 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. CONRAD:

S. 911. 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 Finance.

By Mr. FEINGOLD (for himself, Mr. LAUTENBERG, Mr. LEAHY, Mr. KERRY, Mr. JEFFORDS, Mrs. BOXER, Mr. DAYTON, Mr. SCHUMER, and Mr. DURBIN):

S. 912. A bill to amend the Federal Water Pollution Control Act to clarify the jurisdiction of the United States over waters of the United States; to the Committee on Environment and Public Works.

By Mr. DOMENICI (for himself and Mr. BINGAMAN):

S. 913. A bill to amend title 49, United States Code, to establish a university transportation center to be known as the ''Southwest Bridge Research Center''; to the Committee on Environment and Public Works.

By Mr. ALLARD (for himself, Mr. SMITH, Mr. LOTT, and Mr. DURBIN):

S. 914. A bill to amend the Public Health Service Act to establish a competitive grant program to build capacity in veterinary medical education and expand the workforce of veterinarians engaged in public health practice and biomedical research; to the Committee on Health, Education, Labor, and Pensions.

By Mr. SMITH (for himself and Mr. WYDEN):

S. 915. A bill to provide for the duty-free entry of certain tramway cars and associated spare parts for use by the city of Portland, Oregon; to the Committee on Finance.

By Mr. REID (for himself and Mr. ENSIGN):

S. 916. A bill to provide for the release of certain land from the Sunrise Mountain Instant Study Area in the State of Nevada and to grant a right-of-way across the released land for the construction and maintenance of a flood control project; to the Committee on Energy and Natural Resources.

By Mr. AKAKA:

S. 917. A bill to amend title 38, United States Code, to make permanent the pilot program for direct housing loans for Native American veterans; to the Committee on Veterans' Affairs.

By Mr. OBAMA (for himself, Mr. TALENT, and Mr. DURBIN):

S. 918. A bill to provide for Flexible Fuel Vehicle (FFV) refueling capability at new and existing refueling station facilities to promote energy security and reduction of greenhouse gas emissions; to the Committee on Finance.

By Mr. BURNS (for himself, Mr. ROCKEFELLER, Mr. DORGAN, Mr. CRAIG, Mr. DAYTON, Mr. VITTER, Mr. THUNE, Mr. JOHNSON, Mr. BAUCUS, and Mr. COLEMAN):

S. 919. A bill to amend title 49, United States Code, to enhance competition among and between rail carriers in order to ensure efficient rail service and reasonable rail rates, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. CORNYN:

S. 920. A bill to amend chapter 1 of title 3, United States Code, relating to Presidential succession; to the Committee on Rules and Administration.

By Mrs. MURRAY (for herself, Mr. DURBIN, Mr. KENNEDY, and Mrs. CLINTON):

S. 921. A bill to provide for secondary school reform, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. SANTORUM (for himself and Mr. LIEBERMAN):

S. 922. A bill to establish and provide for the treatment of Individual Development Accounts, and for other purposes; to the Committee on Finance.

By Mr. CORZINE (for himself, Mr. AKAKA, Ms. STABENOW, Mr. LAUTENBERG, and Mr. OBAMA):

S. 923. A bill to amend part A of title IV of the Social Security Act to require a State to promote financial education under the Temporary Assistance for Needy Families (TANF) Program and to allow financial education to count as a work activity under that program; to the Committee on Finance.

By Mr. CORZINE (for himself, Mr. AKAKA, Ms. STABENOW, Mr. LAUTENBERG, Mr. SARBANES, and Mr. BAUCUS):

S. 924. A bill to establish a grant program to enhance the financial and retirement literacy of mid-life and older Americans to reduce financial abuse and fraud among such Americans, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. CORZINE (for himself, Mr. AKAKA, Ms. STABENOW, Mr. LAUTENBERG, and Mr. BAUCUS):

S. 925. A bill to promote youth financial education; to the Committee on Health, Education, Labor, and Pensions.

By Mr. INHOFE (for himself, Mr. VITTER, and Mr. ENZI):

S. 926. A bill to amend the Internal Revenue Code of 1986 to provide that the credit for producing fuel from a nonconventional source shall apply to gas produced onshore from a formation more than 15,000 feet deep; to the Committee on Finance.

By Mr. CORZINE (for himself, Mr. LAUTENBERG, Mr. SARBANES, Mr. JOHNSON, Ms. LANDRIEU, and Mr. KENNEDY):

S. 927. A bill to amend title XVIII of the Social Security Act to expand and improve coverage of mental health services under the medicare program; to the Committee on Finance.

By Mrs. LINCOLN:

S. 928. A bill to amend the Internal Revenue Code of 1986 to provide for the immediate and permanent repeal of the estate tax on family-owned businesses and farms, and for other purposes; to the Committee on Finance.

By Mr. ALLEN (for himself, Mr. CHAMBLISS, Mr. INHOFE, Mr. COBURN, Mr. TALENT, Mr. CORNYN, and Mr. ISAKSON):

S. 929. A bill to provide liability protection to nonprofit volunteer pilot organizations flying for public benefit and to the pilots and staff of such organizations; to the Committee on the Judiciary.

By Mr. GRASSLEY (for himself and Mr. DODD):

S. 930. A bill to amend the Federal Food, Drug, and Cosmetic Act with respect to drug safety, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

By Mr. BURNS:

S. 931. A bill to reduce temporarily the duty on certain articles of natural cork; to the Committee on Finance.

By Mr. KENNEDY (for himself, Mr. DURBIN, Ms. MIKULSKI, Mrs. MURRAY, Mr. HARKIN, Mr. DODD, Mr. LAUTENBERG, Mr. CORZINE, Mr. AKAKA, Mrs. BOXER, Mr. FEINGOLD, Mr. SCHUMER, and Mr. DAYTON):

S. 932. A bill to provide for paid sick leave to ensure that Americans can address their own health needs and the health needs of their families; to the Committee on Health, Education, Labor, and Pensions.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. DURBIN (for himself, Mr. INOUYE, and Mr. STEVENS):

S. Res. 126. A resolution honoring Fred T. Korematsu for his loyalty and patriotism to the United States and expressing condolences to his family, friends, and supporters on his death; considered and agreed to.

By Mr. GREGG (for himself, Mr. LIEBERMAN, Mr. FRIST, Ms. LANDRIEU, Mr. SUNUNU, Mr. ALEXANDER, Mr. DEMINT, Mrs. DOLE, Mr. VITTER, Mr. BURR, and Mr. ALLARD):

S. Res. 127. A resolution congratulating charter schools and their students, parents, teachers, and administrators across the United States for their ongoing contributions to education, and for other purposes; considered and agreed to.

ADDITIONAL COSPONSORS

S. 7

At the request of Mr. KYL, the name of the Senator from Florida (Mr. MARTINEZ) was added as a cosponsor of S. 7, a bill to increase American jobs and economic growth by making permanent the individual income tax rate reductions, the reduction in the capital gains and dividend tax rates, and the repeal of the estate, gift, and generation-skipping transfer taxes.

S. 114

At the request of Mr. KERRY, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 114, a bill to amend titles XIX and XXI of the Social Security Act to ensure that every uninsured child in America has health insurance coverage, and for other purposes.

S. 271

At the request of Mr. SCHUMER, his name was withdrawn as a cosponsor of S. 271, a bill to amend the Federal Election Campaign Act of 1971 to clarify when organizations described in section 527 of the Internal Revenue Code of 1986 must register as political committees, and for other purposes.

S. 300

At the request of Mr. HAGEL, his name was added as a cosponsor of S. 300, a bill to extend the temporary increase in payments under the medicare program for home health services furnished in a rural area.

S. 313

At the request of Mr. LUGAR, the names of the Senator from Georgia (Mr. CHAMBLISS), the Senator from Rhode Island (Mr. CHAFEE) and the Senator from Ohio (Mr. DEWINE) were added as cosponsors of S. 313, a bill to improve authorities to address urgent nonproliferation crises and United States nonproliferation operations.

S. 382

At the request of Mr. ENSIGN, the names of the Senator from North Dakota (Mr. DORGAN) and the Senator from New York (Mrs. CLINTON) were added as cosponsors of S. 382, a bill to amend title 18, United States Code, to strengthen prohibitions against animal fighting, and for other purposes.

S. 397

At the request of Mr. CRAIG, the name of the Senator from Oregon (Mr. SMITH) was added as a cosponsor of 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.

S. 418

At the request of Mrs. CLINTON, the name of the Senator from New Mexico (Mr. BINGAMAN) was added as a cosponsor of S. 418, a bill to protect members of the Armed Forces from unscrupulous practices regarding sales of insurance, financial, and investment products.

S. 428

At the request of Mr. TALENT, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 428, a bill to provide $30,000,000,000 in new transportation infrastructure funding in addition to TEA–21 levels through bonding to empower States and local governments to complete significant long-term capital improvement projects for highways, public transportation systems, and rail systems, and for other purposes.

S. 438

At the request of Mr. ENSIGN, the names of the Senator from Maine (Ms. SNOWE) and the Senator from New Jersey (Mr. LAUTENBERG) were added as cosponsors of S. 438, a bill to amend title XVIII of the Social Security Act to repeal the medicare outpatient rehabilitation therapy caps.

S. 484

At the request of Mr. WARNER, the name of the Senator from Virginia (Mr. ALLEN) was added as a cosponsor of S. 484, a bill to amend the Internal Revenue Code of 1986 to allow Federal civilian and military retirees to pay health insurance premiums on a pretax basis and to allow a deduction for TRICARE supplemental premiums.

S. 633

At the request of Mr. JOHNSON, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. 633, a bill to require the Secretary of the Treasury to mint coins in commemoration of veterans who became disabled for life while serving in the Armed Forces of the United States.

S. 642

At the request of Mr. FRIST, the name of the Senator from Kansas (Mr. ROBERTS) was added as a cosponsor of S. 642, a bill to support certain national youth organizations, including the Boy Scouts of America, and for other purposes.

S. 647

At the request of Mrs. LINCOLN, the names of the Senator from Hawaii (Mr. INOUYE) and the Senator from New Jersey (Mr. LAUTENBERG) were added as cosponsors of S. 647, a bill to amend title XVIII of the Social Security Act to authorize physical therapists to evaluate and treat medicare beneficiaries without a requirement for a physician referral, and for other purposes.

S. 677

At the request of Mr. SANTORUM, the name of the Senator from North Carolina (Mrs. DOLE) was added as a cosponsor of S. 677, a bill to amend title VII

of the Civil Rights Act of 1964 to establish provisions with respect to religious accommodation in employment, and for other purposes.

S. 756

At the request of Mr. BENNETT, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 756, a bill to amend the Public Health Service Act to enhance public and health professional awareness and understanding of lupus and to strengthen the Nation's research efforts to identify the causes and cure of lupus.

S. 757

At the request of Mr. CHAFEE, the names of the Senator from Virginia (Mr. ALLEN), the Senator from Maine (Ms. COLLINS) and the Senator from Iowa (Mr. GRASSLEY) were added as cosponsors of S. 757, a bill to amend the Public Health Service Act to authorize the Director of the National Institute of Environmental Health Sciences to make grants for the development and operation of research centers regarding environmental factors that may be related to the etiology of breast cancer.

S. 782

At the request of Mr. FEINGOLD, the name of the Senator from Illinois (Mr. OBAMA) was added as a cosponsor of S. 782, a bill to amend title 37, United States Code, to authorize travel and transportation for family members of members of the Armed Forces hospitalized in the United States in connection with non-serious illnesses or injuries incurred or aggravated in a contingency operation, and for other purposes.

S. 785

At the request of Mr. LOTT, the name of the Senator from Oklahoma (Mr. INHOFE) was added as a cosponsor of S. 785, a bill to amend the Internal Revenue Code of 1986 to modify the small refiner exception to the oil depletion deduction.

S. 802

At the request of Mr. DOMENICI, the name of the Senator from Idaho (Mr. CRAIG) was added as a cosponsor of S. 802, a bill to establish a National Drought Council within the Department of Agriculture, to improve national drought preparedness, mitigation, and response efforts, and for other purposes.

S. 803

At the request of Mr. COLEMAN, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 803, a bill to amend the Employee Retirement Income Security Act of 1974, the Public Health Service Act, and the Internal Revenue Code of 1986 to provide parity with respect to substance abuse treatment benefits under group health plans and health insurance coverage.

S. 850

At the request of Mr. FRIST, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 850, a bill to establish the Global Health Corps, and for other purposes.

S. 894

At the request of Mr. ENZI, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 894, a bill to allow travel between the United States and Cuba.

S. RES. 117

At the request of Mrs. FEINSTEIN, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. Res. 117, a resolution designating the week of May 9, 2005, as "National Hepatits B Awareness Week."

S. RES. 121

At the request of Mr. COLEMAN, the names of the Senator from Illinois (Mr. DURBIN) and the Senator from Kentucky (Mr. BUNNING) were added as cosponsors of S. Res. 121, a resolution supporting May 2005 as "National Better Hearing and Speech Month" and commending those states that have implemented routine hearing screening for every newborn before the newborn leaves the hospital.

AMENDMENT NO. 573

At the request of Mr. SHELBY, the names of the Senator from Maryland (Mr. SARBANES), the Senator from Rhode Island (Mr. REED) and the Senator from Colorado (Mr. ALLARD) were added as cosponsors of amendment No. 573 proposed to H.R. 3, a bill Reserved.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. CONRAD:

S. 911. 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 Finance.

Mr. CONRAD. Mr. President, today I am introducing the Improving Access to Nurse-Midwifery Care Act of 2005. For too many years, certified nurse midwives, CNMs, have not received adequate reimbursement under the Medicare program, despite evidence that shows the quality of care and outcomes for services provided by CNMs are comparable to obstetricians and gynecologists. My legislation takes important steps to improve reimbursement for these important healthcare providers.

There are approximately three million disabled women on Medicare who are of childbearing age; however, if they choose to utilize a CNM for "well women" services, the CNM is only reimbursed at 65 percent of the physician fee schedule. In practical terms, the typical well-woman visit costs, on average, $50. But Medicare currently reimburses CNMs in rural areas only $14 for this visit, which could include a pap smear, mammogram, and other precancer screenings. CNMs administer the same tests and incur the same costs as physicians but receive only 65 percent of the physician fee schedule for these services. This reduced payment is unfair and does not adequately reflect the services CNMs provide to beneficiaries. At this incredibly low rate of reimbursement, the Medicare Payment Advisory Committee, MedPAC, agrees that a CNM simply cannot afford to provide services to Medicare patients and has supported increasing reimbursement for CNMs.

My legislation would make several changes to improve the ability of CNMs and certified midwives, CMs, to effectively serve the Medicare-eligible population. First, and most importantly, my bill recognizes the need to increase Medicare reimbursement for CNMs by raising the reimbursement level from 65 percent to 100 percent of the physician fee schedule. CNMs provide the same care as physicians; therefore, it is only fair to reimburse CNMs at the same level.

In addition, the Improving Access to Nurse-Midwifery Care Act would guarantee payment for graduate medical education and includes technical corrections that will clarify the reassignment of billing rights for CNMs who are employed by others. Finally, my bill would establish recognition for a certified midwife, CM, to provide services under Medicare. Despite the fact that CNMs and CMs provide the same services, Medicare has yet to recognize CMs as eligible providers. My bill would change this.

This bill will enhance access to "well woman" care for thousands of women in underserved communities and make several needed changes to improve access to midwives. I urge my colleagues to support this legislation.

By Mr. FEINGOLD (for himself, Mr. LAUTENBERG, Mr. LEAHY, Mr. KERRY, Mr. JEFFORDS, Mrs. BOXER, Mr. DAYTON, Mr. SCHUMER, and Mr. DURBIN):

S. 912. A bill to amend the Federal Water Pollution Control Act to clarify the jurisdiction of the United States over waters of the United States; to the Committee on Environment and Public Works.

Mr. FEINGOLD. Mr. President, today I am introducing important legislation to affirm Federal jurisdiction over the waters of the United States. I am pleased to have three members of the Environment and Public Works Committee—the Senator from Vermont, Mr. JEFFORDS, the Senator from New Jersey, Mr. LAUTENBERG, the Senator from California, Mrs. BOXER—as original cosponsors of this bill. I also thank Senators DAYTON, KERRY, SCHUMER, and DURBIN for joining me in introducing this important legislation.

In the U.S. Supreme Court's January 2001 decision, Solid Waste Agency of Northern Cook County versus the Army Corps of Engineers, a 5 to 4 majority limited the authority of Federal agencies to use the so-called migratory bird rule as the basis for asserting Clean Water Act jurisdiction over non-

navigable, intrastate, isolated wetlands, streams, ponds, and other bodies of water.

This decision, known as the SWANCC decision, means that the Environmental Protection Agency and Army Corps of Engineers can no longer enforce Federal Clean Water Act protection mechanisms to protect a waterway solely on the basis that it is used as habitat for migratory birds.

In its discussion of the case, the Court went beyond the issue of the migratory bird rule and questioned whether Congress intended the Clean Water Act to provide protection for isolated ponds, streams, wetlands and other waters, as it had been interpreted to provide for most of the last 30 years. While not the legal holding of the case, the Court's discussion has resulted in a wide variety of interpretations by EPA and Corps officials that jeopardize protection for wetlands, and other waters. The wetlands at risk include prairie potholes and bogs, familiar to many in Wisconsin, and many other types of wetlands.

In effect, the Court's decision removed much of the Clean Water Act protection for between 30 percent to 60 percent of the Nation's wetlands. An estimated 60 percent of the wetlands in my home State of Wisconsin lost Federal protection. Wisconsin is not alone. The National Association of State Wetland Managers has been collecting data from States across the country. For example, Nebraska estimates that it will lose protection for more than 40 percent of its wetlands. Indiana estimates it will lose 31 percent of total wetland acreage and 74 percent of the total number of wetlands. Delaware estimates the loss of protection for 33 percent or more of its freshwater wetlands.

These wetlands absorb floodwaters, prevent pollution from reaching our rivers and streams, and provide crucial habitat for most of the Nation's ducks and other waterfowl, as well as hundreds of other bird, fish, shellfish and amphibian species. Loss of these waters would have a devastating effect on our environment.

In addition, by narrowing the water and wetland areas subject to federal regulation, the decision also shifts more of the economic burden for regulating wetlands to state and local governments. My home State of Wisconsin has passed legislation to assume the regulation of isolated waters, but many other States have not. This patchwork of regulation means that the standards for protection of wetlands nationwide are unclear and confusing, jeopardizing the migratory birds and other wildlife that depend on these wetlands.

Since 2001, the confusion over the interpretation of the SWANCC decision has grown. On January 15, 2003, the EPA and Army Corps of Engineers published in the Federal Register an Advanced Notice of Proposed Rulemaking raising questions about the jurisdiction of the Clean Water Act. Simultaneously, they released a guidance memo to their field staff regarding Clean Water Act jurisdiction.

The agencies claim these actions are necessary because of the SWANCC case. But both the guidance memo and the proposed rulemaking go far beyond the holding in SWANCC. The guidance took effect right away and has had an immediate impact. It tells the Corps and EPA staff to stop asserting jurisdiction over isolated waters without first obtaining permission from headquarters. Based on this guidance, waters that the EPA and Corps judge to be outside the Clean Water Act can be filled, dredged, and polluted without a permit or any other long-standing Clean Water Act safeguard.

The rulemaking announced the Administration's intention to consider even broader changes to Clean Water Act coverage for our waters. Specifically, the agencies are questioning whether there is any basis for asserting Clean Water Act jurisdiction over additional waters, like intermittent streams. The possibility for a redefinition of our waters is troubling because there is only one definition of the term ''water'' in the Clean Water Act. The wetlands program, the point source program which stops the dumping of pollution, and the non-point program governing polluted runoff all depend on this definition. Even though the Administration rescinded this proposed rulemaking in December 2003, the policy guidance remains in effect.

If we don't protect a category of waters from being filled under the wetlands program, we also fail to protect them from having trash or raw sewage dumped in them, or having other activities that violate the Clean Water Act conducted in them as well.

Congress needs to re-establish the common understanding of the Clean Water Act's jurisdiction to protect all waters of the U.S.—the understanding that Congress held when the Act was adopted in 1972—as reflected in the law, legislative history, and longstanding regulations, practice, and judicial interpretations prior to the SWANCC decision.

The proposed legislation is very simple. It does three things. First, it adopts a statutory definition of ''waters of the United States'' based on a longstanding definition of waters in the EPA and Corps of Engineers' regulations. Second, it deletes the term ''navigable'' from the Act to clarify that Congress's primary concern in 1972 was to protect the nation's waters from pollution, rather than just sustain the navigability of waterways, and to reinforce that original intent. Finally, it includes a set of findings that explain the factual basis for Congress to assert its constitutional authority over waters and wetlands on all relevant constitutional grounds, including the Commerce Clause, the Property Clause, the Treaty Clause, and Necessary and Proper Clause.

In conclusion, I am very pleased to have the support of so many environmental and conservation groups, as well as organizations that represent those who regulate and manage our country's wetlands, such as: the Natural Resources Defense Council, Earthjustice, the National Wildlife Federation, Sierra Club, American Rivers, the National Audubon Society, U.S. Public Interest Research Group, Defenders of Wildlife, the Ocean Conservancy, Trout Unlimited, the Izaac Walton League, and the Association of State Floodplain Managers. They know, as I do, that we need to re-affirm the Federal Government's role in protecting our water. This legislation is a first step in doing just that.

I 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. 912

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 ''Clean Water Authority Restoration Act of 2005''.

SEC. 2. PURPOSES.

The purposes of this Act are as follows:

(1) To reaffirm the original intent of Congress in enacting the Federal Water Pollution Control Act Amendments of 1972 (86 Stat. 816) to restore and maintain the chemical, physical, and biological integrity of the waters of the United States.

(2) To clearly define the waters of the United States that are subject to the Federal Water Pollution Control Act.

(3) To provide protection to the waters of the United States to the fullest extent of the legislative authority of Congress under the Constitution.

SEC. 3. FINDINGS.

Congress finds the following:

(1) Water is a unique and precious resource that is necessary to sustain human life and the life of animals and plants.

(2) Water is used not only for human, animal, and plant consumption, but is also important for agriculture, transportation, flood control, energy production, recreation, fishing and shellfishing, and municipal and commercial uses.

(3) In enacting amendments to the Federal Water Pollution Control Act in 1972 and through subsequent amendment, including the Clean Water Act of 1977 (91 Stat. 1566) and the Water Quality Act of 1987 (101 Stat. 7), Congress established the national objective of restoring and maintaining the chemical, physical, and biological integrity of the waters of the United States and recognized that achieving this objective requires uniform, minimum national water quality and aquatic ecosystem protection standards to restore and maintain the natural structures and functions of the aquatic ecosystems of the United States.

(4) Water is transported through interconnected hydrologic cycles, and the pollution, impairment, or destruction of any part of an aquatic system may affect the chemical, physical, and biological integrity of other parts of the aquatic system.

(5) Protection of intrastate waters, along with other waters of the United States, is necessary to restore and maintain the chemical, physical, and biological integrity of all waters in the United States.

(6) The regulation of discharges of pollutants into interstate and intrastate waters is

an integral part of the comprehensive clean water regulatory program of the United States.

(7) Small and periodically-flowing streams comprise the majority of all stream channels in the United States and serve critical biological and hydrological functions that affect entire watersheds, including reducing the introduction of pollutants to large streams and rivers, and especially affecting the life cycles of aquatic organisms and the flow of higher order streams during floods.

(8) The pollution or other degradation of waters of the United States, individually and in the aggregate, has a substantial relation to and effect on interstate commerce.

(9) Protection of the waters of the United States, including intrastate waters, is necessary to prevent significant harm to interstate commerce and sustain a robust system of interstate commerce in the future.

(10) Waters, including wetlands, provide protection from flooding, and draining or filling wetlands and channelizing or filling streams, including intrastate wetlands and streams, can cause or exacerbate flooding, placing a significant burden on interstate commerce.

(11) Millions of people in the United States depend on wetlands and other waters of the United States to filter water and recharge surface and subsurface drinking water supplies, protect human health, and create economic opportunity.

(12) Millions of people in the United States enjoy recreational activities that depend on intrastate waters, such as waterfowl hunting, bird watching, fishing, and photography and other graphic arts, and those activities and associated travel generate billions of dollars of income each year for the travel, tourism, recreation, and sporting sectors of the economy of the United States.

(13) Activities that result in the discharge of pollutants into waters of the United States are commercial or economic in nature.

(14) States have the responsibility and right to prevent, reduce, and eliminate pollution of waters, and the Federal Water Pollution Control Act respects the rights and responsibilities of States by preserving for States the ability to manage permitting, grant, and research programs to prevent, reduce, and eliminate pollution, and to establish standards and programs more protective of a State's waters than is provided under Federal standards and programs.

(15) Protecting the quality of and regulating activities affecting the waters of the United States is a necessary and proper means of implementing treaties to which the United States is a party, including treaties protecting species of fish, birds, and wildlife.

(16) Protecting the quality of and regulating activities affecting the waters of the United States is a necessary and proper means of protecting Federal land, including hundreds of millions of acres of parkland, refuge land, and other land under Federal ownership and the wide array of waters encompassed by that land.

(17) Protecting the quality of and regulating activities affecting the waters of the United States is necessary to protect Federal land and waters from discharges of pollutants and other forms of degradation.

SEC. 4. DEFINITION OF WATERS OF THE UNITED STATES.

Section 502 of the Federal Water Pollution Control Act (33 U.S.C. 1362) is amended—

(1) by striking paragraph (7);

(2) by redesignating paragraphs (8) through (23) as paragraphs (7) through (22), respectively; and

(3) by adding at the end the following:

''(23) WATERS OF THE UNITED STATES.—The term 'waters of the United States' means all waters subject to the ebb and flow of the tide, the territorial seas, and all interstate and intrastate waters and their tributaries, including lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, natural ponds, and all impoundments of the foregoing, to the fullest extent that these waters, or activities affecting these waters, are subject to the legislative power of Congress under the Constitution.''.

SEC. 5. CONFORMING AMENDMENTS.

The Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) is amended—

(1) by striking ''navigable waters of the United States'' each place it appears and inserting ''waters of the United States'';

(2) in section 304(l)(1) by striking ''NAVIGABLE WATERS'' in the heading and inserting ''WATERS OF THE UNITED STATES''; and

(3) by striking ''navigable waters'' each place it appears and inserting ''waters of the United States''.

By Mr. DOMENICI (for himself and Mr. BINGAMAN):

S. 913. A bill to amend title 49, United States Code, to establish a university transportation center to be known as the ''Southwest Bridge Research Center''; to the Committee on Environment and Public Works.

Mr. DOMENICI. Mr. President, I rise today to introduce legislation creating the Bridge Research Center at New Mexico State University. I would also like to thank my good friend Senator BINGAMAN for cosponsoring this important bill.

New Mexico State University (NMSU) is uniquely qualified to be the home of the Bridge Research Center. For over three decades NMSU has applied its considerable talents to solving technological problems related to bridge systems. It makes sense that we capitalize on NMSU's history and expertise in this field by establishing the bridge research center.

The Bridge Research Center will develop smart bridge evaluation techniques using advanced sensors and instrumentation. Additionally, the NMSU Bridge Center will improve bridge design methodologies, create new inspection techniques for bridges, and find better ways to conduct nondestructive evaluation and testing. Finally, the Bridge Center will conduct research into high performance materials to address durability and retrofit needs.

I have no doubt that NMSU will apply its extensive capability to develop theoretical concepts into practical solutions for bridge problems all across our country.

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. 913

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 ''Southwest Bridge Research Center Establishment Act of 2005''.

SEC. 2. BRIDGE RESEARCH CENTER.

Section 5505 of title 49, United States Code, is amended by adding at the end the following:

''(k) SOUTHWEST BRIDGE RESEARCH CENTER.—

''(1) IN GENERAL.—In addition to the university transportation centers receiving grants under subsections (a) and (b), the Secretary shall provide grants to New Mexico State University, in collaboration with the Oklahoma Transportation Center, to establish and operate a university transportation center to be known as the 'Southwest Bridge Research Center' (referred to in this subsection as the 'Center').

''(2) PURPOSE.—The purpose of the Center shall be to contribute at a national level to a systems approach to improving the overall performance of bridges, with an emphasis on—

''(A) increasing the number of highly skilled individuals entering the field of transportation;

''(B) improving the monitoring of structural health over the life of bridges;

''(C) developing innovative technologies for bridge testing and assessment;

''(D) developing technologies and procedures for ensuring bridge safety, reliability, and security; and

''(E) providing training in the methods for bridge inspection and evaluation.

''(3) OBJECTIVES.—The Center shall carry out—

''(A) basic and applied research, the products of which shall be judged by peers or other experts in the field to advance the body of knowledge in transportation;

''(B) an education program that includes multidisciplinary course work and participation in research; and

''(C) Aa ongoing program of technology transfer that makes research results available to potential users in a form that can be implemented.

''(4) MAINTENANCE OF EFFORT.—To be eligible to receive a grant under this subsection, the institution specified in paragraph (1) shall enter into an agreement with the Secretary to ensure that, for each fiscal year after establishment of the Center, the institution will fund research activities relating to transportation in an amount that is at least equal to the average annual amount of funds expended for the activities for the 2 fiscal years preceding the fiscal year in which the grant is received.

''(5) COST SHARING.—

''(A) FEDERAL SHARE.—The Federal share of the cost of any activity carried out using funds from a grant provided under this subsection shall be 50 percent.

''(B) NON-FEDERAL SHARE.—The non-Federal share of the cost of any activity carried out using funds from a grant provided under this subsection may include funds provided to the recipient under any of sections 503, 504(b), and 505 of title 23.

''(C) ONGOING PROGRAMS.—After establishment of the Center, the institution specified in paragraph (1) shall obligate for each fiscal year not less than $200,000 in regularly budgeted institutional funds to support ongoing transportation research and education programs.

''(6) PROGRAM COORDINATION.—

''(A) COORDINATION.—The Secretary shall—

''(i) coordinate the research, education, training, and technology transfer activities carried out by the Center;

''(ii) disseminate the results of that research; and

''(iii) establish and operate a clearinghouse for information derived from that research.

''(B) ANNUAL REVIEW AND EVALUATION.—At least annually, and in accordance with the plan developed under section 508 of title 23,

the Secretary shall review and evaluate each program carried out by the Center using funds from a grant provided under this subsection.

"(7) LIMITATION ON AVAILABILITY OF FUNDS.—Funds made available to carry out this subsection shall remain available for obligation for a period of 2 years after the last day of the fiscal year for which the funds are authorized.

"(8) AMOUNT OF GRANT.—For each of fiscal years 2005 through 2010, the Secretary shall provide a grant in the amount of $3,000,000 to the institution specified in paragraph (1) to carry out this subsection.

"(9) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated from the Highway Trust Fund (other than the Mass Transit Account) to carry out this subsection $3,000,000 for each of fiscal years 2005 through 2010.".

Mr. BINGAMAN. Mr. President, I am pleased to join with my colleague Senator DOMENICI today to introduce legislation that I believe will go a long way in helping to improve the safety and durability of the Nation's highway bridges. It is with great pleasure we are today introducing the New Mexico State University Bridge Research Center Establishment Act of 2005.

The purpose of our bill is to authorize the Secretary of Transportation to establish a new University Transportation Center focused on the safety of highway bridges. The new center will lead the Nation in the research and development of technologies for bridge testing and monitoring, procedures for ensuring bridge safety and security, and training in methods of bridge inspection. New Mexico State University is one of the Nation's leaders in bridge research and I believe worthy of being designated as one of the Nation's university transportation centers.

Our highway network is a central component of our economy and fundamental to our freedom and quality of life. America's mobility is the engine of our free market system. Transportation via cars, buses, and trucks plays a central role in our basic quality of life. Much of the food we eat, the clothes we wear, the materials for our homes and offices, comes to us over the 4 million miles of our road network.

One critical element of our highway network is the highway bridges that span streams, rivers, and canyons of our cities and rural areas. Bridges also help traffic flow smoothly by carrying one road over another.

Most highway bridges are easy to overlook. Notable exceptions are New England's covered bridges, the new Zakim Charles River Bridge in Boston, San Francisco's Golden Gate Bridge, and the spectacular Rio Grande Gorge Bridge near Taos, NM. The fact is, according to the Federal Highway Administration, we have about 590,000 highway bridges in this country that are more than 20-feet long. The total bridge-deck area of these 590,000 bridges is an amazing 120 square miles, or slightly smaller in area than the entire city limits of Albuquerque, NM, roughly twice the size of the entire District of Columbia, or five times the area of New York's Manhattan Island. The State of Texas leads the Nation with almost 49,000 bridges, about ten percent of the total. Ohio is second with about 28,000 highway bridges.

A little known and disturbing fact about these 590,000 highway bridges is that nearly 78,000, or 13 percent, are considered to be structurally deficient according to the most recent statistics from the FHWA. The percent of structurally deficient bridges varies widely among the 50 states. For example, this chart shows the top ten states with the highest percentage of deficient bridges.

State	Number of bridges	Number of structurally deficient bridges	Percent of structurally deficient bridges (percent)
Oklahoma	23,312	7,307	31.3
Rhode Island	749	193	25.8
Pennsylvania	22,253	5,464	24.6
Missouri	23,791	5,028	21.1
Iowa	24,902	5,259	21.1
Mississippi	16,838	3,379	20.1
Vermont	2,690	484	18.0
South Dakota	5,961	1,072	18.0
North Dakota	4,507	803	17.8
Nebraska	15,455	2,550	16.5
Michigan	10,818	1,764	16.3

The source is the FHWA National Bridge Inventory System, December 2004

Florida and Arizona have the lowest percentages of structurally deficient bridges at less than 3 percent each.

Structurally deficient bridges are a particular concern in rural areas of our country. According to FHWA's 2002 edition of its Conditions and Performance Report to Congress, 16 percent or rural bridges are structurally deficient compared to only 10 percent of urban bridges. The report estimates the average costs required to maintain the existing 590,000 highway bridges is $7.3 billion per year.

Another surprising fact about our Nation's highway bridges is their age. Almost one-third of all highway bridges are more than 50 years old, and over 10,000 bridges are at least 100 years old. About 4,200 of these century-old bridges are currently rated as structurally deficient.

I do believe the number of deficient bridges in this country should be a concern to all Senators. Ensuring that States and local communities have the funds they need to help correct these deficient bridges will be one of my priorities when Congress reauthorizes TEA–21. However, because there may not be sufficient Federal and State funding to address all of the deficient bridges, it will be important to identify the bridges that are most in need of replacement or rehabilitation.

To ensure the most efficient use of limited resources, Congress should also address the need for new technologies to help States monitor the condition of the Nation's 590,000 highway bridges and determine priorities for repair or replacement. Such monitoring technologies, or "smart bridges," should be quick, efficient, and not damage the bridge in any way. I am very pleased that New Mexico State University is one of the Nation's pioneers in the development of non-destructive methods of determining the physical condition of highway bridges. Such smart bridges can record and transmit information on their current structural condition as well as on the traffic crossing them. Sensors embedded in the concrete monitor the stresses on the bridge as the weather changes or under the weight of vehicles and show how the materials change with age. The information can then be used by engineers to help design more durable and economical bridges. Eventually NMSU's methods could be used to help design better buildings.

In 1998, NMSU installed 67 fiber-optic sensors on an existing steel bridge on Interstate 10 in Las Cruces and converted it into a "smart bridge." This award-winning project was the first application of fiber-optic sensors to highway bridges. In 2000, sensors were incorporated directly in a concrete bridge during construction to monitor the curing of the concrete; the bridge crosses the Rio Puerco on Interstate 40, west of Albuquerque. A third smart bridge, on I10 over University Avenue in Las Cruces, opened in July 2004.

In February 2003 I had an opportunity to tour the facilities at NMSU and to see firsthand the fine facilities and work being conducted on bridge technology. NMSU has an actual 40-foot "bridge" in a laboratory on campus to allow studies of instrumentation and data collection.

I will ask unanimous consent that two recent articles describing NMSU's accomplishments on smart bridge technology be printed in the RECORD at the end of my statement.

New Mexico State is also a leader in other areas of bridge inspection. The university has provided training for bridge inspectors for over 30 years. It has also developed expertise in using a virtual reality approach to document a bridge's physical condition.

This is just a glimpse at the high quality bridge research at New Mexico Sate University. The university is widely recognized as national leader in

all aspects of bridge research and technology. I believe it is fully appropriate for NMSU to be recognized as the university technology bridge research center.

The bill we are introducing today authorizes the Secretary of Transportation to establish and operate the New Mexico State University Bridge Research Center. I do believe NMSU has earned this honor. The bill mirrors the language for University Transportation Centers in the Senate-passed SAFETEA from the 108th Congress and provides $40 million in funding over 6 years from the Highway Trust Fund to operate the bridge technology center.

The Federal Highway Administration has long recognized the quality of the work at NMSU and has provided grants to support their outstanding work. In November 2004, NMSU's bridge center was awarded a $400,000 grant to install fiber-sensors in a new bridge over Interstate 10 in Doña Ana, NM. The sensors will relay information about the effects of stress on the bridge long before any signs of aging are visible. This is the fourth bridge in New Mexico to be equipped with the smart bridge technology. NMSU's Dr. Rola Idriss is the principal investigator of these projects.

NMSU's work is also being recognized internationally. Highway departments in Switzerland, Belgium, and Japan are experimenting with the smart bridge technology. In October 2004, NMSU's Dr. David Jauregui and Dr. Ken White were invited speakers for the International Conference on Bridge Inspection and Bridge Management in Beijing, China. Dr. White delivered the keynote address for the conference. NMSU is currently developing a memorandum of agreement with the Chinese bridge community to develop a bridge inspection and management training program.

Congress has also already recognized the fine work at NMSU. For example, at my request, Congress provided $600,000 in 2001 for bridge research at New Mexico State University, $250,000 in 2003, $500,000 in 2004 and $125,000 for the current fiscal year.

The specific purpose of NMSU's Bridge Research Center will be to contribute to improving the performance of the Nation's highway bridges. The center will emphasize five goals: 1. Increasing the number of skilled individuals entering the field of transportation; 2. Improving the monitoring of the structural health of highway bridges; 3. Developing innovative technologies for testing and assessment of bridges; 4. Developing technologies and procedures for ensuring bridge safety, reliability, and security; and 5. Providing training in the methods of bridge inspection and evaluation.

Building on NMSU's research work, the University Technology Center will develop a strong educational component, including degree opportunities in bridge engineering at both the undergraduate and graduate levels. In addition, the center will have a cooperative certificate program for training and professional development. Distance education technology and computer-based learning will allow programs to be offered at any of the universities.

The engineers at New Mexico State University have applied their vast talents, tools, and techniques to solving technological problems with highway bridges for over 30 years. The team is well established and maintains cutting-edge expertise. The members of the team are recognized and respected at the national and international levels through accomplishments in bridge testing, monitoring, and evaluation.

