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:

Let us pray.

Almighty Father, the giver of gifts, help us to live in purity. Make all our thoughts so pure that they will bear Your scrutiny. Make all our desires so pure that they will be rooted in Your purposes. Make all our words so pure that You will find pleasure in hearing them. Make all our actions so pure that people will know that we are Your children.

Guide our lawmakers through the challenges of this day. Keep them from words that harm and do not help, from deeds that obstruct and do not build, from habits that shackle and do not liberate, and from ambitions that take and do not give.

Give to us all the blessings of asking and receiving, of seeking and finding, and of knocking and opening.

We pray in Your sovereign 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 legislative clerk read the following letter:

U.S. Senate, President pro tempore, Washington, DC, September 28, 2005,

To the Senate:

Under the provisions of rule 1, 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.

RESERVATION OF LEADER TIME

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

EXECUTIVE SESSION

NOMINATION OF JOHN G. ROBERTS, JR., TO BE CHIEF JUSTICE OF THE UNITED STATES—RESUMED

The ACTING PRESIDENT pro tempore, under the previous order, the Senate will proceed to executive session and resume consideration of Calendar No. 317, which the clerk will report.

The assistant legislative clerk read the nomination of John G. Roberts, Jr., of Maryland, to be Chief Justice of the United States.

The ACTING PRESIDENT pro tempore, under the previous order, the Senate will proceed to executive session and resume consideration of Calendar No. 317, which the clerk will report.

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APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

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

The legislative clerk read the following letter:

The Senate resumes consideration of the nomination of John Roberts to be Chief Justice of the United States. Tomorrow at 11:30 we will vote on this nomination. Again, I remind all Senators to be at their desks for that vote. This is among the most significant votes that most of us will cast in our Senate careers, the approval of the nomination of Chief Justice of the United States. We ask Senators to come to the Chamber around 11:20 to be seated for the 11:30 vote.

Following the confirmation on Judge Roberts, the Senate will take up the Defense appropriations bill. Senators should expect votes on Thursday, and we will be voting on Friday on the appropriations bill or any other legislative or executive items that are cleared for action.

I was talking to the Democratic leader to make sure that we are voting on Friday of this week.

We also have a continuing resolution that we must act on this week before the end of the fiscal year. Therefore, I ask that Senators adjust whatever plans they have for the weekend or for Friday to recognize that we will be voting. We will not be voting on Monday or Tuesday in observance of the Jewish holiday. But the Senate will be in session to conduct business and discussing amendments. Those amendments will be stacked for votes on Wednesday. We will notify Senators as to what time that will be. I encourage Senators to come forward and offer their amendments as early as possible so we can vote on Wednesday.

PANDEMIC PREPAREDNESS

Mr. President, on another issue, an important issue—we have so much going on in this body with the appropriations bills, and the nomination coming forward, and that is going very well in terms of the discussion on both sides of the aisle. But there are many other issues as well.

I want to focus for a few minutes on an issue I do not believe is receiving the attention it deserves given the risk that is before us.

Yesterday, I sent a letter to Health and Human Services Secretary Michael
Leavitt regarding our Nation’s pandemic preparedness. The H5-N1 avian influenza—the name of this particular strain of virus—has spread from Southeast Asia to Russia. It is spreading across the world.

If you look at a map and look at that spread, it gives you real pause—and it should. It threatens to land in Europe. Although you can’t say with certainty as you look at that picture of the globe and you see that spread, it will next be in Europe and America, although we don’t know what order will be.

It has infected more people and more poultry than any previous strain. If you look at the animal population—it is called the avian or bird influenza—it has caused the death or destruction of not just a few million but 160 million birds. That includes what is called the “culling” that goes on. But 160 million birds have died as a result of this influenza.

It has jumped from animals, the birds and other animals, actually, with a genetic shift to humans. People ask, How many humans have been infected? We do not know exactly, but we have documented 115 confirmed human cases of this particular H5-N1 influenza.

How is it fatal? The mortality rate is very high. Fifty-nine people out of the 115 confirmed cases died from this particular virus. It has a very high mortality rate.

Just this week, Indonesian health officials reported that yet another person—a young woman age 30—has died from the virus. This follows last week’s deaths of two young girls and a boy with very similar symptoms in Jakarta and Samarinda. Since last Monday, Indonesia has put itself on an “extraordinary incident” status.

Experts warn that a global catastrophic influenza pandemic is not a question of if but when. Like an earthquake, or like a hurricane, it can hit any time. When it hits, it could take the lives of tens of millions of people.

People ask, Is that an overstatement? I don’t believe it is. You only have to go back and look at the history. This August, I spent a great deal of time talking to experts around the country on the H5-N1 influenza virus. In Tennessee, over in Memphis, there is St. Jude’s Children’s Research Hospital. There is a group of researchers there who probably know more about this present strain than anybody in the world, led by Dr. Robert Webster at the St. Jude’s Children’s Research Hospital. He is one of the leading experts of the H5-N1 strain.

He explained in very clear terms that there are 16 families of the avian influenza. Billions of mutations of the virus are occurring every day. It is constantly changing, constantly adapting. With each of these little mutations, the virus multiplies its odds of becoming transmissible from human to human. It’s like a never-ending lottery game, and we’re going up, to be, throughout the bird population to the human population. And with just one little, tiny change, it can be transmitted person to person to person. It is a little bit like pulling the lever on a Vegas slot machine over and over again. If you pull it enough times, the reels will align and hit the jackpot. In this case the jackpot is a deadly virus to which humans have no natural immunity.

It is very important right now. Nobody listening to me has a natural immunity to this particular virus. Infected hosts are contagious before they are symptomatic. In other words, anybody with an infectious bird influenza can spread the disease. They may not have any symptoms. The virus would thus have ample opportunity to spread rapidly throughout the population before it could be detected or appropriately contained—but not symptomatically. You don’t know whether it can be contained or know to stay away from people.

To make matters worse, we lack our best defense. People say, If it does happen, back to the world we went to in 1918 and the Spanish flu. This pandemic killed not just tens of thousands but 40 million people worldwide. The Spanish flu virus killed 40 million people worldwide, the majority of whom were kids, children, and young adults between the ages of 18 and 35.

Vaccines were available for the 1957 and 1968 flu pandemics, but they arrived too late and 104,000 people died in the United States alone.

Dr. Hitoshi Ashitani at the World Health Organization warns this time around the avian flu virus may be impossible to contain. The geographic spread is historically unprecedented. So people ask: Why are you giving us, Senator Frist, all this bad news? What can and should be done? In my letter sent to Secretary Leavitt—and I had the opportunity to discuss it with him a little bit last night—I did ask him to finalize the agency’s Pandemic Influenza Preparedness Plan. We need a coordinated, comprehensive, aggressive plan which draws on public health and homeland security, foreign policy and defense expertise.

The plan should serve a dual purpose: First, to detect, identify, contain, and respond to threats abroad; and, No. 2, to bolster domestic preparedness and response capacity. I also urged the Secretary to purchase enough additional Tamifly to treat a large portion of the U.S. population.

These are critical first steps, but we have to do a lot more. We need to develop a bold vision of how to address this in future threats—whether they are biological weapons, other infectious diseases, whether they are natural, whether they are accidental, or whether they are deliberate.

That is why earlier this year I called for a Manhattan Project for the 21st Century to launch an unprecedented collaboration among the Federal Government and industry and academia. We must encourage and support advanced support and development into
Mr. NELSON of Florida. Mr. President, I ask unanimous consent I be allowed to yield the floor.

Mr. BROWNBACK. Mr. President, I rise to speak on the nomination of John Roberts to be Chief Justice of the United States. I speak about this at an exciting time for the country. This will be the 17th person to occupy this position. It is a rarity for this position to become available. I love this Nation.

I urge my colleagues to join me in this effort to protect the health, well-being, and security of the American people.

I yield the floor.

The PRESIDING OFFICER (Mr. VITTER). The Senator from the great State of Florida.

Mr. NELSON of Florida. Mr. President, I ask unanimous consent I be allowed to yield the morning business.

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

COAL ENERGY

Mr. NELSON of Florida. Mr. President, I have stated that each day we are in session I am going to try to rise in the Senate to speak about the dependent condition we find ourselves in on foreign oil. Some 58 to 60 percent of our daily consumption of oil comes from foreign sources. This is not a good position for the United States. No matter how much we sound the alarm bells over the past several years, it is hard to shake the powers that be out of our collective lethargy, to break this stranglehold that oil has running through our economy. And it has led us to our dependence on oil for well over a majority of our daily consumption.

That is not a good position to be in for the defense of our country’s interests where we have to protect the free flow of oil to all of the very oil-thirsty world. A list of the top 20 nations coming out of the Persian Gulf region look to the United States for the military protection to keep those lanes open so oil can flow.

Clearly, we ought to, after the remainder of Hurrican Katrina and Rita, be on the journey quickly to weaning ourselves from the dependence on this oil. That means the collective will of this Nation to come together in a major project, like a Manhattan Project. In other words, the moonshot of this decade ought to be weaning ourselves from dependence on foreign oil, as going to the Moon as a result of the Apollo Project was to the decade of the 1960s.

Each day I try to chronicle a new technology so that we can do that. Today I will talk about coal gasification, specifically coal-based integrated gasification. It is otherwise called combined cycle technology.

Our Nation has an abundance of coal. The United States has the largest proven coal reserves of any Nation in the world. At the current production levels, U.S. coal reserves should last over the next 250 years. That is the good news. Our nation’s high carbon content relative to other fossil fuels so that in the burning of it, it releases significant quantities of carbon.

Right now, coal combustion, the burning of coal, accounts for more than one-third of our carbon emissions. Those emissions in the air is what we do not want.

I will never forget being in Beijing, China, in the year 1981 in the dead of winter. January of that year. The city was black with coal smoke that was a result of the coal dust settling over that city because the primary source of heat was the burning of coal, with no attention to the emissions that allowed all of those particulates to go into the air. The last time I visited Beijing, about 2 years ago, after the dead of winter, I must say they have cleaned up their environment quite a bit, but they still have a ways to go.

We know the negatives with regard to burning coal. Now let’s look on the positives; that is, coal gasification or coal-based integrated gasification combined cycle technology has much lower pollutant emissions, and it holds great promise. Only two such plants exist in the United States today. One of them is in my State of Florida. It is run by Tampa Electric Company. I commend TECO for being one of the leaders in this country. My State of Florida is going to plant a IGCC plant that is coal gasification—for 2011, through the Orlando commission and the Southern Company. I thank those two companies for being leaders.

This is the technology: First, the coal is gasified using a chemical process rather than just the burning of coal to generate a synthetic gas—or what we call a syngas, synthetic fuels—that is mostly composed of hydrogen and carbon monoxide. Then that synthetic gas is used to fuel a combustion engine. A turbine with the exhaust heat is employed to produce steam for power generation and for gasification. The process has the potential to be both cleaner and more efficient than just the burning of coal in a steam boiler which is done to make electricity, and it generates considerable waste heat in the traditional burning of coal that then leads to the release of a myriad of undesirable emissions.

In contrast, coal gasification isolates and collects nearly all of the impurities, including mercury and a large portion of the carbon, before the combustion. So those things are not going to be emitted into the atmosphere. The coal is gasified with either oxygen or air, and the resulting synthetic gas or syngas is cooled, cleaned, and fired in a gas turbine, and the hot exhaust from the gas turbine passes through a heat recovery steam generator where it produces steam that drives a steam turbine.

Theoretically, the steam gasification process can be applied to any low-quality, low-energy-efficient, or coal-derived fuels. The promise in developing this technology also raises interesting possibilities with respect to the future of biomass—either alone or in combination with coal—for electricity production. This has a lot of promise.

This whole process, called IGCC, could also be utilized for something called polygeneration. That is co-producing other high-valued products in addition to electricity using gasification.

Gasification could be used to produce ultraclean synthetic fuels from coal, and biomass. Carbon dioxide capture and storage would have to be developed to address the climate change issues coal-based synthetic fuels pose.

But the long and short of it is, these synthetic fuels are inherently superior to crude oil-driven hydrocarbon fuels. This would help us in the transition to more energy-efficient technologies, such as compression-ignition-engine hybrid electric vehicles.

We could exploit our country’s huge coal reserves in an environmentally responsible way. The economic and reliability challenges certainly still exist before these kinds of plants become more readily abundant. And the CO$_2$ carbon capture and storage must be perfected.

Those are all challenges we must meet. But it is a promising technology that would provide the United States with an alternative to electricity produced from natural gas and a way to set us on a course to wean ourselves from dependence on foreign oil.

Mr. President, I will continue to speak out on all of the alternatives in which we can try to sever our dependence on foreign oil.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mr. BROWNBACK. Mr. President, I rise to speak on the nomination of John Roberts to be Chief Justice of the United States. I speak about this at an exciting time for the country. This will be the 17th person to occupy this position. It is a rarity for this position to become available. I love this Nation.

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I love the institutions of this Nation. More, I love the people of this Nation. I know, as well, that John Roberts does too. I know from the time I have spent talking with him and hearing his comments, that he too loves this Nation. He stated that people of this Nation and he looks forward to its greater greatness into the future. I am looking forward to his service.

When the Frenchman, Alexis de Tocqueville, whom many of us quote often, visited the United States in the 1830s, he wondered how Americans could maintain a genuine representative government when the liberty they enjoyed would suggest that the average citizen would be a purely self-interested individual. If we were to give them pure liberty, they would, he believed, just pursue self-interests. So how could you have a government that would govern when everybody is focused on their self-interest?

He was amazed to find what Americans seemed to have in common — that there seemed to be a genuine interest in the greater public good. When he visited, Americans were focused on an interest, their hearts pulled them to a concern about the greater public good, rather than just pursuing self-interests. He believed, just pursue self-interests. So how could you have a government that would govern when everybody is focused on their self-interest?

During the hearing, Judiciary Committee Chairman Howard Coble, R-N.C., asked about the impact of the Roe v. Wade decision. He felt that the people knew that slavery was wrong, and that terrible cost. And the people knew that the right to privacy and stare decisis are fundamental to the American legal system.

The standard argument we have heard is that cases such as Roe v. Wade and Planned Parenthood v. Casey have established the right to privacy, and that such cases should be maintained for the sake of 'stability' and 'settled expectations.'

Throughout our history, our 'habits of the heart' have informed and driven America's conscience. The people knew the colonial system stifled freedom, so they rejected the British monarchy and ultimately ratified the U.S. Constitution. The people knew in their hearts that slavery was wrong, and that terrible institution was rightly brought to an end. It was difficult, and it was at a terrible cost. And the people knew that the loss of local public protection was empty without racial justice.

Throughout the consideration of Judge Roberts' nomination, many of my colleagues have spoken about a particular issue that I want to discuss, and its impact and relationship to that habit of the heart. This particular issue, which is at the center of the debate for Judge Roberts, is the right to privacy. They also have demanded that Judge Roberts address a few cherished cases. Most of Roe v. Wade, that is, the practice of letting a precedent decide the outcome of the case, which the Supreme Court held was constitutional and made its contribution to the habits of the American heart. But even this general result of abortion's cold reality masks the specific costs of the Supreme Court's constitutional misadventure in Roe. For it has become clear in recent years that it is the so-called least among us, the disabled, who have paid a disproportional price as a result of the right established in Roe and other cases.

Let me give you some examples. According to recent numbers released in November of 2004 by the American College of Obstetricians and Gynecologists, over 80 percent of pregnancies involving a child with Down Syndrome were terminated "by choice" in the 1980s and 1990s—80 percent. Again, that is "by choice." According to the Centers for Disease Control and Prevention, out of over 55,000 pregnant women screened, 83 percent of ultrasounds done after 20 weeks gestation testing positive for cystic fibrosis. Finally, the CDC noted that for spina bifida and similar neural tube defects, at least 80 percent of pregnancies were electively terminated.

These particular numbers are astonishing, and not just because they represent the wholesale destruction of generations of unborn disabled children. What makes them painfully ironic is that this trend persists even in a society that has extended significant protections to the disabled once they are born.

A prime example, of course, is the Americans with Disabilities Act of 1990, which was an historic achievement for the Senate. Senators KENNEDY and HARKIN, and my predecessor, Senator Bob Dole, for their important role in passing this milestone legislation.

Deeming the protection of the disabled "a human rights issue," the first President Bush called the ADA "the world's first comprehensive declaration of equality for people with disabilities." His successor, President Clinton, stated on the ninth anniversary of the passage of the ADA that "For too long, we have encumbered disabled Americans with paternalistic policies that prevent them from reaching their potential. But now, we endeavor to empower individuals with the tools they need to achieve their dreams." I would note that to dream, they have to be alive.

In enacting the ADA, the Congress explicitly made the following finding, upon which one of the protections of the ADA was based.

People with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally.

In worthy fulfillment of the promise of the Declaration of Independence that "all Men are created equal," the Congress issued in the ADA a "clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." This mandate was not for all; it was for only one group. It was to address the major areas of discrimination faced day-to-day by people with disabilities.

The ADA establishes extensive protections for persons with disabilities. It
protects them when they seek employment; it protects them when they attempt to use government services; it protects them when they wish to use public transportation; it protects them even when they want to book a hotel room or seek access to a restaurant; it even protects hearing-impaired and speech-impaired who want to share in the benefits of the revolution in telecommunications.

Similarly, 30 years ago, Congress passed the Individuals with Disabilities Education Act. In the act, Congress found, among other things, that "[d]isability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society."

These are worthy and grand statements of inclusion and support to people with disabilities.

The ADA and the IDEA demonstrate that the disabled need and deserve the protection of the law in order to fulfill their potential.

Yet ironically, it is when the disabled are most vulnerable—indeed, completely voiceless—that our society leaves them completely unprotected. The law, after things before they are born. In this dangerous legal vacuum has stepped the Supreme Court. In 1973, just 2 years before enactment of the IDEA, the Court invented the right to abortion—right which has proven lethal to legions of disabled Americans. And in a cruel jurisprudential twist, it was none other than the 14th Amendment, which Congress invoked in enacting the ADA, upon which the Supreme Court based the right to abortion.

What does it say about our society that we refuse to acknowledge the damaging effects of Roe on the disabled? Where does the path lead when we ignore the habits of our hearts, which demand that we extend our compassion to these Americans? What have we become when we have jettisoned the unalienable right to life Thomas Jefferson found self-evident in favor of the moral and legal quicksand of Roe?

The sad experiences of other countries suggest a few unsettling answers to these questions. For example, China recently criminalized abortion for the purpose of sex selection. The reason for this is revealed by figures—an effects test, if you will—that 118 boys are born in China for every 100 girls—119 boys for every 100 girls. This gender gap can be attributed to the combination of the Communist government’s one-child policy with a culture that often values sons more than daughters. So millions of parents have aborted baby girls hoping to have a boy next time. If current trends continue, some experts say that China could have as many as 40 million men who can’t find spouses by the year 2020.

Inducing abortion is a serious problem. Sex determination has been a serious problem since the 1970s, when amniocentesis began to be widely used to determine the sex of the unborn child. A 1985 survey revealed that 90 percent of amniocentesis centers were involved in sex determination, with nearly 96 percent of female fetuses aborted. In response, India outlawed fetal sex determination for sex selection even ago, but prenatal sex determination through ultrasonography continues.

Indeed, the situation has become so dire that the Indian Medical Association has appealed to the conscience of the heart of that nation—and the world to save baby girls from abortion. The association says that up to 2 million baby girls still are killed by abortion every year. A former President of the Indian Medical Association told the BBC that the situation has led to a demographic imbalance of up to 50 million fewer women in the country than would be expected.

This selective destruction of the unborn in other countries has a grim predecessor in our history. The eugenics movement is a right to privacy as it has been defined and applied in the context of voting and other rights. These cases have long applied in the context of voting and other rights. These cases have carved millions of voices out of our civic core and cannot withstand moral scrutiny, much less an honest legal examination.

The right to privacy as it has been extended has not only weakened our legal culture; it has made us poorer as a people. It is impossible not to recognize the significant contributions made by those with disabilities who do survive; they help to bring out the humanity in each of us, and we are better for it. Every time I see one of these beautiful children, I am reminded of what joy they bring, and what joy their counterparts might have brought.

How can we, as a nation, stand for the principle of equality, that we are all blessed to be alive, that we are all capable of great success regardless of disability, and that we are a compassionate society, when our laws blithely allow the elective termination of more than 80 percent of a vulnerable population? It is incomprehensible.

Numerous men, women, and children with disabilities have overcome adversity and achieved great successes in their lives. I would like to take a few minutes to share with you their stories.

Here is a picture of Abby Loff. I met her last week when she visited my office. She is a beautiful young girl and...
she has Down Syndrome. She does modeling and was recently featured in a book called “Common Threads,” which illustrates the numerous accomplishments achieved by people with Down Syndrome. Abby and her mother came to Capitol Hill from Michigan last week to raise awareness of disability issues and to illustrate Abby’s wonderful life journey.

Look at this beautiful child. This note is from her parents:

When Abby was born, physicians and social workers warned the family of all of her potential limitations, developmentally and physically. When we asked what Abby’s education path might look like, we were told that the only word of guaranteed special classes. Abby has been successfully educated with support in all regular education classes and continues to grow. We felt Abby would prove herself to be much more capable than others believed . . . It continues today.

Again, that note is from her parents.