I ask all senators to support the designation of the New Mexico State University Bridge Research Center. I look forward to working this year with the Chairman of the Environment and Public Works Committee, Senator INHOFE, and Senator JEFFORDS, the ranking member, to incorporate this bill into the full 6-year reauthorization of the transportation bill.

I now ask unanimous consent that the letters to which I referred be printed in the RECORD.

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

[From the Albuquerque Journal, Mar. 1, 2004]

NMSU DESIGNS HIGH-TECH BEAMS TO MONITOR SOUNDNESS OF STRUCTURE

(By Andrew Webb)

What if a highway bridge could actually tell you it was wearing out? Or, how about a building that could warn its owners of unseen structural damage after an earthquake?

That's what researchers from New Mexico State University hope to produce by embedding high-tech optical sensors in concrete beams. The six 90-ton beams, each with 120 sensors, will support the westbound lanes of the Interstate 10 overpass at University Avenue in Las Cruces, expected to be completed in July.

When the bridge is complete, the sensors will give federal and state highway departments feedback about the performance of its design, the new high-performance concrete it is made of, and its structural soundness as it ages, says NMSU professor of civil engineering Rola Idriss.

''We'll get information on how the bridge carries its load throughout its entire life,'' said Idriss. She was in Albuquerque last week to help supervise the placement of the sensors and fiber-optic lines in molds at an Albuquerque construction materials business.

The bridge will be the first of its kind in the country, Idriss says. NMSU embedded similar sensors, which are manufactured by the Swiss firm Smartec, in a much smaller Interstate 40 bridge over the Rio Puerco west of Albuquerque in 2000.

''That research was very promising, so we're taking what we learned on that bridge and putting it on a much larger Interstate bridge,'' says Jimmy Camp, a state bridge engineer with the New Mexico Department of Transportation, which helped fund the $500,000 sensor project along with the Federal Highway Administration.

The total cost of the Las Cruces project, which began last summer, is about $6.3 million.

As the expected lifespan of concrete bridges has gone from about 50 years in the Interstate system's early days to nearly 80, builders are seeking better data on bridge conditions, Camp says.

''We make a lot of assumptions with bridge theory,'' he says.

OPTIC MONITORS

The project entails stringing fiber-optic lines throughout the concrete, through which beams of light are shot. As the beam strains or stretches, the properties of the light change. Those changes are picked up by sensors and relayed to a data collection box near the bridge for eventual analysis by NMSU, which then will give the information to the highway department, Idriss said.

''Those changes can be calibrated to measure the strain,'' she said.

At present, inspection of bridges and other concrete structures is done primarily by visual analysis and electronic sensors on outside surfaces.

''Here, you're actually getting measurements from within,'' Idriss said, adding that the added costs would be insignificant in large projects.

She said she thinks the technology could be applied to other structures, such as buildings.

''It could become an industry standard,'' she said. ''Right now, it's still in its infancy.''

Highway departments in Switzerland, Belgium and Japan are experimenting with similar technology, she said. About 20 of the 560,000 major highway bridges in the U.S. have some sort of onboard sensors to detect changes, vibration and other factors, according to the Federal Highway Administration.

The beams were cast at Albuquerque-based Rinker Prestress, a division of Florida-based Rinker Materials, which employs 75 people at three New Mexico plants.

[From the Associated Press, Oct. 4, 2004]

INTERSTATE 10 BRIDGE TO PROVIDE HOW BRIDGES AGE

LAS CRUCES, N.M.—Sensors monitoring stresses on an Interstate 10 bridge will give researchers information on how materials age.

New Mexico State University tested the technology earlier on a bridge over the Rio Puerco near Albuquerque. It installed the technology in late summer in the I–10 bridge in Las Cruces.

The idea is that the bridge will provide information for researchers on how to build bridges with high-performance concretes, which could save highway departments money in the future, said Wil Dooley, bridge engineer for the Federal Highway Administration's state division.

Inside the bridge's beams are fiber optic sensors that monitor how each component bends and changes in different weather and with varying weights of vehicles.

The sensors carry data from the bridge to a locker-size box near an off ramp, where NMSU scientists download the data each week to a portable computer.

''These newer concretes are more durable and they're going to last longer,'' Dooley said. ''All our calculations for how to build bridges are made on traditional concrete. Studying new concretes in the smart bridge will help us modify those equations and make new bridges that last longer and cost less to build.''

NMSU researchers embedded 120 optical sensors in each of six 90-ton concrete beams in the I–10 overpass. Beams of light are carried by fiber optic lines laced through the beams. As the beam strains or stretches, the properties of the light change.

New Mexico is an ideal location to test stresses on different types of concrete. Hot days and cold nights cause concrete to bend and flex, and that happens more in New Mexico than in many other states, Dooley said.

Rola Idriss, an NMSU civil engineering professor who is developing the smart bridge technology, said the researchers could download information from the sensors remotely, but the I–10 bridge is close to campus.

In the future, when the technology is put into bridges in rural areas, highway departments could monitor them remotely—even monitoring all the bridges in the state from one location, she said.

''This is a trend to the future,'' Idriss said. ''The bridge can give you real data about how things are aging. We can use that data to fix problems early and design better bridges with fewer problems in the future.''

Highway engineers intend to put the technology next into a bridge on U.S. 70 near White Sands National Monument.

That might be ideal for testing remote monitoring systems, Idriss said.

Dooley said the technology also could be used in large projects to sense corrosion and allow problems to be corrected before a catastrophic failure, Dooley said.

Adding sensors does not add much expense. The I–10 bridge cost $6.2 million; the sensors and monitoring equipment, along with the expense of studying the data, ran $500,000 more, with the money coming from the Federal Highway Administration and state Department of Transportation, Idriss said.

''We're basically proving out the technology for them,'' she said. ''The information we gather feeds right back to them. They tell us what they want and we research it.''

By Mr. ALLARD (for himself, Mr. SMITH, Mr. LOTT, and Mr. DURBIN):

S. 914. A bill to amend the Public Health Service Act to establish a competitive grant program to build capacity in veterinary medical education and expand the workforce of veterinarians engaged in public health practice and biomedical research; to the Committee on Health, Education, Labor, and Pensions.

Mr. ALLARD. Mr. President, April 27, 2005, marks an important day for health care, especially personnel involved in public health specialties, because it is the day that I introduced the Veterinary Workforce Expansion Act, VWEA. This bill will create a new competitive grant program in the Department of Health and Human Services for capital improvements to the Nation's veterinary medical colleges.

Many Americans do not realize that veterinarians are essential for early detection and response to unusual disease events that could be linked to newly emerging infectious diseases such as monkeypox, SARS, and West Nile Virus, just to name a few. The training and education that veterinarians receive prepares them to address the concerns of bioterrorism and emerging infectious diseases, most of which are transmitted from animals to man. In fact, 80 percent of biothreat agents of concern fall into this category. I believe veterinarians should be our first-responders when it comes to these threats. I know that they are uniquely qualified to address these issues because I have received this training myself. I received my DVM from Colorado State University and have kept my license current every year since I closed my clinic and ran for elected office.

Veterinarians are a unique national resource, as they are the only health professionals trained in multi-species comparative medicine. As a result of this training, the veterinary profession is able to provide an extraordinary link between agriculture and human medicine. The uses made of this link have been extensive, with multiple benefits to society.

Currently, approximately 20 percent, 15,000, of all veterinarians in the United States are I engaged in either private population-health practice with a significant food animal component or public practice in one of its various forms. The need for new graduates entering the field is imperative to preparing the country for the threats of agroterrorism and bioterrorism. If new graduates do not enter these fields, government, nongovernmental organizations, industry, and agribusiness will employ lesser qualified individuals to fill their needs.

There is a critical shortage of veterinarians working in public health areas. The Health Resources and Services Administration, U.S. Department of Agriculture, U.S. Public Health Service, veterinary academia, National Research Council, and the Bureau of Labor Statistics are unified in reporting that the shortage of veterinarians in the workforce will only continue to worsen. Combined with a rapidly growing population and increased human to animal interaction, there is an urgent need to adequately prepare the Nation's veterinary colleges so they may educate the workforce of the future.

The VWEA would allow credentialed schools of veterinary medicine to compete for Federal grant funding under the Department of Health and Human Services. These grants would be for capital costs associated with expanding the existing schools of veterinary medicine or their academic programs in the areas of public health practice. This new grant program will be authorized for 10 fiscal years. At that point, it is my hope and goal that the veterinary medical colleges will be adequately prepared to educate the veterinary workforce for the future.

For more than 100 years, veterinary medical colleges have effectively delivered a core educational program that has enabled veterinarians to adapt and respond to evolving societal needs. Being a veterinarian myself, I want to continue this tradition by expanding existing veterinary colleges. I hope that you will join me in my efforts to protect the Nation's public health by providing much-needed support for veterinary medical education.

By Mr. REID (for himself and Mr. ENSIGN):

S. 916. A bill to provide for the release of certain land from the Sunrise Mountain Instant Study Area in the State of Nevada and to grant a right-of-way across the released land for the construction and maintenance of a flood control project; to the Committee on Energy and Natural Resources.

Mr. REID. Mr. President, I rise today to introduce the Orchard Detention Basin Flood Control Act for myself and Senator ENSIGN. This Act will release approximately 65 acres of land managed by the Bureau of Land Management in Clark County, NV; from the Sunrise Mountain Instant Study Area to allow the construction of an important flood control project.

The Orchard Detention Basin project is part of the Clark County Regional Flood Control District's Master Plan to protect the Las Vegas Valley from flooding. This comprehensive floodplain management program is designed to protect private and public lands from flood damage and to save lives in this rapidly growing metropolitan area. When completed, the Orchard Detention Basin project will protect approximately 1,800 acres of urban development from flooding and reduce the magnitude of flooding further downstream.

The boundary change executed by this legislation is needed because a portion of the detention basin project lies within the boundaries of the Sunrise Mountain Instant Study Area. An ''instant study area'' designation places development restrictions on public lands similar to those on wilderness study areas. This designation currently prevents the construction of this important flood control project, leaving the land and residents living downstream vulnerable to flood damage.

Even though the Las Vegas Valley is a desert, flash flooding is an all too common problem affecting the people in Las Vegas. Along with property damage and deaths related to flooding, Clark County residents experience inconvenience resulting from impassable roads during flooding events. Support services such as police, fire and ambulance can also be delayed, creating life-threatening incidents.

I look forward to working with the Energy Committee and my other distinguished friends to move this bill in a timely manner 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. 916

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 ''Orchard Detention Basin Flood Control Act''.

SEC. 2. DEFINITIONS.

In this Act:

(1) COUNTY.—The term ''County'' means Clark County, Nevada.

(2) MAP.—The term ''map'' means the map entitled ''Orchard Detention Basin'' and dated March 18, 2005.

(3) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

SEC. 3. RELEASE OF CERTAIN LAND IN THE SUNRISE MOUNTAIN INSTANT STUDY AREA.

(a) FINDING.—Congress finds that the land described in subsection (c) has been adequately studied for wilderness designation under section 603 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782).

(b) RELEASE.—The land described in subsection (c)—

(1) is no longer subject to section 603(c) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1782(c)); and

(2) shall be managed in accordance with—

(A) land management plans adopted under section 202 of that Act (43 U.S.C. 1712); and

(B) cooperative conservation agreements in existence on the date of enactment of this Act.

(c) DESCRIPTION OF LAND.—The land referred to in subsections (a) and (b) is the approximately 65 acres of land in the Sunrise Mountain Instant Study Area of the County that is—

(1) known as the ''Orchard Detention Basin''; and

(2) designated for release on the map.

(d) RIGHT-OF-WAY.—The Secretary shall grant to the County a right-of-way to the land described in subsection (c) for the construction and maintenance of the Orchard Detention Basin Project on the land.

By Mr. AKAKA:

S. 917. A bill to amend title 38; United States Code, to make permanent the pilot program for direct housing loans for Native American veterans; to the Committee on Veterans' Affairs.

Mr. AKAKA. Mr. President, today I rise to offer legislation that would make the Native American Veteran Housing Loan Pilot Program permanent. In April 1992, I sponsored a bill that established the Native American Veteran Housing Loan Pilot Program. That bill later became Public Law 102–547 and authorized the Department of Veterans Affairs (VA) to establish a pilot program that would provide veterans with assistance in purchasing, constructing, and improving homes through 1997. This pilot program has been extended several times. In fact, last Session Congress extended this pilot program by three years.

Through January of this year, 443 loans were created under this program. It is time to make this program permanent.

The Native American home ownership rate is about half the rate of the general U.S. population. This issue partially stems from the fact that lenders generally require that buyers own the parcel of land on which their homes will be located. This is difficult for many in Indian Country, Alaska, and Hawaii because their homes are on trust lands. Most lenders decline these loan applications because Federal law prohibits a lender from taking possession of Native trust lands in the event of a default. Several Federal programs have been developed to provide home ownership opportunities to Native Americans. The Native American Veteran Housing Loan Program is one such program that has helped to make home ownership a reality for indigenous peoples, particularly Native Hawaiians.

Under this program, VA offers loan guaranties that protect lenders against loss up to the amount of the guaranty if the borrower fails to repay the loan. Previous to the Native American Veteran Housing Loan Program, Native American veterans who resided on these lands were unable to qualify for VA home-loan benefits. With the Native American Veteran Housing Loan Program, indigenous peoples residing on trust lands are now able to use this very important VA benefit.

The Native American Veteran Housing Loan Program is intended to serve veterans who are eligible for homes under the Hawaiian Homes Commission Act, and who reside on Pacific Islands lands that have been communally owned by cultural tradition and on Native American trust lands on the continental United States. This VA-administered program assists Native American veterans by providing them direct loans to build or purchase homes on such lands.

Before VA can make a loan on tribal trust land, the tribe must enter into a Memorandum of Understanding with VA to clarify some of the issues that could arise when administering the program. During fiscal year 2004, VA entered into two Memoranda of Understanding with tribal entities. In addition, VA is currently negotiating nine Memoranda of Understanding with Native American tribes. Trust lands that are eligible for this program include tribally and individually held trusts. Per a Memorandum of Understanding between VA and the Bureau of Indian Affairs (BIA), VA and BIA Regional Offices work to implement this loan program together. Additionally, VA personnel continue to conduct outreach with tribal representatives to solicit assistance in reaching out to tribal members who are veterans.

Per capita, Native Americans have the highest percentage of people serving in the United States Armed Forces. While they represent less that 1 percent of the population, they make up 1.6 percent of the Armed Forces. I want to reiterate that through January of 2005, 443 loans have been made to Native Americans under this program. This allows those who have served our nation so honorably and their families to be a part of the American Dream of home ownership. We need to make the Native American Veteran Housing Loan permanent this year.

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. 917

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

SECTION 1. PERMANENT AUTHORITY FOR HOUSING LOANS FOR NATIVE AMERICAN VETERANS.

(a) PERMANENT AUTHORITY.—Section 3761 of title 38, United States Code, is amended to read as follows:

''§3761. Authority for housing loans for Native American veterans

''(a) The Secretary shall make direct housing loans to Native American veterans in accordance with the provisions of this subchapter.

''(b) The purpose of loans under this subchapter is to permit Native American veterans to purchase, construct, or improve dwellings on trust land.''.

(b) CONFORMING AMENDMENTS.—Section 3762 of such title is amended—

(1) in subsection (a), by inserting ''under this subchapter'' after ''Native American veteran'' in the matter preceding paragraph (1);

(2) in subsection (b)(1)(E), by striking ''in order to ensure'' and all that follows and inserting a period;

(3) in subsection (c)(1)(B), by striking ''shall be the amount'' and all that follows in the second sentence and inserting ''shall be such amount as the Secretary considers appropriate for the purpose of this subchapter.'';

(4) in subsection (d)(1), by striking the second sentence;

(5) in subsection (i)—

(A) in paragraph (1), by striking ''of the pilot program'' and all that follows and inserting ''of the availability of direct housing loans for Native American veterans under this subchapter.''; and

(B) in paragraph (2)—

(i) in subparagraph (A), by striking ''under the pilot program'' and all that follows and inserting ''under this subchapter'';

(ii) in subparagraph (E), by striking ''in participating in the pilot program'' and inserting ''in participating in the making of direct loans under this subchapter''; and

(6) by striking subsection (j).

(c) CLERICAL AMENDMENTS.—(1) The heading of subchapter V of chapter 37 of such title is amended to read as follows:

''SUBCHAPTER V—HOUSING LOANS FOR NATIVE AMERICAN VETERANS''.

(2) The table of contents for such chapter is amended—

(A) by striking the matter relating to the subchapter heading of subchapter V and inserting the following new item:

''SUBCHAPTER V—HOUSING LOANS FOR NATIVE AMERICAN VETERANS'';

and

(B) by striking the item relating to section 3761 and inserting the following new item:

''3761. Authority for housing loans for Native American veterans.''.

By Mr. OBAMA (for himself, Mr. TALENT, and Mr. DURBIN):

S. 918. A bill to provide for Flexible Fuel Vehicle (FFV) refueling capability at new and existing refueling station facilities to promote energy security and reduction of greenhouse gas emissions; to the Committee on Finance.

Mr. OBAMA. Mr. President, we have all heard from folks back home about the high price of gasoline. When you pull into a gas station to fill up your tank, you're now paying some of the highest prices of all time.

And when you turn on the news, you see that our dependence on foreign oil keeps us tied to one of the most dangerous and unstable regions in the world. With oil at more than $50 per barrel, some argue that the best way to deal with high gasoline prices is to wait it out—to wait until the world market dynamics change.

I disagree with that mindset. For too long now, we've relied too heavily on foreign oil to fuel our energy needs in this country. This is not good for the United States—not for our economy, not for our national security, and not for our people.

The bill I am introducing today, along with my distinguished colleagues from Illinois and Missouri, is designed to do something about fuel prices and our reliance on foreign oil—something rooted in reality, something achievable in the short term, and something that actually works.

Last week, I visited a gasoline station in Springfield, IL, where along with regular gasoline, a new kind of fuel is offered for consumers—a fuel known as E–85. E–85 is a clean, alternative form of transportation fuel consisting of a blend of 85 percent ethanol and 15 percent gasoline. Ethanol is made from renewable, Midwestern corn, and it is 40–60 cents cheaper per gallon than standard gasoline. Last week, at this Springfield station, regular gasoline was listed at $2.06 and E–85 was selling for $1.69.

Not every car can run on E–85 fuel—but there are millions of cars that can. They're known as ''flexible-fuel vehicles,'' and the auto industry is turning out hundreds of thousands of them every year. And if any of you are wondering whether cars will run as well on E–85 as they would on regular gas, just ask the Indy 500, which recently announced that all of their cars will soon run on E–85 fuel.

The only problem we have now is that we're in short supply of E–85 stations. While there are more than 180,000 gas stations all over America, there are only about 400 E–85 stations. And although E–85 has many environmental benefits and is a higher performing fuel, the fuel economy of E–85 is slightly lower than that of regular gasoline. An additional incentive is needed to help ensure that the cost of this clean fuel remains competitive with that of regular gasoline.

That is why I'm introducing a bill to provide a tax credit of 50% for building an E–85 fuel station and a tax credit of 35 cents per gallon of E–85 fuel. This provision is similar to a provision that already has passed the Senate three times. I hope my colleagues will pass this provision again.

We've talked for too long about energy independence in this country, and I think this bill gives us an opportunity to actually get something done about it. I urge the support of my colleagues of this bill, and I thank the Chair.

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. 918

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

SECTION 1. SHORT TITLE, ETC.

(a) SHORT TITLE.—This Act may be cited as the ''E–85 Fuel Utilization and Infrastructure Development Incentives Act of 2005''.

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this division an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

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

Sec. 1. Short title, etc.
Sec. 2. Purpose.
Sec. 3. Findings.
Sec. 4. Incentives for the installation of alternative fuel refueling stations.
Sec. 5. Incentives for the retail sale of alternative fuels as motor vehicle fuel.

SEC. 2. PURPOSE.

The purpose of this Act is to decrease the dependence of the United States on foreign oil by increasing the use of high ratio blends of gasoline with a minimum 85 percent domestically derived ethanol content (E–85) as an alternative fuel and providing greater access to this fuel for American motorists.

SEC. 3. FINDINGS.

Congress finds the following:

(1) The growing United States reliance on foreign produced petroleum and the recent escalation of crude oil prices demands that all prudent measures be undertaken to increase United States refining capacity, domestic oil production, and expanded utilization of alternative forms of transportation fuels and infrastructure.

(2) Recent studies confirm the environmental and overall energy security benefits of high ratio blends of gasoline with a minimum 85 percent domestically derived ethanol content (E–85), especially with regard to the reduction of greenhouse gas emissions from the national on-road passenger car vehicle fleet.

(3) The market penetration of E–85 capable Flexible Fuel Vehicles (FFVs) now exceeds 5,000,000 with an additional 1,000,000 or more FFVs expected to be added annually as automakers continue to respond positively to congressionally provided production incentives.

(4) It is further recognized that actual implementation of the use of E–85 fuel has been significantly underutilized due primarily to the lack of E–85 refueling infrastructure availability and promotion and that such utilization rate will continue to lag unless resources are provided to substantially accelerate national refueling infrastructure development.

(5) Additionally, incentives in the form of tax credits can serve to stimulate infrastructure development and E–85 fuel utilization.

SEC. 4. INCENTIVES FOR THE INSTALLATION OF ALTERNATIVE FUEL REFUELING STATIONS.

(a) IN GENERAL.—Subpart B of part IV of subchapter A of chapter 1 (relating to foreign tax credit, etc.) is amended by adding at the end the following new section:

''SEC. 30B. ALTERNATIVE FUEL VEHICLE REFUELING PROPERTY CREDIT.

''(a) CREDIT ALLOWED.—There shall be allowed as a credit against the tax imposed by this chapter for the taxable year an amount equal to 50 percent of the amount paid or incurred by the taxpayer during the taxable year for the installation of qualified alternative fuel vehicle refueling property.

''(b) LIMITATION.—

''(1) IN GENERAL.—The credit allowed under subsection (a)—

''(A) with respect to any retail alternative fuel vehicle refueling property, shall not exceed $30,000, and

''(B) with respect to any residential alternative fuel vehicle refueling property, shall not exceed $1,000.

''(2) PHASEOUT.—

''(A) IN GENERAL.—In the case of any qualified alternative fuel vehicle refueling property placed in service after December 31, 2010, the limit otherwise applicable under paragraph (1) shall be reduced by—

''(i) 25 percent in the case of any alternative fuel vehicle refueling property placed in service in calendar year 2011, and

''(ii) 50 percent in the case of any alternative fuel vehicle refueling property placed in service in calendar year 2012.

''(c) YEAR CREDIT ALLOWED.—The credit allowed under subsection (a) shall be allowed in the taxable year in which the qualified alternative fuel vehicle refueling property is placed in service by the taxpayer.

''(d) DEFINITIONS.—For purposes of this section—

''(1) QUALIFIED ALTERNATIVE FUEL VEHICLE REFUELING PROPERTY.—The term 'qualified alternative fuel vehicle refueling property' has the same meaning given for clean-fuel vehicle refueling property by section 179A(d), but only with respect to any fuel at least 85 percent of the volume of which consists of ethanol.

''(2) RESIDENTIAL ALTERNATIVE FUEL VEHICLE REFUELING PROPERTY.—The term 'residential alternative fuel vehicle refueling property' means qualified alternative fuel vehicle refueling property which is installed on property which is used as the principal residence (within the meaning of section 121) of the taxpayer.

''(3) RETAIL ALTERNATIVE FUEL VEHICLE REFUELING PROPERTY.—The term 'retail alternative fuel vehicle refueling property' means qualified alternative fuel vehicle refueling property which is installed on property (other than property described in paragraph (2)) used in a trade or business of the taxpayer.

''(e) APPLICATION WITH OTHER CREDITS.—The credit allowed under subsection (a) for any taxable year shall not exceed the excess (if any) of—

''(1) the regular tax for the taxable year reduced by the sum of the credits allowable under subpart A and sections 27, 29, and 30, over

''(2) the tentative minimum tax for the taxable year.

''(f) BASIS REDUCTION.—For purposes of this title, the basis of any property shall be reduced by the portion of the cost of such property taken into account under subsection (a).

''(g) NO DOUBLE BENEFIT.—No deduction shall be allowed under section 179A with respect to any property with respect to which a credit is allowed under subsection (a).

''(h) REFUELING PROPERTY INSTALLED FOR TAX-EXEMPT ENTITIES.—In the case of qualified alternative fuel vehicle refueling property installed on property owned or used by an entity exempt from tax under this chapter, the person which installs such refueling property for the entity shall be treated as the taxpayer with respect to the refueling property for purposes of this section (and such refueling property shall be treated as retail alternative fuel vehicle refueling property) and the credit shall be allowed to such person, but only if the person clearly discloses to the entity in any installation contract the specific amount of the credit allowable under this section.

''(i) CARRYFORWARD ALLOWED.—

''(1) IN GENERAL.—If the credit amount allowable under subsection (a) for a taxable year exceeds the amount of the limitation under subsection (e) for such taxable year

(referred to as the 'unused credit year' in this subsection), such excess shall be allowed as a credit carryforward for each of the 20 taxable years following the unused credit year.

''(2) RULES.—Rules similar to the rules of section 39 shall apply with respect to the credit carryforward under paragraph (1).

''(j) SPECIAL RULES.—Rules similar to the rules of paragraphs (4) and (5) of section 179A(e) shall apply.

''(k) REGULATIONS.—The Secretary shall prescribe such regulations as necessary to carry out the provisions of this section.

''(l) TERMINATION.—This section shall not apply to any property placed in service after December 31, 2013.''.

(b) CONFORMING AMENDMENTS.—

(1) Section 1016(a) is amended by striking ''and'' at the end of paragraph (30), by striking the period at the end of paragraph (31) and inserting '', and'', and by adding at the end the following new paragraph:

''(32) to the extent provided in section 30B(f).''.

(2) Section 55(c)(2) is amended by inserting ''30B(e),'' after ''30(b)(3),''.

(3) The table of sections for subpart B of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 30A the following new item:

''Sec. 30B. Alternative fuel vehicle refueling property credit.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act, in taxable years ending after such date.

SEC. 5. INCENTIVES FOR THE RETAIL SALE OF ALTERNATIVE FUELS AS MOTOR VEHICLE FUEL.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 (relating to business related credits) is amended by inserting after section 40A the following new section:

''SEC. 40B. CREDIT FOR RETAIL SALE OF ALTERNATIVE FUELS AS MOTOR VEHICLE FUEL.

''(a) GENERAL RULE.—The alternative fuel retail sales credit for any taxable year is 35 cents for each gallon of alternative fuel sold at retail by the taxpayer during such year.

''(b) DEFINITIONS.—For purposes of this section—

''(1) ALTERNATIVE FUEL.—The term 'alternative fuel' means any fuel at least 85 percent of the volume of which consists of ethanol.

''(2) SOLD AT RETAIL.—

''(A) IN GENERAL.—The term 'sold at retail' means the sale, for a purpose other than resale, after manufacture, production, or importation.

''(B) USE TREATED AS SALE.—If any person uses alternative fuel (including any use after importation) as a fuel to propel any qualified alternative fuel motor vehicle (as defined in this section) before such fuel is sold at retail, then such use shall be treated in the same manner as if such fuel were sold at retail as a fuel to propel such a vehicle by such person.

''(3) QUALIFIED ALTERNATIVE FUEL MOTOR VEHICLE.—The term 'new qualified alternative fuel motor vehicle' means any motor vehicle—

''(A) which is capable of operating on an alternative fuel,

''(B) the original use of which commences with the taxpayer,

''(C) which is acquired by the taxpayer for use or lease, but not for resale, and

''(D) which is made by a manufacturer.

''(c) ELECTION TO PASS CREDIT.—A person which sells alternative fuel at retail may elect to pass the credit allowable under this section to the purchaser of such fuel or, in the event the purchaser is a tax-exempt entity or otherwise declines to accept such credit, to the person which supplied such fuel, under rules established by the Secretary.

''(d) PASS-THRU IN THE CASE OF ESTATES AND TRUSTS.—Under regulations prescribed by the Secretary, rules similar to the rules of subsection (d) of section 52 shall apply.

''(e) TERMINATION.—This section shall not apply to any fuel sold at retail after December 31, 2010.''.

(b) CREDIT TREATED AS BUSINESS CREDIT.—Section 38(b) (relating to current year business credit) is amended by striking ''plus'' at the end of paragraph (18), by striking the period at the end of paragraph (19) and inserting '', plus'', and by adding at the end the following new paragraph:

''(20) the alternative fuel retail sales credit determined under section 40B(a).''.

(c) CLERICAL AMENDMENT.—The table of sections for subpart D of part IV of subchapter A of chapter 1 is amended by inserting after the item relating to section 40A the following new item:

''Sec. 40B. Credit for retail sale of alternative fuels as motor vehicle fuel.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to fuel sold at retail after the date of the enactment of this Act, in taxable years ending after such date.

By Mr. BURNS (for himself, Mr. ROCKEFELLER, Mr. DORGAN, Mr. CRAIG, Mr. DAYTON, Mr. VITTER, Mr. THUNE, Mr. JOHNSON, Mr. BAUCUS, and Mr. COLEMAN):

S. 919. A bill to amend title 49, United States Code, to enhance competition among and between rail carriers in order to ensure efficient rail service and reasonable rail rates, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. BURNS. Mr. President, as the Senate begins the important task of debating the highway bill reauthorization, another critical infrastructure issue comes to mind: railroads. In Montana, we rely heavily on both passenger and freight rail for our transportation needs. However, Montana is served by only one major railroad, resulting in shippers being captive to little or no competition for price or service quality. That lack of competition hurts our competitiveness for agriculture and manufacturing. It drives up the cost of electricity, because of the increased costs for coal. Sometimes, it even costs us jobs in Montana.

To address the problems faced by many captive shippers, I am introducing today the Railroad Competition Act of 2005. I am joined by my colleagues, Senators ROCKEFELLER, DORGAN, CRAIG, DAYTON, VITTER, THUNE, JOHNSON, BAUCUS, and COLEMAN. This legislation will extend competition to many captive rail customers and correct problems in the Surface Transportation Board's implementation of railroad deregulation. Specifically, the legislation ensures that rail customers will receive rate quotes for movements between various points on a railroad's system; frees regional and short line railroads to provide access to additional major systems; provides captive rail customers who cannot afford to participate in expensive rate challenge proceedings access to arbitration; and directs the STB to adopt a more realistic and workable rate reasonableness standard.

In addition to a lack of competition in many markets, the rail industry in America is badly in need of investment into its infrastructure. To address the infrastructure problem, the legislation increases ten-fold the current Railroad Rehabilitation and Infrastructure Financing program. The legislation also expands who is eligible for the loans and loan guarantees, so that qualified shipping entities can also invest in rail infrastructure.

This is about jobs, plain and simple. Last year, when the intermodal hub in Shelby, Montana was closed, over 40 jobs were lost. The Port Authority in Shelby reached out to the railroads to persuade them to keep the hub open, but without competition, the single supplier chose to close. Those jobs are real losses in Shelby, a town of a little over 3,000 people. As high rail rates make U.S. products less competitive, imports flow in to fill the gap—and that costs us jobs. I understand that the rail industry employs a lot of people, and I am glad for those jobs. But we can not let lack of choice and competition in price and service cost us jobs in other areas.

Since passage of the Staggers Act in 1980, the railroad industry has experienced significant consolidation, from over 40 major railroads down to 7. Roughly 35 percent of the rail traffic in America is captive, driving up the cost of transportation and placing a heavy burden on shippers.

Captive shippers, like my farmers in Montana, have nowhere to go to seek relief. The Surface Transportation Board, the watchdogs over the rail system, is a complicated and expensive mess that hardly provides a fair forum for disputes. To bring a rate reasonableness case, challenging the unfair rates charged to captive shippers, a rail customer must first file huge fees—fees that will double in the coming weeks. Then, the customer must construct a hypothetical railroad and prove to the STB that rail transportation theoretically can be provided at a lower fee. That process can cost over $2 million per case, and take years to see through. At the end, even if the shipper wins, all he gets is a lower fee in the future. Too often, damages for past overcharging are not awarded. Meanwhile, the railroad sits idly by, under no obligation to justify its rates, and continues to collect the exorbitant fees that are under dispute. This system can not stand.

The Railroad Competition Act of 2005 directs the STB to address this nonsensical system, and develops a final offer arbitration option, allowing shippers to take their case to a neutral arbiter. These provisions are necessary, not to

punish railroads, but to develop a level playing field that keeps my small businesses and agriculture producers in business.

Railroads are an essential part of our nation's infrastructure, a vast system that includes our highways, railroads, electric transmission lines, pipelines, and digital infrastructure. In a rural state like Montana, we rely on the rails to cover long distances efficiently, so rail must remain a viable shipping option. We need to achieve affordability, while still allowing sustainability for the railroads. There is a necessary public interest in our shared infrastructure, and the Railroad Competition Act of 2005 is designed to address legitimate public concerns, in Montana and around the nation, about rail operations. I look forward to working with my colleagues to secure passage of this important legislation.

Mr. ROCKEFELLER. Mr. President, it is my pleasure today to join with my colleagues Senator BURNS, Senator DORGAN, Senator CRAIG, Senator DAYTON, Senator VITTER, Senator JOHNSON, Senator THUNE, Senator COLEMAN, and Senator BAUCUS to introduce the Railroad Competition Act of 2005. This legislation encourages the competition and consumer protection in the freight railroad market that Congress intended when it partially deregulated the industry in 1980 with the passage of the Staggers Act.

Introduction of legislation in this vein is a bit of a ritual for this Senator. West Virginia industries depend on efficient and dependable rail service at fair prices to move their products to market. This is a perfectly reasonable goal. However, for shippers without competitive rail access—referred to as captive shippers—it is a cruel and impossible dream. I have tried for years, with partners from both sides of the aisle and all parts of the country, to change the status quo, and improve the economic situation for rail shippers and retail shoppers. This is the seventh time since 1985 I have sponsored legislation to address this issue, and the fifth congress in a row in which I have worked closely with my good friends CONRAD BURNS and BYRON DORGAN to help shippers and their customers. And I won't give up until I actually succeed.

Predictably, the railroads will overreact to this bill with scathing accusations of what we are doing. In truth, we intend nothing more radical than helping shippers, consumers, and the railroads themselves, reap the benefits of the basic principles of capitalism—the ability of sophisticated actors to conduct arms-length negotiations for competition, service, and fair prices. Currently, Class I railroads overcharge and underserve captive shippers with impunity, and with an antitrust exemption preventing meaningful oversight by Congress. Customers have no power. This means higher prices for electricity, food, medicine, paper products; the chemicals to protect our water supply and crops, and the basic ingredients of the plastics in many of the goods we purchase. This is crucial to protecting commerce in the United States. So far, we have been thwarted, though we remain undeterred in our efforts and confident of the validity of our objectives.

In the 1970s, Congress observed a bloated freight rail network, unprofitable railroads, and service was anything but efficient and dependable. When the Staggers Act was passed in 1980, Congress gave a green light to deregulation of the railroad industry. But, as with the deregulation of every other industry that Congress has allowed, there were to be constraints on the ability of railroads to abuse shippers left captive to just one railroad. The Staggers Act left it to the Interstate Commerce Commission (ICC) to watch over a partially deregulated industry carrying out Staggers' dual goals: Improving the financial health and viability of the railroads; and improving and maintaining service for shippers. The ICC was responsible for ensuring fair treatment and reasonable rates for those shippers made captive by mergers or business decisions allowed under Staggers.

The success of Staggers has been completely one-sided. Captive rail shippers in my state of West Virginia have told me—since before I came to the United States Senate—that service was horrible and rates being charged were too high. That is still true today. When I was first running for the Senate, the country was served by about 40 ''Class I'' railroads. After Staggers the railroad industry ''rationalized'' its routes—meaning it dropped unprofitable lines and left more and more shippers captive to just one railroad.

A virtually unimpeded string of rail mergers during the last 25 years has only compounded the problem. The number of Class I railroads has dropped to seven. Four of these—CSX and Norfolk Southern in the East and Burlington Northern Santa Fe and the Union Pacific in the West—completely dominate the industry, accounting for about 90 percent of the freight rail traffic in the nation.

This is simple. Fewer market participants mean less competition, and less competition opens up the possibility of the abuse of local monopoly power. Under the misadministration of the Staggers Act, first by the ICC, and later by its successor agency the Surface Transportation Board (STB), abuse of captive shippers has not only gotten worse, but it has been unjustly bestowed a veneer of propriety by a series of unwise administrative decisions and at least one court case that gave grudging deference to an agency, the STB, that has failed to carry out the clear directions of Congress. The STB, to which shippers have looked for a solution, has become a facilitator of the problem.

The goals of the Railroad Competition Act are really quite mundane. My colleagues and I hope only to give life to a freight rail system originally envisioned by the drafters of the Staggers Act. We hope to send to the President a bill that will allow captive shippers the most basic right in business negotiations: They will be able to get the railroads that ship their products simply to quote a rate for the service.

My colleagues may be amazed to find out that the STB's current reading of the Staggers Act allows shippers no such right. Our legislation will simply require railroads to tell their customers the cost of moving a certain quantity of product from their manufacturing facility to their customer. Point A to Point B. Nothing in business is more basic, but it is a basic of business negotiations captive shippers do not currently enjoy. Additionally, our legislation also would do the following: clarifies that the STB shall promote competition among rail carriers, helping to maintain both reasonable freight rail rates and consistent and efficient rail service; creates a system of ''final offer'' arbitration for matters before the STB; authorizes the STB to remove so-called ''paper barriers'' that prevent short-line and regional railroads from providing improved service to shippers; requires STB to act in the public interest and removes required showing of railroads' anti-competitive conduct; caps filing fees for STB rate cases at the level of federal district courts (reducing filing fee from the current fee $65,000, which is to be doubled in 2005); calls for a Department of Transportation (DOT) study of rail competition; allows elected officials and state railroad regulators to petition the STB for declarations of ''areas of inadequate rail competition,'' with appropriate remedies; creates position of Rail Customer Advocate at U.S. Department of Agriculture (USDA); and expands infrastructure modernization loan guarantee program.

In closing I would suggest that, rather than the highly charged arguments we have engaged in over the years, my colleagues encourage the railroads to take shippers' concerns seriously, and that we all work to create a freight rail marketplace made up of companies hungry, in the best capitalist sense of that word, to do business. That is the goal of the Railroad Competition Act, and I look forward to its consideration by the full Senate.

By Mr. CORNYN:

S. 920. A bill to amend chapter 1 of title 3, United States Code, relating to Presidential succession; to the Committee on Rules and Administration.

Mr. CORNYN. Mr. President, I ask unanimous consent that the bill I am introducing today—to amend chapter 1 of title 3, United States Code, relating to Presidential succession—be printed in the RECORD. I also ask unanimous consent that the section by section analysis titled ''Presidential Succession Act of 2005'' and the letter sent to the chairmen of the RNC and DNC be printed in the RECORD.