It is a tough choice when a mother or a spouse gets a diagnosis in utero that a child has Down syndrome; it is crushing. I know from my own thoughts when we were having our children. Yet I ask people to look at the beauty of the child and embrace her. If they can’t, there are other groups and individuals that will. It is a tough choice, but it is a beautiful child, a child that can accomplish much.

I want to show another example. This one is Samuel. I have had Samuel in to meet with me last year. I am rather partial to the name Samuel myself. In this picture he is catching fish. It doesn’t look like a very big fish and the fish doesn’t look too happy, but Samuel is sure happy. He has spina bifida, which most medical professionals call a devastating birth defect. These are his parents’ words:

Though we were devastated by learning that our unborn son had spina bifida, we wanted to do all we could to improve the quality of his life. Nothing was ever an option. Let’s see what we can do to improve it. At 21 weeks gestation, Samuel had fetal repair of his spina bifida lesion. Today he is a 3-year-old writer. He is imaginative, funny, and compassionate. He can read, swim, and catch even the fastest lizard. He has touched many lives. We are so thankful for him and are eager to see what great things he will accomplish.

Normally, about 80 percent of children diagnosed with spina bifida are terminated and killed in utero. I have a final example. This is a lady who has Down Syndrome as an “up syndrome” and has started “Up with Down Syndrome”. She has served on President Clinton’s Committee on Mental Retardation. She served three terms from 1994 to 2000, one of the first two members with a disability to be appointed to this committee. Her name is Ann M. Forts. She goes around the country and talks with individuals about what she can do. The second paragraph of a letter she sent to me is paragraph of a letter she sent to me is

A lady who looks at her Down Syndrome as an inspiration, who lives a fulfilling life, who is able to give back to others.

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With the recent enactment of the bipartisan partial-birth abortion ban and bills like the Pre-Natally Diagnosed Awareness Act, which I sponsored with Senator Kennedy, we have begun heading in the right direction. However there is still significant work to be done.

There is still a glaring inconsistency between the life that we deem to be worthy of protection under the Constitution, and the life which we do not. The value placed on certain persons’ lives and stages of life seems to be arbitrarily assigned. The Constitution clearly states in the 5th and 14th Amendments that “no person” shall be deprived of “life, liberty, or property without due process of law.”

“No person.” What does that mean? Does it extend to an unborn child? Is an unborn child a person or merely a piece of property? A person is entitled to inalienable rights established under the laws of the United States. Property can be done with as its master chooses. I posed this question to Judge Roberts during his confirmation hearing. Because this issue may come before the Court at some point in the near future, he declined to answer directly. But the persistence of this issue simply underlines the importance of each Supreme Court vacancy.

I will support the nomination of John Roberts to be Chief Justice of the United States. I will do so based in part on his stellar credentials for the position, but also on my hope and my prayer that he understands what is at stake when the Supreme Court interprets the people’s Constitution—not a sterile debate over arcane legal principles and Latin doctrines but the very habits of our hearts.

I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. ROBERTS. Mr. President, I pay tribute to my colleague and friend, Senator BROWNBACK, for his eloquent speech on behalf of those who are disadvantaged and deserve protection from the law. He made an outstanding speech and helped.

I rise to express my support of Judge John Roberts in regard to his nomination as Chief Justice of the U.S. Supreme Court. I know what the committee has done, and I know what the majority of Senators will likely do, and that is to vote in favor of Judge Roberts. But I also believe that an open-minded individual, applying Kansas common sense, would reach the same conclusion that I have come to hold.

It is no small event for a Senator to have the opportunity to participate in the confirmation of a candidate for the position of Chief Justice of the Supreme Court. Over the course of our Nation’s history, the Senate has come together 155 times to vote on a Supreme Court Justice. This occasion marks the 17th time to confirm a Chief Justice. So I am humbled and honored to be part of this moment of history.

The consultation efforts on behalf of the administration with my fellow Senators colleagues in regard to this nomination have been extensive. That is probably an understatement. The President has made great efforts to open dialog and to invite input and to reach out to Members of the Senate. His nomination of Judge John Roberts is a solid choice and not one made in isolation.

Kansans understand that the words inscribed on our Founding Fathers’ documents are not as delicate and fragile as the paper on which they are written. They know that the power behind them is what serves as the foundation of our Nation’s democratic government.

My sense from Judge Roberts is that he, too, rigorously believes in the power of the ideals set forth in the Constitution. As illustrated by his record as a judge on the U.S. Court of Appeals for the DC Circuit, he adheres to the guidelines outlined in the Constitution. Simply put, he walks the talk.

After watching Judge Roberts’ testification, I would say that the bar would find it—over 20 hours of questioning during the nomination hearings, I find myself not only more familiar with his many qualifications, his impressive experiences, but deeply impressed with his character. Judge Roberts’ respectful demeanor and his strong humility in the face of periodic abrasive questioning from some are exactly the type of qualities that a Chief Justice should...
possess. During the question-and-answer portion of the nomination hearings, testimonies of his colleagues, former clients, and others who attest to his character, Judge Roberts has shown to be a man of high integrity, wisdom, and fairness. This assessment was echoed from those representing a broad range of ideologies.

Judge Roberts does possess a brilliant legal mind and a thorough understanding of the law. He performs his duties with a vigor and a meticulous attention to detail that has been noted by all who have spoken about him. As a judge, he approaches a case to understand the legal facts involved and the laws that are affected, while avoiding the temptation to fulfill a specific judicial philosophy. His decisions are based on the merits of the law. His record has earned him the highest rating from the American Bar Association, the ABA. It is worth mentioning that the ABA has often been referred to by my colleagues on this side of the aisle, and those on this side as well as the “gold standard” for evaluating judges.

Most notably, in his opening statement before the Senate committee, Judge Roberts stated:

"Judges and Justices are servants of the law, not the other way around. And concerning the rule of law, he went on to say:

It is what we mean when we say that we are a government of laws and not of men. It is that rule of law that protects the rights and the liberties of Americans. It is the envy of the world. Because without the rule of law, any rights are really meaningless.

Clearly, Judge Roberts understands that the role of a judge is not to rule based on his personal judgments but to adhere to the laws as they are written. The role of the third branch under our Constitution is paramount, as the Supreme Court is often referred to as the “gatekeeper of democracy.” The duty to ensure that legislation passed and enacted by the legislative branch is within the bounds of the Constitution is an important check within our Government. The lifetime appointment provided for in the Constitution is an important protection for our Justices to guard against any pressure in regard to politics. The forward thinking by the authors of our Constitution actually provided for the preservation of our democracy by including these checks and balances between these three branches.

Some have expressed concern about Judge Roberts’ relatively young age to be nominated to such a powerful position. On the contrary, I believe that age will allow for a term of growth and stability for the Court. In my view, his age is of lesser importance when compared to the style of the judges. In response to my colleague, Senator HATCH, he explains that his style is that of a modest judge. He went on to explain that:

It means an appreciation that the role of the judge is to decide the cases before them, they’re not to legislate, they’re not to execute the laws. However, at the same time, we have witnessed judges acting beyond the scope of their duties in making decisions that in a representative democracy are legislative in their jurisdiction. We have seen that all across the country there is a tendency to abuse of power is a source of tremendous contention, not only with folks from the great State of Kansas but with Americans nationwide on too many issues. In too many cases, we have seen that decisions that are contrary to the will of the people. Americans have questioned the rulings on cases ranging from the Boy Scouts of America to the most publicized recent attack on private property rights. In Kansas, land is gold. And if land is gold, farmland is platinum. We have a healthy respect for property rights in middle America. Based on his comments, I believe Judge Roberts holds a similar opinion.

Finally, let us not forget that Judge Roberts is currently a judge. He has already experienced the confirmation process for his judgeship on the U.S. Court of Appeals for the DC Circuit. Let’s not forget that he is the same judge who spoke proudly at the hearings when he said:

I am hopeful that through the course of debate on this nomination and the next Supreme Court nomination—the next Supreme Court nomination—we can avoid the destructive partisanship that approached the brink of absolutism and ideology, a different criteria in regard to how we select judges. We have a duty to respectfully reflect the great traditions of this Chamber and rise above partisan bickering. We must raise the level of civility in our political discourse more so than ever in regard to considering the nomination of judges.

Our democracy is only as strong as our governmental institutions. Judge Roberts will be the strong pillar of support in the third branch of our Government. That, and for the reasons I have just enumerated, is why I will vote in favor of Judge Roberts’ nomination to be the 17th Chief Justice of the United States.

I yield back the remainder of my time. I thank the Chair. The PRESIDING OFFICER (Mr. ISAKSON). The Senator from South Carolina.

Mr. DEMINT. Mr. President, I rise today in support of the nomination of Judge John Roberts for Chief Justice of the Supreme Court of the United States. Just 1 year ago, I was in the middle of a branded Senate campaign and one of the most important issues to the voters of South Carolina, an issue that came up again and again, was the topic of judges. At that time, I promised the people of South Carolina that I would fight for fair judges who would judge based on the facts and the law, not on their personal political opinions.

Americans simply cannot understand how certain judges arrive at decisions such as banning the Pledge of Allegiance or allowing local governments to take a person’s home and give it to a business simply to generate more tax revenue.

Judge Roberts clearly understands and demonstrated in his hearings that he is the kind of Justice America needs. He is brilliant, fair, and independent. He has proven himself to be a judge of integrity who is committed to equal justice for all Americans. Judge Roberts is eminently qualified. He has earned the American Bar Association’s highest rating of “well qualified.” Before being recommended unanimously confirmed by the Senate in 2003 to the DC Court of Appeals, Judge Roberts had already established an unmatched resume in the legal world. After graduating in the top of his class from Harvard, he clerked for Justice William Rehnquist and then worked as a top aide in President Reagan’s Justice Department. In private and public practice, he argued an amazing 39 cases before the Supreme Court, emerging as one of the Nation’s top litigators.

During his hearing, Judge Roberts displayed his humble expertise, and I believe Americans warmly welcome his approach to the law. Despite what some have said about Judge Roberts being too moderate, Judge Roberts was very forthcoming at his hearing in discussing his judicial philosophy, his legal thinking, and his views on a judge’s proper role within our constitutional framework.

The Senate was also allowed to review an unprecedented number of documents from Judge Roberts’ service in the Federal Government illustrating his judicial philosophy and legal ability. We have seen in the hearings when he said:

It means an appreciation that the role of the judge is to decide the cases before them, they’re not to legislate, they’re not to execute the laws.
Mr. BURR. Mr. President, I rise today, like my colleague who spoke just before me, to support the nomination of John Roberts to be the Chief Justice of the U.S. Supreme Court. To those who know me, to those who have heard me talk on this subject, this is no great surprise. But voting on a Supreme Court nomination is a very rare task. It is more historic now, as the Senate will consider a nominee for the top job of the Court.

The question I ask today is, Why should America care about this debate? This debate is more significant than a lifetime appointment of Chief Justice of the Supreme Court.

The debate is not only significant, but more significant than the influence that one single individual brings who is chosen. This debate is about future decisions that will affect the lives of every American, that will affect our children and our children's children.

From our civil liberties, to property rights, to questions of life and death, to safety in communities, to the very basic freedoms, there is no area in our daily lives that is not somehow affected by the judicial decisions of the U.S. Supreme Court. The decisions made by the Court today will have a lasting effect long after we have gone from this institution. It is essential, absolutely essential, that we confirm not only competent, impartial judges, but those who are the very brightest and who are good citizens and understand the task for which they have been nominated and confirmed.

Over the course of the last several weeks, I had the opportunity to hear from legal experts, from political analysts, about Judge Roberts and the chances of the success of his nomination and his confirmation. We have had a process of very detailed hearings where our colleagues, many of whom are lawyers, have asked the most appropriate questions, with a lot of thought, a lot of time to deliver the questions, and we have seen the response of a brilliant lawyer, with no notes, quote case law from years past that appropriately answered the questions that did not affect future cases the Court might hear.

Now, I am not a lawyer and I do not judge Judge Roberts' legal background the same way lawyers might. I understand the distinction of people. I understand when I meet somebody who is a good person. I have met Judge Roberts. This is a good person. This is an individual in whom America can be proud when they refer to him as Chief Justice.

A couple weeks ago I had the opportunity to have Judge Roberts in my office. We talked about his background, his life experiences, we talked about our families. I did not quiz him about his position on hot topics of the day. That, quite frankly, was not the ground I was focused to go on. Personally, as a husband and a father, I wanted to know where Judge Roberts truly stood and if he understood the job he has been asked to do. I wanted to know if he understood the responsibilities not just as a lawyer, not just as a Justice, but as a husband and as a parent. In the decisions he would rule on and how they would affect not just his family but in a real way the people of North Carolina.

As Senators, we are all responsible for constituencies. I am responsible for more than 8½ million individuals in North Carolina, and I wanted to know, quite frankly, if Judge Roberts intends to preserve our Nation's constitutional principles by interpreting law, not by taking a position that conflict with the Constitution, and that is the question I asked him, based upon the answers he gave to me in his testimony in front of the Judiciary Committee, I am confident he will do just that—interpret the law, not write the law. Judge Roberts, as every person has heard, has the academic and the professional credentials to serve not only as a Supreme Court Justice but as Chief Justice.

There is something that concerns me today. It concerns me, and it should concern the American people. This vote will not be unanimous, this vote will be fair from unanimous based upon the reports from Senators. Why? Politics. I am not sure it has ever permeated the process to the degree it has in this. As we stand here today, with one of the brightest nominees, ready to confirm, some in this institution are already suggesting the next nominee has no chance. There is not a person who has been nominated. There is a group of senators that has been talking about it. I might remind Senators that Judge Roberts was never talked about in the group that was purported to come up in the President's first nomination. Yet some suggest we are going to move the Senate further by the next nominee who comes through.

The divisiveness has to stop in this institution. We choose the best and the brightest to serve this country. If we consistently move that bar, if we consistently dig to find things that no other Congress has looked for, if we are not careful, no one will want that job. If we are not careful, the best and the brightest legal minds in this country who would serve on the bench and move our country forward, they would be passed over by the party they are from, when they get that call, will say, Mr. President, I want to pass. I can't put my family through it. I can't put myself through it. The risk of doing it is too great to everywhere to everyone, to make a commitment to serve this country.

I ask all of us, what message are we sending to our children when the best and the brightest pass, when they elect not to go through the process we in this institution have looked for, if we are looking for the smartest nominees, ready to confirm, the brightdest nominees, if we are going to move the Senate bar even farther for the next nominee who comes through.

As long as we have the separation of powers, the other Congress has looked for, if we are not careful, no one will want that job. If we are not careful, the best and the brightest legal minds in this country, who would serve on the bench and move our country forward, they would be passed over by the party they are from, when they get that call, will say, Mr. President, I want to pass. I can't put my family through it. I can't put myself through it. The risk of doing it is too great to everywhere to everyone, to make a commitment to serve this country.

This is a defining time for the Senate. This will determine who is willing in the future to actually serve their country and to serve in one of the single most important areas, the U.S. Supreme Court.

I am confident Judge Roberts holds the academic credentials, he holds the professional credentials but, more importantly, I am confident today that Judge Roberts is a good man. He deserves the support of every Member of the Senate to become the Chief Justice of the U.S. Supreme Court.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. SMITH. Mr. President, I thank you for the time. It is for me a privilege to speak on behalf of Judge Roberts, but especially because while I have voted on hundreds of nominations before, I have not had control of and now at the present time President Bush, this is the first time I will cast a vote, an affirmative vote, for a member of the U.S. Supreme Court.

This is a defining time for the Senate. This is a defining time for this body to speak on behalf of Judge Roberts.

As Senators, we are all responsible for constituencies. I am responsible for more than 8½ million individuals in North Carolina, and I wanted to know, quite frankly, if Judge Roberts intends to preserve our Nation's constitutional principles by interpreting law, not by taking a position that conflict with the Constitution. That is the question I asked him, based upon the answers he gave to me in his testimony in front of the Judiciary Committee. I am confident he will do just that—in other words, he will judge Roberts to come see me. I enjoyed a delightful visit with him prior to announcing my affirmative decision to vote for him without qualification, without reservation, or any reluctance.

He is, in short, a brilliant nominee and I believe he will be a brilliant judge
who will make us proud for years and years to come.

When I ran for the Senate, I ran as someone with a hat in the political arena. It is an experience where you state your position, you ask for votes. That is a fundamentally different exercise than being a judge. A judge is not someone who comes as a candidate asking for a vote, posturing in any fashion, and playing politics. The nature of the judicial branch, even the executive branch, is fundamentally different from the political arena. One does not make law. The President is to execute the law. The judge is to interpret that law.

When I was running for an election certificate, I was asked repeatedly about how I would judge nominees to the Court. The underlying question was always, what is your litmus test? Do you have a single issue litmus test? I promised Oregonians that I would have no litmus test and would vote for qualified Democrats and Republicans from their perception that I would move forward because I truly believe we have to remember the characteristic distinctions between the roles of these different branches of Government. What I did tell them is that I would judge them by their intelligence, their integrity, and their temperament. By that standard, I am not sure we will ever have the privilege of voting for a nominee who is more intelligent than Judge John Roberts. His academic credentials are without equal. He is clearly qualified for the position. What that means is beyond reproach as well. He has conducted himself honorably. There has been no hint of any kind of scandal that would disqualify him from holding high public office. I like especially the fact that he and his wife late in life declared themselves without equal. He is clearly qualified. He has promised fidelity to the Constitution of the United States. I have put an enormous amount of contemplation and consideration into my vote on this nomination. Some may wonder why this has been such a difficult decision for me. Clearly Judge Roberts is an individual of great accomplishment. He has an outstanding educational background and keen legal skills. He is a thoughtful, decent, modest person, impressively knowledgeable about constitutional law and the Court.

I watched much of the judiciary hearings. I have reviewed briefs and court documents written by Judge Roberts. And, thanks to his generosity, I met with Judge Roberts for more than an hour in my office last week, talking one on one.

What I did not find in the hearings or in Judge Roberts’ writings or in our meeting was a clear indication that Judge Roberts understands the critical role the courts play in protecting the civil rights of Americans and in allowing those who have suffered discrimination to be able to seek recourse and affirm their rights in Federal court. I was seeking some indication that Judge Roberts understands that the issues that come before the high Court cannot always be viewed with a cool, legal dispassion and detachment, but that the Court and its members play a critical role in protecting the powerless in our country.

This is of grave concern to me because the individual who fills this Supreme Court vacancy will have the ability to enhance and strengthen or undermine and weaken the Americans With Disabilities Act.

Judge Roberts’ nomination comes at a time when there is a very significant controversy over whether the Supreme Court and Congress over whether Congress has the authority to require the States to comply with antidiscrimination laws. Unfortunately, the law caught at the center of this clash is the Americans With Disabilities Act.

As I have deliberated on this nomination, the first and foremost question in my mind has been this: What kind of Court would the Roberts Court be? Would it be a Court that serves as a refuge of last resort for the powerless in our society? Or, would it be a Court that will continue down a disturbing path seen in the later years of the Rehnquist Court, a path that limits the
ability of Congress to pass legislation that provides meaningful protections to individuals, including the 54 million Americans with disabilities?

Unfortunately, after carefully reviewing the record and talking with Judge Roberts, I am unable to conclude that a Roberts Court would guarantee the rights of the powerless and those with disabilities.

Earlier this year we celebrated the 15th anniversary of passage of the Americans With Disabilities Act. The ADA, as it is known, prohibits discrimination in employment against people with disabilities. It requires that the services and programs of local and State governments be accessible and usable by individuals with disabilities. Since its enactment, the ADA has provided opportunity and access for 54 million Americans with disabilities who, prior to the law’s enactment, routinely faced prejudice, discrimination, and exclusion. And in their everyday lives.

As Members of this body know very well, I was the lead sponsor of the ADA. I championed it because I had seen discrimination against the disabled firsthand, growing up with my brother Frank, who was deaf. During his childhood, my brother was sent halfway across the State to a school for the “deaf and dumb.” He was told his career path would be limited because he was deaf. During his everyday life, Frank experienced active discrimination at the hands of both private individuals and government, and this served to limit the choices before him. Frank’s experience was by no means unusual, as Congress documented extensively prior to enactment of the ADA. As part of the writing of that bill, we gathered a massive record of blatant discrimination against those with disabilities. We had 25 years of testimony and reports on disability discrimination, 14 congressional hearings, and 63 field hearings by a special congressional task force that were held in the 3 years prior to the passage of the Americans With Disabilities Act. We received boxes loaded with thousands of letters and pieces of testimony gathered in hearings and townhall meetings across the country from people whose lives had been damaged or destroyed by discrimination. We had markups in 5 different committees, had over 100 amendments in the Senate, and the rights of the disabled still hang in the balance.

As a result, 15 years after passage of the ADA, the rights of those with disabilities still hang in the balance. Those rights will be determined in a very significant way by a potential Roberts Court. As Chief Justice, Mr. Roberts will have a major role in determining whether the balance swings for or against people with disabilities. If Judge Roberts lends his voice to those on the Court who believe, in the rights of States over the rights of people, in court houses are accessible, but maybe libraries are not, employment offices are not, prisons are accessible but employment offices are not.

When we passed the ADA, we in Congress did not forbid employment discrimination against the disabled unless they worked for the State. We didn’t say some services must be accessible. But that is what the Court has been saying. Talk about judicial activism.