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

S. 920

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 ''Presidential Succession Act of 2005''.

SEC. 2. PRESIDENTIAL SUCCESSION.

(a) IN GENERAL.—Section 19(d) of title 3, United States Code, is amended—

(1) in paragraph (1), by inserting '', Secretary of Homeland Security, Ambassador to the United Nations, Ambassador to Great Britain, Ambassador to Russia, Ambassador to China, Ambassador to France'' after ''Secretary of Veterans Affairs'';

(2) in paragraph (2), by striking ''but not'' and all that follows through the period and inserting ''or until the disability of the President or Vice President is removed.'';

(3) in paragraph (3)—

(A) by striking ''be held to constitute'' and inserting ''not require''; and

(B) by adding at the end the following: ''Such individual shall not receive compensation from holding that office during the period that the individual acts as President under this section, and shall be compensated for that period as provided under subsection (c).''; and

(4) by adding at the end the following:

''(4) This subsection shall apply only to such officers that are—

''(A) eligible to the office of President under the Constitution;

''(B) appointed to an office listed under paragraph (1), by and with the advice and consent of the Senate, prior to the time the powers and duties of the President devolve to such officer under paragraph (1); and

''(C) not under impeachment by the House of Representatives at the time the powers and duties of the office of President devolve upon them.''.

(b) CONFORMING AMENDMENTS.—Section 19 of title 3, United States Code, is amended—

(1) in subsection (b), by striking ''as Acting President'' and inserting ''to act as President''; and

(2) in subsection (e)—

(A) in the first sentence, by striking ''(a), (b), and (d)'' and inserting ''(a) and (b)''; and

(B) by striking the second sentence.

SEC. 3. SENSE OF CONGRESS REGARDING VOTES BY ELECTORS AFTER DEATH OR INCAPACITY OF NOMINEES.

It is the sense of Congress that—

(1) during a Presidential election year, the nominees of each political party for the office of President and Vice President should jointly announce and designate on or before the final day of the convention (or related event) at which they are nominated the individuals for whom the electors of President and Vice President who are pledged to vote for such nominees should give their votes for such offices in the event that such nominees are deceased or permanently incapacitated prior to the date of the meeting of the electors of each State under section 7 of title 3, United States Code;

(2) in the event a nominee for President is deceased or permanently incapacitated prior to the date referred to in paragraph (1) (but the nominee for Vice President of the same political party is not deceased or permanently incapacitated), the electors of President who are pledged to vote for the nominee should give their votes to the nominee of the same political party for the office of Vice President, and the electors of Vice President who are pledged to vote for the nominee for Vice President should give their votes to the individual designated for such office by the nominees under paragraph (1);

(3) in the event a nominee for Vice President is deceased or permanently incapacitated prior to the date referred to in paragraph (1) (but the nominee for President of the same political party is not deceased or permanently incapacitated), the electors of Vice President who are pledged to vote for such nominee should give their votes to the individual designated for such office by the nominees under paragraph (1);

(4) in the event that both the nominee for President and the nominee for Vice President of the same political party are deceased or permanently incapacitated prior to the date referred to in paragraph (1), the electors of President and Vice President who are pledged to vote for such nominees should vote for the individuals designated for each such office by the nominees under paragraph (1); and

(5) political parties should establish rules and procedures consistent with the procedures described in the preceding paragraphs, including procedures to obtain written pledges from electors to vote in the manner described in such paragraphs.

SEC. 4. SENSE OF CONGRESS ON THE CONTINUITY OF GOVERNMENT AND THE SMOOTH TRANSITION OF EXECUTIVE POWER.

It is the sense of Congress that during the period preceding the end of a term of office in which a President will not be serving a succeeding term—

(1) that President should consider submitting the nominations of individuals to the Senate who are selected by the President-elect for offices that fall within the line of succession;

(2) the Senate should consider conducting confirmation proceedings and votes on the nominations described under paragraph (1), to the extent determined appropriate by the Senate, between January 3 and January 20 before the Inauguration; and

(3) that President should consider agreeing to sign and deliver commissions for all approved nominations on January 20 before the Inauguration to ensure continuity of Government.

SECTION-BY-SECTION ANALYSIS

The Presidential Succession Act of 2005—introduced by U.S. Senator JOHN CORNYN (R–TX) and U.S, Representative BRAD SHERMAN (D–CA) on April 27, 2005—makes a number of significant improvements to the current Presidential Succession Act, in order to ensure the continuity of the Presidency in the event of a terrorist attack or other crisis. This legislation implements Article II, Section 1, Clause 6 of the U.S. Constitution, which provides that ''the Congress may by Law provide for the Case of Removal, Death, Resignation or Inability, both of the President and Vice President, declaring what Officer shall then act as President, and such Officer shall act accordingly, until the Disability be removed, or a President shall be elected.''

This legislation is a more modest version of two bills introduced by Senator CORNYN and Representative SHERMAN in the last Congress to reform the Presidential Succession Act. Because many constitutional experts believe that members of Congress are constitutionally ineligible to serve in the line of succession, both S. 2073 and H.R. 2749 would have addressed a potential constitutional crisis by removing the House Speaker and Senate President pro tempore from the line of succession. By contrast, the 2005 version of the bill does not attempt to address that particular controversy, but instead leaves the Speaker and President pro tempore in the line of succession. It is hoped that Congress will enact the Presidential Succession Act of 2005 quickly, and that the more controversial but nevertheless critical constitutional issues arising out of current law can be addressed as well through separate legislation.

SECTION 1. SHORT TITLE.

SECTION 2. PRESIDENTIAL SUCCESSION ACT REFORMS.

Amending the line of succession. This provision adds the Secretary of Homeland Security to the line of succession. Under current law, the Secretary of Homeland Security does not fall within the line of succession. During the 108th Congress, the Senate approved legislation to place the Secretary of Homeland Security right behind the Attorney General in the line of succession, but that proposal ran into opposition in the House. This provision attempts to avoid that controversy by placing the Secretary of Homeland Security at the end of the current line of succession.

In addition, this provision addresses the difficulty that arises from the fact that all current members of the line of succession generally work and live in the greater Washington, D.C. area. Due to current law, a catastrophic incident in the D.C. area could theoretically eliminate the entire line of succession and leave the nation without anyone legally eligible to serve as President for an extended period of time. Accordingly, this provisions adds at the end of line of succession senior federal officials who do not generally work and live in the D.C. area specifically, the U.S. Ambassador to the United Nations and the U.S. Ambassadors to each of the four other permanent members of the U.N. Security Council (Great Britain, Russia, China, and France).

Reforming Cabinet succession. This provision eliminates the requirement that a cabinet secretary must resign in order to succeed to the Presidency. By doing so, this provision helps ensure that a cabinet secretary will not hesitate to take the reins, by ensuring that there will be a cabinet position to which the officer may return after any period of service as Acting President. This provision also helps cure a potential constitutional defect in current law; some constitutional scholars argue that only a current ''officer'' may act as President under Article II.

In addition, this provision addresses the so-called ''bumping off'' problem in current law. The current Presidential succession statute puts the Executive Branch in a precarious position vis-a-vis Congress, because it allows the House Speaker or Senate President pro tempore to assert their right under current law to take over the reins at any time from a cabinet officer who holds office as Acting President. This aspect of current law raises serious constitutional separation of powers problems, because it effectively places the Presidency at the mercy of Congressional leaders. In addition, current law raises a potential constitutional problem because Article II, Section 1, Clause 6 of the U.S. Constitution states that any officer who shall act as President ''shall act accordingly, until the Disability be removed, or a President shall be elected.'' This provision eliminates this ''bumping off'' problem in current law by eliminating the ability of the House Speaker or Senate President pro tempore to assert their right under current law to take over the reins from a cabinet officer holding office as Acting President.

Finally, this provision ensures that only individuals who are actually confirmed to the Cabinet-level office are eligible to serve in the line of succession. By doing so, this provision prevents lower-level officers who rise to the position of an acting Cabinet secretary from then acting as President.

Section 3. Presidential succession during the Presidential selection process. This provision states the sense of Congress that steps must be taken to ensure smooth Presidential succession in the event of a crisis during the Presidential selection process. The provision states that, prior to their political party's nominating conventions, candidates for President and Vice President should announce individuals who should be chosen by members of the Electoral College in the event that either the Presidential or Vice Presidential nominee is killed or permanently incapacitated prior to the Electoral College vote. The provision also advises the political parties to craft rules and procedures consistent with these principles.

Section 4. Presidential succession during the Presidential transition. This provision is modeled after S. Con. Res. 89 and H. Res. 775 from the last Congress. It states the sense of Congress that, in the event of the election of a new President, the outgoing Administration and incoming Administration should work together to ensure a smooth transition. Under current law, in the event of a terrorist attack on the inauguration or other crisis, a member of the prior Administration could theoretically rise to serve as Acting President, because new Cabinet officers may have not yet been nominated, confirmed, and appointed by that time. Accordingly, this provision calls for cooperation between outgoing and incoming Administrations to achieve smooth Presidential transitions. It recommends that the outgoing President nominate the individuals selected by the incoming President for offices that fall within the line of succession, it advises the Senate to act on those nominees to the extent it deems appropriate prior to the inaugural event on January 20, and finally, it recommends that the outgoing President appoint confirmed individuals to their posts on January 20 before the inaugural event.

CONGRESS OF THE UNITED STATES,
Washington, DC, April 27, 2005.

Chairman KEN MEHLMAN,
Republican National Committee,
Washington, DC.
Chairman HOWARD DEAN,
Democratic National Committee,
Washington, DC.

DEAR CHAIRMAN MEHLMAN AND CHAIRMAN DEAN: This morning, we introduce the Presidential Succession Act of 2005, to update the existing Presidential Succession Act of 1947. The bill addresses some of the most pressing problems in the current law to ensure that, should tragedy strike, the nation will have a clear and legitimate president.

One of the primary areas of concern is the period between the nominating conventions and the casting of Electoral. votes. Should a presidential or vice-presidential nominee be unable to proceed as a nominee between these two events, general election voters and electors would face great uncertainty about their votes. We are concerned about the potential mischief and instability in our government that could arise in such event.

We have attached language from the Presidential Succession act of 2005 which calls on political parties to address this issue with appropriate party rules changes and public declarations. Specifically, these changes would call upon the presidential and vice-presidential nominees to jointly name successors should tragedy occur. If only the presidential nominee is unable to continue in an election, the vice presidential nominee would become the presidential nominee.

There is no reason for the political parties to await Congressional action. The vagaries of current party rules can be solved much sooner. We call on you to take action.

Should you have questions or need additional information, please do not hesitate to contact us.

Sincerely,

JOHN CORNYN,
United States Senate.
BRAD SHERMAN,
United States House of Representatives.

By Mrs. MURRAY (for herself, Mr. DURBIN, Mr. KENNEDY, and Mrs. CLINTON):

S. 921. A bill to provide for secondary school reform, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mrs. MURRAY. Mr. President, I am pleased today to introduce a bill with Senators DURBIN, KENNEDY, and CLINTON that will help our Nation's high school students graduate with the knowledge necessary to succeed in post-secondary education and the skills needed to succeed in the workforce.

Unfortunately too many high school students today are not completing high school at all or with the skills necessary to enter post-secondary education or the workforce. The statistics are staggering. Every day, 3,000 teenagers drop out of high school. This year over 500,000 students will drop out of high school. Overall, less than 70 percent of high school students will graduate and less than 50 percent of high school students of color will graduate.

Of 100 9th graders, less than 70 percent will graduate on time, only 38 percent will directly enter college, only 26 percent will still be enrolled in their sophomore year, and only 18 percent will graduate from college. That number is even lower for minority students. Forty percent of students entering 4-year colleges and nearly 70 percent of students entering community colleges will take remedial classes in reading, writing or math, extending their years in and the cost of college.

Only one-third of the U.S. workforce has any post-secondary education but it is estimated that 60 percent of new jobs in the 21st century will require a post-secondary education. Business will spend billions of dollars on remediation for their employees in reading, writing and math.

We can do better and we must do better for our Nation's students, their families, and American business. Currently, high school students are graduating at meager rates and even if they are graduating from high school, they are not leaving high school with the skills and knowledge to enter the workforce or be successful in college. That is why I have written and am introducing the Pathways for All Students to Succeed Act or the PASS Act.

The PASS Act targets high school reform in three key areas: core academics, improving graduation rates, and assistance to low-performing schools to improve student achievement through innovative models. The PASS Act will help improve student achievement in core academics and reduce the need for remediation in college and the workplace through grants for schools to hire literacy and math coaches. Literacy and math coaches bring professional development back into schools and classrooms. Coaches help teachers identify which students are having reading or math problems, how to respond to such problems, and how to integrate literacy and math skills across curricula.

The PASS Act also targets dropouts and low graduation rates through grants for academic counselors and a meaningful graduation rate calculation. Time after time I have talked to students in their senior year who have said, ''I didn't know I needed four years of math to graduate and get into college.'' Part of the problem is that our counselors are completely overwhelmed. The current national average ratio of students to counselors is over 450 to 1. My bill would provide grants to bring that ratio down to 150 to 1. Academic counselors will also work with students and their families to create 6 year graduation and career plans that will help students identify what classes they need to graduate and achieve their post-secondary goals, whether those goals are training or college, and identify support services such as GEAR UP and TRIO that are available to the student.

The PASS Act also provides grants to schools for data collection, and specifically on graduation rates. Currently schools do not have a way to accurately calculate graduation rates. The Department of Education only requires schools to report the graduation rate based on 12th grade data and we all know that is not when students drop out. The PASS Act provides schools with funding to collect, disaggregate, and report accurate graduation rates so that schools can correctly diagnose and address problems facing specific student populations.

And lastly the PASS Act provides additional funding for schools labeled ''in need of improvement'' to implement proven, innovative reforms leading to gains in student achievement. I often talk to principals who tell me they know what they need to do to improve their schools; they just don't have the funds to make the necessary changes. Such reforms include smaller learning communities, adolescent literacy programs, whole school reforms, personalized learning environments, and programs that target transitions between middle and secondary school.

Congress must act now and act boldly to correct the shortfalls in our nation's high schools. We can and must do better. I hope my colleagues will join me in supporting this bill and addressing the needs of our high school students.

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. 921

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 ''Pathways for All Students to Succeed Act''.

TITLE I—READING AND MATHEMATICS SKILLS FOR SUCCESS

SEC. 101. FINDINGS.

Congress makes the following findings:

(1) While the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.), as amended by the No Child Left Behind Act of 2001 (Public Law 107–110, 115 Stat. 1425), provides a strong framework for helping children in the early grades, our Nation still needs a comprehensive strategy to address the literacy problems and learning gaps of students in middle school and secondary school.

(2) Approximately 60 percent of students in the poorest communities fail to graduate from secondary school on time, in large part because of severe reading deficits that contribute to academic failure.

(3) Forty percent of students attending high minority enrollment secondary schools enroll in remedial reading coursework when entering higher education, in an effort to gain the skills their secondary education failed to provide.

(4) While 33 percent of all low-income students are enrolled in secondary schools, only 15 percent of the funding targeted to disadvantaged students goes to secondary schools.

(5) Data from the 1998 National Assessment of Educational Progress show that 32 percent of boys and 19 percent of girls in eighth grade cannot read at a basic level. These numbers do not change significantly in the secondary school years and are even more dramatic when students are identified by minority status.

(6) The 2002 National Assessment of Educational Progress writing scores indicate that while the percentage of fourth and eighth graders writing at or above a basic level increased between 1998 and 2002, the percentage of 12th graders writing at or above a basic level decreased. These numbers show that our concentrated efforts for elementary school students have improved their writing skills, but by neglecting the needs of secondary school students, we are squandering these gains.

(7) The United States cannot maintain its position as the world's strongest economy if we continue to ignore the literacy needs of adolescents in middle school and secondary school.

(8) The achievement gap between White and Asian students and Black and Hispanic students remains wide in the area of mathematics.

(9) The 2003 National Assessment of Education Progress shows that the achievement gap between the mathematics scores of eighth grade Black and Hispanic students and White students is the same in 2003 as in 1990.

(10) The 2003 National Assessment of Education Progress shows that eighth grade students eligible for a free or reduced-price school lunch did not meet the basic mathematics score, unlike non-eligible students.

(11) According to the latest results from international assessments, 15-year-olds from the United States performed below the international average in mathematics literacy and problem-solving, placing 27th out of 39 countries.

(12) Only 13 of the United States workforce has any post-secondary education, yet 60 percent of new jobs in the 21st century will require post-secondary education.

SEC. 102. PURPOSES.

The purposes of this title are—

(1) to provide assistance to State educational agencies and local educational agencies in establishing effective research-based reading, writing, and mathematics programs for students in middle schools and secondary schools, including students with disabilities and students with limited English proficiency;

(2) to provide adequate resources to schools to hire and to provide in-service training for not less than 1 literacy coach per 20 teachers who can assist middle school and secondary school teachers to incorporate research-based reading and writing instruction into the teachers' teaching of mathematics, science, history, civics, geography, literature, language arts, and other core academic subjects;

(3) to provide assistance to State educational agencies and local educational agencies—

(A) in strengthening reading and writing instruction in middle schools and secondary schools; and

(B) in procuring high-quality diagnostic reading and writing assessments and comprehensive research-based programs and instructional materials that will improve reading and writing performance among students in middle school and secondary school; and

(4) to provide adequate resources to schools to hire and to provide in-service training for not less than 1 mathematics coach per 20 teachers who can assist middle school and secondary school teachers to utilize research-based mathematics instruction to develop students' mathematical abilities and knowledge, and assist teachers in assessing student learning.

SEC. 103. DEFINITIONS.

In this title:

(1) IN GENERAL.—The terms ''local educational agency'', ''Secretary'', and ''State educational agency'' have the meaning given the terms in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(2) ELIGIBLE LOCAL EDUCATIONAL AGENCY.—The term ''eligible local educational agency'' means a local educational agency who is eligible to receive funds under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.).

(3) LITERACY COACH.—The term ''literacy coach'' means a certified or licensed teacher with a demonstrated effectiveness in teaching reading and writing to students with specialized reading and writing needs, and the ability to work with classroom teachers to improve the teachers' instructional techniques to support reading and writing improvement, who works on site at a school—

(A) to train teachers from across the curriculum to incorporate the teaching of reading and writing skills into their instruction of content;

(B) to train teachers to assess students' reading and writing skills and identify students requiring remediation; and

(C) to provide or assess remedial literacy instruction, including for—

(i) students in after school and summer school programs;

(ii) students requiring additional instruction;

(iii) students with disabilities; and

(iv) students with limited English proficiency.

(4) MATHEMATICS COACH.—The term ''mathematics coach'' means a certified or licensed teacher, with a demonstrated effectiveness in teaching mathematics to students with specialized needs in mathematics, a command of mathematical content knowledge, and the ability to work with classroom teachers to improve the teachers' instructional techniques to support mathematics improvement, who works on site at a school—

(A) to train teachers to better assess student learning in mathematics;

(B) to train teachers to assess students' mathematics skills and identify students requiring remediation; and

(C) to provide or assess remedial mathematics instruction, including for—

(i) students in after school and summer school programs;

(ii) students requiring additional instruction;

(iii) students with disabilities; and

(iv) students with limited English proficiency.

(5) MIDDLE SCHOOL.—The term ''middle school'' means a school that provides middle school education, as determined under State law.

(6) SECONDARY SCHOOL.—The term ''secondary school'' means a school that provides secondary education, as determined under State law.

(7) STATE.—The term ''State'' means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

SEC. 104. AUTHORIZATION OF APPROPRIATIONS.

(a) LITERACY GRANTS.—For the purposes of carrying out subtitle A, there are authorized to be appropriated $1,000,000,000 for fiscal year 2006 and such sums as may be necessary for each of the 5 succeeding fiscal years.

(b) MATHEMATICS GRANTS.—For the purposes of carrying out subtitle B, there are authorized to be appropriated $1,000,000,000 for fiscal year 2006 and such sums as may be necessary for each of the 5 succeeding fiscal years.

Subtitle A—Literacy Skills Programs

SEC. 111. LITERACY SKILLS PROGRAMS.

(a) GRANTS AUTHORIZED.—

(1) IN GENERAL.—From funds appropriated under section 104(a) for a fiscal year, the Secretary shall establish a program, in accordance with the requirements of this subtitle, that will provide grants to State educational agencies, and grants or subgrants to eligible local educational agencies, to establish reading and writing programs to improve the overall reading and writing performance of students in middle school and secondary school.

(2) LENGTH OF GRANT.—A grant to a State educational agency under this subtitle shall be awarded for a period of 6 years.

(b) RESERVATION OF FUNDS BY THE SECRETARY.—From amounts appropriated under section 104(a) for a fiscal year, the Secretary shall reserve—

(1) 3 percent of such amounts to fund national activities in support of the programs assisted under this subtitle, such as research and dissemination of best practices, except that the Secretary may not use the reserved funds to award grants directly to local educational agencies; and

(2) 2 percent of such amounts for the Bureau of Indian Affairs to carry out the services and activities described in section 112(c) for Indian children.

(c) GRANT FORMULAS.—

(1) FORMULA GRANTS TO STATE EDUCATIONAL AGENCIES.—If the amounts appropriated under section 104(a) for a fiscal year are equal to or greater than $500,000,000, then the Secretary shall award grants, from allotments under paragraph (3), to State educational agencies to enable the State educational agencies to provide subgrants to eligible local educational agencies to establish reading and writing programs to improve

overall reading and writing performance among students in middle school and secondary school.

(2) DIRECT GRANTS TO ELIGIBLE LOCAL EDUCATIONAL AGENCIES.—

(A) IN GENERAL.—If the amounts appropriated under section 104(a) for a fiscal year are less than $500,000,000, then the Secretary shall award grants, on a competitive basis, directly to eligible local educational agencies to establish reading and writing programs to improve overall reading and writing performance among students in middle school and secondary school.

(B) PRIORITY.—The Secretary shall give priority in awarding grants under this paragraph to eligible local educational agencies that—

(i) are among the local educational agencies in the State with the lowest graduation rates, as described in section 1111(b)(2)(C)(vi) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)(2)(C)(vi)); and

(ii) have the highest number or percentage of students who are counted under section 1124(c) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333(c)).

(3) ALLOTMENTS TO STATES.—

(A) IN GENERAL.—From funds appropriated under section 104(a) and not reserved under subsection (b) for a fiscal year, the Secretary shall make an allotment to each State educational agency having an application approved under subsection (d) in an amount that bears the same relation to the funds as the amount the State received under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) bears to the amount received under such part by all States.

(B) MINIMUM ALLOTMENT.—Notwithstanding subparagraph (A), no State educational agency shall receive an allotment under this paragraph for a fiscal year in an amount that is less than 0.25 percent of the funds allotted to all State educational agencies under subparagraph (A) for the fiscal year.

(4) REALLOTMENT.—If a State educational agency does not apply for a grant under this subtitle, the Secretary shall reallot the State educational agency's allotment to the remaining States.

(d) APPLICATIONS.—

(1) IN GENERAL.—In order to receive a grant under this subtitle, a State educational agency shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require. Each such application shall meet the following conditions:

(A) A State educational agency shall not include the application for assistance under this subtitle in a consolidated application submitted under section 9302 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7842).

(B) The State educational agency's application shall include an assurance that—

(i) the State educational agency has established a reading and writing partnership that—

(I) coordinated the development of the application for a grant under this subtitle; and

(II) will assist in designing and administering the State educational agency's program under this subtitle; and

(ii) the State educational agency will participate, if requested, in any evaluation of the State educational agency's program under this subtitle.

(C) The State educational agency's application shall include a program plan that contains a description of the following:

(i) How the State educational agency will assist eligible local educational agencies in implementing subgrants, including providing ongoing professional development for literacy coaches, teachers, paraprofessionals, and administrators.

(ii) How the State educational agency will help eligible local educational agencies identify high-quality screening, diagnostic, and classroom-based instructional reading and writing assessments.

(iii) How the State educational agency will help eligible local educational agencies identify high-quality research-based materials and programs.

(iv) How the State educational agency will help eligible local educational agencies identify appropriate and effective materials, programs, and assessments for students with disabilities and students with limited English proficiency.

(v) How the State educational agency will ensure that professional development funded under this subtitle—

(I) is based on reading and writing research;

(II) will effectively improve instructional practices for reading and writing for middle school and secondary school students; and

(III) is coordinated with professional development activities funded through other programs (including federally funded programs such as programs funded under the Adult Education and Family Literacy Act (20 U.S.C. 9201 et seq.), the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.), and the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.)).

(vi) How funded activities will help teachers and other instructional staff to implement research-based components of reading and writing instruction.

(vii) The subgrant process the State educational agency will use to ensure that eligible local educational agencies receiving subgrants implement programs and practices based on reading and writing research.

(viii) How the State educational agency will build on and promote coordination among reading and writing programs in the State to increase overall effectiveness in improving reading and writing instruction, including for students with disabilities and students with limited English proficiency.

(ix) How the State educational agency will regularly assess and evaluate the effectiveness of the eligible local educational agency activities funded under this subtitle.

(2) REVIEW OF APPLICATIONS.—The Secretary shall review applications from State educational agencies under this subsection as the applications are received.

(e) STATE USE OF FUNDS.—Each State educational agency receiving a grant under this subtitle shall—

(1) establish a reading and writing partnership, which may be the same as the partnership established under section 1203(d) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6363(d)), that will provide guidance to eligible local educational agencies in selecting or developing and implementing appropriate, research-based reading and writing programs for middle school and secondary school students;

(2) use 80 percent of the grant funds received under this subtitle for a fiscal year to award subgrants to eligible local educational agencies having applications approved under section 112(a); and

(3) use 20 percent of the grant funds received under this subtitle—

(A) to carry out State-level activities described in the application submitted under subsection (d);

(B) to provide—

(i) technical assistance to eligible local educational agencies; and

(ii) high-quality professional development to teachers and literacy coaches;

(C) to oversee and evaluate subgrant services and activities undertaken by the eligible local educational agencies as described in section 112(c); and

(D) for administrative costs,

of which not more than 10 percent of the grant funds may be used for planning, administration, and reporting.

(f) NOTICE TO ELIGIBLE LOCAL EDUCATIONAL AGENCIES.—Each State educational agency receiving a grant under this subtitle shall provide notice to all eligible local educational agencies in the State about the availability of subgrants under this subtitle.

(g) SUPPLEMENT NOT SUPPLANT.—Each State educational agency receiving a grant under this subtitle shall use the grant funds to supplement not supplant State funding for activities authorized under this subtitle or for other educational activities.

(h) NEW SERVICES AND ACTIVITIES.—Grant funds provided under this subtitle may be used only to provide services and activities authorized under this subtitle that were not provided on the day before the date of enactment of this Act.

SEC. 112. SUBGRANTS TO ELIGIBLE LOCAL EDUCATIONAL AGENCIES.

(a) APPLICATION.—

(1) IN GENERAL.—Each eligible local educational agency desiring a subgrant under this subtitle shall submit an application to the State educational agency in the form and according to the schedule established by the State educational agency.

(2) CONTENTS.—In addition to any information required by the State educational agency, each application under paragraph (1) shall demonstrate how the eligible local educational agency will carry out the following required activities:

(A) Development or selection and implementation of research-based reading and writing assessments.

(B) Development or selection and implementation of research-based reading and writing programs, including programs for students with disabilities and students with limited English proficiency.

(C) Selection of instructional materials based on reading and writing research.

(D) High-quality professional development for literacy coaches and teachers based on reading and writing research.

(E) Evaluation strategies.

(F) Reporting.

(G) Providing access to research-based reading and writing materials.

(3) CONSORTIA.—An eligible local educational agency may apply to the State educational agency for a subgrant as a member of a consortium, if each member of the consortium is an eligible local educational agency.

(b) AWARD BASIS.—

(1) MINIMUM SUBGRANT AMOUNT.—Each eligible local educational agency receiving a subgrant under this subtitle for a fiscal year shall receive a minimum subgrant amount that bears the same relation to the amount of funds made available to the State educational agency under section 111(e)(2) as the amount the eligible local educational agency received under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) for the preceding fiscal year bears to the amount received by all eligible local educational agencies under such part for the preceding fiscal year.

(2) SUFFICIENT SIZE AND SCOPE.—Subgrants under this section shall be of sufficient size and scope to enable eligible local educational agencies to fully implement activities assisted under this subtitle.

(c) LOCAL USE OF FUNDS.—Each eligible local educational agency receiving a subgrant under this subtitle shall use the subgrant funds to carry out, at the middle school and secondary school level, the following services and activities:

(1) Hiring literacy coaches, at a ratio of not less than 1 literacy coach for every 20 teachers, and providing professional development for literacy coaches—

(A) to work with classroom teachers to incorporate reading and writing instruction within all subject areas, during regular classroom periods, after school, and during summer school programs, for all students;

(B) to work with classroom teachers to identify students with reading and writing problems and, where appropriate, refer students to available programs for remediation and additional services;

(C) to work with classroom teachers to diagnose and remediate reading and writing difficulties of the lowest-performing students, by providing intensive, research-based instruction, including during after school and summer sessions, geared toward ensuring that the students can access and be successful in rigorous academic coursework; and

(D) to assess and organize student data on literacy and communicate that data to school administrators to inform school reform efforts.

(2) Reviewing, analyzing, developing, and, where possible, adapting curricula to make sure literacy skills are taught within the content area subjects.

(3) Providing reading and writing professional development for all teachers in middle school and secondary school that addresses both remedial and higher level literacy skills for students in the applicable curriculum.

(4) Providing professional development for teachers, administrators, and paraprofessionals serving middle schools and secondary schools to help the teachers, administrators, and paraprofessionals meet literacy needs.

(5) Procuring and implementing programs and instructional materials based on reading and writing research, including software and other education technology related to reading and writing instruction.

(6) Building on and promoting coordination among reading and writing programs in the eligible local educational agency to increase overall effectiveness in improving reading and writing instruction, including for students with disabilities and students with limited English proficiency.

(7) Evaluating the effectiveness of the instructional strategies, teacher professional development programs, and other interventions that are implemented under the subgrant.

(d) SUPPLEMENT NOT SUPPLANT.—Each eligible local educational agency receiving a subgrant under this subtitle shall use the subgrant funds to supplement not supplant the eligible local educational agency funding for activities authorized under this subtitle or for other educational activities.

(e) NEW SERVICES AND ACTIVITIES.—Subgrant funds provided under this subtitle may be used only to provide services and activities authorized under this subtitle that were not provided on the day before the date of enactment of this Act.

(f) EVALUATIONS.—Each eligible local educational agency receiving a grant under this subtitle shall participate, as requested by the State educational agency or the Secretary, in reviews and evaluations of the programs of the eligible local educational agency and the effectiveness of such programs, and shall provide such reports as are requested by the State educational agency and the Secretary.

Subtitle B—Mathematics Skills Programs

SEC. 121. MATHEMATICS SKILLS PROGRAMS.

(a) GRANTS AUTHORIZED.—

(1) IN GENERAL.—From funds appropriated under section 104(b) for a fiscal year, the Secretary shall establish a program, in accordance with the requirements of this subtitle, that will provide grants to State educational agencies, and grants and subgrants to eligible local educational agencies, to establish mathematics programs to improve the overall mathematics performance of students in middle school and secondary school.

(2) LENGTH OF GRANT.—A grant to a State educational agency under this subtitle shall be awarded for a period of 6 years.

(b) RESERVATION OF FUNDS BY THE SECRETARY.—From amounts appropriated under section 104(b) for a fiscal year, the Secretary shall reserve—

(1) 3 percent of such amounts to fund national activities in support of the programs assisted under this subtitle, such as research and dissemination of best practices, except that the Secretary may not use the reserved funds to award grants directly to local educational agencies; and

(2) 2 percent of such amounts for the Bureau of Indian Affairs to carry out the services and activities described in section 122(c) for Indian children.

(c) GRANT FORMULAS.—

(1) FORMULA GRANTS TO STATE EDUCATIONAL AGENCIES.—If the amounts appropriated under section 104(b) for a fiscal year are equal to or greater than $500,000,000, then the Secretary shall award grants, from allotments under paragraph (3), to State educational agencies to enable the State educational agencies to provide subgrants to eligible local educational agencies to establish mathematics programs to improve overall mathematics performance among students in middle school and secondary school.

(2) DIRECT GRANTS TO ELIGIBLE LOCAL EDUCATIONAL AGENCIES.—

(A) IN GENERAL.—If the amounts appropriated under section 104(b) for a fiscal year are less than $500,000,000, then the Secretary shall award grants, on a competitive basis, directly to eligible local educational agencies to establish mathematics programs to improve overall mathematics performance among students in middle school and secondary school.

(B) PRIORITY.—The Secretary shall give priority in awarding grants under this paragraph to eligible local educational agencies that—

(i) are among the local educational agencies in the State with the lowest graduation rates, as described in section 1111(b)(2)(C)(vi) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)(2)(C)(vi)); and

(ii) have the highest number or percentage of students who are counted under section 1124(c) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333(c)).

(3) ALLOTMENTS TO STATES.—

(A) IN GENERAL.—From funds appropriated under section 104(b) and not reserved under subsection (b) for a fiscal year, the Secretary shall make an allotment to each State educational agency having an application approved under subsection (d) in an amount that bears the same relation to the funds as the amount the State received under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) bears to the amount received under such part by all States.

(B) MINIMUM ALLOTMENT.—Notwithstanding subparagraph (A), no State educational agency shall receive an allotment under this paragraph for a fiscal year in an amount that is less than 0.25 percent of the funds allotted to all State educational agencies under subparagraph (A) for the fiscal year.

(4) REALLOTMENT.—If a State educational agency does not apply for a grant under this subtitle, the Secretary shall reallot the State educational agency's allotment to the remaining States.

(d) APPLICATIONS.—

(1) IN GENERAL.—In order to receive a grant under this subtitle, a State educational agency shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may require. Each such application shall meet the following conditions:

(A) A State educational agency shall not include the application for assistance under this subtitle in a consolidated application submitted under section 9302 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7842).

(B) The State educational agency's application shall include an assurance that—

(i) the State educational agency has established a mathematics partnership that—

(I) coordinated the development of the application for a grant under this subtitle; and

(II) will assist in designing and administering the State educational agency's program under this subtitle; and

(ii) the State educational agency will participate, if requested, in any evaluation of the State educational agency's program under this subtitle.

(C) The State educational agency's application shall include a program plan that contains a description of the following:

(i) How the State educational agency will assist eligible local educational agencies in implementing subgrants, including providing ongoing professional development for mathematics coaches, teachers, paraprofessionals, and administrators.

(ii) How the State educational agency will help eligible local educational agencies identify high-quality screening, diagnostic, and classroom-based instructional mathematics assessments.

(iii) How the State educational agency will help eligible local educational agencies identify high-quality research-based mathematics materials and programs.

(iv) How the State educational agency will help eligible local educational agencies identify appropriate and effective materials, programs, and assessments for students with disabilities and students with limited English proficiency.

(v) How the State educational agency will ensure that professional development funded under this subtitle—

(I) is based on mathematics research;

(II) will effectively improve instructional practices for mathematics for middle school and secondary school students; and

(III) is coordinated with professional development activities funded through other programs.

(vi) How funded activities will help teachers and other instructional staff to implement research-based components of mathematics instruction.

(vii) The subgrant process the State educational agency will use to ensure that eligible local educational agencies receiving subgrants implement programs and practices based on mathematics research.

(viii) How the State educational agency will build on and promote coordination among mathematics programs in the State to increase overall effectiveness in improving mathematics instruction, including for students with disabilities and students with limited English proficiency.

(ix) How the State educational agency will regularly assess and evaluate the effectiveness of the eligible local educational agency activities funded under this subtitle.

(2) REVIEW OF APPLICATIONS.—The Secretary shall review applications from State educational agencies under this subsection as the applications are received.

(e) STATE USE OF FUNDS.—Each State educational agency receiving a grant under this subtitle shall—

(1) establish a mathematics partnership that will provide guidance to eligible local educational agencies in selecting or developing and implementing appropriate, research-based mathematics programs for middle school and secondary school students;

(2) use 80 percent of the grant funds received under this subtitle for a fiscal year to approve high-quality applications for subgrants to eligible local educational agencies having applications approved under section 122(a); and

(3) use 20 percent of the grant funds received under this subtitle—

(A) to carry out State-level activities described in the application submitted under subsection (d);

(B) to provide—

(i) technical assistance to eligible local educational agencies; and

(ii) high-quality professional development to teachers and mathematics coaches;

(C) to oversee and evaluate subgrant services and activities undertaken by the eligible local educational agencies as described in section 122(c); and

(D) for administrative costs,

of which not more than 10 percent of the grant funds may be used for planning, administration, and reporting.

(f) NOTICE TO ELIGIBLE LOCAL EDUCATIONAL AGENCIES.—Each State educational agency receiving a grant under this subtitle shall provide notice to all eligible local educational agencies in the State about the availability of subgrants under this subtitle.

(g) SUPPLEMENT NOT SUPPLANT.—Each State educational agency receiving a grant under this subtitle shall use the grant funds to supplement not supplant State funding for activities authorized under this subtitle or for other educational activities.

(h) NEW SERVICES AND ACTIVITIES.—Grant funds provided under this subtitle may be used only to provide services and activities authorized under this subtitle that were not provided on the day before the date of enactment of this Act.

SEC. 122. SUBGRANTS TO ELIGIBLE LOCAL EDUCATIONAL AGENCIES.

(a) APPLICATION.—

(1) IN GENERAL.—Each eligible local educational agency desiring a subgrant under this subtitle shall submit an application to the State educational agency in the form and according to the schedule established by the State educational agency.

(2) CONTENTS.—In addition to any information required by the State educational agency, each application under paragraph (1) shall demonstrate how the eligible local educational agency will carry out the following required activities:

(A) Development or selection and implementation of research-based mathematics assessments.

(B) Development or selection and implementation of research-based mathematics programs, including programs for students with disabilities and students with limited English proficiency.

(C) Selection of instructional materials based on mathematics research.

(D) High-quality professional development for mathematics coaches and teachers based on mathematics research.

(E) Evaluation strategies.

(F) Reporting.

(G) Providing access to research-based mathematics materials.

(3) CONSORTIA.—An eligible local educational agency may apply to the State educational agency for a subgrant as a member of a consortium if each member of the consortium is an eligible local educational agency.

(b) AWARD BASIS.—

(1) MINIMUM SUBGRANT AMOUNT.—Each eligible local educational agency receiving a subgrant under this subtitle for a fiscal year shall receive a minimum subgrant amount that bears the same relation to the amount of funds made available to the State educational agency under section 121(e)(2) as the amount the eligible local educational agency received under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) for the preceding fiscal year bears to the amount received by all eligible local educational agencies under such part for the preceding fiscal year.