I would point out here, in those years when we were developing the Americans With Disabilities Act, my friend Senator HATCH was ranking member on the Judiciary Committee. They had their staffs look to make sure we passed the constitutional tests. Attorney General Dick Thornburgh, a great supporter of the Americans With Disabilities Act, had the Department of Justice look and make sure we were passing constitutional muster. Boyden Gray, in the White House Counsel’s Office, looked at it to make sure we passed constitutional muster. Fifteen Reagan appointees to the National Council on Disability, working with constitutional law experts, looked at the bill to make sure it passed constitutional muster. Yet the Court, by 5-to-4 decisions, is undermining all we did.

As a result, 15 years after passage of the ADA, the rights of those with disabilities still hang in the balance. Those rights will be determined in a very significant way by a potential Roberts Court. As Chief Justice, Mr. Roberts will have a major role in determining whether the balance swings for or against people with disabilities. If Judge Roberts lends his voice to those on the Court who believe, in the rights of States over the rights of people, in court houses are accessible, but maybe libraries are not, employment offices are not, prisons are accessible but employment offices are not.

In a memo to the Attorney General, Judge Roberts said the lower court decisions amounted to an exercise of judicial activism and the lower courts had inappropriately “substituted their own judgment of appropriate educational policy.”

This was not the language of a lawyer merely representing the views of a client. This was the language of an attorney in a policymaking position at the Department of Justice, suggesting that the Government should have weighed in against the right of a deaf student to have access to an interpreter under the Education of the Handicapped Act, a predecessor to the Individuals With Disabilities Education Act. In other words, Judge Roberts thought that this law, the Federal law to ensure that students with disabilities have access to the same educational opportunities as all other students, should be interpreted narrowly rather than broadly.

That is not the quality I am looking for in a Chief Justice. I want a Chief Justice who brings a passion for justice to the law; who does not lose sight of the real people whose lives and livelihoods are at stake in the Court’s decisions. Some supporters of Judge Roberts have argued that the Rowley case was more than two decades ago and Judge Roberts’ views on statutory interpretation and on the ability of individuals to protect their rights through the courts may have evolved since then. But how are we in this body to know that, particularly when the White House has failed to provide us with all requested and directly relevant documents?

Of greatest interest to me are the decisionmaking memoranda written by Judge Roberts during his tenure as Principal Deputy Solicitor General. Again, in his role as Principal Deputy Solicitor General—a position sometimes referred to as a “political deputy” because it is a political appointment—Judge Roberts was not merely representing a client but was involved in crafting the Department’s legal positions in some of the most important cases in recent years.

During his tenure as Principal Deputy, Judge Roberts argued before the
court that individuals shouldn’t be allowed to go to court to enforce their rights under the Medicaid statute, that children shouldn’t have access to courts to enforce their rights under the Adoption Assistance and Child Welfare Act, and that courts should take a restrictive view of remedies available under title IX and other civil rights laws.

Given the decision of the White House to withhold these documents from the Senate, I am forced to draw my conclusions. I do know.

Before I conclude my remarks, I would like to describe an example of one of the “real people” I referred to earlier, a woman by the name of Beverly Jones. Ms. Jones, who testified before the Senate Judiciary Committee on Judge Roberts’ nomination, has been using a wheelchair since a 1984 traffic accident in 1990, the year we passed ADA. She completed court reporting school and set out to work as a court reporter’s stenographer in order to support her family. But what she found as she traveled throughout the State of Tennessee was she couldn’t get the jobs in a great majority of Tennessee’s courthouses. She was forced to choose between asking complete strangers to carry her up the courthouse or inaccessible rest rooms or simply turn down employment opportunities. That is an unacceptable choice for a single mother supporting two kids.

Ms. Jones testified to the committee that she talked with Federal, State, and local officials about the problem of inaccessible courtrooms, but her entreaties were met with indifference, until she filed suit. I would like to quote from Ms. Jones’ testimony about her experience because I think it vividly illustrates what is at stake.

She said:

The door that I thought had been opened with passage of the ADA was still closed and many of our disabled still a dream, and turning into a nightmare. Nobody took either me or the law seriously until I and others brought a lawsuit.

That is what is at stake today—the right of 64 million Americans with disabilities to live their dreams, the right of the powerless in our society, the disenfranchised, to turn to the courts to take them seriously.

Unfortunately, I am not yet persuaded that a Roberts Court would protect these rights to Federal, State, and local officials. The mentally retarded have been subject to a “lengthy and tragic history,” of segregation and discrimination that can only be called grotesque. . . . A regime of state-mandated segregation and degradation soon emerged that in its virulence and bigotry rivaled, and indeed paralleled, the worse excesses of Jim Crow. Massive custodial institutions were built to warehouse the retarded for life; the aim was to halt reproduction of the retarded and “nearly extinguish their race.” Retarded children were categorically excluded from public schools, based on the false stereotype that all were ineducable and on the purpose needed to protect non-retarded children from them. State laws doomed the retarded “unfit for citizenship.” That has been the experience for the last 200 years or more in this country. We stepped in to remedy that with the Americans with Disabilities Act.

I hope Judge Roberts keeps these things uppermost in his mind and in his heart. Only time will tell. I yield the floor.

The PRESIDING OFFICER (Mr. GRAHAM). The Senator from New York. Mr. SCHUMER. Mr. President, I rise to speak on the nomination of Judge John Roberts to be Chief Justice of the United States.

I thank my colleague from Iowa for his heartfelt and outstanding words. Votes like this come about so rarely that many Senators have spent their entire careers in this body without ever having had the opportunity to vote on a Chief Justice.

And most of us in the Senate today will likely never again vote on a nominee to that incalculably important position.

That is why I have been troubled about how some have characterized the votes of conscientious Senators in this case—Senators who have struggled with, and deliberated over, Judge Roberts’s record in arriving at their decisions.

As will be borne out tomorrow, Democratic Senators have given this vote the profound and serious consideration that it deserves.

We are not voting monolithically, but rather each according to his or her own conscience.

And that is what this vote is.

It is a question of principle—not of politics, partisanship, or positioning, as some have cynically suggested.

Democrats have truly struggled with this vote. I know I have. Like some others, I did not make up my mind until late on the night before the committee vote.

We are not marching in lockstep, with nary a dissent like my colleagues across the aisle.

But while this vote was a close call for many, (Like myself) the next one may not be.

While this nomination did not warrant an attempt to block the nominee on the floor of the Senate, the next one might.

If the President sends us a nominee who, like Janice Rogers Brown, believes that the New Deal was the triumph of a “socialist revolution,” there will be a fight.

If the President sends us a nominee who, like Priscilla Owen, was criticized by her conservative colleague—Alberto González—for an “unconscionable act of judicial activism,” there will be a fight.

If the President sends us a nominee who, like Miguel Estrada, refuses to answer any real questions and whose record is not made fully available, there will be a fight.

If the President sends us a nominee who is committed to an agenda of turning the clock back on civil rights, workers’ rights, individual autonomy, or other vital Constitutional protections, there will likely be a fight.

And it will be a fight without any winners.

Mr. President, on the eve not only of the confirmation vote on John Roberts, but also the President’s nomination of a replacement for the seat of Justice O’Connor—for more than two decades a pivotal swing vote on the High Court—I hope and pray that the President chooses to unite rather than divide; that he chooses consensus over confrontation.

Now let me return to the vote at hand.

The vote should be viewed against a unique—and troubling—historical backdrop.

Many are saying the Senate should not bring “politics” into this. Their
quarrel should be with the President of the United States if they feel that “politics” means figuring out a judge’s ideological, judicial philosophy. Politics, if you define it as that, was introduced by a President who vowed that, if given the opportunity, he would name to the Supreme Court Justices in the “mold” of Clarence Thomas and Anthony Scalia.

Given the President’s campaign promise and repeated declarations, there is a presumption that any nominee to the President sends to the Senate is in that “mold.”

The presumption is especially strong—and is particularly hard to overcome—with a nominee who was carefully vetted, researched, and interviewed at sufficient length by a President who professed a desire to nominate people in the mold of Thomas and Scalia; and, with a nominee who is eagerly embraced by those groups who support the views of Thomas and Scalia. It’s not that I have failed to change America through the Courts;

The presumption can be rebutted, of course. And the way it can be rebutted is through the answering of questions and through the production of relevant documents. Here, regrettably, there was much lacking.

To be fair, Judge Roberts did partially rebut the presumption. He made some inroads.

Judge Roberts has a keen and impressive mind. We all know that. His encyclopedic knowledge of the law and eloquent presentation certainly confirmed what his colleagues have said about him—that he is one of the best advocates, if not the best advocate in the Nation.

But being brilliant and accomplished is not the number one criterion for elevation to the Supreme Court—there are many who would use their considerable talents and legal acumen to set America ablaze. So, while legal brilliance is to be considered, it is not dispositive.

In addition, very good lawyers know how to avoid tough questions. People have said that one of the reasons the Supreme Court is that he mastered the trick of making the point he wanted to make, rather than answer the question asked.

When I reviewed the transcript in the weeks following the hearings concluded but before we were called on to vote, there was often less than met the ear.

There is an obligation of nominees to answer questions fully and forthrightly, because they are essential to figuring out a nominee’s judicial philosophy and ideological bent to me, the most important criteria in choosing a Justice.

Many of us were disappointed in his failure to answer so many questions and is one of the contributing factors to the no votes that will be cast against Judge Roberts.

Add to that the refusal of the administration to allow the Senate to examine important and relevant documents, and we are voting on a hunch. Senators voting on the position of Chief Justice should not be relegated to voting on a “hunch.”

Without an answer to the central question: Who is Judge Roberts?

Particularly troubling to me are the eerie parallels between Judge Roberts’s testimony and then-Judge Thomas’s, especially given President Bush’s declaration that he would nominate Justice Thomas in the mold of Clarence Thomas.

The echoes of then-Judge Thomas’s empty reassurances that he was a mainstream jurist are ringing in the ears of every Senator who listened to the hearings. As a Supreme Court Justice, however, Justice Thomas has repeatedly urged the most narrow interpretation of a privacy interest possible, in Casey, in Lawrence, and at every other opportunity.

At his hearing, for example, Judge Roberts said that he believes “there is a right to privacy protected as part of the liberty guarantee in the due process clause.” At his hearing, then-Judge Thomas made almost the identical statement. As a Supreme Court Justice, however, Justice Thomas has repeatedly urged the most narrow interpretation of a privacy interest possible, in Casey, in Lawrence, and at every other opportunity.

At his hearing, Judge Roberts repeatedly assured the Committee that he had “no quarrel” with various Supreme Court decisions on issues of privacy, women’s rights, civil rights, education, rights, and the environment on this widely-accepted constitutional basis.

We simply did not get definitive answers to these questions at the hearings.

At the hearings, I gave Judge Roberts every opportunity to distance himself from Justice Thomas’s most extreme views. He refused.

Now, Senator CORNYN, my good friend from Texas, and others from across the aisle have said that if we can’t vote for this nominee who could we vote for? Here is your answer: someone who answers questions fully and a record that he is not an ideologue; someone who gives us a significant level of assurance with some answers and a record that he or she is not an ideologue.

Judge Roberts is clearly brilliant and his demeanor suggests he well might not be an ideologue.

But he simply did not make the case strongly enough to bet the farm.

There is a good chance—perhaps even a majority chance—that Judge Roberts will be like Justice Rehnquist on the bench. We know he will be brilliant, and he could well be—while very conservative—not an ideologue. That is why I struggled with this decision so long and so hard.

If he is a Rehnquist, that would not cause for exultation; nor would it cause for alarm. The Court’s balance will not be altered.

But there is a reasonable danger that he will be like Justice Thomas, the most radical Justice on the Supreme Court.

It is not that I am certain that he will be a Thomas. It’s not even that the chance that he will a Thomas is greater than fifty percent. But the risk that he might be a Thomas and the lack of reassurance that he won’t—particularly in light of this President’s professed desire to nominate people in that mold—is just not good enough.

Because if he is a Justice Thomas, he could turn back the clock decades for all Americans. The Court’s balance may be tipped radically in one direction and stay that way for too long.

I hope he is not a Thomas. But the risk is too great to bear, and it exceeds the upside benefit.

Because of the risk and its enormous consequences for generations of Americans, I cannot vote yes. I must reluctantly cast my vote against confirmation.

The PRESIDING OFFICER. The Senator from Oregon,

Mr. WYDEN. Mr. President, 5 years have passed since the Presidential election of 2000, and legitimate questions...
about the outcome of that campaign have left too much of America too divided. Legitimate questions about the outcome of that election have given rise to an ever-growing polarization between so-called red and blue States, between liberals and conservatives, and between Republicans and Democrats in the Congress.

Despite a somewhat more convincing outcome in the 2004 Presidential election, the divisions caused by the events of 2000 did not become purely ideology-based. So, when Judge Roberts came to the Senate, it was clear he was far from being a partisan, at least as assessed by lobbyist. 

As I have pointed out here before, the Supreme Court opening occurs while the constitutional bedlam whenever a Supreme Court nominee is, per se, objectionable. Given what is ahead, I felt I had an obligation to examine how Judge Roberts saw end-of-life issues in the context of the Constitution and whether he would be willing to manipulate its language to add to a constitutional intrusion in private family matters. When I met with Judge Roberts in August, we discussed end-of-life issues at length, not because this was a litmus test for me, and I certainly don't believe in litmus tests, but because I thought it was important to carefully consider Judge Roberts' judicial temperament on this critical issue.

Judge Roberts did not say how he would have handled the Schiavo case or that he saw end-of-life issues in the Constitution. However, should the test to confirm a Chief Justice be, he is not one we would choose? I ask my friends to imagine the mess we will have left for our country if the Senate uses this test and votes solely on the basis of a nominee's political beliefs. Judge Roberts because he is not one of us, because he is too conservative, because he is too young, because he may prove effective. He is not whom we would choose, they say. And on that point, I am in full agreement.

Should the test to confirm a Chief Justice be, he is not one we would choose? I ask my friends to imagine the mess we will have left for our country if the Senate uses this test and votes solely on the basis of a nominee's political beliefs. Judge Roberts because he is not one of us, because he is too conservative, because he is too young, because he may prove effective. He is not whom we would choose, they say. And on that point, I am in full agreement.

Here is my message to those friends: A sword forged in ideology in 2005 can tear apart the fabric of our society; a test for me, and I certainly don't believe in litmus tests, but because I thought it was important to carefully consider Judge Roberts' judicial temperament on this critical issue.

The elections that have divided us in such a manner are being guided by an ideological litmus test. This is the kind of litmus test that I respect the policy watchdogs that I respect the thoughtful reason; three, on the basis of his public testimony, it is hard to see Judge Roberts as a man who will walk into the white pillar building across the street and set about tearing apart the fabric of our society; one, on the basis of his public testimony, it is hard to see Judge Roberts as a judicial activist who would place ideological purity or a particular agenda above or ahead of the need for thoughtful reason; three, on the basis of his public testimony, it is hard to see Judge Roberts as a divisive, confrontational extremist who would try to further exploit the divisions in our country.

What I saw in his public testimony and the general public is an intelligent, thoughtful man, certainly a deeply conservative man with a tempered view of the role of Government. At his Judiciary Committee hearings, nothing he said in public conflicted with what he had told me in private. In addition to meeting with him, I have scrutinized Judge Roberts and his record closely, considering his Reagan-era documents, reading the news analysis, and even attending hearings. I have carefully read the transcripts of them as well. No one disputes that Judge Roberts has a brilliant legal mind. My analysis of his record leads me to conclude that he is not cut from the same originalist cloth as Justice Thomas and Justice Scalia. He does not seem to believe that the words of the Constitution are fossilized, leaving only a one-size-fits-all, 18th century remedy for every problem that our society confronts. It is hard not to believe that he believes in limited government.

Back in March, I led the effort in the Senate to block attempts to dictate a specific medical treatment in Terri Schiavo's tragic case because I believed the Constitution affords families the right to decide these matters privately. This is an area, in my view, in which the Federal Government has no business intruding. Involving itself in the Schiavo case was an inappropriate meddling and bluntly ignoring the limits of its constitutional authority.

I believe that the Terri Schiavo case is, in some small way, a sign of the end-of-life cases that will arrive at the Supreme Court's doorstep. In my view, most of these cases will involve one individual and passionately held views. Demographic trends and improvements in medical technology assure that there will be many of these cases.

Given what is ahead, I felt I had an obligation to examine how Judge Roberts saw end-of-life issues in the context of the Constitution and whether he would be willing to manipulate its language to add to a constitutional intrusion in private family matters. When I met with Judge Roberts in August, we discussed end-of-life issues at length, not because this was a litmus test for me, and I certainly don't believe in litmus tests, but because I thought it was important to carefully consider Judge Roberts' judicial temperament on this critical issue.

Judge Roberts did not say how he would have handled the Schiavo case or that he saw end-of-life issues in the Constitution. However, Judge Roberts did say quite a bit that made a lot of sense to me and I think would make sense to the vast majority of Americans. Judge Roberts agreed that there is a constitutionally based privacy right and that while the scope of the privacy right is still being defined in the context of end-of-life care, he said that when he approached the issue, he starts with the proposition that each person has the right to be left alone and that their liberty interests should be factored in as well.

At his hearing, Judge Roberts reiterated his position, stating that a right to privacy exists in the Constitution. He stated that privacy is a component of the liberty protected by the due process clauses of the 5th and 14th amendments, and he stated this liberty interest is protected substantively as well as procedurally. While discussing the Schiavo tragedy during our August meeting, I also asked him about Congress's authority to legislate a particular remedy in a particular case, and Judge Roberts expressed his concern about judicial independence. It was apparent to me Judge Roberts understands there are constitutional limits to the recent enthusiasm of Congress to prescribe particular remedies in a particular end-of-life case.

Concerning States rights to regulate medical practice and the 10th amendment, Judge Roberts stated he believed the Framers expected States to do most of the regulating and that they expected most regulation to
be State-based. In his view, the basic genius of the Federal system is that it affords different States the ability to approach problems in a way that is best suited to meet their different needs, and that imposing uniformity across the country would stifle the genius of our Federal Fathers.

Judge Roberts also told me he attaches great importance to legislative history in interpreting law. He repeated this point several times during his public hearings. Those who have closely studied former Attorney General Ashcroft’s challenge to the Oregon physician-assisted suicide law know there is not one word in the Controlled Substances Act, the law used to launch the case, indicating the Controlled Substances Act is aimed at or should be used to overturn or undermine the right of States to regulate medical practices within their borders.

On the extremely important matter of a woman’s right to choose, I asked Judge Roberts about Roe. He did not offer specific comments, but his response indicated he would not enter the Court with an “agenda” and he would respect the Court’s precedents. In the public hearings, he also said he personally agreed with the conclusion of the Griswold and Eisenstadt decisions, which held that the privacy right protects the right of individuals to use birth control.

His opinions on the issues that matter indicate he is intelligent, thoughtful, and that he has a tempered view of the role of the Federal Government.

Judge Roberts’ combination of temperament and intelligence give him the potential to be a conciliatory voice at a divisive time in American history. He has the skills to reach across the divisions in America to show that justice can be a healing force for the wounds that cut our society so deeply. He can help to unify the country by building a consensus and he possesses the nature and the desire to unify the Court and, with it, our Nation. I wish him wisdom, diplomacy, and moderation as he prepares to assume the role.

Mr. President, I yield the floor.

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

The PRESIDING OFFICER. Mr. Miranda.

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. GRAHAM. Madam President, I want to make one final point, Mr. President, a point that is important to me. There is another vacancy on the Court, and the President is expected to send forth his nominee soon. My intention to vote for Judge Roberts tomorrow may be construed as a “weathervane” for how I might vote on the next nominee. In the past, I have not hesitated to vote against several of the President’s nominees to the courts of appeals when they carried the ideological and activist baggage I believed would be disruptive to our society. If the President puts forward a nominee to replace Justice O’Connor who is unlikely to ably and respectfully fill her shoes, I will vigorously oppose that nomination.

I believe it is important to voice my question about the impact of this nomination on the body politic of our country. Among the many awesome duties of the Chief Justice, no duty is of greater importance than the duty to unify our Nation when Americans find themselves in disagreement. Different Chief Justices have shouldered this burden with varying degrees of success. This ability to unify what is most sorely needed at this moment in our history is, I am of the opinion that Judge Roberts possesses the nature and the desire to unify the Court and, with it, our Nation. I wish him wisdom, diplomacy, and moderation as he prepares to assume the role.

Mr. President, I yield the floor.

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. GRAHAM. Madam President, I want to comment a bit on the nomination of Judge Roberts. I wish to make a political observation. This is certainly a political body, and the nomination process has politics to it. That is not a bad thing. That is to be expected.

From a Republican point of view, this is an easy vote. We are inclined to support a President when he is in power making a nomination. But that is not always the case, that every Republican vote for every nominee. I expect that will be the case here. Most of us on our side of the aisle are pleased with the nominee, someone of extraordinary intelligence, legal abilities, and seems to be an all around good guy who has served his country well in every capacity that he has been called upon to serve. We will all vote en masse. It is an easy vote for us.

To our Democratic colleagues, it is not so easy. Any time you are in the minority, and the Court being an important part of American life and politics, there is a lot of pressure on our Democratic colleagues to say no for different reasons by special interest groups on the left. We certainly have them on the right. Our day will come. If there is ever a Democratic nominee, we will face the same pressure.

I would like to compliment my Democratic colleagues. Every one has taken the process seriously. There will be a healthy number of Democratic votes for Judge Roberts. To those who have decided to vote for him, history will judge you well. You have based your votes on the qualifications test. You have decided to vote for someone who loves the law more than politics. Over time, history will judge you well. One of the highlights of the Bush administration will be the selection of Judge Roberts to be the Chief Justice of the United States.