(2) SUFFICIENT SIZE AND SCOPE.—Subgrants under this section shall be of sufficient size and scope to enable eligible local educational agencies to fully implement activities assisted under this subtitle.

(c) LOCAL USE OF FUNDS.—Each eligible local educational agency receiving a subgrant under this subtitle shall use the subgrant funds to carry out, at the middle school and secondary school level, the following services and activities:

(1) Hiring mathematics coaches, at a ratio of not less than 1 mathematics coach for every 20 teachers, and providing professional development for mathematics coaches—

(A) to work with classroom teachers to better assess student learning in mathematics;

(B) to work with classroom teachers to identify students with mathematics problems and, where appropriate, refer students to available programs for remediation and additional services;

(C) to work with classroom teachers to diagnose and remediate mathematics difficulties of the lowest-performing students, by providing intensive, research-based instruction, including during after school and summer sessions, geared toward ensuring that those students can access and be successful in rigorous academic coursework; and

(D) to assess and organize student data on mathematics and communicate that data to school administrators to inform school reform efforts.

(2) Reviewing, analyzing, developing, and, where possible, adapting curricula to make sure mathematics skills are taught within the content area subjects.

(3) Providing mathematics professional development for all teachers in middle school and secondary school that addresses both remedial and higher level mathematics skills for students in the applicable curriculum.

(4) Providing professional development for teachers, administrators, and paraprofessionals serving middle schools and secondary schools to help the teachers, administrators, and paraprofessionals meet mathematics needs.

(5) Procuring and implementing programs and instructional materials based on mathematics research, including software and other education technology related to mathematics instruction.

(6) Building on and promoting coordination among mathematics programs in the eligible local educational agency to increase overall effectiveness in improving mathematics instruction, including for students with disabilities and students with limited English proficiency.

(7) Evaluating the effectiveness of the instructional strategies, teacher professional development programs, and other interventions that are implemented under the subgrant.

(d) SUPPLEMENT NOT SUPPLANT.—Each eligible local educational agency receiving a subgrant under this subtitle shall use the subgrant funds to supplement not supplant the eligible local educational agency funding for activities authorized under this subtitle or for other educational activities.

(e) NEW SERVICES AND ACTIVITIES.—Subgrant funds provided under this subtitle may be used only to provide services and activities authorized under this subtitle that were not provided on the day before the date of enactment of this Act.

(f) EVALUATIONS.—Each eligible local educational agency receiving a grant under this subtitle shall participate, as requested by the State educational agency or the Secretary, in reviews and evaluations of the programs of the eligible local educational agency and the effectiveness of such programs, and shall provide such reports as are requested by the State educational agency and the Secretary.

TITLE II—PATHWAYS TO SUCCESS

SEC. 201. FINDINGS.

Congress makes the following findings:

(1) In 2003, approximately 60 percent of students in the poorest communities failed to graduate from secondary school on time.

(2) All ninth grade students should have a plan that assesses the student's instructional needs and outlines the coursework the student must complete to graduate on time, properly prepared for college and career.

(3) Research shows that 1 of the most important factors behind student success in secondary school is a close connection with at least 1 adult who demonstrates concern for the student's advancement.

(4) Secondary school counselors can help students receive the instructional, tutorial, and social supports that contribute to academic success.

(5) Model programs around the Nation have demonstrated that effective academic and support plans for students, developed by counselors serving as academic coaches, in cooperation with students and parents, result in a higher percentage of students graduating from secondary school well prepared for college study.

SEC. 202. DEFINITIONS.

In this title:

(1) IN GENERAL.—The terms ''local educational agency'', ''poverty line'', ''secondary school'', ''Secretary'', and ''State educational agency'' have the meaning given the terms in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(2) ACADEMIC COUNSELOR.—The term ''academic counselor'' means a highly qualified professional who has received professional development appropriate to perform the services described in section 205(c).

(3) ELIGIBLE LOCAL EDUCATIONAL AGENCY.—The term ''eligible local educational agency'' means a local educational agency who has jurisdiction over not less than 1 secondary school receiving assistance under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.).

(4) STATE.—The term ''State'' means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

SEC. 203. PROGRAM AUTHORIZED.

The Secretary is authorized to establish a program, in accordance with the requirements of this title, that—

(1) enables a secondary school that receives assistance under title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.), to hire a sufficient number of academic counselors, in a ratio of not less than 1 counselor to 150 students, to develop personal plans for each student at the school, including students with limited English proficiency;

(2) involves parents in the development and implementation of the personal plans; and

(3) provides academic counselors and staff at the schools receiving grants under this

title the opportunity to coordinate with other programs and services, including those supported by Federal funds, to ensure that students have access to the resources and services necessary to fulfill the students' personal plans.

SEC. 204. GRANTS TO STATES.

(a) GRANTS AUTHORIZED.—From amounts made available under section 206 and not reserved under subsection (i), the Secretary shall award grants, from allotments under subsection (b), to State educational agencies to enable the State educational agencies to provide subgrants to eligible local educational agencies to implement programs in secondary schools in accordance with this title.

(b) ALLOTMENTS TO STATES.—

(1) IN GENERAL.—From funds appropriated under section 206 and not reserved under subsection (i) for a fiscal year, the Secretary shall make an allotment to each State educational agency having an application approved under subsection (d) in an amount that bears the same relation to the funds as the amount the State received under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) bears to the amount received under such part by all States.

(2) MINIMUM ALLOTMENT.—Notwithstanding paragraph (1), no State educational agency shall receive an allotment under this subsection for a fiscal year in an amount that is less than 0.25 percent of the amount allotted to the State educational agencies under subsection (e)(1) for the fiscal year.

(3) RATABLE REDUCTIONS.—If the amount appropriated to carry out this title for any fiscal year is less than $2,000,000,000, then the Secretary shall ratably reduce the allotment made to each State educational agency under this subsection in proportion to the relative number of children who are counted under section 1124(c) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6333(c)), in the State compared to such number for all States.

(c) LENGTH OF GRANTS.—A grant to a State educational agency under this title shall be awarded for a period of 6 years.

(d) APPLICATIONS.—In order to receive a grant under this title, a State educational agency shall submit an application to the Secretary in the form and according to the schedule established by the Secretary by regulation.

(e) STATE USE OF FUNDS.—Each State educational agency receiving a grant under this title shall use—

(1) 80 percent of the grant funds to award subgrants to eligible local educational agencies under section 205; and

(2) 20 percent of the grant funds to provide professional development to academic counselors and technical assistance to local educational agencies, and to pay for administrative costs, of which not more than 10 percent of such 20 percent may be used for planning, administration, and reporting.

(f) SUPPLEMENT NOT SUPPLANT.—Grant funds provided to State educational agencies under this title shall be used to supplement not supplant funding provided by the State for activities authorized under this title or for other educational activities.

(g) NEW SERVICES AND ACTIVITIES.—Grant funds provided under this title may be used only to provide services and activities authorized under this title that were not provided on the day before the date of enactment of this Act.

(h) REALLOTMENT.—If a State educational agency does not apply for funding under this title, the Secretary shall reallot the State educational agency's allotment to the remaining eligible State educational agencies.

(i) RESERVATIONS.—Of the funds appropriated under section 206 for each fiscal year, the Secretary shall reserve—

(1) 2 percent for the Bureau of Indian Affairs to carry out the authorized activities described in section 205(c); and

(2) 3 percent for national activities that support the programs assisted under this title, except that the Secretary shall not use such reserved funds to award grants directly to local educational agencies.

SEC. 205. SUBGRANTS TO ELIGIBLE LOCAL EDUCATIONAL AGENCIES.

(a) SUBGRANTS AUTHORIZED.—From amounts made available under section 204(e)(1), a State educational agency shall award subgrants to eligible local educational agencies having applications approved under subsection (b) to enable the eligible local educational agencies to carry out the authorized activities described in subsection (c).

(b) APPLICATIONS.—

(1) IN GENERAL.—Each eligible local educational agency desiring a subgrant under this title shall submit an application to the State educational agency in the form and according to the schedule established by the State educational agency. Each such application shall describe how the eligible local educational agency will—

(A) hire a sufficient number of highly qualified academic counselors to develop personal plans for all students in such students' first year of secondary school, with a ratio of 1 academic counselor to not more than 150 students in each secondary school served under the subgrant;

(B) provide adequate resources to each such school to offer the supplemental and other support services that the implementation of students' personal plans require, and provide such supplemental services, where possible, through coordination with Federal TRIO programs under chapter 1 of subpart 2 of part A of title IV of the Higher Education Act of 1965 (20 U.S.C. 1070a–11 et seq.), Gear Up programs under chapter 2 of such subpart (20 U.S.C. 1070a–21 et seq.), programs under title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.), 21st Century Community Learning Centers under part B of title IV of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7171 et seq.), programs under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) (in accordance with students' individualized education programs), and programs under the Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C. 2301 et seq.);

(C) include parents in the development and implementation of students' personal plans; and

(D) provide staff at each such school with opportunities for appropriate professional development and coordination to help the staff support students in implementing the students' personal plans.

(2) CONSORTIA.—An eligible local educational agency may apply to the State educational agency for a subgrant as a consortium, if each member of the consortium is an eligible local educational agency.

(c) AUTHORIZED ACTIVITIES.—Each eligible local educational agency receiving a subgrant under this title shall use the subgrant funds to provide the following services:

(1) Hiring academic counselors (at a ratio of not less than 1 counselor per 150 students) to develop the 6-year personal plans for all students in such students' first year of secondary school and coordinate the services required to implement such personal plans. Such academic counselors shall—

(A) work with students and their families to develop an individual plan that will define such students' career and education goals, assure enrollment in the coursework necessary for on-time graduation and preparation for career development or postsecondary education, and identify the courses and supplemental services necessary to meet those goals;

(B) advocate for students, helping the students to access the services and supports necessary to achieve the goals laid out in the personal plan for the student;

(C) assure student access to services, both academic and nonacademic, needed to lower barriers to succeed as needed;

(D) assess student progress on a regular basis;

(E) work with school and eligible local educational agency administrators to promote reforms based on student needs and performance data;

(F) involve parents or caregivers, including those parents or caregivers who are limited English proficient, and teachers, in the development of students' personal plans to ensure the support and assistance of the parents, caregivers, and teachers in meeting the goals outlined in such personal plans; and

(G) communicate to students and their families the importance of implementing the 2 years of the personal plan following secondary school graduation, and work with institutions of higher education to help students transition successfully and fully implement the students' personal plans.

(2) Determining the academic needs of all students entering grade 9 and identifying barriers to success.

(3) Ensuring availability of the services necessary for the implementation of students' personal plans, including access to a college preparatory curriculum and advanced placement or international baccalaureate courses.

(4) Where appropriate, modifying the curriculum at a secondary school receiving subgrant funds under this title to address the instructional requirements of students' personal plans.

(5) Providing for the ongoing assessment of students for whom personal plans have been developed and modifying such personal plans as necessary.

(6) Coordinating the services offered with subgrant funds received under this title with other Federal, State, and local funds, including programs authorized under title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.), sections 402A and 404A of the Higher Education Act of 1965 (20 U.S.C. 1070a–11 and 1070a–21), the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.) (in accordance with students' individualized education programs), and the Carl D. Perkins Vocational and Technical Education Act of 1998 (20 U.S.C. 2301 et seq.).

(d) ELIGIBLE LOCAL EDUCATIONAL AGENCY PRIORITY.—In awarding subgrants to eligible local educational agencies, a State educational agency shall give priority to eligible local educational agencies with—

(1) the largest number or percentage of students in grades 6 through 12 reading below grade level; or

(2) the lowest graduation rates as described in section 1111(b)(2)(C)(vi) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)(2)(C)(vi)).

(e) SCHOOL PRIORITY.—In awarding subgrant funds to secondary schools, an eligible local educational agency shall give priority to secondary schools that—

(1) have the highest percentages or numbers of students in grades 6 through 12 reading below grade level;

(2) have the highest percentages or numbers of children living below the poverty line according to census figures; or

(3) have the lowest graduation rates as described in section 1111(b)(2)(C)(vi) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311(b)(2)(C)(vi)).

(f) MINIMUM SUBGRANT AMOUNT.—Each eligible local educational agency receiving a subgrant under this title for a fiscal year shall receive a minimum subgrant amount that bears the same relation to the amount of funds made available to the State educational agency under section 204(e)(1) as the amount the eligible local educational agency received under part A of title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6311 et seq.) for the preceding fiscal year bears to the amount received by all eligible local educational agencies in the State under such part for the preceding fiscal year.

(g) SUFFICIENT SIZE AND SCOPE.—Subgrants under this section shall be of sufficient size and scope to enable eligible local educational agencies to fully implement activities assisted under this title.

(h) SUPPLEMENT NOT SUPPLANT.—Each eligible local educational agency receiving a subgrant under this section shall use the subgrant funds to supplement not supplant funding for activities authorized under this title or for other educational activities.

(i) NEW SERVICES AND ACTIVITIES.—Subgrant funds provided under this section may be used only to provide services and activities authorized under this section that were not provided on the day before the date of enactment of this Act.

SEC. 206. AUTHORIZATION OF APPROPRIATIONS.

For the purposes of carrying out this title, there are authorized to be appropriated $2,000,000,000 for fiscal year 2006 and such sums as may be necessary for each of the 5 succeeding fiscal years.

TITLE III—FOSTERING SUCCESSFUL SECONDARY SCHOOLS

SEC. 301. FINDINGS.

Congress makes the following findings:

(1) Personalization of the school environment has been proven to be an essential factor in helping low-performing secondary school students succeed.

(2) Effective schools provide ongoing, high-quality professional development for teachers and administrators to improve instruction.

(3) Student success is dependent upon alignment of curriculum, instruction, and assessment.

(4) Successful schools adapt instruction to the unique interests and talents of each student.

(5) Successful schools have high expectations for all students and offer a rigorous curriculum for the entire student body.

(6) Ongoing assessment is the best way to measure how each student is learning and responding to the teacher's instructional methods.

(7) Effective secondary schools have access to, and utilize, data related to student performance prior to, and following, secondary school enrollment.

(8) Despite significant increases to the program, only about 7 percent of funding for title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301 et seq.) goes to secondary schools.

(9) Every year, 1,300,000 students do not graduate with their peers, which means every school day, our Nation loses 7,000 students.

(10) Nationally, of 100 ninth-graders, only 68 will graduate from high school on time, only 38 will directly enter college, only 26 will still be enrolled for the sophomore year, and only 18 will end up graduating from college. The numbers for minority students are even lower.

(11) Even secondary school graduates going on to college are struggling with basic literacy skills, with 40 percent of all 4-year college students taking a remedial course and 63 percent of all community college students assigned to at least 1 remedial course.

SEC. 302. PURPOSES.

It is the purpose of this title to implement research-based programs, practices, and models that will improve student achievement in low performing secondary schools.

SEC. 303. DEFINITIONS.

In this title:

(1) IN GENERAL.—The terms ''institution of higher education'', ''local educational agency'', ''secondary school'', ''Secretary'', and ''State educational agency'' have the meanings given the terms in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(2) ELIGIBLE LOCAL EDUCATIONAL AGENCY.—The term ''eligible local educational agency'' means a local educational agency that has jurisdiction over not less than 1 eligible secondary school.

(3) ELIGIBLE PARTNERSHIP.—The term ''eligible partnership'' means—

(A) an eligible local educational agency in partnership with a regional educational laboratory, an institution of higher education, or another nonprofit institution with significant experience in implementing and evaluating education reforms; or

(B) a consortium of eligible secondary schools or eligible local educational agencies, each of which is an eligible entity described in subparagraph (A).

(4) ELIGIBLE SECONDARY SCHOOL.—The term ''eligible secondary school'' means a secondary school identified for school improvement under section 1116(b) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6316(b)), as of the day preceding the date of enactment of the Pathways for All Students to Succeed Act.

(5) STATE.—The term ''State'' means each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

SEC. 304. PROGRAM AUTHORIZED; AUTHORIZATION OF APPROPRIATIONS.

(a) PROGRAM AUTHORIZED.—The Secretary is authorized to award grants to State educational agencies, from allotments under section 305(b), to enable the State educational agencies to award subgrants to eligible local educational agencies, from allocations under section 305(c)(2), to promote secondary school improvement and student achievement.

(b) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this title $500,000,000 for fiscal year 2006 and such sums as may be necessary for each of the 5 succeeding fiscal years.

SEC. 305. RESERVATIONS, STATE ALLOTMENTS, AND LOCAL ALLOCATIONS.

(a) RESERVATIONS.—From funds appropriated under section 304(b) for a fiscal year the Secretary shall reserve—

(1) 2 percent for schools funded or supported by the Bureau of Indian Affairs to carry out the purposes of this title for Indian children;

(2) 3 percent to carry out national activities in support of the purposes of this title; and

(3) 95 percent for allotment to the States in accordance with subsection (b).

(b) ALLOTMENT TO STATES.—

(1) IN GENERAL.—From funds reserved under subsection (a)(3) for a fiscal year, the Secretary shall make an allotment to each State educational agency in an amount that bears the same relationship to the funds as the number of schools in that State that have been identified for school improvement under section 1116(b) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6316(b)), bears to the number of schools in all States that have been identified for school improvement under such section 1116(b).

(2) REALLOTMENT.—The portion of any State educational agency's allotment that is not used by the State educational agency shall be reallotted among the remaining State educational agencies on the same basis as the original allotments were made under paragraph (1).

(c) ALLOCATIONS TO ELIGIBLE LOCAL EDUCATIONAL AGENCIES.—

(1) RESERVATIONS.—Each State educational agency receiving a grant under this title shall reserve—

(A) not more than 10 percent of the grant funds—

(i) for State-level activities to provide high-quality professional development and technical assistance to local educational agencies receiving funds under this title and to other local educational agencies as appropriate, including the dissemination and implementation of research-based programs, practices, and models for secondary school improvement; and

(ii) to contract for the evaluation of all programs and activities in the State that are assisted under this title; and

(B) not less than 90 percent of the grant funds to award subgrants to eligible local educational agencies to enable the eligible local educational agencies to carry out the activities described in section 306.

(2) LOCAL ALLOCATION.—From funds reserved under paragraph (1)(B), the State educational agency shall allocate to each eligible local educational agency in the State an amount that bears the same relation to such funds as the number of secondary schools that have been identified for school improvement under section 1116(b) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6316(b)), that are served by the eligible local educational agency, bears to the number of such schools served by all eligible local educational agencies in the State.

SEC. 306. LOCAL USES OF FUNDS.

Each eligible local educational agency receiving a subgrant under this title shall use the subgrant funds for activities to improve secondary schools that have been identified for school improvement under section 1116(b) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6316(b)), such as—

(1) developing and implementing research-based programs or models that have been shown to raise achievement among secondary school students, including smaller learning communities, adolescent literacy programs, block scheduling, whole school reforms, individualized learning plans, personalized learning environments, and strategies to target students making the transition from middle school to secondary school;

(2) promoting community investment in school quality by engaging parents, businesses, and community-based organizations in the development of reform plans for eligible secondary schools;

(3) researching, developing, and implementing a school district strategy to create smaller learning communities for secondary school students, both by creating smaller learning communities within existing secondary schools, and by developing new, smaller, and more personalized secondary schools;

(4) providing professional development for school staff in research-based practices, such as interactive instructional strategies and opportunities to connect learning with experience; and

(5) providing professional development and leadership training for principals and other school leaders in the best practices of instructional leadership and implementing school reforms to raise student achievement.

SEC. 307. APPLICATIONS.

(a) STATES.—Each State educational agency desiring a grant under this title shall submit to the Secretary an application at such time, in such manner, and containing such information as the Secretary may require to ensure compliance with the requirements of this title.

(b) ELIGIBLE LOCAL EDUCATIONAL AGENCIES.—Each eligible local educational agency desiring a subgrant under this title shall submit to the State educational agency an application at such time, in such manner, and containing such information as the State educational agency may require to ensure compliance with the requirements of this title. Each such application shall describe how the eligible local educational agency will form an eligible partnership to carry out the activities assisted under this title.

SEC. 308. EVALUATIONS.

In cooperation with the State educational agencies receiving funds under this title, the Secretary shall undertake or contract for a rigorous evaluation of the effectiveness and success of activities conducted under this title.

TITLE IV—DATA CAPACITY

SEC. 401. GRANTS FOR INCREASING DATA CAPACITY FOR PURPOSES OF ASSESSMENT AND ACCOUNTABILITY.

(a) PROGRAM AUTHORIZED.—From funds appropriated under subsection (e) for a fiscal year, the Secretary may award grants, on a competitive basis, to State educational agencies to enable the State educational agencies to develop or increase the capacity of data systems for assessment and accountability purposes, including the collection of graduation rates.

(b) APPLICATION.—Each State educational agency desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and containing such information as the Secretary may require.

(c) USE OF FUNDS.—Each State educational agency that receives a grant under this section shall use the grant funds for the purpose of—

(1) increasing the capacity of, or creating, State databases to collect, disaggregate, and report information related to student achievement, enrollment, and graduation rates for assessment and accountability purposes; and

(2) reporting, on an annual basis, for the elementary schools and secondary schools within the State, on—

(A) the enrollment data from the beginning of the academic year;

(B) the enrollment data from the end of the academic year; and

(C) the twelfth grade graduation rates.

(d) DEFINITIONS.—In this section:

(1) GRADUATION RATE.—The term ''graduation rate'' means the percentage that—

(A) the total number of students who—

(i) graduate from a secondary school with a regular diploma (which shall not include the recognized equivalent of a secondary school diploma or an alternative degree) in an academic year; and

(ii) graduated on time by progressing 1 grade per academic year; represents of

(B) the total number of students who entered the secondary school in the entry level academic year applicable to the graduating students.

(2) STATE EDUCATIONAL AGENCY.—The term ''State educational agency'' has the meaning given such term in section 9101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7801).

(3) SECRETARY.—The term ''Secretary'' means the Secretary of Education.

(e) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $50,000,000 for fiscal year 2006, and such sums as may be necessary for each of the 2 succeeding fiscal years.

Mr. DURBIN. Mr. President, I am pleased to support the introduction today, along with my colleagues Senators CLINTON and KENNEDY, of Senator MURRAY's bill to improve America's high schools.

We have all heard a lot of talk these days about the need to improve America's high schools. Bill Gates makes the point that the academic caliber of our high school graduates is one of the greatest factors in our country's ability to innovate and to compete internationally in technological advancements. The CEO of Intel, Craig Barrett, tells the story of the how U.S. students are eclipsed in the international science competition his firm sponsors. University presidents I meet with talk about the strain that remedial education for incoming freshmen places on the school's faculty and budgets.

The President's budget this year includes his high school initiative, which proposes to redirect money to high schools. There's a big catch, though. The President says that to fund his high school initiative we need to eliminate one of our most effective education programs for high schools, technical schools and colleges—Perkins Vocational and Technical Education grants.

There is a better way. The Pathways for All Students to Success (PASS) Act provides the resources schools need to sharpen the focus on literacy and math—skills critical to success in the workforce or in post-secondary studies. High schools can employ literacy and math coaches to help support and supplement the teachers in traditional classrooms. The legislation also allows for additional academic counseling, to provide that targeted, individualized assistance that many students need to achieve proficiency in key academic areas.

The PASS Act also provides funding that allows schools not meeting national standards to implement proven, comprehensive school reform to help students learn. Finally, current data on high school graduation rates is incomplete, inconsistent and often inaccurate. That makes it harder for schools to know which populations of students are most in need of additional attention. This legislation provides funding for school systems to collect, disaggregate and report accurate graduation rates.

Now is the time to strengthen our high schools. Expectations in the workplace and on post-secondary campuses are higher than ever for high school graduates. The PASS Act supports students working toward high school graduation, enhancing their pathway to success.

By Mr. SANTORUM (for himself and Mr. LIEBERMAN):

S. 922. A bill to establish and provide for the treatment of Individual Development Accounts, and for other purposes; to the Committee on Finance.

Mr. SANTORUM. Mr. President, I along with Senator LIEBERMAN am introducing the Savings and Working Families Act of 2005.

The need for this legislation comes at a time when Americans face an ongoing savings and assets crisis. One third of all Americans have no assets available for investment, and another fifth have only negligible assets. The United States household savings rate lags far behind that of other industrial nations, constraining national economic growth and keeping many Americans from entering the economic mainstream by buying a house, obtaining an adequate education, or starting a business.

Low-income Americans face a huge hurdle when trying to save. Individual Development Accounts, IDAs, provide them with a way to work toward building assets while instilling the practice of savings into their everyday lives. IDAs are one of the most promising tools that enable low-income and low-wealth American families to save, build assets, and enter the financial mainstream. Based on the idea that all Americans should have access, through the tax code or through direct expenditures, to the structures that subsidize homeownership and retirement savings of wealthier families, IDAs encourage savings efforts among the poor by offering them a one-to-one match for their own deposits. IDAs reward the monthly savings of working-poor families who are trying to buy their first home, pay for post-secondary education, or start a small business. These matched savings accounts are similar to 401(k) plans and other matched savings accounts, but can serve a broad range of purposes.

The Savings and Working Families Act of 2005 builds on existing IDA programs by creating tax credit incentives for an additional 900,000 accounts. Individuals between 18 and 60 who are not dependents or students and meet the income requirements would be eligible to establish and contribute to an IDA. For single filers, the income limit would be $20,000 in modified aggregate gross income, AGI. The corresponding thresholds for head-of-household and joint filers would be $30,000 and $40,000, respectively.

Participants could generally withdraw their contributions and matching funds for qualified purposes, which include certain higher education expenses, first-time home purchase expenditures, and small business capitalization.

Additionally, this bill would create a tax credit to defray the cost of establishing and running IDA programs, contributing matching funds to the appropriate accounts, and providing financial education to account holders. Program sponsors could be qualified institutions, qualified nonprofits, or

qualified Indian tribes, and would have to be an institution eligible under current law to serve as the custodian of IRAs. Sponsors could claim a tax credit that would have two components. The first would be a $50 credit per account to offset the ongoing costs of maintaining and administering each account and providing financial education to participants. Except for the first year that an account is open, the credit would be available only for accounts with a balance, at year's end, of more than $100. In addition, there would be a credit for the dollar-to-dollar matching amounts.

IDAs work to spur savings by low-income individuals. The American Dream Demonstration, ADD, a 14-site IDA program, has proven that low-income families, with proper incentives and support, can and do save for longer-term goals. In ADD, average monthly net deposits per participant were $19.07, with the average participant saving 50 percent of the monthly savings target and making deposits in 6 of 12 months. Participants accumulated an average of $700 per year including matching contributions. Importantly, deposits increased as the monthly target increased, indicating that low-income families' saving behavior, like that of wealthier individuals; is influenced by the incentives they receive.

Additionally, key to the success of IDAs is the economic education that participants receive. Information about repairing credit, reducing expenditures, applying for the Earned Income Tax Credit, avoiding predatory lenders, and accessing financial services helps IDA participants to reach savings goals and to integrate themselves into the mainstream economic system. The encouragement and connection to supportive services helps low-income individuals to keep early withdrawals to a minimum and overcome obstacles to saving. Banks and credit unions benefit from these new customer relations, and States benefit from decreased presence of check-cashing, pawnshop, and other predatory outlets.

But more than income enhancement, asset accumulation affects individuals' confidence about the future, willingness to defer gratification, avoidance of risky behavior, and investment in community. In families where assets are owned, children do better in school, voting participation increases, and family stability improves. Reliance on public assistance decreases as families use their assets to access higher education and better jobs, reduce their housing costs through ownership, and create their own job opportunities through entrepreneurship.

We must re-instill the value that Americans once put into saving and promote an ownership society. Saving must once again become a national virtue. At stake are not just the financial security and prosperity of Americans as individuals but America as a nation. This bill takes a step in reaching out to low-income Americans to meet this goal.

I urge my colleagues to support the Savings and Working Families Act of 2005.

By Mr. CORZINE (for himself, Mr. AKAKA, Ms. STABENOW, Mr. LAUTENBERG, and Mr. OBAMA):

S. 923. A bill to amend part A of title IV of the Social Security Act to require a State to promote financial education under the Temporary Assistance for Needy Families (TANF) Program and to allow financial education to count as a work activity under that program; to the Committee on Finance.

Mr. CORZINE. Mr. President, I rise today to introduce the TANF Financial Education Promotion Act of 2005 in order to call attention to an important issue for low-income families financial literacy. I am proud to be reintroducing this bill during the month of April, which is Financial Literacy Month.

One of the goals of the Temporary Assistance for Needy Families (TANF) Program is to help low-income families transition from welfare to work. However, there is more to leaving poverty than just finding a job. Welfare recipients must learn the skills that will help them build savings and establish good credit so that they can stay off welfare. Currently, TANF does not offer financial education to low-income individuals, leaving welfare recipients at risk of dependence upon public assistance.

Furthermore, millions of low-income families, including families receiving TANF, are unbanked. These households tend to do their banking at check-cashing outlets that charge exorbitant fees for such services. A lack of basic consumer finance education, including lack of familiarity with how a checking or savings account works, has been cited as a major reason why millions of Americans do not set up such accounts.

Not only are low-income people more likely to be unbanked than other individuals, but they are also the most vulnerable to abusive lending practices and hostile credit arrangements. Those with the fewest financial resources end up paying the most to obtain financing. Financial education that addresses predatory lending will help prevent low-income families from becoming victims of unaffordable loan payments, equity stripping, and foreclosure.

Burdened by significant financial needs, welfare recipients need practical information on the fundamentals of saving, household budgeting, taxes, and credit. With this knowledge, individuals will be better equipped to move toward self-sufficiency and maintain financial independence.

The TANF Financial Education Promotion Act makes strides in financial literacy for welfare recipients by requiring states to use TANF funds to collaborate with community-based organizations, banks, and community colleges to create financial education programs for low-income families receiving welfare and for those transitioning from welfare to work.

I am not alone in advocating financial literacy for TANF recipients. Federal Reserve Chairman Alan Greenspan has said, "Educational and training programs may be the most critical service offered by community-based organizations to enhance the ability of lower-income households to accumulate assets."

I urge my colleagues to join me in helping the most vulnerable families in the United States get access to the tools they will need to successfully make the transition from welfare to work.

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. 923

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 "TANF Financial Education Promotion Act of 2005".

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) Most recipients of assistance under the Temporary Assistance for Needy Families (TANF) Program established under part A of title IV of the Social Security Act (42 U.S.C. 601 et seq.) and individuals moving toward self-sufficiency operate outside the financial mainstream, paying high costs to handle their finances and saving little for emergencies or the future.

(2) Currently, personal debt levels and bankruptcy filing rates are high and savings rates are at their lowest levels in 70 years. The inability of many households to budget, save, and invest prevents them from laying the foundation for a secure financial future.

(3) Financial planning can help families meet near-term obligations and maximize their longer-term well being, especially valuable for populations that have traditionally been underserved by our financial system.

(4) Financial education can give individuals the necessary financial tools to create household budgets, initiate savings plans, and acquire assets.

(5) Financial education can prevent vulnerable customers from becoming entangled in financially devastating credit arrangements.

(6) Financial education that addresses abusive lending practices targeted at specific neighborhoods or vulnerable segments of the population can prevent unaffordable payments, equity stripping, and foreclosure.

(7) Financial education speaks to the broader purpose of the TANF Program to equip individuals with the tools to succeed and support themselves and their families in self-sufficiency.

SEC. 3. REQUIREMENT TO PROMOTE FINANCIAL EDUCATION UNDER TANF.

(a) STATE PLAN.—Section 402(a)(1)(A) of the Social Security Act (42 U.S.C. 602(a)(1)(A)) is amended by adding at the end the following:

"(vii) Establish goals and take action to promote financial education, as defined in section 407(j), among parents and caretakers receiving assistance under the program through collaboration with community-based organizations, financial institutions, and the Cooperative State Research, Education, and Extension Service of the Department of Agriculture.".

(b) INCLUSION OF FINANCIAL EDUCATION AS A WORK ACTIVITY.—Section 407 of the Social Security Act (42 U.S.C 607) is amended—

(1) in subsection (c)(1)—

(A) in subparagraph (A), by striking ''or (12)'' and inserting ''(12), or (13)''; and

(B) in subparagraph (B), by striking ''or (12)'' each place it appears and inserting ''(12), or (13)'';

(2) in subsection (d)—

(A) in paragraph (11), by striking ''and'' at the end;

(B) in paragraph (12), by striking the period and inserting ''; and''; and

(C) by adding at the end the following:

''(13) financial education, as defined in subsection (j).''; and

(3) by adding at the end the following:

''(j) DEFINITION OF FINANCIAL EDUCATION.—In this part, the term 'financial education' means education that promotes an understanding of consumer, economic, and personal finance concepts, including the basic principles involved with earning, budgeting, spending, saving, investing, and taxation.''.

(c) EFFECTIVE DATE.—The amendments made by this section take effect on October 1, 2005.

By Mr. CORZINE (for himself, Mr. AKAKA, Ms. STABENOW, Mr. LAUTENBERG, Mr. SARBANES, and Mr. BAUCUS):

S. 924. A bill to establish a grant program to enhance the financial and retirement literacy of mid-life and older Americans to reduce financial abuse and fraud among such Americans, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. CORZINE. Mr. President, I would like to speak today about an issue that I believe should be a lifelong goal for all Americans—financial literacy.

More specifically, I want to highlight the necessity of financial literacy for men and women who are close to retirement. Senior citizens are too often the victims of predatory mortgage and lending abuses and other financial scams. AARP surveys show that over half of telemarketing fraud victims are age 50 or older. In fact, financial exploitation is the largest single category of abuse against older persons. It is clear that the vulnerability of this population stems from a lack of financial knowledge, so it is more important than ever that this Congress take steps to increase the availability of financial education for midlife and senior citizens.

Not only does poor financial literacy leave older Americans vulnerable to financial fraud, but it also leads to poor retirement planning. In the next thirty years, the number of Americans over the age of 65 will double. For many of these Americans, Social Security alone will be insufficient to cover all their expenses, particularly as health care costs rise. Only about half of American workers are currently participating in any pension plan, leaving more than 75 million Americans without an employer-sponsored pension. Even worse is the fact that fifty million Americans have no retirement savings whatsoever. These statistics are frightening. As our population lives longer, we must focus on retirement education for mid-life and aging Americans as well as consumer education for seniors.

My legislation, the Education for Retirement Security Act will address the need for financial literacy among seniors by creating a $100 million competitive grant program that would provide resources to State and area agencies on aging, and nonprofit community based organizations, to provide financial education to mid-life and older Americans. The goal of this education is to enhance these individuals' financial and retirement knowledge and reduce their vulnerability to financial abuse and fraud, including telemarketing, mortgage, and pension fraud. The bill also creates a national technical assistance program that will designate at least one national grantee to provide financial education materials and training to local grantees.

I am proud to be reintroducing this legislation during the month of April, which is Financial Literacy Month.

We must offer those individuals who are close to or in retirement the tools they will need to make sound financial decisions and prepare appropriately for their retirement. The Education for Retirement Security Act will help older Americans learn how to avoid scams and invest well. With savvy financial planning and smart consumer skills, senior citizens will be more empowered to protect themselves and ultimately be better able to enjoy a more secure retirement.

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. 924

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 ''Education for Retirement Security Act of 2005''.

SEC. 2. FINDINGS.

Congress finds the following:

(1) Improving financial literacy is a critical and complex task for Americans of all ages.

(2) Low levels of savings and high levels of personal and real estate debt are serious problems for many households nearing retirement.

(3) Only 53 percent of working Americans have any form of pension coverage. Three out of four women aged 65 or over receive no income from employer-provided pensions.

(4) The more limited timeframe that mid-life and older individuals and families have to assess the realities of their individual circumstances, to recover from counter-productive choices and decisionmaking processes, and to benefit from more informed financial practices, has immediate impact and near term consequences for Americans nearing or of retirement age.

(5) Research indicates that there are now 4 basic sources of retirement income security. Those sources are social security benefits, pensions and savings, healthcare insurance coverage, and, for an increasing number of older individuals, necessary earnings from working during one's ''retirement'' years.

(6) Over the next 30 years, the number of older individuals in the United States is expected to double, from 35,000,000 to nearly 75,000,000, and long-term care costs are expected to skyrocket.

(7) Financial exploitation is the largest single category of abuse against older individuals and this population comprises more than ½ of all telemarketing victims in the United States.

(8) The Federal Trade Commission (FTC) Identity Theft Data Clearinghouse has reported that incidents of identity theft targeting individuals over the age of 60 increased from 1,821 victims in 2000 to 21,084 victims in 2004, an increase of more than 11 times in number.

SEC. 3. GRANT PROGRAM TO ENHANCE FINANCIAL AND RETIREMENT LITERACY AND REDUCE FINANCIAL ABUSE AND FRAUD AMONG MID-LIFE AND OLDER AMERICANS.

(a) AUTHORITY.—The Secretary is authorized to award grants to eligible entities to provide financial education programs to mid-life and older individuals who reside in local communities in order to—

(1) enhance financial and retirement knowledge among such individuals; and

(2) reduce financial abuse and fraud, including telemarketing, mortgage, and pension fraud, among such individuals.

(b) ELIGIBLE ENTITIES.—An entity is eligible to receive a grant under this section if such entity is—

(1) a State agency or area agency on aging; or

(2) a nonprofit organization with a proven record of providing—

(A) services to mid-life and older individuals;

(B) consumer awareness programs; or

(C) supportive services to low-income families.

(c) APPLICATION.—An eligible entity desiring a grant under this section shall submit an application to the Secretary in such form and containing such information as the Secretary may require, including a plan for continuing the programs provided with grant funds under this section after the grant expires.

(d) LIMITATION ON ADMINISTRATIVE COSTS.—A recipient of a grant under this section may not use more than 4 percent of the total amount of the grant in each fiscal year for the administrative costs of carrying out the programs provided with grant funds under this section.

(e) EVALUATION AND REPORT.—

(1) ESTABLISHMENT OF PERFORMANCE MEASURES.—The Secretary shall develop measures to evaluate the programs provided with grant funds under this section.

(2) EVALUATION ACCORDING TO PERFORMANCE MEASURES.—Applying the performance measures developed under paragraph (1), the Secretary shall evaluate the programs provided with grant funds under this section in order to—

(A) judge the performance and effectiveness of such programs;

(B) identify which programs represent the best practices of entities developing such programs for mid-life and older individuals; and

(C) identify which programs may be replicated.

(3) ANNUAL REPORTS.—For each fiscal year in which a grant is awarded under this section, the Secretary shall submit a report to Congress containing a description of the status of the grant program under this section, a description of the programs provided with grant funds under this section, and the results of the evaluation of such programs under paragraph (2).

SEC. 4. NATIONAL TRAINING AND TECHNICAL ASSISTANCE PROGRAM.

(a) AUTHORITY.—The Secretary is authorized to award a grant to 1 or more eligible entities to—

(1) create and make available instructional materials and information that promote financial education; and

(2) provide training and other related assistance regarding the establishment of financial education programs to eligible entities awarded a grant under section 3.