For those who vote no, to a person everyone has struggled with it, thought about it, cast your vote. Generations of Republicans sitting on the committee and in the Chamber has lived up to the best traditions of the Senate. A few months ago, we were at each other’s throats, about to blow up the place. There is plenty of blame to go around but we have sort of broken that cycle. We have had a confirmation process that is in the best tradition of the Senate. We will go forward, and I hope he gets a healthy number of votes. It looks as if he will. One thing I wanted to take some time to discuss is some of the reasoning given to vote no and make a cautionary tale about some of the suggestions why a “no” vote would be appropriate. There seems to be some suggestion that if he doesn’t have an allegiance to a particular line of cases, particularly the right of privacy cases centering around Roe v. Wade, that you can’t vote for him. That one case or that line of legal reasoning is so important that with his commitment to upholding Roe v. Wade or the concept of Roe v. Wade, a “no” vote would be in order. I would argue that could be applied on our side. Most of us are pro-life. I would say 90 percent of the Republican caucus is pro-life. Probably 90 percent of the Democratic caucus is pro-choice. The country is pretty evenly divided. If we have a litmus test about Roe v. Wade or any other case, that is not doing the judiciary a good service because you are putting a judge in a bad spot.

Senator HARKIN mentioned the Americans with Disabilities Act, something he should be very proud of. He fought hard to make it part of law, and we are a better Nation for it. There are some cases involving the Americans with Disabilities Act that will come before the Court. Senator HARKIN did not think that he could vote yes because he wasn’t assured that Judge Roberts would uphold the Americans with Disabilities Act in a way that he felt comfortable with in that States have been exempted from the act. We are all dealing with that issue.

The only thing I can say about a guarantee with Judge Roberts, if you decided you would like to see certain Court decisions reversed, if you are a liberal and would like to see certain decisions sustained, the one thing I can promise you about Judge Roberts is he is going to make his decision based on the facts, the briefs, the record in the particular case, and the arguments made by litigants. If he overturns a precedent of the Court, he will apply the four-part test that has been the historical analysis of how to overturn a standing precedent. He is not so easy. Any time you are in the minority, he is going to apply the rule of law. If you are looking for an outcome-determinative judge, someone who is going
to see things your way before they get your vote, you are going to be disappointed. To be honest, the law is better off for those answers. He is not the only one to refuse to bargain his way on the Court.

Justice Marshall was asked by Senator McClellan: Do you subscribe to the philosophy expressed by a majority of the Court in Miranda?

That is a major league constitutional case in our Nation’s history where police officers have to inform a criminal defendant of certain rights to silence under the Constitution. That was a big deal. When Justice Marshall was coming along, that case had not been long decided. He said: I cannot answer your question because there are many cases pending that are variations on Miranda that I will have to pass on if I were confirmed.

Senator McClellan: Do you disagree with the Miranda philosophy?

Justice Marshall: I am not saying whether it is not, because I am going to be called to pass on it.

Senator McClellan: You cannot make any comment on any decision that has been made in the past?

Justice Marshall answered: I would say that things that are certain to be reexamined in the Court, it would be improper for me to comment on them in advance.

I couldn’t say it better. This idea that Judge Roberts has been evasive, that he will not give you a detailed answer of how he will decide the concept of the right of privacy or how he might rule on interstate commerce clause cases that will certainly come before the Court, he is doing exactly what Justice Marshall did when he was in the confirmation process. He was not going to bargain his way on the Court.

Justice Ginsburg gave a very famous quote: I am not going to give you hints, any previews, no advisory opinions that I believe will be coming before the Court.

If that is your test, that you have to have a guarantee in your mind that a certain line of cases or a legal concept will be upheld or stricken down, Judge Roberts is never going to satisfy you. It is good for the country that he not try to do that, just as Justice Marshall avoided that dilemma.

This is a question by Senator Kohl to Justice Souter: What was your opinion in Miranda?

Justice Souter: Well, with respect. Senator, I am going to ask you to let me draw the line there, because I do not think I could get into opinions of 1973.

Senator Leahy: You do not have the same sense, to whatever degree you consider privacy in Griswold settled—which is the ability to engage in birth control practices—to whatever extent that is, you do not have in your own mind the same sense of settlement on Roe v. Wade as is that correct?

Justice Souter: Well, with respect, sir, I think that is a question that I should not answer. Because I think to get into that kind of comparison is to start down the road on an analysis of one of the strands of thought upon which the Roe v. Wade decision either would or would not stand. So with respect, I will ask not to be asked to answer that question.

He said it better than I read it. Bottom line is, he is telling Senator Leahy and Senator Kohl that if you start asking me to compare one case with another that has viable legal concepts, that could be a foreshadowing of how I might pass on matters before the Court, and you are putting me in a bad spot and I like not to do that. I can talk about Griswold, but if you ask me to say am I settled about Roe v. Wade as I am Griswold, then you are basically getting a preview how I might rule on a Roe v. Wade-type scenario.

So the idea that Judge Roberts did not want to make such comparisons with the interstate commerce clause is not unknown to the confirmation process. Justice Souter did not want to go down that road with the right of privacy. Judge Roberts was asked probing, hard, clever questions to try to get him to tip his hand. I think what he said was clear, that I will follow the rule of law. There is a process of how to overturn a case. There is a process of how to decide a case. That process is, you look at the facts, you look at the record, you listen to the arguments of the litigants, and you don’t prejudice. I think that will serve the country well.

The other concept that is coming into play is what burden does the nominee have, what deference should the Senate give to the President, what is the standard for confirmation. I have always believed that the idea that the President’s nominee should be given deference by the Senate is a long-standing concept in our country. I am not the only one who believes that.

There is a lot of information out there from our Democratic friends who have gone down that same road and have come to the same conclusion. There are prominent law professors out there who have suggested that there is a presumption of a nomination by the President that the Senate should give great deference to the President’s nominee and that our advise-and-consent role does not replace the judgment of the President but simply to see if the person is qualified, has the character and integrity and will wear the robe in the way that is consistent with being a judge and not turn it into power grab.

Professor Michael Gerhardt, who has advised our Democratic friends about the confirmation process established now and in the past, says:

The Constitution establishes a presumption of confirmation that works to the advantage of the President and his nominee.

He also said:

The presumption of confirmation embodied in the Constitution puts the onus on those interested inimpeding a nomination to mobilize opposition to it.

So the general idea that the President should be given deference, in Professor Gerhardt’s opinion, is accepted in terms of the practice of the Senate. Senator Biden, on past nominations, has said: First, as a Member of the Senate, I am not confirming a nominee for the Court. That is the prerogative of the President of the United States and we, Members of the Senate, are simply reviewing the decision he has made. Second: Our review, I believe, must operate within certain limits. We have the alternative of answering some of the following questions: First, does the nominee have the intellectual capacity, confidence, and temperament to be a Supreme Court Justice? Second, is the nominee of good moral character and free of conflict of interest that would compromise her ability—in this case it was Justice Ginsburg—to faithfully and objectively perform her role as a member of the Supreme Court? Third, will the nominee faithfully uphold the Constitution? United States of America? We are not attempting to determine whether the nominee will address with all of us—being the Senate—every pressing social or legal issue of the day. Indeed, if that were the test, no one passes this committee, much less the full Senate.

I could not agree with Senator Biden more. If that is the test, we are OK. If it becomes some subjective test where you have to adopt our view of a particular line of legal reasoning, then I think you have undermined the role of the President, I think you put the Judiciary at a great disadvantage, and I think you will be starting down a road that will not pay great dividends for the Senate.

I argue that whatever votes you cast, let’s not create standards that will come back to haunt the judiciary. Let’s not put people in a bind, in trying to get on the Court, by making decisions answering questions that will compromise their integrity and violate their judicial ethics to get votes.

I do not think anybody is intentionally trying to do that, but there are some disturbing comments about what the standard should be. There have been a couple of occasions on the Judiciary Committee where people have looked at Judge Roberts and said: Convince me, the burden is on you to convince me you will not do the following or you will do the following. I do not think that is the right road.

There have been some occasions in the committee where people have acknowledged the great intellect of Judge Roberts. His preparation for the job is not in question. I said in committee you interrogate his intellect, people are going to question yours. He is a genius. There is no way of getting around that. He is one of the greatest legal minds in the history of the country, and I think he will be a historic choice by the President.

People have suggested: I don’t know if he has the real-world experience; I know about your brain, but I don’t
know about your heart. I suggest it is dangerous for us in the Senate to begin judging other people's hearts. That gets to be a slippery slope.

Senator Wyden's statement, I thought, was dead on point. He understands the difference between the body that is the President. He pointed out, in fact, that Justice Ginsburg and Justice Breyer, two Clinton nominees, received 87 votes and 96 votes, respectively. If you start applying heart tests, I can tell you that gets to be so subjective and so political, and I think it is dangerous for the judiciary and not healthy for the Senate.

One of the issues Justice Ginsburg wrote about was the idea that prosecution should be a legal activity because it is dangerous for us in the Senate to begin judging other people's hearts. That gets to be a slippery slope.

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Presidents pick people they know and with whom they are comfortable. Clinton was comfortable with Ginsburg, the executive general council for the ACLU, someone we would not have picked. He was comfortable with Justice Breyer, a former Democratic staffer, someone the President would not pick. This President picked someone who worked for his dad, President Bush 1, and Ronald Reagan.

There is an argument out there that adopting the Reagan administration's extension of the Civil Rights Act in toto, without a change, that would lead to a reverse discrimination test called "proportionality" and is out of the mainstream. Ronald Reagan won 49 States. If you can win 49 States and be out of the mainstream, I would argue the person saying you are out of the mainstream is out of the mainstream. If you picked someone similar to Scalia and that would justify a filibuster and the guy got 98 votes, there is a disconnect going on here.

One of the memos that is in question is a memo that Judge Roberts wrote about the Reagan administration's decision to grant amnesty, for lack of a better word, to illegal aliens in this country. He was asked to suggest how the President should respond to an inquiry by Spanish Today, a Latino, Hispanic newspaper. He talked about the idea that it would be well received in the Hispanic community and that there would be no effect that Spanish Today would be pleased that we are trying to grant legal status to their illegal amigos.

Somehow that one phrase has been suggested that this young man, working for the Reagan administration, committed some kind of a wrong that would deny him the ability to be fairly considered for the Supreme Court 20-something years later. I argue, No. 1, that if you read his writings in terms of the Reaganite, he was a Reaganite, he was not meant to be slanderous, it was not meant to be a derogatory remark—he answered the question fully—that it was not meant to be that way at all. That was a commonly used term in the White House, the term "amigos," and he made a correct observation: that certain Hispanic groups did welcome President Reagan's decision.