(b) ELIGIBLE ENTITIES.—An entity is eligible to receive a grant under this section if such entity is a national nonprofit organization with substantial experience in the field of financial education.

(c) APPLICATION.—An eligible entity desiring a grant under this section shall submit an application to the Secretary in such form and containing such information as the Secretary may require.

(d) BASIS AND TERM.—The Secretary shall award a grant under this section on a competitive, merit basis for a term of 5 years.

SEC. 5. DEFINITIONS.

In this Act:

(1) FINANCIAL EDUCATION.—The term ''financial education'' means education that promotes an understanding of consumer, economic, and personal finance concepts, including saving for retirement, long-term care, and estate planning and education on predatory lending and financial abuse schemes.

(2) MID-LIFE INDIVIDUAL.—The term ''mid-life individual'' means an individual aged 45 to 64 years.

(3) OLDER INDIVIDUAL.—The term ''older individual'' means an individual aged 65 or older.

(4) SECRETARY.—The term ''Secretary'' means the Secretary of Health and Human Services.

SEC. 6. AUTHORIZATION OF APPROPRIATIONS.

(a) AUTHORIZATION.—There are authorized to be appropriated to carry out this Act, $100,000,000 for each of the fiscal years 2006 through 2010.

(b) LIMITATION ON FUNDS FOR EVALUATION AND REPORT.—The Secretary may not use more than $200,000 of the amounts appropriated under subsection (a) for each fiscal year to carry out section 3(e).

(c) LIMITATION ON FUNDS FOR TRAINING AND TECHNICAL ASSISTANCE.—The Secretary may not use less than 5 percent or more than 10 percent of amounts appropriated under subsection (a) for each fiscal year to carry out section 4.

By Mr. CORZINE (for himself, Mr. AKAKA, Ms. STABENOW, Mr. LAUTENBERG, and Mr. BAUCUS):

S. 925. A bill to promote youth financial education; to the Committee on Health, Education, Labor, and Pensions.

Mr. CORZINE. Mr. President, I rise today to introduce the Youth Financial Education Act. I am pleased to introduce this bill during the month of April—Financial Literacy Month.

It is hard to underestimate the importance of financial literacy for our youth. As credit, banking, and financial systems in this country become more and more complex, it is time to make sure that our education system teaches our children the fundamental principles of earning, spending, saving and investing, so that they can be successful citizens. Federal Reserve Chairman Alan Greenspan said himself that ''Improving basic financial education at the elementary and secondary school levels is essential to providing a foundation for financial literacy that can help prevent younger people from making poor financial decisions.'' It is crucial not only for the well-being of our children, but for the future of our society as a whole that all citizens understand how to manage a checking account, use a credit card, and estimate their taxes.

According to the Jump$tart Coalition for Personal Financial Literacy's Survey of High School Seniors, which measures students' aptitude and ability to manage financial resources such as credit cards, insurance, retirement funds and savings accounts, only 52.3 percent of students answered the survey questions correctly. In less than a year, 54 percent of these students who go onto college will carry a credit card. These statistics make it evident that we must do more to arm our youth with the tools they need to make informed decisions about the fiscal realities they will face upon entering college or the workforce.

In 2004, only 7 states required students to complete a course that includes personal finance before graduating from high school. In my home State of New Jersey, New Egypt High School is the only school that requires a course financial education. Several years ago I had the pleasure of teaching a class of these students, and came away impressed with their knowledge and competency in financial matters.

While awareness of the importance of financial literacy is improving, it is still not being addressed appropriately in schools. Our schools must prepare our children to succeed in every way, including in their financial decisions.

I am pleased that I successfully added a provision to the No Child Left Behind Act giving elementary and secondary schools access to funds that will allow them to include financial education as part of their basic educational curriculum. Although this was an important step in the right direction, Congress can and should do more to address this Issue.

The legislation I am introducing today will provide grants to States to help them develop and implement financial education programs in elementary and secondary schools. These programs will offer professional development for teachers and prepare them to provide financial education. It would also establish a national clearinghouse for instructional materials and information regarding model financial education programs.

Earlier this year, the Senate debated the Bankruptcy Reform Bill that seeks to change the rules governing bankruptcy. While I agree that bankruptcy reform should provide an incentive for capable individuals to honor their financial obligations, this legislation will make it that much more difficult for people who have fallen into debt to declare bankruptcy. With these reforms imminent, it will be all the more critical to take a proactive approach to the problem of personal debt in this country and make sure that the next generation learns how to better manage their money.

I ask for my colleagues to join me in support of the Youth Financial Education Act, which will equip our nation's youth with skills to become responsible consumers and enjoy economic security as well as economic opportunity in their futures.

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. 925

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

SECTION 1. PROMOTING YOUTH FINANCIAL LITERACY.

Title IV of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 7101 et seq.) is amended by adding at the end the following:

''PART D—PROMOTING YOUTH FINANCIAL LITERACY

''SEC. 4401. SHORT TITLE AND FINDINGS.

''(a) SHORT TITLE.—This part may be cited as the 'Youth Financial Education Act'.

''(b) FINDINGS.—Congress finds the following:

''(1) In order to succeed in our dynamic American economy, young people must obtain the skills, knowledge, and experience necessary to manage their personal finances and obtain general financial literacy. All young adults should have the educational tools necessary to make informed financial decisions.

''(2) Despite the critical importance of financial literacy to young people, the average student who graduates from high school lacks basic skills in the management of personal financial affairs. A nationwide survey conducted in 2004 by the Jump$tart Coalition for Personal Financial Literacy examined the financial knowledge of 4,074 12th graders. On average, survey respondents answered only 52 percent of the questions correctly. This figure is up only slightly from the 50 percent average score in 2002.

''(3) An evaluation by the National Endowment for Financial Education High School Financial Planning Program undertaken jointly with the United States Department of Agriculture Cooperative State Research, Education, and Extension Service demonstrates that as little as 10 hours of classroom instruction can impart substantial knowledge and affect significant change in how teens handle their money.

''(4) State educational leaders have recognized the importance of providing a basic financial education to students in kindergarten through grade 12 by integrating financial education into State educational standards, but by 2004, only 7 States required students to complete a course that covered personal finance before graduating from high school.

''(5) Teacher training and professional development are critical to achieving youth financial literacy. Teachers should be given the tools they need to educate our Nation's youth on personal finance and economics.

''(6) Personal financial education helps prepare students for the workforce and for financial independence by developing their sense of individual responsibility, improving their life skills, and providing them with a

thorough understanding of consumer economics that will benefit them for their entire lives.

''(7) Financial education integrates instruction in valuable life skills with instruction in economics, including income and taxes, money management, investment and spending, and the importance of personal savings.

''(8) The consumers and investors of tomorrow are in our schools today. The teaching of personal finance should be encouraged at all levels of our Nation's educational system, from kindergarten through grade 12.

''SEC. 4402. STATE GRANT PROGRAM.

''(a) PROGRAM AUTHORIZED.—The Secretary is authorized to provide grants to State educational agencies to develop and integrate youth financial education programs for students in elementary schools and secondary schools.

''(b) STATE PLAN.—

''(1) APPROVED STATE PLAN REQUIRED.—To be eligible to receive a grant under this section, a State educational agency shall submit an application that includes a State plan, described in paragraph (2), that is approved by the Secretary.

''(2) STATE PLAN CONTENTS.—The State plan referred to in paragraph (1) shall include—

''(A) a description of how the State educational agency will use grant funds;

''(B) a description of how the programs supported by a grant will be coordinated with other relevant Federal, State, regional, and local programs; and

''(C) a description of how the State educational agency will evaluate program performance.

''(c) ALLOCATION OF FUNDS.—

''(1) ALLOCATION FACTORS.—Except as otherwise provided in paragraph (2), the Secretary shall allocate the amounts made available to carry out this section pursuant to subsection (a) to each State according to the relative populations in all the States of students in kindergarten through grade 12, as determined by the Secretary based on the most recent satisfactory data.

''(2) MINIMUM ALLOCATION.—Subject to the availability of appropriations and notwithstanding paragraph (1), a State that has submitted a plan under subsection (b) that is approved by the Secretary shall be allocated an amount that is not less than $500,000 for a fiscal year.

''(3) REALLOCATION.—In any fiscal year an allocation under this subsection—

''(A) for a State that has not submitted a plan under subsection (b); or

''(B) for a State whose plan submitted under subsection (b) has been disapproved by the Secretary;

shall be reallocated to States with approved plans under this section in accordance with paragraph (1).

''(d) USE OF GRANT FUNDS.—

''(1) REQUIRED USES.—A grant made to a State educational agency under this part shall be used—

''(A) to provide funds to local educational agencies and public schools to carry out financial education programs for students in kindergarten through grade 12 based on the concept of achieving financial literacy through the teaching of personal financial management skills and the basic principles involved with earning, spending, saving, and investing;

''(B) to carry out professional development programs to prepare teachers and administrators for financial education; and

''(C) to monitor and evaluate programs supported under subparagraphs (A) and (B).

''(2) LIMITATION ON ADMINISTRATIVE COSTS.—A State educational agency receiving a grant under subsection (a) may use not more than 4 percent of the total amount of the grant in each fiscal year for the administrative costs of carrying out this section.

''(e) REPORT TO THE SECRETARY.—Each State educational agency receiving a grant under this section shall transmit a report to the Secretary with respect to each fiscal year for which a grant is received. The report shall describe the programs supported by the grant and the results of the State educational agency's monitoring and evaluation of such programs.

''SEC. 4403. CLEARINGHOUSE.

''(a) AUTHORITY.—Subject to the availability of appropriations, the Secretary shall make a grant to, or execute a contract with, an eligible entity with substantial experience in the field of financial education, such as the Jump$tart Coalition for Personal Financial Literacy, to establish, operate, and maintain a national clearinghouse (in this part referred to as the 'Clearinghouse') for instructional materials and information regarding model financial education programs and best practices.

''(b) ELIGIBLE ENTITY.—In this section, the term 'eligible entity' means a national nonprofit organization with a proven record of—

''(1) cataloging youth financial literacy materials; and

''(2) providing support services and materials to schools and other organizations that work to promote youth financial literacy.

''(c) APPLICATION.—An eligible entity desiring to establish, operate, and maintain the Clearinghouse shall submit an application to the Secretary at such time, in such manner, and accompanied by such information, as the Secretary may reasonably require.

''(d) BASIS AND TERM.—The Secretary shall make the grant or contract authorized under subsection (a) on a competitive, merit basis for a term of 5 years.

''(e) USE OF FUNDS.—The Clearinghouse shall use the funds provided under a grant or contract made under subsection (a)—

''(1) to maintain a repository of instructional materials and related information regarding financial education programs for elementary schools and secondary schools, including kindergartens, for use by States, localities, and the general public;

''(2) to disseminate to States, localities, and the general public, through electronic and other means, instructional materials and related information regarding financial education programs for elementary schools and secondary schools, including kindergartens; and

''(3) to the extent that resources allow, to provide technical assistance to States, localities, and the general public on the design, establishment, and implementation of financial education programs for elementary schools and secondary schools, including kindergartens.

''(f) CONSULTATION.—The chief executive officer of the eligible entity selected to establish and operate the Clearinghouse shall consult with the Department of the Treasury and the Securities Exchange Commission with respect to its activities under subsection (e).

''(g) SUBMISSION TO CLEARINGHOUSE.—Each Federal agency or department that develops financial education programs and instructional materials for such programs shall submit to the Clearinghouse information on the programs and copies of the materials.

''(h) APPLICATION OF COPYRIGHT LAWS.—In carrying out this section the Clearinghouse shall comply with the provisions of title 17 of the United States Code.

''SEC. 4404. EVALUATION AND REPORT.

''(a) PERFORMANCE MEASURES.—The Secretary shall develop measures to evaluate the performance of programs assisted under sections 4402 and 4403.

''(b) EVALUATION ACCORDING TO PERFORMANCE MEASURES.—Applying the performance measures developed under subsection (a), the Secretary shall evaluate programs assisted under sections 4402 and 4403—

''(1) to judge their performance and effectiveness;

''(2) to identify which of the programs represent the best practices of entities developing financial education programs for students in kindergarten through grade 12; and

''(3) to identify which of the programs may be replicated and used to provide technical assistance to States, localities, and the general public.

''(c) REPORT.—For each fiscal year for which there are appropriations under section 4407(a), the Secretary shall transmit a report to Congress describing the status of the implementation of this part. The report shall include the results of the evaluation required under subsection (b) and a description of the programs supported under section 4402.

''SEC. 4405. DEFINITIONS.

''In this part:

''(1) FINANCIAL EDUCATION.—The term 'financial education' means educational activities and experiences, planned and supervised by qualified teachers, that enable students to understand basic economic and consumer principles, acquire the skills and knowledge necessary to manage personal and household finances, and develop a range of competencies that will enable the students to become responsible consumers in today's complex economy.

''(2) QUALIFIED TEACHER.—The term 'qualified teacher' means a teacher who holds a valid teaching certification or is considered to be qualified by the State educational agency in the State in which the teacher works.

''SEC. 4406. PROHIBITION.

''Nothing in this part shall be construed to authorize an officer or employee of the Federal Government to mandate, direct, or control a State, local educational agency, or school's specific instructional content, curriculum, or program of instruction, as a condition of eligibility to receive funds under this part.

''SEC. 4407. AUTHORIZATION OF APPROPRIATIONS.

''(a) AUTHORIZATION.—For the purposes of carrying out this part, there are authorized to be appropriated $100,000,000 for each of the fiscal years 2006 through 2010.

''(b) LIMITATION ON FUNDS FOR CLEARINGHOUSE.—The Secretary may use not less than 2 percent and not more than 5 percent of amounts appropriated under subsection (a) for each fiscal year to carry out section 4403.

''(c) LIMITATION ON FUNDS FOR SECRETARY EVALUATION.—The Secretary may use not more than $200,000 from the amounts appropriated under subsection (a) for each fiscal year to carry out subsections (a) and (b) of section 4404.

''(d) LIMITATION ON ADMINISTRATIVE COSTS.—Except as necessary to carry out subsections (a) and (b) of section 4404 using amounts described in subsection (c) of this section, the Secretary shall not use any portion of the amounts appropriated under subsection (a) for the costs of administering this part.''.

By Mr. INHOFE (for himself, Mr. VITTER, and Mr. ENZI):

S. 926. A bill to amend the Internal Revenue Code of 1986 to provide that the credit for producing fuel from a nonconventional source shall apply to gas produced onshore from a formation more than 15,000 feet deep; to the Committee on Finance.

Mr. INHOFE. Mr. President, today I proudly rise to introduce The Natural Gas Production Act of 2005.

One of the challenges facing our economy is increasing energy prices. Take, for example, natural gas that accounts for 22 percent of American energy consumption. According to the Energy Information Administration, over the next 20 years, U.S. natural gas consumption will increase by over 50 percent. At the same time, U.S. natural gas production will only grow by 14 percent. At a time when natural gas prices are already at an all time high, it is critical that we increase our supply by developing our domestic natural gas.

This legislation will provide an incentive to increase the supply of domestically produced natural gas, which in turn will help alleviate high natural gas prices.

The Natural Gas Production Act of 2005 will add natural gas produced from formations more than 15,000 feet deep (Deep Gas), to the list of qualifying fuels for the Section 29 non-conventional tax credit. Experts consider deep gas drilling at more than 15,000 feet to be a non-conventional source of energy production.

Studies show the resource potential below 15,000 feet for natural gas is great. The Department of Energy's Strategic Center for Natural Gas has estimated there to be 130 trillion cubic feet below 15,000 feet in the lower 48. In comparison, that is equal to the proven and potential reserves on the Alaskan North Slope.

While these vast reserves remain, very little production is occurring from depths greater than 15,000. Deep gas wells require a considerable amount of time and money. On average these wells cost more than $6.1 million, and for wells deeper than 20,000 feet costs can exceed $16 million. Add to that the minimum one-year and longer drilling time and you can clearly see that Federal drilling incentives are needed to help promote and speed production of this enormous potential resource.

To drill a deep well, a drilling rig will employ about 25 people directly. In 1979, 128 deep well completions in Oklahoma created 2,630 jobs. In addition to direct jobs, economists estimate that 60 to 75 indirect jobs will be created as well.

Due to changes in the regulatory governance of the industry and cyclical market conditions over the next two and one-half decades, deep drilling activity all across the country has declined substantially.

I am introducing this legislation, along with Senator VITTER, today to encourage more domestic production in an area of proven reserves that will increase our supply. I thank Senator VITTER for his work and I urge members to support us in this effort. I ask consent that the text of the bill be printed in the RECORD.

If you have any questions, please contact Mike Ference on my Staff at 224–1036.

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

S. 926

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 ''Natural Gas Production Act of 2005''.

SEC. 2. CREDIT FOR PRODUCING FUEL FROM NONCONVENTIONAL SOURCE TO APPLY TO GAS PRODUCED ONSHORE FROM FORMATIONS MORE THAN 15,000 FEET DEEP.

(a) IN GENERAL.—Subparagraph (B) of section 29(c)(1) of the Internal Revenue Code of 1986 (defining qualified fuels) is amended by striking ''or'' at the end of clause (i), by striking ''and'' at the end of clause (ii) and inserting ''or'', and by inserting after clause (ii) the following new clause:

''(iii) an onshore well from a formation more than 15,000 feet deep, and''.

(b) ELIGIBLE WELLS.—Section 29 of such Code is amended by adding at the end the following new subsection:

''(h) ELIGIBLE DEEP GAS WELLS.—In the case of a well producing qualified fuel described in subsection (B)(iii)—

''(1) for purposes of subsection (f)(1)(A), such well shall be treated as drilled before January 1, 1993, if such well is drilled after the date of the enactment of this subsection, and

''(2) subsection (f)(2) shall not apply.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act.

By Mr. CORZINE (for himself, Mr. LAUTENBERG, Mr. SARBANES, Mr. JOHNSON, Ms. LANDRIEU, and Mr. KENNEDY):

S. 927. A bill to amend title XVIII of the Social Security Act to expand and improve coverage of mental health services under the medicare program; to the Committee on Finance.

Mr. CORZINE. Mr. President, I rise today to introduce a very important piece of legislation, the Medicare Mental Health Modernization Act of 2005.

Our Nation's Medicare beneficiaries—our elderly and disabled population—have limited access to mental health services. Medicare restricts the types of mental health services available to beneficiaries and the types of providers who are allowed to offer such care. It also charges higher copayments for mental health services than it does for all other health care. In order to receive mental health care, seniors and the disabled must pay 50 percent of the cost of a visit to their mental health specialist, as opposed to the 20 percent that they pay for other services. Medicare also limits the number of days a beneficiary can receive mental health care in a hospital setting to 190 days over an individual's lifetime.

We must address this problem. The need is glaring. Almost 20 percent of Americans over age 65 have a serious mental disorder. They suffer from depression, Alzheimer's disease, dementia, anxiety, late-life schizophrenia and, all too often, substance abuse. These are serious illnesses that must be treated. Unfortunately, they are often unidentified by primary care physicians, or the appropriate services are simply out of reach. Americans age 65 and older have the highest rate of suicide of any other population in the United States. An alarming 70 percent of elderly suicide victims have visited their primary care doctor in the month prior to committing suicide.

Medicare is also the primary source of health insurance for millions of non-elderly disabled. More than 20 percent of these individuals suffer from mental illness and/or addiction. This very needy population faces the same discrimination in their mental health coverage.

As our population ages, the burden of mental illness on seniors, their families, and the health care system will only continue increase. Experts estimate that by the year 2030, 15 million people over 65 will have psychiatric disorders, with the number of individuals suffering from Alzheimer's disease doubling. If we do not reform the Medicare program to provide greater access to detection and treatment of mental illness, the cost of not treating these diseases will rapidly escalate. Without the appropriate outpatient mental health services, too many of our seniors are forced into nursing homes and hospitals. If We truly want to modernize Medicare and make it more efficient, we must provide access to these services. Not only will they likely reduce costs in the long term, but they will also increase Medicare beneficiaries' quality of life.

The Medicare Mental Health Modernization Act takes critical steps to address these issues. First, the bill reduces the 50 percent copayment for mental health services to 20 percent. The proposed 20 percent copayment is the same as the copayment for all other outpatient services in Medicare. Second, the bill would provide access to intensive residential services for those who are suffering from severe mental illness. This will give people with Alzheimer's disease and other serious mental illness the opportunity to be cared for in their homes or in community-based settings. Third, the bill expands the number of qualified mental health professionals eligible to provide services through the Medicare program. This includes licensed professional mental health counselors, clinical social workers, and marriage and family therapists. This expansion of qualified providers is critical to ensuring that seniors throughout the nation, particularly those in rural areas, are able to receive the services they need.

In closing, I urge all of my colleagues to step forward to support the Medicare Mental Health Modernization Act of 2005. It is time for the Medicare program to stop discriminating against seniors and the disabled who are suffering from mental illness.

By Mrs. LINCOLN:

S. 928. A bill to amend the Internal Revenue Code of 1986 to provide for the

immediate and permanent repeal of the estate tax on family-owned businesses and farms, and for other purposes; to the Committee on Finance.

Mrs. LINCOLN. Mr. President, four years ago, as projected budget surpluses reached over $5 trillion, Congress passed a tax cut bill that began the process of addressing the unfairness of the estate tax. Now in 2005, the surpluses have long since disappeared, and Congress has made no further progress on estate tax relief for America's family-owned farms and businesses—many of whom still pay this tax today.

Earlier this month, the House once again voted for a complete repeal of the estate tax. I myself have consistently supported complete repeal, I have voted in favor of full repeal on multiple occasions, and I will continue to support full repeal should that option be brought to the floor of the U.S. Senate for a vote in the future. Nevertheless, given the persistent state of our more than $400 billion annual deficits, it is increasingly doubtful such a bill could obtain the necessary votes in the Senate for passage right now.

I'm not alone in feeling that the votes just aren't there for full repeal. President of the U.S. Chamber, Tom Donahue, was quoted this week stating that the Chamber would likely support a good compromise coming out of the Senate. We all understand the state of affairs and I want to echo Mr. Donahue's sentiments. We must work together to bring relief to those that this tax affects most—family-owned farms and businesses.

It is the family-owned farms and businesses across Arkansas and all across this Nation that serve as the backbone of our rural communities. To put it simply, they are the economic engines of rural America. It is the family-owned businesses that provide jobs, wages, and health care for my constituents. It is the family-owned businesses that sponsor Little League, they pay local taxes, they are a part of the community. They live there. And that's why family-owned businesses aren't the ones that are shutting down and heading off-shore. When we force family businesses to spend valuable assets on estate planning and life insurance rather than on investing and expanding their businesses, we are putting them at a disadvantage to their publically-traded competitors. I, for one, intend to fight for these family businesses, fight for these communities, and fight for the jobs in rural America.

In the wake of the House vote and the real lack of votes here in the Senate to pass a complete repeal bill, talk of compromise has raised speculation of higher exemptions and/or lower tax rates as an alternative to complete repeal.

Quite frankly, I believe these compromise approaches are incomplete solutions to the problems faced by family-owned farms and businesses. Certainly, I understand that a higher exemption and lower rates will be considered as part of a compromise. But both are expensive and inefficient methods to specifically reach family-owned farms and businesses.

Given the restraints of our budget deficits today, I ask, how can we raise the exemption high enough, or lower the rates low enough, to provide necessary relief for family farms and businesses?

We could not get there in 2001 when projected surpluses reached $5 trillion. What makes us think we can solve this problem today with projected deficits totaling $2.6 trillion in the President's budget?

We took these approaches in 2001, and family-owned farms and businesses still face this tax today, so we should be leery of any compromise approach that considers only rates and exemptions. They were incomplete compromise solutions then—and they will be tomorrow.

In this environment, I feel we are seriously losing ground on coming to a fair and final resolution of this issue. In the meantime, the current state of the law places many family-owned businesses in an extremely uncertain and precarious position—a law that taxes family-owned businesses today, then repeals the tax in 2010, and then snaps back to pre–2001 law in 2011 is simply not responsible on our part. This amounts to nothing more than a nightmarish rollercoaster ride for the businesses we intended to help!

So, we need to set some priorities and go about the business of lifting this tax from these family-owned farms and businesses first.

On the subject of setting priorities, I would like to relay a statistic that may startle my colleagues a bit. The IRS Statistics of Income for 2003 show that only 7.4 percent of the estate tax is paid on ''farm assets, closely held stock, or other non-corporate business assets.'' These 7.4 percent should be our first priority in any compromise the estate tax. The remaining 92.6 percent of assets—such as widely-held stock, bonds, insurance proceeds, art, and real estate partnerships—should not drive or dictate our actions at the expense of America's family-owned farms and businesses.

This simple statistic helps lead us to a targeted solution which should cost less and immediately help those we intended to help in the first place. Today, I introduce the ''Estate Tax Repeal Acceleration for Family-Owned Businesses and Farms Act''—or ExTRA. Under ExTRA, an estate may voluntarily elect to exclude an unlimited portion of family business assets from the estate tax. The carryover basis rules will apply to these business assets and no estate tax will be paid on them. That is the same deal that repeal promises—but we do so immediately and permanently—and at a fraction of the cost.

My bill does not seek to change current law to repeal the estate tax. It would leave in place the scheduled increases in the unified credit, the decreases in rates, and the repeal of the estate tax in 2010. My bill would only seek to rectify the special circumstances of family-owned businesses and farms, in an attempt, not to inflame the issue further, but to resolve this issue now and forever for those this effort was originally intended to help.

The goal of the Lincoln bill is that no family-owned farm or business will ever pay the estate tax. Americans are driven to build their lives and their communities and they want to be able to pass that on to the next generation. What comes of the American dream if someone works hard all their life to build something to pass on to their family, their legacy, and it has to be sold for taxes.

If there is an idea that will protect the American dream and the family-owned business, we should not be reluctant to put it on the table. Today, I am introducing such an idea, and I firmly believe such an approach must be part of any compromise if one is reached. In fact, I will not support any compromise that does not take care of family businesses in Arkansas.

I urge my colleagues to take a look and study the Lincoln bill to immediately and permanently repeal the estate tax for family owned farms and businesses.

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. 928

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 ''Estate Tax Repeal Acceleration (ExTRA) for Family-Owned Businesses and Farms Act''.

SEC. 2. REPEAL OF ESTATE TAX ON FAMILY-OWNED BUSINESSES AND FARMS.

(a) CARRYOVER BUSINESS INTEREST EXCLUSION.—Part IV of subchapter A of chapter 11 of the Internal Revenue Code of 1986 (relating to taxable estate) is amended by inserting after section 2058 the following new section:

''SEC. 2059. CARRYOVER BUSINESS INTERESTS.

''(a) GENERAL RULES.—

''(1) ALLOWANCE OF DEDUCTION.—For purposes of the tax imposed by section 2001, in the case of an estate of a decedent to which this section applies, the value of the taxable estate shall be determined by deducting from the value of the gross estate the adjusted value of the carryover business interests of the decedent which are described in subsection (b)(2).

''(2) APPLICATION OF CARRYOVER BASIS RULES.—With respect to the adjusted value of the carryover business interests of the decedent which are described in subsection (b)(2), the rules of section 1023 shall apply.

''(b) ESTATES TO WHICH SECTION APPLIES.—

''(1) IN GENERAL.—This section shall apply to an estate if—

''(A) the decedent was (at the date of the decedent's death) a citizen or resident of the United States,

''(B) the executor elects the application of this section under rules similar to the rules of paragraphs (1) and (3) of section 2032A(d) and files the agreement referred to in subsection (e), and

''(C) during the 8-year period ending on the date of the decedent's death there have been periods aggregating 5 years or more during which—

''(i) the carryover business interests described in paragraph (2) were owned by the decedent or a member of the decedent's family, and

''(ii) there was material participation (within the meaning of section 2032A(e)(6)) by the decedent, a member of the decedent's family, or a qualified heir in the operation of the business to which such interests relate.

''(2) INCLUDIBLE CARRYOVER BUSINESS INTERESTS.—The carryover business interests described in this paragraph are the interests which—

''(A) are included in determining the value of the gross estate,

''(B) are acquired by any qualified heir from, or passed to any qualified heir from, the decedent (within the meaning of section 2032A(e)(9)), and

''(C) are subject to the election under paragraph (1)(B).

''(3) RULES REGARDING MATERIAL PARTICIPATION.—For purposes of paragraph (1)(C)(ii)—

''(A) in the case a surviving spouse, material participation by such spouse may be satisfied under rules similar to the rules under section 2032A(b)(5),

''(B) in the case of a carryover business interest in an entity carrying on multiple trades or businesses, material participation in each trade or business is satisfied by material participation in the entity or in 1 or more of the multiple trades or businesses, and

''(C) in the case of a lending and finance business (as defined in section 6166(b)(10)(B)(ii)), material participation is satisfied under the rules under subclause (I) or (II) of section 6166(b)(10)(B)(i).

''(c) ADJUSTED VALUE OF THE CARRYOVER BUSINESS INTERESTS.—For purposes of this section—

''(1) IN GENERAL.—The adjusted value of any carryover business interest is the value of such interest for purposes of this chapter (determined without regard to this section), as adjusted under paragraph (2).

''(2) ADJUSTMENT FOR PREVIOUS TRANSFERS.—The Secretary may increase the value of any carryover business interest by that portion of those assets transferred from such carryover business interest to the decedent's taxable estate within 3 years before the date of the decedent's death.

''(d) CARRYOVER BUSINESS INTEREST.—

''(1) IN GENERAL.—For purposes of this section, the term 'carryover business interest' means—

''(A) an interest as a proprietor in a trade or business carried on as a proprietorship, or

''(B) an interest in an entity carrying on a trade or business, if—

''(i) at least—

''(I) 50 percent of such entity is owned (directly or indirectly) by the decedent and members of the decedent's family,

''(II) 70 percent of such entity is so owned by members of 2 families, or

''(III) 90 percent of such entity is so owned by members of 3 families, and

''(ii) for purposes of subclause (II) or (III) of clause (i), at least 30 percent of such entity is so owned by the decedent and members of the decedent's family.

For purposes of the preceding sentence, a decedent shall be treated as engaged in a trade or business if any member of the decedent's family is engaged in such trade or business.

''(2) LENDING AND FINANCE BUSINESS.—For purposes of this section, any asset used in a lending and finance business (as defined in section 6166(b)(10)(B)(ii)) shall be treated as an asset which is used in carrying on a trade or business.

''(3) LIMITATION.—Such term shall not include—

''(A) any interest in a trade or business the principal place of business of which is not located in the United States,

''(B) any interest in an entity, if the stock or debt of such entity or a controlled group (as defined in section 267(f)(1)) of which such entity was a member was readily tradable on an established securities market or secondary market (as defined by the Secretary) at any time,

''(C) that portion of an interest in an entity transferred by gift to such interest within 3 years before the date of the decedent's death, and

''(D) that portion of an interest in an entity which is attributable to cash or marketable securities, or both, in any amount in excess of the reasonably anticipated business needs of such entity.

In any proceeding before the United States Tax Court involving a notice of deficiency based in whole or in part on the allegation that cash or marketable securities, or both, are accumulated in an amount in excess of the reasonably anticipated business needs of such entity, the burden of proof with respect to such allegation shall be on the Secretary to the extent such cash or marketable securities are less than 35 percent of the value of the interest in such entity.

''(4) RULES REGARDING OWNERSHIP.—

''(A) OWNERSHIP OF ENTITIES.—For purposes of paragraph (1)(B)—

''(i) CORPORATIONS.—Ownership of a corporation shall be determined by the holding of stock possessing the appropriate percentage of the total combined voting power of all classes of stock entitled to vote and the appropriate percentage of the total value of shares of all classes of stock.

''(ii) PARTNERSHIPS.—Ownership of a partnership shall be determined by the owning of the appropriate percentage of the capital interest in such partnership.

''(B) OWNERSHIP OF TIERED ENTITIES.—For purposes of this section, if by reason of holding an interest in a trade or business, a decedent, any member of the decedent's family, any qualified heir, or any member of any qualified heir's family is treated as holding an interest in any other trade or business—

''(i) such ownership interest in the other trade or business shall be disregarded in determining if the ownership interest in the first trade or business is a carryover business interest, and

''(ii) this section shall be applied separately in determining if such interest in any other trade or business is a carryover business interest.

''(C) INDIVIDUAL OWNERSHIP RULES.—For purposes of this section, an interest owned, directly or indirectly, by or for an entity described in paragraph (1)(B) shall be considered as being owned proportionately by or for the entity's shareholders, partners, or beneficiaries. A person shall be treated as a beneficiary of any trust only if such person has a present interest in such trust.

''(e) AGREEMENT.—The agreement referred to in this subsection is a written agreement signed by each person in being who has an interest (whether or not in possession) in any property designated in such agreement consenting to the application of this section with respect to such property.

''(f) OTHER DEFINITIONS AND APPLICABLE RULES.—For purposes of this section—

''(1) QUALIFIED HEIR.—The term 'qualified heir' means a United States citizen who is—

''(A) described in section 2032A(e)(1), or

''(B) an active employee of the trade or business to which the carryover business interest relates if such employee has been employed by such trade or business for a period of at least 10 years before the date of the decedent's death.

''(2) MEMBER OF THE FAMILY.—The term 'member of the family' has the meaning given to such term by section 2032A(e)(2).

''(3) APPLICABLE RULES.—Rules similar to the following rules shall apply:

''(A) Section 2032A(b)(4) (relating to decedents who are retired or disabled).

''(B) Section 2032A(e)(10) (relating to community property).

''(C) Section 2032A(e)(14) (relating to treatment of replacement property acquired in section 1031 or 1033 transactions).

''(D) Section 2032A(g) (relating to application to interests in partnerships, corporations, and trusts).

''(4) SAFE HARBOR FOR ACTIVE ENTITIES HELD BY ENTITY CARRYING ON A TRADE OR BUSINESS.—For purposes of this section, if—

''(A) an entity carrying on a trade or business owns 20 percent or more in value of the voting interests of another entity, or such other entity has 15 or fewer owners, and

''(B) 80 percent or more of the value of the assets of each such entity is attributable to assets used in an active business operation, then the requirements under subsections (b)(1)(C)(ii) and (d)(3)(D) shall be met with respect to an interest in such an entity.''.

(b) CARRYOVER BASIS RULES FOR CARRYOVER BUSINESS INTERESTS.—Part II of subchapter O of chapter 1 of the Internal Revenue Code of 1986 (relating to basis rules of general application) is amended by inserting after section 1022 the following new section:

''SEC. 1023. TREATMENT OF CARRYOVER BUSINESS INTERESTS.

''(a) IN GENERAL.—Except as otherwise provided in this section—

''(1) qualified property acquired from a decedent shall be treated for purposes of this subtitle as transferred by gift, and

''(2) the basis of the person acquiring qualified property from such a decedent shall be the lesser of—

''(A) the adjusted basis of the decedent, or

''(B) the fair market value of the property at the date of the decedent's death.

''(b) QUALIFIED PROPERTY.—For purposes of this section, the term 'qualified property' means the carryover business interests of the decedent with respect to which an election is made under section 2059(b)(1)(B).

''(c) PROPERTY ACQUIRED FROM THE DECEDENT.—For purposes of this section, the following property shall be considered to have been acquired from the decedent:

''(1) Property acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent.

''(2) Property transferred by the decedent during his lifetime—

''(A) to a qualified revocable trust (as defined in section 645(b)(1)), or

''(B) to any other trust with respect to which the decedent reserved the right to make any change in the enjoyment thereof through the exercise of a power to alter, amend, or terminate the trust.

''(3) Any other property passing from the decedent by reason of death to the extent that such property passed without consideration.

''(d) COORDINATION WITH SECTION 691.—This section shall not apply to property which constitutes a right to receive an item of income in respect of a decedent under section 691.

''(e) CERTAIN LIABILITIES DISREGARDED.—

''(1) IN GENERAL.—In determining whether gain is recognized on the acquisition of property—

''(A) from a decedent by a decedent's estate or any beneficiary other than a tax-exempt beneficiary, and

''(B) from the decedent's estate by any beneficiary other than a tax-exempt beneficiary, and in determining the adjusted basis of such property, liabilities in excess of basis shall be disregarded.

''(2) TAX-EXEMPT BENEFICIARY.—For purposes of paragraph (1), the term 'tax-exempt beneficiary' means—

''(A) the United States, any State or political subdivision thereof, any possession of the United States, any Indian tribal government (within the meaning of section 7871), or any agency or instrumentality of any of the foregoing,

''(B) an organization (other than a cooperative described in section 521) which is exempt from tax imposed by chapter 1,

''(C) any foreign person or entity (within the meaning of section 168(h)(2)), and

''(D) to the extent provided in regulations, any person to whom property is transferred for the principal purpose of tax avoidance.

''(f) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this section.''.

(c) CLERICAL AMENDMENTS.—

(1) The table of sections for part IV of subchapter A of chapter 11 of the Internal Revenue Code of 1986 is amended by inserting after the item relating to section 2058 the following new item:

''Sec. 2059. Carryover business exclusion.''.

(2) The table of sections for part II of subchapter O of chapter 1 of such Code is amended by inserting after the item relating to section 1022 the following new item:

''Sec. 1023. Treatment of carryover business interests.''.

(d) EFFECTIVE DATES.—The amendments made by this section shall apply to estates of decedents dying, and gifts made—

(1) after the date of the enactment of this Act, and before January 1, 2010, and

(2) after December 31, 2010.

By Mr. ALLEN (for himself, Mr. CHAMBLISS, Mr. INHOFE, Mr. COBURN, Mr. TALENT, Mr. CORNYN, and Mr. ISAKSON):

S. 929. A bill to provide liability protection to nonprofit volunteer pilot organizations flying for public benefit and to the pilots and staff of such organizations; to the Committee on the Judiciary.

Mr. ALLEN. Mr. President, I rise in support of legislation that I reintroduced today with a number of my Senate colleagues—the Volunteer Pilot Organization Protection Act of 2005.

The spirit of volunteerism is indelibly rooted in our Nation's history. From when early settlers landed in Jamestown in 1607 to when our citizen soldiers took up arms against the British Crown in the Revolutionary War, volunteerism has always been a part of American culture.

But that unwavering spirit did not stop there, it has continued and thrived in many individuals and charitable organizations today. One such group of organizations that has selflessly given back so much to Virginians and Americans are charitable medical transportation systems operated by volunteer pilot organizations, VPOs.

The mission and purpose of public benefit and non-profit volunteer pilot organizations involved in patient transport is to ensure that no financially needy patient is denied access to distant specialized medical evaluation, diagnosis or treatment for lack of a means of long-distance medical air transportation. The principal goal is to remove the geographical and financial burdens that would deny access to specialized care.

Last year public benefit flying nonprofit volunteer pilot organizations provided long-distance, no-cost transportation for over 40,000 patients and their escorts in times of special need. Mr. President, this year, that figure will likely grow to roughly 54,000 people.

One such organization that has played an intricate part in this mission is Angel Flight. Angel Flight is a not-for-profit grassroots organization with a volunteer corps of more than 6,200 volunteer pilots/plane owners—divided into six regions across the United States—who fly under the banner of Angel Flight America. Angel Flight provides flights of hope and healing by transporting patients and their families in private planes, free of charge, to hospitals for medical treatment.

Following the terrorist attacks of September 11, 2001, the Department of Transportation and the FAA closed airports and grounded commercial air traffic, but the FAA allowed Angel Flight volunteers to fly. Angel Flight pilots flew firefighters, families of victims of the bombings, Red Cross personnel, medical and other supplies including the protective booties for the Search and Rescue dogs to New York and Washington, DC.

In my years of public service, I have always maintained that we must provide access to care to all Virginians and Americans. Medical care should be available to all individuals. Sadly, our Nation is facing a medical crisis. Medical malpractice insurance costs and Medicare physician reimbursement are forcing many of our doctors to stop seeing ''high-risk'' patients or Medicare beneficiaries and in some cases forcing our doctors to give up practice altogether and retire. As a result, patients have to travel great distances to receive the medical care that they need to live happy, healthy and productive lives. Unfortunately, a number of these patients do not have the financial means to travel long distances, thus, ultimately denying patients access to life-saving or quality of life improving specialized treatment.

We can say the same with patients who rely on volunteer pilot organizations such as Angel Flight or one of its subsidiary groups like Mercy Medical Airlift in my home Commonwealth of Virginia. Unfortunately, due to the public's apparent notion that organizations that use airplanes are financially well-off and have deep pockets, many of the volunteer pilot organizations are open to frivolous and junk lawsuits. This leads to an access to care issue.

Also, aviation insurance has skyrocketed up in price and non-owned aircraft liability insurance is no longer reasonably available to volunteer pilot organizations. Many insurance companies had always provided this type of insurance but post September 11, 2001, this insurance is scarcely found and if found, the costs have increased greatly, to the astronomical sums of $5 million a year. Because of the exorbitant costs of insurance, volunteer pilot organizations have a difficult time recruiting and retaining pilots and professional persons.

I would like to submit an editorial written by the Virginian Pilot. This editorial correctly identifies the obstacles that these volunteer pilot organizations have to go through. I would like that editorial inserted here.

That is why I decided to introduce the Volunteer Pilot Organization Protection Act. In 1997, Congress passed the Volunteer Protection Act, which handled much of the liability issue for volunteer endeavors in the country; however, this legislation did not adequately address aviation-related matters.

My bill amends the highly regarded Good Samaritan Act to provide necessary liability protections in the area of charitable medical air transportation and promote volunteer pilot organizations. More specifically, this legislation will protect volunteer pilot organizations, their boards and small paid staff and nonflying volunteers from liability should there be an accident. The VPOs are simply the ''matchmakers'' between the volunteer pilot willing to help a neighbor and the needy patient family. The pilot has full and sole responsibility for conducting the flight in a safe manner in accordance with Federal Aviation Regulations. In addition, this legislation will provide liability protection for the individual volunteer pilot over and above the liability insurance that they are required to carry.

Furthermore, the Volunteer Pilot Protection Act will provide liability protection for ''referring agencies'' who tell their patients that the charitable flight service is available. Referring hospitals and clinics are becoming unwilling to inform their patients that charitable medical air transportation help is available for fear of a liability against them should something happen in a subsequent volunteer pilot flight. Hence, organizations like the Shriners Hospital System and the American Cancer Society would be able to make known available volunteer pilot services to transport their patients to Shriners or other hospitals where they receive care.

I know a few people have concerns that this bill would provide blanket immunity to Volunteer Pilot Organizations but I want to stress that my bill requires insurance on the part of the pilot and if there is negligence on behalf of the pilot, the injured party does have legal recourse. This bill does not provide blanket immunity to VPOs, but has been carefully worded to allow

legal action to be brought against the insurance policy of the pilot in event of negligence.

By providing volunteer pilots with liability protection, insurance rates for these pilots will ultimately be reduced. Therefore, more pilots will be able to afford insurance and fly for the public good. With less-costly insurance available, I am confident that more pilots will generously give their time to fly for and help the medically needy.

This bill enjoys the support of a number of charitable organizations, including the Children's Organ Transplant Association, the National Organization for Rare Disorders, the Air Care Alliance, the Independent Charities of America, the Health and Medical Research Charities of America, the National Association of Hospital Hospitality Houses, and many others.

Not only does this legislation enjoy the support of numerous charitable organizations, it also enjoyed the support of the United States House of Representatives. On September 14, 2004, the House of Representatives passed the Volunteer Pilot Organization Protection Act of2004 by a vote of 385–12. Mr. President, this is a clear indication that this bill has broad bipartisan support in the House and I know the House will once again pass this commonsense legislation.

I am confident that this legislation will start a trend to help curb the large amounts of counterproductive lawsuits, lower insurance costs, and promote the spirit of volunteerism that has been rooted in the framework of our country's storied history. I, along with the volunteer pilots and organizations, and with the thousands of families who rely and may rely on the help of volunteer pilot organizations, urge the Senate to quickly and finally pass this legislation in the 109th Congress.

I would like to thank Congresswoman THELMA DRAKE, our newest member to the Virginia team, for taking over this legislation for former Congressman Ed Schrock and introducing the companion bill on the House side. In addition, I would also like to thank the original cosponsors of this legislation, Senators CHAMBLISS, INHOFE, COBURN, TALENT, CORNYN, and ISAKSON for their support as we work to pass this vitally necessary legislation.

[From the (Norfolk) Virginian-Pilot, Mar. 11, 2003]

SHIELD HELPFUL PILOTS FROM FRIVOLOUS LAWSUITS

In the realm of volunteers, few outshine the generous folks at Angel Flight.

This nonprofit organization flies patients for whom air transport would be otherwise unaffordable to medical facilities around the country. Private pilots spirit individuals to dialysis, chemotherapy sessions, organ transplants and other surgeries by donating their aircraft and their valuable time. The goal is a noble one: to ensure that no one in need is denied medical care for lack of long-distance transportation.

But in our lawsuit-happy society, even these warmhearted souls can't escape the possibility of landing in court. While a law known as the Volunteer Protection Act shields most people who give their time to worthy causes from frivolous suits, it doesn't cover volunteer pilots or flight organizers. Liability insurance costs for Angel Flight and similar nonprofits have skyrocketed from $1,000 to more than $25,000 annually.

This prohibitive price tag threatens the future of Angel Flight, which is funded solely through donations. A spokeswoman for Angel Flight Mid-Atlantic, headquartered in Virginia Beach, said the burden will ultimately fall on sick and needy patients. And with 600 volunteer pilots transporting an average of 100 medical cases a month, literally thousands of lives may be affected by this oversight in the law.

Fortunately, lawmakers are paying attention. U.S. Rep. Ed Schrock recently introduced bipartisan legislation to add volunteer-pilot organizations to the ranks of those covered by the Volunteer Protection Act. U.S. Sen. George Allen is expected to introduce a similar measure in the Senate. Congress should pass these bills, the sooner the better. Keeping Angel Flight aloft is literally a life-and-death matter.

By Mr. GRASSLEY (for himself and Mr. DODD):

S. 930. A bill to amend the Federal Food, Drug, and Cosmetic Act with respect to drug safety, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

Mr. GRASSLEY. Mr. President, today I introduce Senate Bill 930, the Food and Drug Administration Safety Act of 2005. I am pleased that Senator DODD is co-sponsoring another piece of drug safety legislation with me. This legislation is part of a sustained effort to restore public confidence in the Federal Government's food and drug safety agency. Enactment of this bill will be another meaningful step toward greater accountability and transparency at the FDA. Importantly, this legislation provides the FDA with some much needed authorities to ensure the safety and efficacy of drugs for the long haul.

The Food and Drug Administration cannot always serve the American people and the interests of the drug industry at the same time. These two interests are often at odds with each other. When there is a conflict the American people should win out each and every time. The Vioxx situation is a classic example of this inherent conflict. American consumers demand and deserve assurances that the medicines in their cabinets are safe. The risks associated with a drug should be outweighed by its benefits, and this risk-benefit analysis should not be negotiated by the industry behind closed doors. Unfortunately, reforms at the FDA are necessary to place drug safety front and center once and for all.

When drugs go on the market, they are used by exponentially larger numbers of people than were involved in the pre-approval trials. What John Q. Public deserves and demands is for the FDA to embrace a renewed mission to pursue aggressively key safety questions that the industry would sometimes prefer to ignore. The FDA must protect the health of the public by considering not only the benefits but also the risks of drugs for the tens of millions of Americans who actually use new drugs already available in the marketplace. The FDA's post-market evaluation and research needs to be a separate but equal partner with pre-approval evaluation. Indeed FDA's post marketing surveillance function can no longer take a back seat within the agency.

I have been pressing for necessary reforms at the FDA—both administrative and legislative—and the focus of these reforms center on a reorganization of the FDA. The Food and Drug Administration Safety Act of 2005 will establish an independent Center within the FDA—the Center for Post-market Drug Evaluation and Research (CPDER). The new Center's primary mission, vision and values will focus on conducting risk assessment for approved drugs and biological products once they are on the market. The Director of the Center will report directly to the FDA Commissioner and will be responsible for monitoring and assessing the safety and efficacy of drugs and biological products.

Today's legislation is focused on the equal importance of pre-marketing evaluations by the Center for Drug Evaluation and Research (CDER)—the pre-market Center—and post-marketing evaluations by the newly established post-market Center. Consultation and coordination between pre-market and post-market Centers will be essential, but their relationship will place them on equal footing with the other. The present Office of Drug Safety will no longer be effectively under the thumb of the Office of New Drugs. We are hopeful that this reorganization of the FDA will go a long way toward eliminating the conflict of interest that shadows the FDA's post-market risk assessment presently.

Today's legislation will also: authorize the Director to require manufacturers to conduct post-market clinical or observational studies if there are questions about the safety or efficacy of a drug or biological product.

Authorize the Director to determine whether an approved drug or licensed biological product may present an unreasonable risk to the health of patients or the general public, given the known benefits.

Authorize the Director to take corrective action if a drug or biological product presents an unreasonable risk to patients or the general public—including the authority to make changes to the label or approved indication, place restrictions on product distribution, require physician and consumer education, and require the use of other risk management tools.

Allow the Director to withdraw approval of a drug or biological product if necessary to protect the public health.

Require submission of advertising prior to dissemination, and certain advertising disclosures related to risks and benefits to patients, if one or more

of the three following conditions is met: the Director has determined that the product may present an unreasonable risk to patients, the product is the subject of an outstanding post-market study requirement, or the product was approved within the last two years.

Establish strong enforcement mechanisms, including civil monetary penalties, for those who fail to comply.

Ensure that the Director benefits from all appropriate resources, including but not limited to consultation with the Center for Drug Evaluation and Research (CDER) or the Center for Biologics Evaluation and Research (CBER), and makes all decisions based on a risk-benefit analysis.

Ensure that all findings and decisions made by CPDER are transparent.

Require a report and recommendations to Congress on post-market surveillance of medical devices.

Authorize graduated appropriations totaling $500 million over five years to ensure that CPDER has the resources to accomplish its goals.

Today's legislation is another important step toward reforming the FDA. I urge my colleagues to join me in this effort by cosponsoring this important legislation.

Mr. DODD. Mr. President, I rise today to join Senator GRASSLEY in announcing the introduction of the Food and Drug Administration Safety Act of 2005 (FDASA). I would like to thank Senator GRASSLEY for his commitment to this issue and his willingness to work on this important legislation in a bipartisan manner. Senator GRASSLEY and I have spent the past several months crafting this legislation, which will create a new center within the FDA that will be responsible for ensuring that prescription drugs are safe once they are on the market.

Our hope is that the creation of this new center will restore confidence in the medicines that so many Americans rely on to safeguard their health and well-being. Patients should be able to rest-assured that the drugs they take to help them will not hurt them instead.

The American pharmaceutical industry is a true success story. Their incredible innovations over the last few decades have saved and improved millions of lives, and made prescription drugs an integral part of quality health care. I am proud to say that Connecticut is home to a number of leading pharmaceutical companies. There is very little question that the American drug industry is the world leader. This is due, in no small part, to the FDA. Throughout the world, the FDA seal of approval—the words ''FDA Approved''—has stood as the gold standard for safety and quality.

Unfortunately, events of the past year have put patients at risk and have seriously tarnished the FDA's image. Recent developments have cast into doubt the FDA's ability to ensure that the drugs that it approves are safe—especially once they are on the market. These concerns are bad for patients, bad for physicians, and bad for the drug industry.

Like many Americans, I have been deeply disturbed by the revelations of significant risk associated with widely used medications to treat pain and depression. These revelations raise real and legitimate questions about the safety of drugs that have already been approved. It would be one thing if these drugs were in a trial phase, but safety issues are being identified in drugs that are already on the market and widely used. Health risks significant enough to remove drugs from the market or significantly restrict their use are becoming clear only after millions of Americans have been exposed to real or potential harm.

It has been estimated that more than 100,000 Americans might have been seriously injured or killed by a popular pain medication, while millions of children have been prescribed antidepressants that could put them at risk. This recent spate of popular medicines being identified as unsafe underscores the need to take additional steps to monitor and protect safety after a drug has been approved.

The legislation that Senator GRASSLEY and I are introducing today will do three things to restore confidence in the words ''FDA Approved,'' and ensure that the FDA has all the tools that it needs to protect patients. First and foremost, it will establish within the FDA a new center—the Center for Postmarket Drug Evaluation and Research (CPDER)—which will report directly to the FDA Commissioner and be responsible for ensuring the safety and effectiveness of drugs and biological products once they are on the market.

I strongly believe that the creation of such a new, independent center is necessary. There have been disturbing reports that suggest that the FDA does not place enough emphasis on drug safety, and that concerns raised by those in the Office of Drug Safety (ODS) are sometimes ignored and even suppressed. An internal study conducted by the HHS Office of the Inspector General in 2002 revealed that approximately one-fifth of drug reviewers had been pressured to approve a drug despite concerns about safety, efficacy, or quality. In addition, more than one-third said they were ''not at all'' or only ''somewhat'' confident that final decisions of the Center for Drug Evaluation and Research (CDER) adequately assessed safety. The creation of a new center will raise the profile of drug safety within the agency.

Second, our bill will provide the Director of CPDER with significant new authorities, including: the authority to require drug companies to conduct postmarket studies of their products if there are questions about safety or effectiveness; the authority to take corrective actions, such as labeling changes, restricted distribution, and other risk management tools, if an unreasonable risk exists; the authority to review drug advertisements before they are disseminated, and to require certain disclosures about increased risk; and in extreme cases, the authority to pull the product off the market.

These new authorities will allow the FDA to act quickly to get answers when there are questions about the safety of a drug, and to act decisively to mitigate the risks when the evidence shows that a drug presents a safety issue. With these authorities, we will never again have a situation where a critical labeling change takes two years to complete, as was the case with Vioxx. When we are talking about drugs that are already on the market and in widespread use, any delay can put millions of patients in harm's way.

Third and lastly, this legislation will authorize the appropriation of $500 million over the next 5 years to provide the new center with the resources to carry out the provisions of this legislation.

I would like to thank several groups that have endorsed this bill, and that were instrumental in its drafting, including Consumer's Union, the Elizabeth Glaser Pediatric AIDS Foundation, the National Organization for Rare Disorders (NORD), the National Women's Health Network (NWHN), the U.S. Public Interest Research Group (PIRG), the Consumer Federation of America, and the Center for Medical Consumers.

I look forward to working with all of my colleagues, including Senator ENZI and Senator KENNEDY on the HELP Committee, to see this legislation enacted as soon as possible. By strengthening the ability of the FDA to ensure the safety of prescription drugs once they are on the market, this legislation will allow physicians to prescribe, and patients to use, prescription drugs without wondering if the medicines intended to help them will hurt them instead. It will help ensure that the term ''FDA-Approved'' will remain the gold standard for safety and quality.

By Mr. BURNS:

S. 931. A bill to reduce temporarily the duty on certain articles of natural cork; to the Committee on Finance.

Mr. BURNS. Mr. President, today I am introducing legislation to address the difference between the import tariff placed on unfinished cork and refined cork. Unfinished cork has a higher import tariff than already-refined cork—this problem is in need of a resolution.

Unfinished cork is the principal element of a fishing pole's grip and must be imported as it is not available domestically. Many fishing rod companies reside in Montana, such as the R.L. Winston Rod Company of Twin Bridges. I am aware that fishing rod manufacturers, particularly fly-fishing rod manufacturers, are under pressure to increase the price of their equipment because of prohibitively high tariff on the import of unfinished cork.

While the tariff on already-finished cork is 6 percent, unfinished cork is subject to a 14 percent tariff. It just does not make good sense to charge a significantly higher levy on an unfinished product that is imported and then handcrafted by American workers.

This inconsistency must end by leveling the difference between the two tariffs. The reduction will enable American workers to continue manufacturing custom-made fishing rod grips, keep the price of all fishing poles down, and bring a measure of common sense to this portion of our tariff law. Once resolved, domestic businesses will be able to finish fly rods here, leading to an increasingly competitive place in the market for American goods. With this change Montana's small businesses will benefit as will our overall economy in the state.

I am pleased that some of my colleagues in the House have decided to assist in this effort. I truly appreciate the work of Representative SIMMONS of Connecticut, who is leading this legislation in the House. He has already signed on 17 co-sponsors to this legislation at last count. His assistance has been invaluable, and I look forward to working with him as this legislation moves forward.

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. 931

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

SECTION 1. CERTAIN ARTICLES OF NATURAL CORK.

(a) IN GENERAL.—Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new heading:

"	9902.45.03	Articles of natural cork (provided for in subheading 4503.90.60) ..	6%	No change	No change	On or before 12/31/2008	".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) applies with respect to goods entered, or withdrawn from warehouse for consumption, on or after the 15th day after the date of the enactment of this Act.

By Mr. KENNEDY (for himself, Mr. DURBIN, Ms. MIKULSKI, Mrs. MURRAY, Mr. HARKIN, Mr. DODD, Mr. LAUTENBERG, Mr. CORZINE, Mr. AKAKA, Mrs. BOXER, Mr. FEINGOLD, Mr. SCHUMER, and Mr. DAYTON):

S. 932. A bill to provide for paid sick leave to ensure that Americans can address their own health needs and the health needs of their families; to the Committee on Health, Education, Labor, and Pensions.

Mr. KENNEDY. Mr. President, the ability of American families to live the American dream is becoming harder and harder. With each passing month, it's more difficult for families to earn a living—to pay the mortgage and the doctor bills, and send their sons and daughters to college.

In the Bush economy, families are worried about their job security, their income, and the cost of living. They're working longer and harder and finding it more and more difficult to balance their work and their family responsibilities.

Most Americans assume that paid sick days are a right. They're not. Half of all American workers are not guaranteed the right to time off when they're ill, without losing their pay, or even their job.

In 1993, Congress and the administration guaranteed unpaid leave for millions of working men and women to deal with serious medical problems.

It's time to build on this success, and ensure that millions of workers can also take time off when they need an annual check-up, when their children are sick with a cold, and when their ailing elderly parents need to be taken to the doctor.

Hard-working men and women deserve better. That's why Congresswoman DELAURO and I are introducing legislation to guarantee workers 7 days of paid sick leave a year to care for their own medical needs and those of their family members. This proposal covers workers at all businesses, except small businesses with fewer than 15 employees.

This is a family issue. When my son was diagnosed with cancer in his leg as a child, and had to undergo surgery, I was able to take the time I needed to be there for him. But year after year, countless employees have to choose between the job they need and the family they love. Families deserve the flexibility to care for each other when they get sick.

It's an economic issue. Paid sick days actually save businesses money through reduced turnover and increased productivity. A recent study by Cornell University examined the problem of employees coming to work despite medical problems. They found it costs business $180 billion annually in lost productivity.

It's also a public health issue. Too often, employees come to work sick and co-workers and many others can easily be infected. Recently, a court ruled that because of the lack of paid sick leave, a stomach virus in one worker infected 600 guests and 300 employees at the Reno Hilton Hotel in Nevada.

Paid sick days will help prevent the spread of illnesses like that. Taking time off to treat illnesses and injuries will save health costs in the long run. It will make an important difference for insurers, for hospitals, and for the health of millions of Americans.

It's long past time to provide paid sick days for workers. This bill is a first step to guarantee that every worker who needs sick leave has it and can afford to take it.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 126—HONORING FRED T. KOREMATSU FOR HIS LOYALTY AND PATRIOTISM TO THE UNITED STATES AND EXPRESSING CONDOLENCES TO HIS FAMILY, FRIENDS, AND SUPPORTERS ON HIS DEATH

Mr. DURBIN (for himself, Mr. INOUYE, and Mr. STEVENS) submitted the following resolution which was considered and agreed to:

S. RES. 126

Whereas on January 30, 1919, Fred Toyosaburo Korematsu was born in Oakland, California, to Japanese immigrants;

Whereas Fred Korematsu graduated from Oakland High School and tried on 2 occasions to enlist in the United States Army but was not accepted due to a physical disability;

Whereas on December 7, 1941, Japan attacked the United States military base at Pearl Harbor, Hawaii, forcing the United States to enter World War II against Japan, Germany, and Italy;

Whereas on February 19, 1942, President Franklin D. Roosevelt signed Executive Order number 9066 (42 Fed. Reg. 1563) as "protection against espionage and against sabotage to national defense", which authorized the designation of "military areas . . . from which any or all persons may be excluded, and with respect to which, the right of any person to enter, remain in, or leave shall be subject to whatever restriction the . . . Military Commander may impose in his discretion";

Whereas the United States Army issued Civilian Exclusion Order Number 34, directing that after May 9, 1942, all persons of Japanese ancestry were to be removed from designated areas of the West Coast because they were considered to be a security threat;

Whereas in response to that Civilian Exclusion Order, Fred Korematsu's family reported to Tanforan, a former racetrack in the San Francisco area that was used as 1 of 15 temporary detention centers, before being sent to an internment camp in Topaz, Utah;

Whereas more than 120,000 Japanese Americans were similarly detained in 10 permanent War Relocation Authority camps located in isolated desert areas of the States of Arizona, Arkansas, California, Colorado, Idaho, Utah, and Wyoming, without any charges brought or due process accorded;

Whereas Fred Korematsu, then 22 years old and working as a shipyard welder in Oakland, California, refused to join his family in reporting to Tanforan, based on his belief that he was a loyal American and not a security threat;

Whereas on May 30, 1942, Fred Korematsu was arrested and jailed for remaining in a military area, tried in United States district court, found guilty of violating Civilian Exclusion Order Number 34, and sentenced to 5 years of probation;

Whereas Fred Korematsu unsuccessfully challenged that Civilian Exclusion Order as it applied to him, and appealed the decision of the district court to the United States

Court of Appeals for the 9th Circuit, where his conviction was sustained;

Whereas Fred Korematsu was subsequently confined with his family in the internment camp in Topaz for 2 years, and during that time, he appealed his conviction to the United States Supreme Court;

Whereas on December 18, 1944, the Supreme Court issued its decision in Korematsu v. United States, 323 U.S. 214, which upheld Fred Korematsu's conviction by a vote of 6-to-3, based on the finding of the Supreme Court that Fred Korematsu was not removed from his home ''because of hostility to him or his race'' but because the United States was at war with Japan and the United States military ''feared an invasion of our West Coast'';

Whereas Fred Korematsu continued to maintain his innocence for decades following World War II;

Whereas, under section 552 of title 5, United States Code (commonly known as the ''Freedom of Information Act''), an historian discovered numerous government documents indicating that, at the time Korematsu v. United States, 323 U.S. 214, was decided, the Federal Government suppressed findings that Japanese Americans on the West Coast were not security threats;

Whereas in light of this newly discovered information, Fred Korematsu filed a writ of error coram nobis with the United States District Court for the Northern District of California;

Whereas on November 10, 1983, United States District Judge Marilyn Hall Patel overturned Fred Korematsu's conviction, concluding that senior government officials knew there was no factual basis for the claim of ''military necessity'' when they presented their case before the Supreme Court in 1944;

Whereas in that decision, Judge Patel stated that, while Korematsu v. United States ''remains on the pages of our legal and political history . . . [as] historical precedent it stands as a constant caution that in times of war or declared military necessity our institutions must be vigilant in protecting constitutional guarantees'';

Whereas the Commission on Wartime Relocation and Internment of Civilians, authorized by Congress in 1980 to review the facts and circumstances surrounding the relocation and internment of Japanese Americans under Executive Order Number 9066 (42 Fed. Reg. 1563), concluded that ''today the decision in Korematsu lies overruled in the court of history'';

Whereas the Commission on Wartime Relocation and Internment of Civilians concluded that a ''grave personal injustice was done to the American citizens and resident aliens of Japanese ancestry who, without individual review or any probative evidence against them were excluded, removed and detained by the United States during World War II'', and that those acts were ''motivated largely by racial prejudice, wartime hysteria, and a failure of political leadership'';

Whereas the overturning of Fred Korematsu's conviction and the findings of Commission on Wartime Relocation and Internment of Civilians influenced the decision by Congress to pass the Civil Liberties Act of 1988 (50 U.S.C. App. 1989b et seq.) to request a Presidential apology and symbolic payment of compensation to persons of Japanese ancestry who lost liberty or property because of discriminatory action by the Federal Government;

Whereas on August 10, 1988, President Reagan signed that Act into law, stating, ''[H]ere we admit a wrong; here we reaffirm our commitment as a nation to equal justice under the law'';

Whereas on January 15, 1998, President Clinton awarded the Medal of Freedom, the highest civilian award of the United States, to Fred Korematsu, stating, ''In the long history of our country's constant search for justice, some names of ordinary citizens stand for millions of souls: Plessy, Brown, Parks. To that distinguished list, today we add the name of Fred Korematsu.'';

Whereas Fred Korematsu remained a tireless advocate for civil liberties and justice throughout his life, particularly speaking out against racial discrimination and violence targeting Arab, Muslim, South Asian, and Sikh Americans in the wake of the September 11, 2001, tragedy, and cautioning the Federal Government against repeating mistakes of the past by singling out individuals for heightened scrutiny on the basis of race, ethnicity, or religion;

Whereas on March 30, 2005, Fred Korematsu died at the age of 86 in Larkspur, California; and

Whereas Fred Korematsu was a role model for all Americans who love the United States and the promises contained in the Constitution, and his strength and perseverance serve as an inspiration for all people striving for equality and justice: Now, therefore, be it

Resolved, That the Senate—

(1) honors Fred T. Korematsu for his loyalty and patriotism to the United States, his work to advocate for the civil rights and civil liberties of all Americans, and his dedication to justice and equality; and

(2) expresses its deepest condolences to his family, friends, and supporters on his death.

SENATE RESOLUTION 127—CONGRATULATING CHARTER SCHOOLS AND THEIR STUDENTS, PARENTS, TEACHERS, AND ADMINISTRATORS ACROSS THE UNITED STATES FOR THEIR ONGOING CONTRIBUTIONS TO EDUCATION, AND FOR OTHER PURPOSES

Mr. GREGG (for himself, Mr. LIEBERMAN, Mr. FRIST, Ms. LANDRIEU, Mr. SUNUNU, Mr. ALEXANDER, Mr. DEMINT, Mrs. DOLE, Mr. VITTER, Mr. BURR, and Mr. ALLARD) submitted the following resolution; which was considered and agreed to:

S. RES. 127

Whereas charter schools deliver high-quality education and challenge our students to reach their potential;

Whereas charter schools provide thousands of families with diverse and innovative educational options for their children;

Whereas charter schools are public schools authorized by a designated public entity that are responding to the needs of our communities, families, and students and promoting the principles of quality, choice, and innovation;

Whereas in exchange for the flexibility and autonomy given to charter schools, they are held accountable by their sponsors for improving student achievement and for their financial and other operations;

Whereas 41 States, the District of Columbia, and the Commonwealth of Puerto Rico have passed laws authorizing charter schools;

Whereas nearly 3,300 charter schools are now operating in 40 States, the District of Columbia, and the Commonwealth of Puerto Rico and serving approximately 900,000 students;

Whereas over the last 10 years, Congress has provided more than $1,500,000,000 in support to the charter school movement through facilities financing assistance and grants for planning, startup, implementation, and dissemination;

Whereas charter schools improve their students' achievement and stimulate improvement in traditional public schools;

Whereas charter schools must meet the student achievement accountability requirements under the Elementary and Secondary Education Act of 1965 in the same manner as traditional public schools, and often set higher and additional individual goals to ensure that they are of high quality and truly accountable to the public;

Whereas charter schools give parents new freedom to choose their public school, routinely measure parental satisfaction levels, and must prove their ongoing success to parents, policymakers, and their communities;

Whereas nearly 40 percent of charter schools report having a waiting list, and the total number of students on all such waiting lists is enough to fill over 1,000 average-sized charter schools;

Whereas charter schools nationwide serve a higher percentage of low-income and minority students than the traditional public system;

Whereas charter schools have enjoyed broad bipartisan support from the Administration, Congress, State Governors and legislatures, educators, and parents across the United States; and

Whereas the sixth annual National Charter Schools Week, to be held May 1 through 7, 2005, is an event sponsored by charter schools and grassroots charter school organizations across the United States to recognize the significant impacts, achievements, and innovations of charter schools: Now, therefore, be it

Resolved, That—

(1) the Senate acknowledges and commends charter schools and their students, parents, teachers, and administrators across the United States for their ongoing contributions to education and improving and strengthening our public school system;

(2) the Senate supports the sixth annual National Charter Schools Week; and

(3) it is the sense of the Senate that the President should issue a proclamation calling on the people of the United States to conduct appropriate programs, ceremonies, and activities to demonstrate support for charter schools during this weeklong celebration in communities throughout the United States.

AMENDMENTS SUBMITTED AND PROPOSED

SA 582. Mr. TALENT proposed an amendment to amendment SA 567 proposed by Mr. INHOFE to the bill H.R. 3, Reserved.

SA 583. Mr. LOTT submitted an amendment intended to be proposed by him to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 584. Ms. COLLINS (for herself and Ms. SNOWE) submitted an amendment intended to be proposed by her to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 585. Mr. SPECTER submitted an amendment intended to be proposed by him to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 586. Mr. KOHL submitted an amendment intended to be proposed by him to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 587. Mr. LEVIN (for himself and Ms. STABENOW) submitted an amendment intended to be proposed by him to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 588. Mr. VOINOVICH (for himself and Mr. LEVIN) submitted an amendment intended to be proposed by him to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 589. Mr. BINGAMAN (for himself, Mr. BENNETT, and Mr. KYL) submitted an amendment intended to be proposed by him to the bill H.R. 3, supra; which was ordered to lie on the table.

SA 590. Mr. BINGAMAN (for himself and Mr. ROBERTS) submitted an amendment intended to be proposed by him to the bill H.R. 3, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 582. Mr. TALENT proposed an amendment to amendment SA 567 proposed by Mr. INHOFE to the bill H.R. 3, Reserved; as followed:

At the appropriate place, insert the following:

SEC. ___. FIRST RESPONDER VEHICLE SAFETY PROGRAM.

(a) IN GENERAL.—Not later than one year after the date of enactment of this Act, the Secretary of Transportation, in consultation with the Administrator, National Highway Traffic Safety Administration, shall—

(1) develop and implement a comprehensive program to promote compliance with State and local laws intended to increase the safe and efficient operation of first responder vehicles;

(2) compile a list of best practices by State and local governments to promote compliance with the laws described in paragraph (1);

(3) analyze State and local laws intended to increase the safe and efficient operation of first responder vehicles; and

(4) develop model legislation to increase the safe and efficient operation of first responder vehicles.

(b) PARTNERSHIPS.—The Secretary may enter into partnerships with qualified organizations to carry out this section.

(c) PUBLIC OUTREACH.—The Secretary shall use a variety of public outreach strategies to carry out this section, including public service announcements, publication of informational materials, and posting information on the Internet.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary for fiscal year 2006 to carry out the provisions of this section.

SA 583. Mr. LOTT submitted an amendment intended to be proposed by him to the bill H.R. 3, Reserved; which was ordered to lie on the table; as follows:

In section 178(c) of title 23, United States Code (as added by section 1824(a)), strike ''and transit''.

SA 584. Ms. COLLINS (for herself and Ms. SNOWE) submitted an amendment intended to be proposed by her to the bill H.R. 3, Reserved; which was ordered to lie on the table; as follows:

At the end of subtitle H of title I, add the following:

SEC. ___. DESIGNATION OF HIGH PRIORITY CORRIDOR IN NEW YORK, VERMONT, NEW HAMPSHIRE, AND MAINE.

Section 1105(c) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2031; 112 Stat. 191; 115 Stat. 871) is amended by adding at the end the following:

''(46) The East-West Corridor, from Watertown, New York, continuing northeast through the States of New York, Vermont, New Hampshire, and Maine, and terminating in Calais, Maine.''.

SA 585. Mr. SPECTER submitted an amendment intended to be proposed by him to the bill H.R. 3, Reserved; which was ordered to lie on the table; as follows:

At the end of section 1808, add the following:

(c) DESIGNATION OF ADDITION TO THE APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM.—Section 14501(b) of title 40, United States Code, is amended by adding at the end the following:

''(3) DESIGNATION.—

''(A) IN GENERAL.—There is designated as an addition to the Appalachian development highway system the portion of United States Route 219 that—

SA 586. Mr. KOHL submitted an amendment intended to be proposed by him to the bill H.R. 3, Reserved; which was ordered to lie on the table; as follows:

Section 105(b)(1)(B) of title 23, United States Code (as amended by section 1104(a)) is amended by inserting after ''that decennial census,'' in the second place it appears the following: ''an indexed State motor fuel excise tax rate for gasoline that is greater than 150 percent of the Federal motor fuel excise tax rate for gasoline under section 4081 of the Internal Revenue Code of 1986,''.

SA 587. Mr. LEVIN (for himself and Ms. STABENOW) submitted an amendment intended to be proposed by him to the bill H.R. 3, Reserved; which was ordered to lie on the table; as follows:

Strike section 1701(b) and insert the following:

(b) CONGESTION MITIGATION AND AIR QUALITY IMPROVEMENT PROGRAM ELIGIBILITY.—Section 149(b) of title 23, United States Code, is amended by striking paragraph (5) and inserting the following:

''(5) if the program or project improves traffic flow, including projects to improve signalization, construct high occupancy vehicle lanes, improve intersections, improve transportation systems management and operations, and implement, operate, and maintain intelligent transportation system strategies and such other projects that are eligible for assistance under this section on the day before the date of enactment of this paragraph.''.

SA 588. Mr. VOINOVICH (for himself and Mr. LEVIN) submitted an amendment intended to be proposed by him to the bill H.R. 3, Reserved; which was ordered to lie on the table; as follows:

On page 551, strike lines 14 and 15 and insert the following:

''(B) coal combustion fly ash;

''(C) blast furnace slag aggregate; and

''(D) any other waste material or byprod-

SA 589. Mr. BINGAMAN (for himself, Mr. BENNETT, and Mr. KYL) submitted an amendment intended to be proposed by him to the bill H.R. 3, Reserved; which was ordered to lie on the table; as follows:

On page 405, line 13, strike ''$1,607,547'' and insert ''$1,800,000''.

SA 590. Mr. BINGAMAN (for himself and Mr. ROBERTS) submitted an amendment intended to be proposed by him to the bill H.R. 3, Reserved; which was ordered to lie on the table; as follows:

On page 216, after the matter preceding line 1, insert the following:

SEC. 1524. SOUTHWEST PASSAGE INITIATIVE FOR REGIONAL AND INTERSTATE TRANSPORTATION.

Section 1105(c) of the Intermodal Surface Transportation Efficiency Act of 1991 (105 Stat. 2032) is amended by adding at the end the following:

''(46) The corridor extending from the point on the border between the United States and Mexico at El Paso, Texas, where United States Route 54 begins, along United States Route 54 through the States of Texas, New Mexico, Oklahoma, and Kansas, and ending in Wichita, Kansas, to be known as the 'Southwest Passage Initiative for Regional and Interstate Transportation Corridor' or 'SPIRIT Corridor'.''.

NOTICES OF HEARING/MEETINGS

ENERGY AND NATURAL RESOURCES COMMITTEE

Mr. DOMENICI. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Committee on Energy and Natural Resources on Wednesday, May 11, at 10 a.m. in Room SD–366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of the hearing is to receive testimony on S. 895, a bill to direct the Secretary of the Interior to establish a rural water supply program in the Reclamation States to provide a clean, safe, affordable, and reliable water supply to rural residents.

For further information please contact Nate Gentry at 202–224–2179 or David Marks at 202–228–6195.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be authorized to conduct a hearing during the session of the Senate on Wednesday, April 27, 2005 at 10:30 a.m. The purpose of this hearing will be to consider the nomination of Thomas Dorr to be Under Secretary of Agriculture for Rural Development and to be a member of the Board of Directors of the Commodity Credit Corporation.

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

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet in executive session during the session of the Senate on Wednesday, April 27, 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. HATCH. Mr. President, I ask unanimous consent that the Committee on Homeland Security and Governmental Affairs be authorized to meet on Wednesday, April 27, 2005, at 10 a.m. for a hearing titled ''Chemical Attack on America: How Vulnerable Are We?''

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

COMMITTEE ON INDIAN AFFAIRS

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Indian Affairs be authorized to meet on Wednesday, April 27, 2005, at 9:30 a.m. in Room 485 of the Russell Senate Office Building to conduct an oversight hearing on Regulation of Indian Gaming.

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

COMMITTEE ON THE JUDICIARY

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on ''Executive Nominations'' on Wednesday, April 27, 2005 at 9:30 a.m. in Dirksen Senate Office Building Room 226.

Witness List:

Panel I: Senators.

Panel II: Paul D. Clement, to be Solicitor General of the United States.

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

COMMITTEE ON RULES AND ADMINISTRATION

Mr. HATCH. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be authorized to meet during the session of the Senate on Wednesday, April 27, 2005, at 9:30 a.m., to markup S. 271, a bill which reforms the regulatory and reporting structure of organizations registered under Section 527 of the Internal Revenue Code.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. HATCH. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on April 27, 2005 at 9:30 a.m. to hold a hearing.

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

SPECIAL COMMITTEE ON AGING

Mr. HATCH. Mr. President, I ask unanimous consent that the Special Committee on Aging be authorized to meet Wednesday, April 27, 2005 from 10 a.m.–12 p.m. in Dirksen G50 for the purpose of conducting a hearing.

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

EXECUTIVE SESSION

NOMINATION OF ROBERT J. PORTMAN TO BE UNITED STATES TRADE REPRESENTATIVE

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to executive session for the consideration of Executive Calendar No. 74.

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

The clerk will report.

The assistant legislative clerk read the nomination of Robert J. Portman, of Ohio, to be United States Trade Representative.

CLOTURE MOTION

Mr. MCCONNELL. Mr. President, I understand we cannot get a time agreement on this nomination due to an objection on the other side. Therefore, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to report the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 74, the nomination of Robert J. Portman, of Ohio, to be United States Trade Representative, with the rank of Ambassador Extraordinary and Plenipotentiary.

Bill Frist, Chuck Grassley, Sam Brownback, Kay Bailey Hutchison, David Vitter, Orrin Hatch, Elizabeth Dole, Lisa Murkowski, Bob Bennett, John Cornyn, Lamar Alexander, Johnny Isakson, C.S. Bond, Michael B. Enzi, Mike DeWine, John Ensign, Ted Stevens.

NOMINATION OF STEPHEN L. JOHNSON TO BE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Executive Calendar No. 61.

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

The clerk will report.

The assistant legislative clerk read the nomination of Stephen L. Johnson, of Maryland, to be administrator of the Environmental Protection Agency.

CLOTURE MOTION

Mr. MCCONNELL. Mr. President, again I am told there is objection from the Democratic side to a time agreement on the nomination. Therefore, I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to report the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 61, the nomination of Stephen L. Johnson, of Maryland, to be Administrator of the Environmental Protection Agency.

Bill Frist, J.M. Inhofe, Sam Brownback, Kay Bailey Hutchison, David Vitter, Orrin Hatch, Elizabeth Dole, Lisa Murkowski, Bob Bennett, John Cornyn, Lamar Alexander, Johnny Isakson, C.S. Bond, Michael B. Enzi, Mike DeWine, John Ensign, Ted Stevens.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the live quorums with respect to both cloture votes be waived and the Senate resume legislative session.

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

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now resume legislative session.

VERMONT DAIRY FESTIVAL

Mr. MCCONNELL. Mr. President, I ask unanimous consent that it be in order for the Agriculture Committee to be discharged from further consideration of S. Res. 118, and that the Senate then proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the resolution by title.

The assistant legislative clerk read as follows:

A resolution (S. Res. 118) recognizing June 2 through June 5, 2005, as the ''Vermont Dairy Festival,'' in honor of Harold Howrigan for his service to his community and the Vermont dairy industry.

There being no objection, the Senate proceeded to consider the resolution.

Mr. JEFFORDS. Mr. President, I rise to discuss S. Res. 118, a resolution I submitted with Senator LEAHY to recognize the Enosburg Falls Vermont Dairy Festival in honor of Harold Howrigan.

Harold is a dairyman through and through.

He recently retired from the board of the St. Albans Co-op, a Vermont dairy cooperative, and he ably served as the board's president for 17 years.

Harold is a great guy—a real leader in Vermont's diary industry—and I've known him and his family for many years.

Dairy farming is a tough job, and only those who really love it are successful.

Congratulations, Harold, and I wish you the best in retirement.

Enosburg Falls and the Lions Club of Enosburg host and sponsor the Vermont Dairy Festival.

This year, the festival celebrates its 49th year.

They say it is the largest parade in Vermont, and I believe it is the largest.

Enosburg Falls is a small town; I know, I used to spend a lot of time there.

In fact, my family settled in Enosburg in 1792.

My family owned the local pharmacy on Main Street, in downtown Enosburg, for many years.

But during the festival, thousands of Vermonters show up to enjoy the parade and participate in the events.

It is a wonderful time.

Our resolution honors Harold's years of service.

And it recognizes the men and women who make the Vermont Dairy Festival the success that it is and will continue to be.

I am hopeful that the Senate will soon act on this resolution to appropriately celebrate Harold's career and Vermonts dairy farmers.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the resolution and preamble be agreed to en bloc, the motions to reconsider be laid upon the table en bloc, and that any statement relating to the resolution be printed in the RECORD, with no intervening action or debate.

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

The resolution (S. Res. 118) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 118

Whereas the town of Enosburg Falls, Vermont, will host the ''Vermont Dairy Festival'' from June 2 through June 5, 2005;

Whereas the men and women of the Enosburg Lions Club will sponsor the Vermont Dairy Festival, which celebrates its 49th year;

Whereas the Vermont Dairy Festival is a beloved expression of the civic pride and agricultural heritage of the people of Enosburg Falls and Franklin County, Vermont;

Whereas the people of Enosburg Falls and Franklin County have long-held traditions of family owned and operated dairy farms;

Whereas the St. Albans Cooperative Creamery, Inc., which was established in 1919, is a farmer-owned cooperative;

Whereas Harold Howrigan served on the Board of the St. Albans Cooperative for 24 years;

Whereas Mr. Howrigan was the President of the Board of the St. Albans Cooperative for 17 years;

Whereas Mr. Howrigan recently retired from his position as President of the Board of the St. Albans Cooperative; and

Whereas Mr. Howrigan led the St. Albans Cooperative to uphold the region's traditions and to meet future challenges: Now, therefore, be it

Resolved, That the Senate recognizes June 2 through June 5, 2005, as the ''Vermont Dairy Festival'', in honor of Harold Howrigan for his service to his community and the Vermont dairy industry.

HONORING FRED T. KOREMATSU

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 126, submitted earlier today by Senator DURBIN.

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

The assistant legislative clerk read as follows:

A resolution (S. Res. 126) honoring Fred T. Korematsu for his loyalty and patriotism to the United States and expressing condolences to his family, friends, and supporters on his death.

There being no objection, the Senate proceeded to consider the resolution.

Mr. MCCONNELL. 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, with no intervening action, and that any statements relating to this resolution be printed in the RECORD.

Mr. DURBIN. Mr. President, reserving the right to object, and I will not object, I would like to say a brief word or two about this resolution honoring the life of a great American who passed away recently. I am proud to be joined by Senators INOUYE and STEVENS on this resolution.

Three weeks ago, when I heard that Fred Korematsu died at the age of 86, I came to the Senate floor and paid my tribute. But because his place in our Nation's history is so important, I have come to the floor again to ask the entire Senate to recognize this man with this resolution.

In recent months, I have had several occasions to mention Fred Korematsu's name in committee and floor proceedings, because the story about the injustices he and thousands of others faced as a Japanese American during from World War II is one that we should never forget.

Today, as our Nation is engaged in a global war on terrorism and when we are confronting the issues of the balance between civil liberties and security, Fred Korematsu's name is a reminder that we need to learn from our history, as difficult and shameful as it may be.

In November 2003, Fred Korematsu filed a brief before the Supreme Court in a case involving the detentions at Guantanamo Bay. His brief contained a simple plea to the government: ''to avoid repeating the mistakes of the past, this court should make clear that the United States respects constitutional and human rights, even in times of war.''

As leaders in Washington, we are responsible for a wide range of legislative and policy decisions that will have impact on millions of lives of our fellow Americans. As we deliberate and debate these issues, I hope all my colleagues will continue to heed the wise words of this humble man.

Fred Korematsu died on March 30 at his daughter's home in Larkspur, CA, after a long illness. He leaves behind his wife, Kathryn, and their son and daughter. Our thoughts and prayers go out to their family and friends, and we honor his memory today with this resolution.

I ask my colleagues to support this resolution honoring a true American hero.

Fred Korematsu is a family name known to every student who has ever gone through law school. It was Mr. Korematsu who filed the law case protesting the internment of Japanese Americans during World War II. His family, like so many others, was discriminated against simply because of their heritage. We now realize it was a serious mistake and a great disservice to many loyal and patriotic Japanese Americans.

His recent passing was a reminder of this man's courage throughout his life, and I hope that this resolution, when it is sent to his family, will be a fitting tribute from the Senate for all the contributions they and his family have made to America.

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

Mr. INOUYE. Mr. President, I rise to speak in support of the Senate resolution honoring Fred Toyosaburo Korematsu for his loyalty and patriotism to the United States and expressing condolences to Fred's family, friends and supporters on his passing.

On March 30, 2005, our Nation lost a deeply compassionate man and a great American patriot. Fred profoundly influenced the course of American history and legal jurisprudence when he led a courageous legal challenge against the internment of Japanese Americans by the United States Government. Fred was born in Oakland, CA, in 1919. His parents were Japanese immigrants who ran a flower nursery while Fred attended Castlemont High School and later the Master School of Welding. Fred worked on the Oakland docks as a steel welder and was quickly promoted to a foreman position.

The war in Europe, however, changed his life. America began providing supplies to Great Britain in its war against Germany and Germany's allies, including the country of Japan. At home in California, when Fred entered restaurants, waiters refused to serve him because of his ancestry. Fred's union terminated his membership, and Fred lost his job. American by birth, Fred wished to prove his patriotism by joining the United States Coast Guard, but the recruiting officer refused his application. Fred eventually found work with a mobile trailer company, but after the bombing of Pearl Harbor in December 1941, his employer fired him.

Fred was 22 years old when President Roosevelt issued Executive Order 9066, authorizing military commanders on the West Coast to issue whatever orders necessary for national security. Curfews, exclusionary orders, and the internment of 120,000 Japanese Americans soon followed, and the Korematsu family was taken to the Tanforan racetrack in San Mateo. Fred, however, held a deep conviction that the constitutional rights of Japanese Americans were being violated by the internment order issued without any real evidence of disloyalty, without specific charges, and without trial, and so Fred chose to defy the order.

Fred assumed a non-Japanese identity and even had plastic surgery in an attempt to change his appearance. Nevertheless, the police stopped him in San Leandro and Fred was charged with violating the military's exclusion order. Fred was sent to Federal prison and later to live with his family in a

horse stall at the Tanforan racetrack. The Korematsus performed hard labor behind barbed wire and under the watch of armed guards. Other Japanese Americans in the internment camp avoided him, fearing for the safety of their own families. The Federal district court found Fred guilty of violating military exclusion orders, and sentenced him to 5 years of probation under military authority. Fred appealed that decision. Meanwhile, after a year and a half of laboring in the interment camp, Fred's skill as a welder enabled him to leave the camp, on the condition that he not return to California. He got a job as a welder in an iron works company in Salt Lake City, and eventually, made his way to Detroit.

Fred's appeal reached the Supreme Court in 1944. The Court upheld the lower court's ruling in a 6–3 vote, citing the simple reason that the internment of American citizens of Japanese ancestry was a military necessity in light of the war with Japan. Fred petitioned for a rehearing, but it was denied in February 1945.

Fred eventually met and married Kathryn and raised a family. Like many Japanese Americans, Fred tried to put his internment experiences behind him, but he was unable to pursue many job opportunities because his violation of the exclusion order left him with a criminal record. He once worked on an application to become a real estate broker, but when he came across the question that asked whether he had prior criminal convictions, he threw the application away. Although Fred worked as a draftsman, he did not apply to work at larger companies or government agencies, as they would not hire someone who had a prior conviction on record. Without a pension, Fred worked part time to make ends meet, even while in his eighties.

In the early 1980s, a volunteer legal team began to accumulate evidence that government officials had possessed significant information that Japanese Americans had not posed an actual threat to national security at the time of the interment, and the team approached Fred to file a coram nobis petition to review events that occurred 40 years earlier that denied Fred a fair hearing.

In late 1983, a Federal court in San Francisco overturned Fred's guilty conviction, stating that the Government's case at the time had been based on false and biased information.

The court's decision was a landmark and a critical turning point in history. The volunteer legal team that gravitated to Fred was driven by his courage, his unshakable sense of right and wrong, and his faith in the American Constitution. The court's 1983 holding in *Korematsu* v. *U.S.*, *coram nobis*, set in motion a chain of important events. Shortly following the success of that case, Congress ordered a commission report on the internment of Japanese Americans. Upon the commission's finding that internment orders were issued without proper basis, Congress in 1988 passed legislation for a Presidential apology and reparations to Japanese American internees.

Ten years later, in 1998, President Bill Clinton awarded Fred with the Presidential Medal of Freedom, the highest civilian honor in the United States. During that ceremony, the President stated, ''In the long history of our country's constant search for justice, some names of ordinary citizens stand for millions of souls—Plessy, Brown, Parks. To that distinguished list today we add the name of Fred Korematsu.''

To many, Fred was more than just a distinguished name. Fred shared his riveting and protracted story about justice with thousands of young Americans, and he has deeply touched and inspired a new generation of civil rights attorneys. Fred's zest for life, courage, patriotism, compassion, gentle humor, strong will, and delight in teaching others has endeared him to many. He graced our midst, and by example, encouraged all of us to never abandon our Nation's cherished constitutional principles and values.

Fred Korematsu was a devoted husband and father, a teacher, a trailblazer, a hero, and a great American.

The resolution (S. Res. 126) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 126

Whereas on January 30, 1919, Fred Toyosaburo Korematsu was born in Oakland, California, to Japanese immigrants;

Whereas Fred Korematsu graduated from Oakland High School and tried on 2 occasions to enlist in the United States Army but was not accepted due to a physical disability;

Whereas on December 7, 1941, Japan attacked the United States military base at Pearl Harbor, Hawaii, forcing the United States to enter World War II against Japan, Germany, and Italy;

Whereas on February 19, 1942, President Franklin D. Roosevelt signed Executive Order number 9066 (42 Fed. Reg. 1563) as ''protection against espionage and against sabotage to national defense'', which authorized the designation of ''military areas . . . from which any or all persons may be excluded, and with respect to which, the right of any person to enter, remain in, or leave shall be subject to whatever restriction the . . . Military Commander may impose in his discretion'';

Whereas the United States Army issued Civilian Exclusion Order Number 34, directing that after May 9, 1942, all persons of Japanese ancestry were to be removed from designated areas of the West Coast because they were considered to be a security threat;

Whereas in response to that Civilian Exclusion Order, Fred Korematsu's family reported to Tanforan, a former racetrack in the San Francisco area that was used as 1 of 15 temporary detention centers, before being sent to an internment camp in Topaz, Utah;

Whereas more than 120,000 Japanese Americans were similarly detained in 10 permanent War Relocation Authority camps located in isolated desert areas of the States of Arizona, Arkansas, California, Colorado, Idaho, Utah, and Wyoming, without any charges brought or due process accorded;

Whereas Fred Korematsu, then 22 years old and working as a shipyard welder in Oakland, California, refused to join his family in reporting to Tanforan, based on his belief that he was a loyal American and not a security threat;

Whereas on May 30, 1942, Fred Korematsu was arrested and jailed for remaining in a military area, tried in United States district court, found guilty of violating Civilian Exclusion Order Number 34, and sentenced to 5 years of probation;

Whereas Fred Korematsu unsuccessfully challenged that Civilian Exclusion Order as it applied to him, and appealed the decision of the district court to the United States Court of Appeals for the 9th Circuit, where his conviction was sustained;

Whereas Fred Korematsu was subsequently confined with his family in the internment camp in Topaz for 2 years, and during that time, he appealed his conviction to the United States Supreme Court;

Whereas on December 18, 1944, the Supreme Court issued its decision in Korematsu v. United States, 323 U.S. 214, which upheld Fred Korematsu's conviction by a vote of 6-to-3, based on the finding of the Supreme Court that Fred Korematsu was not removed from his home ''because of hostility to him or his race'' but because the United States was at war with Japan and the United States military ''feared an invasion of our West Coast'';

Whereas Fred Korematsu continued to maintain his innocence for decades following World War II;

Whereas, under section 552 of title 5, United States Code (commonly known as the ''Freedom of Information Act''), an historian discovered numerous government documents indicating that, at the time Korematsu v. United States, 323 U.S. 214, was decided, the Federal Government suppressed findings that Japanese Americans on the West Coast were not security threats;

Whereas in light of this newly discovered information, Fred Korematsu filed a writ of error coram nobis with the United States District Court for the Northern District of California;

Whereas on November 10, 1983, United States District Judge Marilyn Hall Patel overturned Fred Korematsu's conviction, concluding that senior government officials knew there was no factual basis for the claim of ''military necessity'' when they presented their case before the Supreme Court in 1944;

Whereas in that decision, Judge Patel stated that, while Korematsu v. United States ''remains on the pages of our legal and political history...[as] historical precedent it stands as a constant caution that in times of war or declared military necessity our institutions must be vigilant in protecting constitutional guarantees'';

Whereas the Commission on Wartime Relocation and Internment of Civilians, authorized by Congress in 1980 to review the facts and circumstances surrounding the relocation and internment of Japanese Americans under Executive Order Number 9066 (42 Fed. Reg. 1563), concluded that ''today the decision in Korematsu lies overruled in the court of history'';

Whereas the Commission on Wartime Relocation and Internment of Civilians concluded that a ''grave personal injustice was done to the American citizens and resident aliens of Japanese ancestry who, without individual review or any probative evidence against them were excluded, removed and detained by the United States during World War II'', and that those acts were ''motivated largely by racial prejudice, wartime hysteria, and a failure of political leadership'';

Whereas the overturning of Fred Korematsu's conviction and the findings of Commission on Wartime Relocation and Internment of Civilians influenced the decision by Congress to pass the Civil Liberties Act of 1988 (50 U.S.C. App. 1989b et seq.) to request a Presidential apology and symbolic payment of compensation to persons of Japanese ancestry who lost liberty or property because of discriminatory action by the Federal Government;

Whereas on August 10, 1988, President Reagan signed that Act into law, stating, ''[H]ere we admit a wrong; here we reaffirm our commitment as a nation to equal justice under the law'';

Whereas on January 15, 1998, President Clinton awarded the Medal of Freedom, the highest civilian award of the United States, to Fred Korematsu, stating, ''In the long history of our country's constant search for justice, some names of ordinary citizens stand for millions of souls: Plessy, Brown, Parks. To that distinguished list, today we add the name of Fred Korematsu.'';

Whereas Fred Korematsu remained a tireless advocate for civil liberties and justice throughout his life, particularly speaking out against racial discrimination and violence targeting Arab, Muslim, South Asian, and Sikh Americans in the wake of the September 11, 2001, tragedy, and cautioning the Federal Government against repeating mistakes of the past by singling out individuals for heightened scrutiny on the basis of race, ethnicity, or religion;

Whereas on March 30, 2005, Fred Korematsu died at the age of 86 in Larkspur, California; and

Whereas Fred Korematsu was a role model for all Americans who love the United States and the promises contained in the Constitution, and his strength and perseverance serve as an inspiration for all people striving for equality and justice: Now, therefore, be it

Resolved, That the Senate—

(1) honors Fred T. Korematsu for his loyalty and patriotism to the United States, his work to advocate for the civil rights and civil liberties of all Americans, and his dedication to justice and equality; and

(2) expresses its deepest condolences to his family, friends, and supporters on his death.

CONGRATULATING CHARTER SCHOOLS

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of S. Res. 127, which was submitted earlier today.

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

The legislative clerk read as follows:

A resolution (S. Res. 127) congratulating charter schools and their students, parents, teachers, and administrators across the United States for their ongoing contributions to education, and for other purposes.

There being no objection, the Senate proceeded to consider the resolution.

Mr. GREGG. Mr. President, today I am joined by my colleagues Senators LIEBERMAN, FRIST, LANDRIEU, SUNUNU, ALEXANDER, DEMINT, DOLE, VITTER, BURR, in support of this resolution to designate the week of May 1 through May 7, 2005 as National Charter Schools Week. This year marks the 13th anniversary of the opening of the nation's first charter school in Minnesota. Since that time, charter schools have experienced tremendous growth as more and more parents discover for themselves why surveys show such high levels of parental satisfaction with charter schools. Today, there are almost 3,300 charter schools serving nearly 900,000 students in 40 States, the District of Columbia, and Puerto Rico, up from 3,000 schools serving 750,000 students just 1 year ago. Nearly 40 percent of these schools report having waiting lists, and there are enough students on these waiting lists to fill another 1,000 average-sized charter schools.

Charter schools serve a unique role in public education. They are designed to be free from many of the burdensome regulations and policies that govern traditional public schools. They are founded and run by principals, teachers and parents who share a common vision of education, a vision which guides each and every decision made at the schools, from hiring personnel to selecting curricula. Furthermore, charter schools are held strictly accountable for student performance—if they fail to educate their students well and meet the goals of their charters, they are closed. Most importantly, charter schools are raising student achievement. Research has shown that charter school students are more likely to be proficient in reading and math than students in neighboring traditional schools, and that the greatest achievement gains can be seen among African American, Hispanic, and low-income students. Research also shows that the longer charter schools have been in operation, the more they outdistance traditional scores in student performance.

Since each charter school represents the unique vision of its founders, these schools vary greatly, but all strive for excellence. There are countless examples of charter schools that are having an enormous impact on their students both academically and personally, and on the surrounding community.

For example, the Vaughn Next Century Learning Center in San Fernando, CA, serves students in grades K–12, 97 percent of whom qualify for free lunch, and 87 percent of whom speak limited English. Fifteen years ago, the Vaughn Street School was a haven for drug deals and violence, and students' test scores were the lowest in the San Fernando Valley. Since it converted to a charter school in 1993, Vaughn rose from the ninth percentile in language arts and the eleventh percentile in math to become a National Blue Ribbon School. Test scores have gone up 330 percent in the past 5 years alone. As a result of the autonomy granted by converting to charter status, Vaughn has been able to redirect considerable resources to programmatic efforts, including an extended school year and comprehensive afterschool program. The school has also expanded its offerings to the greater community, including a school-based clinic, family center, business co-op, and library.

Cincinnati's W.E.B. DuBois Academy, serving children in grades 1 through 8, recently became the only elementary school in the city and one of only 102 schools in Ohio to be recognized as a ''School of Promise.'' The recognition follows a period of remarkable improvement for the low-income school, which now boasts that 100 percent of its students passed State tests in six areas. The school has met the State's requirements for Adequate Yearly Progress, and is closing the achievement gap—and has generated a lengthy waiting list along the way. The W.E.B. DuBois Academy attributes its success to extended research-based instructional time, performance-based pay for teachers, strict discipline, and a rewards system that reinforces outstanding academic performance. Says founder Wilson H. Willard III, ''We've implemented a research-based system that addresses the constraints that compromise traditional education. In doing so, we've generated successful academic results for hundreds of our students. . . . defying convention has built success for the school, and most importantly, each student in it. In the end, that's what really matters.''

These are but a few of the promising schools in the charter movement, which includes a wide range of schools serving a variety of different learning needs and styles, often at a lower cost than traditional public schools. I am pleased that four such schools have launched in New Hampshire this year, ranging from the State's first school for deaf and hard of hearing students to academies focused on the arts, technology, and business. Several more schools will soon open their doors in the Granite State, offering additional options for parents and students, including those most at risk.

I expect that we will see charter schools continue to expand both in New Hampshire and nationally. Three years ago, the President signed into law the No Child Left Behind Act, which gives parents in low-performing schools the option to transfer their children to another public school. No Child Left Behind also provides school districts with the option of converting low-performing schools into charter schools. I believe these provisions will strengthen the charter school movement by creating more opportunities for charter school development. And, as parents exercise their right to school choice and ''vote with their feet'', the demand for charters schools will increase.

I commend the ever-growing number of people involved in the charter school movement, from parents and teachers to community leaders and members of the business community. Together, they have led the charge in education reform and are helping transform our system of public education. Districts with a large number of charter schools have reported that they are becoming more customer service-oriented, increasing interaction with parents, and creating new education programs, many of which are similar to those offered by charter schools. These improvements benefit all our students,

not just those who choose charter schools.

I encourage my colleagues to visit a charter school during National Charter Schools Week to witness firsthand the ways in which these innovative schools are making a difference, both in the lives of the students they serve as well as in the communities in which they reside.

Mr. McCONNELL. 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. 127) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 127

Whereas charter schools deliver high-quality education and challenge our students to reach their potential;

Whereas charter schools provide thousands of families with diverse and innovative educational options for their children;

Whereas charter schools are public schools authorized by a designated public entity that are responding to the needs of our communities, families, and students and promoting the principles of quality, choice, and innovation;

Whereas in exchange for the flexibility and autonomy given to charter schools, they are held accountable by their sponsors for improving student achievement and for their financial and other operations;

Whereas 41 States, the District of Columbia, and the Commonwealth of Puerto Rico have passed laws authorizing charter schools;

Whereas nearly 3,300 charter schools are now operating in 40 States, the District of Columbia, and the Commonwealth of Puerto Rico and serving approximately 900,000 students;

Whereas over the last 10 years, Congress has provided more than $1,500,000,000 in support to the charter school movement through facilities financing assistance and grants for planning, startup, implementation, and dissemination;

Whereas charter schools improve their students' achievement and stimulate improvement in traditional public schools;

Whereas charter schools must meet the student achievement accountability requirements under the Elementary and Secondary Education Act of 1965 in the same manner as traditional public schools, and often set higher and additional individual goals to ensure that they are of high quality and truly accountable to the public;

Whereas charter schools give parents new freedom to choose their public school, routinely measure parental satisfaction levels, and must prove their ongoing success to parents, policymakers, and their communities;

Whereas nearly 40 percent of charter schools report having a waiting list, and the total number of students on all such waiting lists is enough to fill over 1,000 average-sized charter schools;

Whereas charter schools nationwide serve a higher percentage of low-income and minority students than the traditional public system;

Whereas charter schools have enjoyed broad bipartisan support from the Administration, Congress, State Governors and legislatures, educators, and parents across the United States; and

Whereas the sixth annual National Charter Schools Week, to be held May 1 through 7, 2005, is an event sponsored by charter schools and grassroots charter school organizations across the United States to recognize the significant impacts, achievements, and innovations of charter schools: Now, therefore, be it

Resolved, That—

(1) the Senate acknowledges and commends charter schools and their students, parents, teachers, and administrators across the United States for their ongoing contributions to education and improving and strengthening our public school system;

(2) the Senate supports the sixth annual National Charter Schools Week; and

(3) it is the sense of the Senate that the President should issue a proclamation calling on the people of the United States to conduct appropriate programs, ceremonies, and activities to demonstrate support for charter schools during this weeklong celebration in communities throughout the United States.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. McCONNELL. Mr. President, I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nominations on today's Executive Calendar: Nos. 55, 56, 60, 64, 65, and all nominations on the Secretary's desk. I further ask unanimous consent that the nominations be confirmed en bloc, the motions to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

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

The nominations considered and confirmed are as follows:

DEPARTMENT OF AGRICULTURE

Charles F. Conner, of Indiana, to be Deputy Secretary of Agriculture.

DEPARTMENT OF STATE

Howard J. Krongard, of New Jersey, to be Inspector General, Department of State.

ENVIRONMENTAL PROTECTION AGENCY

Luis Luna, of Maryland, to be an Assistant Administrator of the Environmental Protection Agency.

MISSISSIPPI RIVER COMMISSION

Major General Don T. Riley, United States Army, to be a Member and President of the Mississippi River Commission.

Brigadier General William T. Grisoli, United States Army, to be a Member of the Mississippi River Commission.

NOMINATIONS PLACED ON THE SECRETARY'S DESK

COAST GUARD

PN304 COAST GUARD nominations (2) beginning Curtis L. Sumrok, and ending Jed R. Boba, which nominations were received by the Senate and appeared in the Congressional Record of March 14, 2005.

PN305 COAST GUARD nominations (292) beginning Michael T Cunningham, and ending David K Young, which nominations were received by the Senate and appeared in the Congressional Record of March 14, 2005.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

PN390 NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION nominations (15) beginning Paul Andrew Kunicki, and ending Lindsey M Vandenberg, which nominations were received by the Senate and appeared in the Congressional Record of April 4, 2005.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now return to legislative session.

ORDERS FOR THURSDAY, APRIL 28, 2005

Mr. McCONNELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m. tomorrow, Thursday, April 28. I further ask that following the prayer and the pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate then proceed to a period for morning business for up to 60 minutes, with the first 30 minutes under the control of the Democratic leader or his designee and the final 30 minutes under the control of the majority leader or his designee; provided that following morning business, the Senate resume consideration of H.R. 3, the highway bill.

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

PROGRAM

Mr. McCONNELL. Tomorrow, following morning business, the Senate will resume consideration of the highway bill. We will continue the amending process, and the chairman and ranking member will work through amendments as they are offered throughout the day. Rollcall votes are expected in relation to those amendments. On behalf of the majority leader, I encourage Senators who wish to offer amendments to the bill to contact the bill managers as soon as possible.

In addition to the highway bill, we will also act on a budget reconciliation conference report, should it become available. The Senate may also act on any nominations available for floor consideration.

Just moments ago, I filed two cloture motions with respect to two Cabinet-level nominations. These votes will occur on Friday of this week, unless some other agreement is reached prior to that time. Therefore, Senators should expect a busy day tomorrow and Friday, with rollcall votes possible throughout as we complete our work prior to the recess.

ORDER FOR ADJOURNMENT

Mr. McCONNELL. If there is no further business to come before the Senate, I ask that the Senate stand in adjournment under the previous order, following the remarks of Senator CARPER and the remarks of the distinguished Democratic leader, who is on the floor.

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

The minority leader.

RULE CHANGES

Mr. REID. Mr. President, today the American people have spoken, and they have spoken very firmly. It should be a day of celebration in the United States Capitol. A few hours ago, we saw responsible Republican leaders in the House of Representatives come together to do the right thing by abandoning the attempt to change the ethics rules. We will await the final outcome but I am told it has all been done, that they will have to go to the House floor and approve changing the rules back from where they are now to where they need to be—that is, the way they used to be. The American people are very perceptive. They can tell when something is going on that simply is not fair. What we had in the House of Representatives is one of the leaders, with the abuse of power that takes place so often around here, took himself out of the criticism that he was receiving from the Ethics Committee. He was reprimanded on three separate occasions within 1 year but he did not have to worry about any more censures or reprimands because they simply changed the rules.

That is where the American people came in. They know that the rules cannot be changed in the middle of the game. Today, the Republicans in the House heard that message.

As this Chamber wrestles with its own possible rule change in the next few weeks, I urge my Republican colleagues to pay attention to how the American people feel about what is being attempted. It does not matter how many times one comes to the Senate floor and says there has not been a filibuster on a judge ever before, it is simply not true, underlined and underscored.

I note the tone has been different, and I am happy about that. My distinguished friend, the Senator from Utah, came to the floor today and said there has not been a filibuster of a judge that has come to the floor. Well, that still is not true but it is better than what he said before. What he was saying, in the language we understand in Congress, is the Republicans in the Judiciary Committee turned down 69 judges that President Clinton wanted. They did not come to the floor. They did not come to the committee. Senator HATCH is right, they certainly did not get a floor vote.

Also, we keep hearing we have to have up-or-down votes on judicial nominations. I was somewhat amazed yesterday by what people from the other side of the aisle said, that we are going to allow filibusters on other nominations that come from the President. Now, let us see what logic there is here. On a lifetime appointment, that is a judge who becomes a district court judge or a circuit court judge, they can be appointed at age 35 and serve for the next 40 years, and we cannot use our advise and consent that we have as Senators? But if someone is going to serve for a few months or a few years, as other nominations, then we can talk as long as we want, our ability to speak is not taken away there?

If we look at this, there might be something more there than meets the eye. The American people are not interested in seeing us fight about the rules or pursuing partisan goals. That is why this body has to come together and worked out this issue. We need to take on issues the American people wrestle with every day. Whether it is in Chicago; Oklahoma City; Reno; Pittsburgh; Dover, DE, wherever it is, the people in those communities are interested in health care—as a subset, prescription drugs—and they certainly are interested in gas prices. As I have said on the floor the last few days, Nevada is paying $2.65 a gallon. If you have a small car it is $30.

Veterans—we need to take care of veterans, better than what I see in this budget. The American people want us to talk about this.

They want us to talk about education.

They also want us to see that the checks and balances created by our Founding Fathers are not trampled on, this provision of the Constitution. I hope we are not heading down that road with the nuclear option, which turns the Senate into a rubber stamp, which destroys the checks and balances. As I said in the past, I will do everything within my power to avoid that option and today gives me hope we can avoid that.

The American people did not like what they saw with the abuse of power in the House of Representatives. What did they do? They spoke out loudly. As a result, the Speaker and others in the House of Representatives said we are no longer going to protect one of our own, because it is an abuse of power, and we are going to go back to the rules the way they used to be. That is a victory for the American people. I hope we can accomplish the same here today.

As I said yesterday, it would be a great visual if Senator FRIST and I could walk down this aisle—he stands here, I stand here—and say we have got a deal for the American people.

There is so much work to do, we should not be fighting over these rules. If the Republicans insist on putting politics ahead of the American people, we are going to make sure the Senate works for the American people.

Mr. DURBIN. Will the Senator from Nevada yield for a question?

Mr. REID. I am happy to yield to my friend.

Mr. DURBIN. I would say I followed his remarks closely. If I understand what has just happened in the House of Representatives, or is about to happen, it is that they decided the changes in the ethics rules which were promulgated to protect perhaps one Member or two Members from close scrutiny, in terms of their conduct, are now going to be changed. I think, if I am not mistaken, this will be the second time in the last few months—in recent times, that the Republican leadership in the House of Representatives has changed the ethics rules and then, after public response, came back and restored the ethics rules.

Is this not similar to a situation we are facing on the Senate side, where there are at least some who are talking about the nuclear option, a term that Senator LOTT came up with, that would change the rules of the Senate in the middle of our session, rules that have been in place for almost 200 years?

Mr. REID. I would answer to my friend, not only is there a suggestion about changing the rules, but they are going to do it by breaking the rules. To change a rule here in the Senate takes a simple majority. But if somebody wants to speak in an extensive manner relating to that rule change, you have to break a filibuster. They are not willing to do that. They are going to use brute force and break the rules to change the rules. That is what they are talking about.

So even though what went on in the House of Representatives is bad, what is contemplated here is even worse than that.

Mr. DURBIN. I ask the Senator from Nevada if he will yield for an additional question through the Chair. I would like to ask the Senator, is it not true that the Democrats, in the minority in the House of Representatives, stood together and argued that the integrity of the House of Representatives was at stake because of these changes in ethics rules to favor one Republican leader, or perhaps two, and that by standing together and appealing to the Nation, that they were successful, and now the Republican leadership in the House of Representatives has announced they are going to restore the original ethics rules?

Mr. REID. I say in answer to my friend, I applaud, I commend the Speaker of the House of Representatives from the State of Illinois for realizing that what had gone on was wrong, and it is being changed as we speak. So the Speaker got the message loudly and clearly from the American people.

Mr. DURBIN. I would also ask the Senator from Nevada through the Chair, is it not also true that as we have started talking to the American people about the so-called nuclear option, the term that Senator TRENT LOTT came up with, as we have talked to the people about the nuclear option across the country, is it not true there has been an incredible reaction? I would say to the Senator from Nevada, many of us believed this was an arcane debate that most people wouldn't follow. But we are finding that overwhelmingly the people across America share the view of the Democrats on

this issue, that we should not change the rules in the middle of the game and eliminate the filibuster on judicial nominees, that we should not assault the basic principle of checks and balances also under the Constitution, and, finally, we should stand our ground to make sure that, on a bipartisan basis, we pick judges for lifetime appointments, judges who are in touch with the values and needs of simple Americans and their families?

Mr. REID. I say to my friend, the answer is yes. Yesterday, I got a copy of an editorial from a newspaper in Nevada, a newspaper out of Fallon, NV. In 1998, I got 21 percent of the vote in that county. I have said before, a homeless person could have gotten that many votes in Churchill County, but that is how many votes I got. So I got the editorial and it said, ''Stop Mr. Smith.''

As we know, there are some ads running that show the great movie with Jimmy Stewart as Mr. Smith coming to Washington to give a long speech as a Senator.

I said: I will read it. I read that editorial. It was so magnificent. I ask unanimous consent I be allowed to have that printed in the RECORD.

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

SHUT UP, MR. SMITH

(By Glen McAdoo)

NEVADA, April 25.—Remember when you were a kid and there was always at least one whiner on the block who had to win at all costs? If you were playing baseball and the whiners got three strikes they wanted to change the rules in the middle of the game so they could have at least four strikes. Furthermore they wanted to call the balls and strikes themselves. If, by miracle, they finally did strike out, becoming the third out, they wanted to change the rules so that their team got four outs. Remember those whiners? They would pout and cry or jump up and down and scream bloody murder until they got their way. Remember them?

Well, they are still around. They comprise the majority of the House and Senate leadership in Washington, D.C. They're not called whiners anymore, today we call them Republicans.

Remember the movie, ''Mr. Smith Goes to Washington'' starring James Stewart? Well, you won't find a Mr. Smith among these modern day whiners. And if they have their way, Mr. Smith will never again grace the hallowed halls in our Nation's Capitol. The Republicans want to do away with one of the great traditions in our Government—the filibuster. In an attempt to prevent the Democrats from stopping the appointment of Judges who echo the shallow thoughts of the most extreme far right, the Republicans are up to no good—again.

''Stay home Mr. Smith, there is no place for big mouths like you in the Capitol. Save your breath. Go home to the folks who sent you here. We are in charge now and we would rather you keep your big mouth shut. So what if you are right. Shut your lip. We know what is best for everyone and we don't need a do-gooder like you gumming up the works. What's that you say Mr. Smith? You say we are even angry with the Federal Judges we appointed. That's about half of them. Judges should decide cases based on the law and not public opinion, you say? Darn you, a little truth could spoil everything. See, that's why we want you to shut up and go home,'' so would say the Republicans to Mr. Smith.

Last week, Senator Harry Reid brought forth a million names of people who don't want the rules changed. These people believe the filibuster should stay as part of a time honored practice.

The filibuster may be the only way to stop overzealous lawmakers who insist on approving the worst of President Bush's misguided nominees to the Federal Bench. We must keep the filibuster, and use it when necessary, and if the petulant pouting pompous Republicans in the Senate don't like it they can take their ball and go home. So there!

How quickly they forget. The Republicans have used the filibuster many times. Have they forgotten Abe Fortas in 1968 or Clinton's nominee to the ninth circuit Richard Paez in 2000. All told the Republicans used the filibuster six times in attempts to block Clinton's Judicial nominees. What hypocrites.

In the House of Representatives things are just as bad. Republicans have now changed the rules to make it nearly impossible to have a public inquiry and possibly oust Tom DeLay (R-Texas) on ethics charges. According to Congressman Barney Frank, the Republican leadership has now removed from the ethics committee any Republican with the slightest bit of independence and replaced them with people who will acquiesce to the leadership's wishes. In the past, if the committee were deadlocked five to five a public investigation would go forward. With the rules change it is dead in the water, unless one of these mighty midgets of morality says yea and makes it six to five. These foul balls want four strikes and four outs.

The self proclaimed model for the moral right, Mr. DeLay, could turn out to be one of the slimiest characters we have ever seen in such a high office. We will probably never know for sure unless one of the spineless Republicans on the ethics panel gets some backbone and makes their private probe, public. That may happen, they are under a lot of pressure, but I wouldn't bet on it.

We don't need a bunch of rule changes in the House and Senate. What we need to do is replace a bunch of Republicans with Democrats.

Mr. REID. Mr. President, the first paragraph—and I am paraphrasing but not by very much—starts out by saying: You remember when you were growing up and you had this kid who was never happy? You couldn't win a game because he kept changing the rules in the middle of the game, and if you didn't allow the change, all he did was whine about it?

They went on for long, maybe six or seven paragraphs, saying: What is going on in Washington? Trying to change the rules in the middle of the game is un-American.

This is from Fallon, NV.

So the answer is yes, the American people are speaking. If you can get a newspaper in Fallon, NV, to write a harsh criticism of the Republican leadership we have in the Senate, they should listen because, believe me, I got 21 percent of the vote in that county.

Mr. DURBIN. If the Senator would further yield for a question through the Chair, is it not true that the filibuster, because it requires 60 votes to overcome, really requires the Senate to work to compromise, to find bipartisan solutions to their differences, and brings us together in a bipartisan fashion? Is this not the same thing that the Democratic leader just alluded to, that we should use that same bipartisan approach not only when it comes to lifetime appointments for judges and controversial issues but to find constructive solutions to issues such as the challenge of health care, the cost of health insurance, the need to help families pay for college education—all of the things we should put on our agenda but, sadly, have not been part of the discussion in this Republican majority Senate so far this year?

Mr. REID. Let me say to my friend, a perfect example of that is what is going on on the floor as we speak. One of our colleagues, the distinguished junior Senator from Indiana, Mr. BAYH, has an issue. He offered an amendment to this bill.

The reason he offered it to this bill is he wanted to make a statement about something that is going on in China. He believes trade policies there are unfair and unbalanced. He offered an amendment on this bill.

You can debate whether it should be on this bill, but it is on this bill. He offered an amendment. We have a right to do that. He, as a result of what he has done, held up the nomination of ROB PORTMAN, Congressman PORTMAN to be Trade Representative. I like Congressman PORTMAN, a good man. I think he will do a good job as our Trade Representative.

As we speak, because of this filibuster that he, in effect, is conducting—not necessarily on this bill, but he is not going to let PORTMAN go forward, so we will have to vote 2 days from now—the parties have come together. They are talking. I am confident we will work that out and PORTMAN will be approved tomorrow.

The answer is yes. One of the good things about this institution we have found in the 214 years it has been in existence is that the filibuster, which has been in existence since the beginning, from the days of George Washington—we have changed the rules as relates to it a little bit but never by breaking the rules.

I say to my distinguished friend, the senior Senator from Illinois, in all the political writings about filibuster, that is one of the things they talk about as a positive. It forces people to get together because sometimes in this body you become very fixed. You think you are the only person who knows what is going on and you need to examine yourself. The other person has an issue. The Senator from Illinois is absolutely right. It brings people together.

Mr. DURBIN. If I could ask one final question of the Senator from Nevada through the Chair? I know what the Senator said about his commitment to the traditions of the Senate, to the constitutional principles that guide the Senate, such as the protection of the minority so there will never be another tyranny of the majority; that you will

have this filibuster that gives the minority, always, a voice in the dealings of the Senate.

I know the Senator from Nevada—and I share his belief—is committed to this constitutional principle that goes back to our Founding Fathers. But I want to ask the Senator from Nevada in closing: Is it not true, as you announced yesterday, that despite this commitment to this core principle that you have reached out to the other side, to the Republican leadership, in an effort to try to find some common ground to work through our difficulties and differences over several different judges; that you have spoken directly to Senator FRIST and many Republican Senators in an effort to try to resolve this, and that, sadly, Senator FRIST came to the floor yesterday and announced he wouldn't be party to any negotiations to try to work this out?

Mr. REID. I say to my friend, first of all, in defense of Senator FRIST, the statement he gave was before we had our meeting. I have confidence Senator FRIST is weighing the offer I gave him.

Let me say this to all my friends, including the distinguished junior Senator from Pennsylvania: I am not going to dwell on what took place during the Clinton administration. Most people would acknowledge it was not right. I am not going to dwell on what took place these last 4 years of the Bush administration because I am sure people can make a case, as advocates can, that maybe we did not do the right thing in those years.

I am asking my Republican friends on the other side of the aisle to give us a chance. Let's work our way through this. We are not out plotting to take the next Supreme Court nominee who comes before the Senate, waiting in the wings to knock him or her out. We are not waiting to knock out circuit judges or district court judges.

Test us. We have proven so far this year that we are willing to work with the majority. We have done some pretty good stuff in spite of a number of things we could have held up for a long time. As I said yesterday, we could have held up class action for a long time. Just to go to conference takes three separate cloture votes. Bankruptcy could have taken a lot of time.

We legislated the way the Senate used to legislate. We had a bill come to the Senate. A person offered an amendment. He spoke in favor of it. People came and joined in that. People spoke against it. And we did things the old-fashioned way—we voted on them and then sent the bill to the House. That is the way we did it.

We have to develop faith in what we are trying to do. I am saying to everyone, trust us. Yes, I have spoken to Republican Senators. I have spoken to every one of the Democrat Senators. I have spoken to quite a few Republican Senators. I hope they give us the benefit of the doubt.

We are not working from a position of weakness. The American people want us to do this. They want us to join together, to pass legislation. They do not want anyone breaking the rules to change the rules.

This is so important for our country. We need to come together to work out our differences. It is not only important to this institution, it is important to our country.

I thank very much my friend from Illinois for his questions.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. I ask unanimous consent I be able to speak for 7 minutes.

Mr. REID. Mr. President, I have no problem with my friend speaking. My friend has to catch a train, and he has had unanimous consent to speak here for a long period of time. I think he should be able to go first. I object. I want my friend from Delaware to go first.

Mr. CARPER. I appreciate that. I will miss my train, but go ahead. I yield to the Senator.

Mr. SANTORUM. If the Senator is going to miss his train because of my 7 minutes, not because of his own speech, I will withhold. But if he is going to miss the train because of his speech—

Mr. REID. Mr. President, I object.

The PRESIDING OFFICER. The objection has been heard.

The Senator from Delaware is recognized.

Mr. CARPER. I thank the Senator from Pennsylvania, and I promise to be very brief.

The PRESIDING OFFICER. The Senator is recognized.

NOMINATION OF STEPHEN JOHNSON

Mr. CARPER. Mr. President, I have been here 4 years. I have never placed a hold, as I recall, on any nomination for anyone to serve in this administration.

When Christie Whitman was nominated to head up EPA, I said: Congratulations. What can I do to help get you confirmed and to confirm the members of the team you want to surround yourself with? And I went to work on it.

When Mike Levitt was nominated to succeed her, I called Mike Levitt—both him and Governor Whitman, with whom I served—I called Mike Levitt and I said: Congratulations. What can I do to help get you confirmed and the team you want to surround yourself with? And I went to work on it.

When Tommy Thompson was nominated to be Secretary of Health and Human Services, I called to congratulate him and said: What can I do to help get you confirmed and confirm the team you want to surround you? And I went to work on it.

When Tom Ridge was nominated to be Secretary of Homeland Security, I called him and I said: Congratulations. What can I do to help get you confirmed and to confirm the team you want around you?

For me to stand here today in an effort to stop, at least for a short while, the nomination of Stephen Johnson to be Administrator of EPA is out of character for me. That is not the way I do business. I hope my colleagues realize that after 4 years I am a guy who likes to work across the aisle, and whether the issues are some of the issues Senator REID just mentioned—class action reform, bankruptcy reform legislation, now asbestos, overhauling the postal system, comprehensive energy bill—I am one on the Democrat side who looks forward to working not only with my colleagues but with our colleagues on the other side of the aisle.

We have problems in our country, challenges we face on all fronts. Among those challenges we face is what to do to improve the quality of our air and how we can do that in a way that does not cost consumers an arm and a leg. What can we do to improve the quality of our air that does not encourage the shifting of utility plants from coal, which we have in abundance, to natural gas, which we don't.

We have had sort of a Hobson's choice in the last couple of years—the administration's clear skies proposals, multipollutant bill dealing with reducing sulphur dioxide, nitrogen oxide, mercury from utility plants, compared to the proposal of our colleague from Vermont, Senator JEFFORDS, and others, who would propose to go further, a lot further, a lot faster than the administration on those three pollutants, and add a fourth, carbon dioxide.

The Presiding Officer, as well as my friend from Pennsylvania—we have all served in the House together. I don't know about them, but when I served in the House, I never liked it when I was dealt a Hobson's choice—a position over here and another position over here. I never liked it.

One of the great things about the Senate is we can craft something in the middle. What I sought to do in working with people such as Senator LAMAR ALEXANDER from Tennessee, LINCOLN CHAFEE from Rhode Island, and JUDD GREGG from New Hampshire, was to come up with something in the middle, a centrist approach that we believe reduces the emission of sulphur dioxide, nitrogen oxide, mercury from utility plants, gets a start in slowing down the growth of emissions from CO_2, and does so in a way that does not cost consumers an arm and a leg and, frankly, does not lead to a lot of shifting off of coal and onto natural gas.

We introduced legislation the first time in 2002. That was the year I first asked EPA for comparative analysis, comparing the administration's clear skies proposal with our bipartisan bill with the Jeffords bill. In 2003 we got a lot of raw data and not much analysis from EPA. Along with the raw data and the limited analysis they sent us, they said some of the assumptions on which this analysis was conducted are, frankly, out of date and that the information we have shared with you is maybe not as valid as it otherwise would be.

We renewed the request and asked for the comparative analysis of the President's proposal of the clear skies with the Jeffords proposal and our proposal in the middle. We found out in 2004—we heard the information could not be provided because it looked as if Congress, the Environment and Public Works Committee, was not going to move to cleaner legislation in 2004, so they did not want the EPA to do the analysis.

We renewed our request in 2005 for the comparative analysis, and we were told that no, the EPA does not have time because we are moving so quickly toward enactment of clean air legislation.

We are now in a situation where the President's proposal was not approved by committee, and we are not moving anything. The only thing that is moving right now is lawyers—to file lawsuits on behalf of environmental groups or on behalf of utilities. It is not a good situation.

I came here to legislate. I didn't come here to litigate. I came here to get things done.

We have about 50,000 people in my State who suffer from asthma, and about 20,000 of them are kids. We have too much smog in my State—the ozone problem and too much smog—especially in the summertime, more than we do in other parts of the country. We have in my State too much mercury that has been ingested by fish, and pregnant women in Delaware and other places around the country eat those fish. There are high levels of mercury in those fish. We know what it does to the brains of the unborn those pregnant women carry.

Not everybody believes carbon dioxide leads to global warming and that we are actually seeing a temperature rising on this planet of ours. I will tell you NASA says this year will be the warmest year on record since we have been keeping records, and we have been keeping records for 150 years. We are told that 9 out of the last 10 years have been the warmest years since we have been keeping temperature records in this country.

The glaciers—I have seen some of them, and maybe others here have, too—are disappearing way up North and way down South. The snowcaps on some of the tallest mountains in the world are disappearing, too. We are actually seeing temperatures rise. We are seeing sea levels rise.

I am not going to get into an argument today about whether there is a real problem. I believe there is. I respect the views of others who disagree, but I think the preponderance of scientific evidence says we need to get started on this issue.

How does that lead us to the nomination of Stephen Johnson? I have been asking for 3 years, from the EPA, for scientific analysis that will enable our committee and, frankly, the Senate to decide what kind of clean air legislation, multipollutant legislation, to move out of committee to bring to the Senate floor. Frankly, we have not gotten an altogether satisfactory response.

The responses are getting a little better, but we are not quite where I think we need to be. Stephen Johnson is a good man. He will be a good administrator if this administration will let him do his job. If we do not have the scientific analysis we need to be able to use good science to decide how far, how fast to go in reducing the emissions of these four pollutants, we are not going to get a clean air bill. It is just that simple.

Someday, we will have a Democratic President. It could be in a couple years. It could be longer than that. Someday, we will have a Democratic majority in the Senate, maybe even in the House. I do not think it should matter who is in the White House or who is in the majority here in the Senate. We need to work across the aisle on issues such as this. If you look at the history of this body: clean air, bipartisan legislation; clean water, bipartisan legislation; brownfields, bipartisan legislation.

If we are going to find agreement, common ground on multipollutant legislation, it is going to be because we work together, not because EPA was compelled to withhold data or information from one side or the other, but because they shared that information, and we used that information and good science to go forward.

Let me close with this. There is going to be a vote on cloture—it could be tomorrow; it could be Friday—on Stephen Johnson. As much as I am convinced he is a good man and would be a good administrator of EPA, I am even more convinced we need not just a good person to head up EPA, but we need strong, balanced multipollutant legislation in this country. The only way I believe that legislation is going to move through our committee and through this Senate is if we have good, comparable analysis, good comprehensive analysis. It is not hard to get.

I spoke with Mr. Johnson twice today. He was good enough to respond to me in writing to my requests. We met and talked a number of times. He has suggested to me what he thinks might be a compromise on the amount of information they would be willing to share. I responded, in turn, with a counterproposal. In my judgment, it is eminently reasonable.

I would hope somebody on the other side—our Republican friends either here or down at 1600 Pennsylvania Avenue—would see that maybe the better part of valor and a way to get to a win-win situation is to simply say: We will provide the information that has been requested. We will stop squabbling about it and just provide it.

If they do that, we can negotiate in earnest this spring on a multipollutant bill; and we can pass, this year, that legislation. I would call that a win-win situation—a win-win because Stephen Johnson would be allowed, literally, to be confirmed this week to head up EPA; and our country would be on the road to having air that is cleaner to breathe and less polluted with sulfur dioxide, nitrogen oxide, and mercury; and we would have a world where the threat of global warming has been reduced a little bit as well. Those are two good outcomes.

My hope is, before we push this ball any further down the court, we can come to agreement and get those two things done.

Mr. President, I yield back my time and thank the Senator from Pennsylvania for his accommodation.

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. SANTORUM. 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. SANTORUM. Mr. President, I ask unanimous consent to speak as in morning business.

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

SENATE TRADITION ON JUDICIAL NOMINATIONS

Mr. SANTORUM. Mr. President, I had the opportunity to listen to the Democratic leader for a few moments talking about the House of Representatives and the compromise the House of Representatives just achieved on their ethics consideration.

Three comments about that compromise: No. 1, it is interesting that ''compromise'' means the Republicans do what the Democrats insisted upon them doing. That is a compromise, No. 1.

No. 2, that compromise meant the House went back to the way the House has always done things when it came to ethics. The compromise was to go back to the precedent and rules of the House they have always used.

Third, that compromise means—and the Senator from Oklahoma has had experience over in the House, as have I—the rules of the House will continue to be that if a Member has an ethics claim filed against them by someone—and the Ethics Committee is equally divided—particularly, if it is a Member where there happens to be political value in having an ethics claim filed against them, if the other side decides, politically, they are simply not going to hear the case, it stays on the docket forever, for as long as the session lasts, with no need to dispose or rule on that. So the ethics charge hangs out there without a decision. It automatically goes forward, in other words, unless there is a decision on the part of a bipartisan majority to end the discussion.

I think what we have seen in the past—and I know Members of the House are concerned about this—is

that there has been an abuse, a politicization of the ethics process. We all know how damaging it is because the only thing we have in this body and before our constituents is our word and our reputation. They are intangible things that are easily affected and certainly are affected when ethics charges are filed. That does not mean ethics violations have been found but simply that ethics charges have been filed.

The mere fact a charge has been filed is a very damaging thing to the reputation of a Member. To have that out there, without any need for disposition, I think is very dangerous and has proven to be—and I think will continue to be—a bad precedent.

But that is compromise. I make the argument that capitulation is not compromise. But I will agree on the second point I made, that going back to the way we have done things in the past is usually a pretty good idea when you really aren't sure how to deal with things. So I too say I am glad that the speaker, the leader, and others in the House have broken this logjam, and they have done so in a way they can at least move the process forward in the House. I too commend the Republican leadership for trying to move it forward.

I will say the same thing could be done here in the Senate. If we have a sincere disagreement as to how we should proceed with respect to judicial nominations, we could look to the example of the House of Representatives and go back to the way we did things for years and years and years. The way we have done things for years and years and years, 214 years prior to the last session of Congress, was that nominations that came to the floor of the Senate received an up-or-down vote.

It was very interesting. The Senator from Nevada criticized one of our Republican Members who suggested that we would be willing to compromise by not including all executive nominations, just including certain executive nominations. When that was proffered, the Senator from Nevada criticized this compromise and said: It is disingenuous because it is not intellectually consistent. Lots of compromises aren't. But that was for the sake of compromise, to say that we believe—and 214 years of history have shown, and the tradition and the precedent of the Senate is—when executive nominations arrive on the floor of the Senate, they receive an up-or-down vote. That is the precedent. There is not one instance in which someone who had majority support here on the floor of the Senate for a judicial nomination did not receive an up-or-down vote and get confirmed, not one precedent until 2 years ago. Then things changed.

So we have suggested we would like to go back to that 214-year precedent that served this country very well. We didn't have the acrimony we see here today. The Senator from Nevada repeatedly talked about how the public wants us to get things done. Then don't change the rules of the game and then complain the public is angry with the fact that we are not getting things done. Look at the cause of the controversy.

The cause of the controversy lies with the previous leader of the Democrats, who put forward a strategy, a plan, a scheme to fundamentally shift the power away from the President to 41 Members of the Senate to determine what nominees will be confirmed in the Senate. That could have been done. I would agree with the Senator from Nevada and everybody else here. It could have been done 200 years ago. It could have been done 100 years ago. It could have been done 10 years ago. But it never was done. We showed restraint. I showed restraint.

The Senator from Nevada talked about how I could look back at the Clinton administration and see how President Clinton's nominees were disadvantaged. Let's look back to the Clinton administration. I can think of two people I recall very clearly to whom I was adamantly opposed. They had records as judges that were deplorable in my mind. They didn't follow the law. They were activists on the court. They put their interpretation and their views ahead of the law repeatedly. Richard Paez and Marsha Berzon were their names. They were nominated for the circuit court.

I adamantly opposed them. They were bad judges and, in my opinion, this country would be in worse shape by having them on the circuit court. I wanted them defeated. They were against a lot of what I strongly believed was bad for this country. That is what they were for, things which I strongly believed were bad for the country.

There were a lot of groups outside, a lot of conservative groups, just as they are hearing from a lot of liberal groups, who said: Do it, block their nomination. Yes, they have majority support, but block their nomination because they will do so much damage. They are bad. That is what these outside groups were saying: These folks will undermine the judiciary.

There is always a temptation to let the current fury cloud your judgment and to think about the immediate political posture or the next election or the folks who brought you here and do what they ask you to do.

We had a leader, at that time, in TRENT LOTT, and we had a chairman, in ORRIN HATCH, who said: I understand how you feel. I oppose these judges too. But there is something more here in the Senate than the passions of the day. There is something more than the groups who may support your campaigns today. When we do things that change the precedent of the Senate, it ripples, maybe forever, and can fundamentally change the balance of power, the way the judiciary functions, the way the executive functions and, as you have seen in the last 2 years, the way this body functions or ''misfunctions'' as a result.

So for that moment in which I really wanted to block their nominations, when TRENT LOTT and ORRIN HATCH filed cloture on those two nominees to move the vote forward, not to block their nomination, but to move their vote forward, I voted along with 85 of my colleagues. A vast majority of Republicans and all the Democrats voted to allow their vote to come. Richard Paez did not get 60 votes when his confirmation came up. In other words, had we wanted to filibuster Richard Paez, we would have been successful. He would not have gotten 60 votes. He would not be a judge on the circuit today had we wanted to block his nomination.

But my belief is—and the vast majority of Republicans' belief was at that time—as much as we opposed the nomination, we supported the tradition and the precedent of the Senate because we are but stewards of this place. We don't own this institution. Yes, we say we run this institution. We don't run this institution. We are simply stewards. We are passersby. When we crack the foundation of the way things have been done and worked for this country for 200-plus years, we leave behind a foundation that may not sustain us as a people.

To stand before the Senate, as my colleagues on the other side of the aisle have done repeatedly over the last few weeks, and talk about how they are being aggrieved by what the Senate Republicans are trying to do and calling this the nuclear option repeatedly, and suggesting somehow or another this is destroying the filibuster, when it was never used—underscore that, never used—to block a judge on the floor of the Senate prior to the last session of Congress, when the Democratic minority decided they could not resist, they had to put politics over process. They had to put partisanship over the stability of this institution for the long term.

I suspect there are a lot of folks on the other side of the aisle who regret that happening, and they probably regret it today. Where are the statesmen? Where are the folks who quietly whisper to one another that this was wrong? Where are they to stand up and set it straight?

I desperately hope we do not have to cast this vote on the floor of the Senate to return the precedent of the Senate to the way it has been for 214 years because it would show what two sides were able to do for 214 years. I say to the Presiding Officer from Oklahoma, think about all of the conflicts and passions that have occurred through all of the great debates in the Senate. People were shot in the Senate, and there were fisticuffs and beatings. The passions must have been incredible at certain times. But we always were able to understand that there were some things bigger than the passion of the moment. This institution is one of

them. The way this institution functioned to balance powers was one of them. What the other side of the aisle is doing, I say to the Senator from Illinois, is fracturing the foundation of this institution.

So I hope we don't have a vote. I hope we don't have a vote. I hope there will be some on both sides of the aisle who would look to the 214-year precedent when, in spite of strong disagreements, the Senate was able to find comity to get things done.

We need to get things done. I know the Democratic leader has threatened to shut down the Senate—his words, not mine, ''shut down the Senate''—if they don't get their compromise. What is their compromise? They want to continue to do what they did in the last session of the Congress. That is their compromise. I find it somewhat remarkable that the Senator from Illinois praised the Senator from Nevada for his ''compromise.'' His compromise says if the ten judges they were blocking from the last session—they have successfully blocked three because they have been withdrawn, and now they are suggesting they want to block at least three more. They don't care which ones they are. I know this was all driven by pure concern about each and every one of these, but for some reason they can pick which three. Some might suggest this is less about the individual and more about politics, but now we are sort of in this compromise and, fine, let's compromise. Fine. We will take ten, we get to kill six, and you get to pick the four we move forward with. That is compromise. Oh, and by the way, we reserve the right to continue to do this in the future. This is the great Henry Clay type of statement that we see before the Senate: Of the ten that we have blocked—against every precedent of the Senate—we will take six, and these fine individuals, all well qualified by the ABA—the ''gold standard,'' in Senator LEAHY's words, not mine—we will take these fine upstanding people in the community and tarnish their reputations for the rest of their lives.

By the way, you pick the three we are going to tarnish, and we will let you have four nominees. By the way, you can go ahead and expect that we will block others in the future.

That is their compromise. That is the great olive branch: We will continue to abuse 214 years of history.

I ask anyone if you can point out one nominee for the court on the floor of the Senate who had majority support who was blocked by filibuster. Name one who had majority support. It never happened. So what is the compromise? The compromise is that six judges who had majority support on the floor of the Senate will be denied confirmation, and we will do so to others in the future if we so desire. That is the compromise. I don't think most people objectively looking at that would see that as much of a compromise.

The Senator from Illinois said another remarkable thing. I will go back and check the record. I find it hard to believe. He said Senator FRIST came to the floor yesterday and said he would not be a party to any negotiation on this issue. That is what the Senator from Illinois said.

Let me review the record. Senator FRIST, in the last session of Congress, offered a compromise with Zell Miller called the Frist-Miller approach. It was a compromise. It is still a compromise that is out there. I know for a fact—and I suspect others on the other side of the aisle do, too—that Senator FRIST has repeatedly offered compromises to the Democratic leader.

I know also for a fact that the Senate majority leader, Senator FRIST, is very much open to negotiation and compromise, to return the precedent of the Senate and find a way in which we get back to what was just lauded by the other side of the aisle—returning, as the House just did, to the way they have always done things. So, too, would we like to do that—return to the way we have always done things. But that is too much of a reach, I suspect, for some because we have partisan agendas. We have, even more so, I suggest, not just partisan agendas because I think in part it is driven by partisanship, but I think it is mostly driven by ideology.

What I think is sadly true is that the agenda of the other side of the aisle—which we have not seen a whole lot of as far as solutions; we have seen a lot of obstruction, not a whole lot of ideas but a lot of obstruction—is not accomplished in democratic forums anymore. It is accomplished through the courts. So I think what we are seeing is a gasp of saying that we can no longer win elections on our agenda. We can no longer win votes on the floor of the Senate with our agenda—the most radical elements of our agenda, anyway—so we must hold on to the courts. We must hold on and make sure those individuals who are willing to be activists on the court and overturn the will of the Congress, create new rights in the Constitution, bypass the democratic process, amend the Constitution through court edict, as opposed to the traditional way laid out by our Founders, we want to make sure that we still have the ability to enact our agenda on the courts.

Another point I will make is that I am very much for the filibuster. I believe the filibuster is exactly what our Founders intended when it comes to legislation—absolutely what they intended, that the Senate would be a place where the hot tea would be poured into the saucer and cooled. I support it and, in fact, I voted to support it because when I was first elected to the Senate, some Democratic Members offered a change to the rules that would have eliminated the filibuster and gone to a simple majority on all legislative matters.

This was interesting because at the time, as I said, the Republicans were in the majority, and yet Democrats were offering this rather savory morsel out there for those of us who recently came to the Senate and wanted to get a lot of things done and understood how difficult it would be. We had a Contract With America, we may recall—the House was moving forward and wanting to pass a lot of bills. We had a lot of momentum over here. There was a part of me that said: That would be great, we could get rid of this. I said: No, the Founders had it right, the traditions of the Senate are right. We do not need to change this institution because of the whims of the moment, because of the passions of the day, because of the interest groups off Capitol Hill that would want us to do so.

No, we have a higher duty. We have a higher duty. That duty is to this institution because this institution is the bulwark of this democracy that protects us from doing rash and sometimes irrational things in which at times the public gets swept up. No, that is what this institution is for when it comes to legislative passions.

By the way, there were 19 people, 19 Democrats who voted to end the legislative filibuster, but not one Republican. Not one. So the legislative filibuster is important, and it will remain in place as a result of anything we do over the next few weeks with respect to judicial nominations.

I close by saying I am hopeful we can find a compromise, but what I keep hearing from the other side is this incredible spinning that somehow or other what has gone on here in the last 2 years was part of the normal course, and the fact that this was done in previous Congresses, as the Senator from Nevada mentioned, in committee, in committee these nominations were killed.

Were these nominations killed? Some nominations were held and defeated in committee, that is right. By whom? By the majority—by the majority. The majority on the floor of the Senate has defeated nominations. The majority in committee has defeated nominations. But never before has the minority in committee defeated a nomination. Never before has the minority on the floor defeated a nomination. Never before has the minority been able to dictate to a President who they will nominate either for their Cabinet or for some of the most important positions in the judiciary. Never before until now.

This is taking power away from a popularly elected President who, under the Constitution, has the right to nominate people. President Clinton, I believe, had over 350 judges confirmed. I think I voted against maybe 5, 6, something like that; less than 10, I know that. I did not agree ideologically with probably more than 10, but as I went home and had to face some of my constituents who were upset with me for voting for one judge or another because they did not like their politics, I said: You will have to take it up with the American people because President

Clinton won the election, and he has a right to nominate who he wants as long as they are within the mainstream. That does not mean they are going to agree with me philosophically. There are a lot of people in the mainstream who are center and left of center who have a right to serve, as people who are right of center have a right to serve, and I am not going to impose my ideology on somebody else's nominees.

That is what is going on today. It is an ideological litmus test, and it is now infecting this body to the detriment of the Senate.

I hope cooler heads will prevail, and that those of us who showed restraint and did not vote for filibusters, voted for cloture on nominees we did not like—that there will be those who will stand up and do the same on the other side of the aisle in the future.

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. 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.

FILIBUSTER HISTORY

Mr. DURBIN. Mr. President, I know it is late, and I will be very brief. I want to make a quick response to my colleague and friend from Pennsylvania, Senator SANTORUM. I am sorry I had to leave the floor while he was speaking.

What I am about to say I would be happy to say with Senator SANTORUM in the Chamber and would be happy to respond to tomorrow. The Senator from Pennsylvania made the point that he thinks the golden rule here is, the principle here is that every judicial nominee is entitled to a majority vote up or down.

That is an interesting idea, and it might be appealing to some people if they do not know the rules of the Senate. For 214 years, we have said if you bring an amendment, a bill, or a nomination to the floor of the Senate, it is subject to Senate rules. And Senate rules are very clear. Any Senator can take the floor and begin a debate and hold the floor as long as that Senator physically can, unless 60—now 60 members of the Senate—vote otherwise. So you need an extraordinary majority—60 Senators—to stop a filibuster. That is the way it has always been.

In the beginning it was different. Senators could not stop a filibuster until 1919. In 1919 it took 67 votes; a few years back we changed that to 60 votes. But it has always taken more than a majority to stop a filibuster.

In "Mr. Smith Goes to Washington," Jimmy Stewart is on the floor, holding the floor as long as he did. That is the Senate. That is the tradition of the Senate.

The Senator from Pennsylvania says it has always been a majority vote. Sadly, he is mistaken. There has always been the opportunity for filibuster on a nomination.

So he was mistaken in that assertion.

The second thing the Senator from Pennsylvania was mistaken about was his oft-repeated comments that never, ever, not once in the history of the Senate—we hear it from the Senator from Pennsylvania and others has a filibuster been used on a judicial nomination. It has never been done until the Democrats recently did it to a number of President Bush's nominees.

Unfortunately, again, history is not on the side of the Senator from Pennsylvania. On 12 different occasions, beginning in 1881, filibusters have been used to stop judicial nominations. In 1881, it was Stanley Matthews to be a Supreme Court Justice; 1968, Abe Fortas to be Chief Justice of the Supreme Court was subjected to a filibuster; right on down through the Clinton administration, when, in fact, on two different occasions—maybe more, as I look at this list—there were filibusters applied to Clinton nominees. So for the Republican side of the aisle to consistently state what history tells us is not true is unfortunate.

I ask unanimous consent to have printed in the RECORD this history of filibusters and judges so anyone who follows congressional proceedings can read the names and circumstances for each and every judge who has been subjected to a filibuster in the history of the Senate.

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

HISTORY OF FILIBUSTERS AND JUDGES

Prior to the start of the George W. Bush administration in 2001, the following 11 judicial nominations needed 60 (or more) votes—cloture—in order to end a filibuster:

1881: Stanley Matthews to be a Supreme Court Justice.

1968: Abe Fortas to be Chief Justice of the Supreme Court (cloture required ⅔ of those voting).

1971: William Rehnquist to be a Supreme Court Justice (cloture required ⅔ of those voting).

1980: Stephen Breyer to be a Judge on the First Circuit Court of Appeals.

1984: J. Harvie Wilkinson to be a Judge on the Fourth Circuit Court of Appeals.

1986: Sidney Fitzwater to be a Judge for the Northern District of Texas.

1986: William Rehnquist to be Chief Justice of the Supreme Court.

1992: Edward Earl Carnes, Jr. to be a Judge on the Eleventh Circuit Court of Appeals.

1994: H. Lee Sarokin to be a Judge on the Third Circuit Court of Appeals.

1999: Brian Theadore Stewart to be a Judge for the District of Utah.

2000: Richard Paez to be a Judge on the Ninth Circuit Court of Appeals.

2000: Marsha Berzon to be a Judge on the Ninth Circuit Court of Appeals.

Because of a filibuster, cloture was filed on the following two judicial nominations, but was later withdrawn:

1986: Daniel Manion to be a Judge on the Seventh Circuit Court of Appeals Senator Biden told then Majority Leader Bob Dole that "he was ready to call off an expected filibuster and vote immediately on Manion's nomination."—Congressional Quarterly Almanac, 1986.

1994: Rosemary Barkett to be a Judge on the Eleventh Circuit Court of Appeals ". . . lacking the votes to sustain a filibuster, Republicans agreed to proceed to a confirmation vote after Democrats agreed to a daylong debate on the nomination."—Congressional Quarterly Almanac, 1994.

Following are comments by Republicans during the filibuster on the Paez and Berzon nominations in 2000, confirming that there was, in fact, a filibuster:

". . . it is no secret that I have been the person who has filibustered these two nominations, Judge Berzon and Judge Paez."—Senator Bob Smith, March 9, 2000.

"So don't tell me we haven't filibustered judges and that we don't have the right to filibuster judges on the floor of the Senate. Of course we do. That is our constitutional role."—Senator Bob Smith, March 7, 2000.

"Indeed, I must confess to being somewhat baffled that, after a filibuster is cut off by cloture, the Senate could still delay a final vote on the nomination."—Senator Orrin Hatch, March 9, 2000, when a Senator offered a motion to indefinitely postpone the Paez nomination after cloture had been invoked.

In 2000, during consideration of the Paez nomination, the following Senator was among those who voted to continue the filibuster: Senator Bill Frist—Vote #37, 106th Congress, Second Session, March 8, 2000.

Mr. DURBIN. Mr. President, the Senator from Pennsylvania is very discreet in how he explains his view of dealing with judges, that every judge should be allowed a majority up-or-down vote. That is not a bad concept if that really was what the Senator from Pennsylvania could point to in his own record. Under President Clinton's administration, nine of the President's judicial nominees to the Commonwealth of Pennsylvania were confirmed by the Senate, while eight were never even given hearings before the Judiciary Committee. So the Senators who are now begging for majority votes and majority rules thought nothing of closeting and burying these judicial nominees under the Clinton administration, to the point where they had no possibility of being confirmed.

Let me be specific. John Bingler was nominated by President Clinton. Senator SANTORUM exercised his discretion over nominations in his State and held up this nomination for 2 years, until Mr. Bingler withdrew.

Robert Freedberg, another nominee by President Clinton. Senator SANTORUM delayed the entire slate of judicial candidates, saying the President didn't honor an earlier agreement to nominate a particular Pittsburgh attorney whom he, Senator SANTORUM, wanted.

Lynette Norton. As was reported by the Pittsburgh Post Gazette on July 22, 2000:

> Sen. Rick Santorum insisted yesterday the Senate will not act on any nomination for the U.S. District Court here until next presidential administration . . .

He was very clear on what his agenda was: it was to hold up nominations that were going to be filled by President Clinton until, hopefully, in his

eyes, a Republican President was elected.

Repeatedly, Senator SANTORUM used his own form of a filibuster to deny even a hearing or a vote in the Senate to these judicial nominees. Now he stands aghast, appalled, incredulous, that anyone would oppose a judicial nominee of President Bush.

We should stand by the traditions of the Senate. Let's not change the rules in the middle of the game. Let's not violate the time-honored principle of checks and balances which says the Senate as an institution will have the last word on lifetime appointments to the Federal bench.

Even though President Bush has been successful with over 95 percent of his nominees being approved by the Senate, mark my words, a few of them should not have been approved for lifetime appointments. Our view on our side of the aisle, both liberal and conservative, a handful went too far. Their positions on the role of Government in protecting our health and safety, the role of Government in protecting our environment, the rights of women, privacy under our Constitution, their views were so extreme and so radical they were not deserving, at least to the mind of many of my colleagues, to have a lifetime appointment to the Federal bench.

It is best when in doubt to stick with the Constitution. It is best when in doubt to stick with the traditions of the Senate. It is best when in doubt to stick with the filibuster, which requires compromise, requires bipartisanship, and moves us to a point where we can and must work together to achieve goals of this Nation and to serve the people who were kind enough to give us this great opportunity.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands in adjournment until 9:30 a.m., Thursday, April 28, 2005.

Thereupon, the Senate, at 6:59 p.m., adjourned until Thursday, April 28, 2005 at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate April 27, 2005:

EXECUTIVE OFFICE OF THE PRESIDENT

BEN S. BERNANKE, OF NEW JERSEY, TO BE A MEMBER OF THE COUNCIL OF ECONOMIC ADVISERS, VICE NICHOLAS GREGORY MANKIW, RESIGNED.

UNITED STATES INTERNATIONAL TRADE COMMISSION

SHARA L. ARANOFF, OF MARYLAND, TO BE A MEMBER OF THE UNITED STATES INTERNATIONAL TRADE COMMISSION FOR A TERM EXPIRING DECEMBER 16, 2012, VICE MARCIA E. MILLER, TERM EXPIRED.

DEPARTMENT OF STATE

DAVID HORTON WILKINS, OF SOUTH CAROLINA, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO CANADA.

NATIONAL LABOR RELATIONS BOARD

DENNIS P. WALSH, OF MARYLAND, TO BE A MEMBER OF THE NATIONAL LABOR RELATIONS BOARD FOR THE TERM OF FIVE YEARS EXPIRING DECEMBER 16, 2009. (REAPPOINTMENT)

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be rear admiral

REAR ADM. (LH) ALAN S. THOMPSON, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be rear admiral

REAR ADM. (LH) NANCY J. LESCAVAGE, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be rear admiral

REAR ADM. (LH) JEFFREY A. BROOKS, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be rear admiral

REAR ADM. (LH) ROBERT B. MURRETT, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be rear admiral (lower half)

CAPT. VICTOR C. SEE, JR., 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be rear admiral (lower half)

CAPT. CHRISTINE M. BRUZEK-KOHLER, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be rear admiral (lower half)

CAPT. MARK W. BALMERT, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be rear admiral (lower half)

CAPT. RAYMOND E. BERUBE, 0000
CAPT. JOHN J. PRENDERGAST III, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be rear admiral (lower half)

CAPT. KEVIN M. MCCOY, 0000
CAPT. WILLIAM D. RODRIGUEZ, 0000

CONFIRMATIONS

Executive nominations confirmed by the Senate Wednesday, April 27, 2005:

DEPARTMENT OF AGRICULTURE

CHARLES F. CONNER, OF INDIANA, TO BE DEPUTY SECRETARY OF AGRICULTURE.

DEPARTMENT OF STATE

HOWARD J. KRONGARD, OF NEW JERSEY, TO BE INSPECTOR GENERAL, DEPARTMENT OF STATE.

ENVIRONMENTAL PROTECTION AGENCY

LUIS LUNA, OF MARYLAND, TO BE AN ASSISTANT ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY.

MISSISSIPPI RIVER COMMISSION

MAJOR GENERAL DON T. RILEY, UNITED STATES ARMY, TO BE A MEMBER AND PRESIDENT OF THE MISSISSIPPI RIVER COMMISSION.

BRIGADIER GENERAL WILLIAM T. GRISOLI, UNITED STATES ARMY, TO BE A MEMBER OF THE MISSISSIPPI RIVER COMMISSION.

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.

THE JUDICIARY

J. MICHAEL SEABRIGHT, OF HAWAII, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF HAWAII.

IN THE COAST GUARD

COAST GUARD NOMINATIONS BEGINNING WITH CURTIS L. SUMROK AND ENDING WITH JED R. BOBA, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON MARCH 14, 2005.

COAST GUARD NOMINATIONS BEGINNING WITH MICHAEL T. CUNNINGHAM AND ENDING WITH DAVID K. YOUNG, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON MARCH 14, 2005.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION NOMINATIONS BEGINNING WITH PAUL ANDREW KUNICKI AND ENDING WITH LINDSEY M. VANDENBERG, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON APRIL 4, 2005.