Bottom line is, if we are going to take a phrase that a person wrote when he was 26, and say it is a reason to vote no, we be to anybody else coming before this committee. I would not want that to be the standard for me.

He never apologized because he did not think he had anything to apologize about. So this is much ado, in my opinion, about nothing. You have read his writings. He used Latin, French, and Spanish terms all over the place. He is kind of a witty guy. You may not like his sense of humor, but I think it is appropriate. He is an ideologue with an idea about, you know, more homemakers becoming lawyers, who said we need more homemakers than lawyers—and I
think a lot of people agree with that, and his wife happens to be an attorney. by the way—taking these phrases out of context and not looking at life in total is not fair. Not one person came before this body or the committee to say Judge Roberts has lived his life in any way, shape, or form to demean any group in America or individual. It is quite the opposite. He has received praise from everybody he has worked with on both sides of the aisle because he is basically a very good man. So I hope we will not make that the standard in the future.

Final thoughts. The vote is not in question in terms of confirmation. The process is in question. And that to me is as important as the vote total. The President is going to get another pick. That is the way it has happened. He has had a lot of things happen on his watch historic in nature. Whatever you think about President Bush, whether you like him or not, he has had to deal with some major league events. Let me tell you, some will go down good and not so good in history. That is the life of a President. But one thing I can say for certain is that his decision to make John Roberts the next Chief Justice of the United States will go down well in history. It will be one of the greatest things he has done as President of the United States because he has picked one of the most uniquely qualified men in America to serve on a Court that needs all the unity it can find, and this guy will be a consensus builder. The next one is coming and it is coming soon. There is all kind of jockeying already about what the President should do and what he should not do. I hope and pray we will remember the best traditions of the Senate, that we will listen to the Joe Bidens of the past, when he informed us that our job is to make sure they pick wisely in terms of character, integrity, and qualification. And if we will stick to that test and not substitute our political philosophy for that of the President and not require a political allegiance of the nominee to our way of thinking about a particular line of cases or a particular concept in law, but judge the qualifications, we will have served the country well. If we get into the mud and start fighting each other over the second pick, because some people don’t like how the election turned out, then we will set a trend that will haunt this body, haunt all future Presidents, and we will be worse off as a nation.

With that, I am going to end with the idea I am optimistic that we will not go down that road, we will give the next nominee the respect and deference this nominee has, and we will vote our conscience, and the vote will come and the vote will go. And the worst thing we could do is politicize the judiciary any more than it has been politicized. That is the reason on the Supreme Court, there will be millions of dollars to run you down and destroy your life, and that is going to happen on both sides of the aisle if we do not watch it. The best thing the Senate can do is use this opportunity to stand up to the people who want to run down somebody and ruin their life unfairly, because our day will come as Republicans. If we can unite around the idea we are not going to let special interest groups take over the Senate, the country will be stronger.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. ALLARD. I congratulate my colleague and good friend from South Carolina for a fine statement.

I also rise today in support of President Bush’s nomination of Judge John Roberts to serve as Chief Justice of the United States.

I ask the President Bush could not have nominated an individual more qualified to be confirmed as the next Chief Justice of the United States. If one were to prescribe the ideal training regimen for a future Chief Justice, Judge Roberts’ career may well serve as the model.

Judge Roberts has interacted with the Supreme Court in nearly every conceivable capacity. After law school, he held a prestigious position at the Supreme Court as a clerk to Justice William Rehnquist. He then went on to argue 39 cases before the Supreme Court, representing both public and private litigants. He currently serves as a judge on the U.S. Court of Appeals for the DC Circuit often referred to as the second highest court in the land.

In short, he has worked at the Supreme Court, represented dozens of clients before the Supreme Court, and served as a judge on the court that many consider a stepping-stone to the Supreme Court. I cannot imagine someone more qualified to now serve as Chief Justice of the Supreme Court.

After spending considerable time with Judge Roberts the nominee, I came to be equally impressed with John Roberts the man. He is humble, unassuming, polite, and respectful. In that respect, he shares the values of many of my fellow Coloradans.

The humility he exudes is reflected in his view on the role of judges and the courts. Judge Roberts says:

[A] certain humility should characterize the judicial role. Judges and Justices are servants of the law, not the other way around.

He describes himself as a “modest judge,” which is evidenced in his “appreciation that the role of the judge is limited, that judges are to decide the cases before them, they’re not to legislate, they’re not to execute the laws.”

This judicial philosophy is imperative to preserving the sanctity of the Constitution that is under attack by a handful of activist judges. Judges who proclaim the Pledge of Allegiance unconstitutional and attempt to redefine the institution of marriage. Unlike these activist judges, Judge Roberts will be on the side of Constitution.

As a Senator representing Colorado, I also appreciate the uniqueness of the issues important to Colorado and the West. The departure of Justice O’Connor, and now Chief Justice Rehnquist, marks the loss of a Western presence on the Supreme Court.

Earlier this year, I asked President Bush to nominate a judge with an understanding of issues important to Colorado and the West, such as water and resource law.

I asked Judge Roberts about his understanding of Western resource and water law. Judge Roberts acknowledged the loss of the Western presence on the Court and assured me that he understands the uniqueness to the West of such issues as water, the environment, and public lands.

He shared his experience working on several cases in the State of Alaska, encompassing issues on rivers, Indian land, and natural resources. He also described his practice of traveling to the site of cases when he believes it is beneficial to his understanding of the facts. This practice is demonstrative of his commitment to fully understanding cases from the perspective of both sides.

I was pleasantly surprised to learn that he currently has a law clerk from New Mexico. Law clerks sit at a judge’s right hand and are integral in the judge’s decision making. I am hopeful that Judge Roberts will continue to surround himself with individuals who have a Western perspective.

The Senate Judiciary Committee has reviewed Judge Roberts’ record more than any Supreme Court nominee. The Administration produced more than 76,000 pages of documents related to Judge Roberts’ distinguished career in public service. Judge Roberts testified for more than 16 hours before the Senate Judiciary Committee.

During the extensive review process, the country learned a great deal about
Judge Roberts’ fitness to serve on the Supreme Court.

We learned about his judicial philosophy, one which is firmly rooted in the rule of law and unwavering in its reverence for the Constitution. I believe his most telling statement was this:

“I come to the bench with an agenda. I have no platform. Judges are not politicians who can promise to do certain things in exchange for votes. I have no agenda, but I do have a commitment. If I am confirmed, I will confront every case based on the record, according to the rule of law, without fear or favor, to the best of my ability, and I will remember that it’s my job to call balls and strikes, and not to pitch or bat.

We learned that Judge Roberts subscribes to “the bedrock principle of treating people on the basis of merit without regard to race or sex.” His belief in these principles is echoed in praise from several women’s and minority groups.

“The Minority Business Round Table says “his appointment to the U.S. Supreme Court will certainly uphold our core American values of freedom, equality and fairness.”

The Independent Women’s Forum applauds Judge Roberts as a “very well qualified candidate with a reputation of being a strict interpreter of the law rather than someone who legislates from the bench.”

We learned that Judge Roberts recognizes the limitations on the government’s taking of private property and the role of the legislature in drawing lines that the Court should not. The Court in Kelo permitted the transfer of property from one private party to another private party to satisfy the Constitution’s “public use” requirement, essentially erasing this fundamental protection from its text. Judge Roberts says the Kelo decision “leaves the ball in the court of the legislature... [Congress] and legislative bodies in the States are protectors of the people’s rights as well... . [Y]ou can protect them in situations where the Court has determined, as it did 5-4 in Kelo, that they are not going to draw that line.”

We learned that Judge Roberts will rely on domestic precedent to interpret the U.S. Constitution, not foreign law. Justice Roberts says “as a governor, I... a couple of things... cause concern on my part about the use of foreign law as precedent... The first has to do with democratic theory... If we’re relying on a decision from a German judge about what our Constitution means, no President accountable to the people appointed that judge, and no Senate accountable to the people confirmed that judge, and yet he’s playing a role in shaping a law that binds the people in this country.”

Given his keen intellect, impartiality, temperament, sound legal judgment, and integrity, it is not surprising that Judge Roberts enjoyed bipartisan support by the Senate Judiciary Committee. I expect that he will enjoy similar bipartisan support in his confirmation vote tomorrow morning.

I want to commend President Bush on the unprecedented level of bipartisan consultation he engaged in with the Senate regarding this nomination. The Constitution grants the power to the President to nominate and the Senate to provide advice and consent. Although Senators can provide input, the Senate does not co-nominate. When the President sends forth highly qualified candidates, this body has an obligation to the American people to provide a timely up-or-down vote.

I commend my colleagues on the respect we pay to the judicial process. The Ginsburg Standard was applied to Judge Roberts fair, respectful hearings; no prejudging of cases likely to come before the court; and a timely, up-or-down vote.

With consultations on the next nominee already well under way, and an announcement imminent, I am hopeful that my colleagues will apply the same standards.

Jubges are not politicians. The Senate debate should reflect that the job of a judge is to reach cases impartially, not to advocate issues. Judges should be evaluated on their qualifications, judicial philosophy, and respect for the rule of law.

I am confident that President Bush will send forth a highly qualified nominee to replace Justice O’Connor, and I am hopeful that my colleagues will continue to build on the spirit of bipartisanship witnessed during this confirmation process.

In conclusion, I cannot imagine a better qualified candidate than Judge Roberts to lead this nation’s highest Court into the 21st century. I believe his rhetoric matches his actions.

On behalf of the citizens of Colorado, I thank Judge Roberts for his willingness to serve our country. I am hopeful that the fair and respectful hearings accorded to him by this body will serve to inspire the best and the brightest of future generations to make similar sacrifices in the name of public service.

I strongly urge my colleagues to cast a vote in favor of Judge John Roberts’ confirmation as the 17th Chief Justice of the United States.

The PRESIDING OFFICER. The Senator from Colorado.

Mr. BURNS. Madam President, after listening to my friend from Colorado and my good friend from South Carolina, then to look at the statement that I have, it appears we are all saying about the same thing, but we just all haven’t had the opportunity to say it yet. I will try to put a little different slant on it.

We know the qualifications of this man, Judge Roberts. He has consistently shown me excellence in all areas of his professional career. He is widely thought of as one of the best legal minds in the country, is highly respected by his colleagues as a fair-minded, brilliant, and temperate jurist. He graduated from Harvard College summa cum laude. He did it in only 3 years. He then graduated from Harvard Law School at the top of his class.

Less than 3 years ago, Judge Roberts was confirmed by a unanimous vote to the DC Court of Appeals, which is often referred to, as my friend from Colorado says, as the second highest court in the land. He was also a partner in the prestigious law firm of Hogan & Hartson. He specialized in U.S. Supreme Court litigation, which is the highest court in the country before the Court to which we seek to confirm him today.

I expect that he will have an active practice in appellate law.

I guess what we look for in the men and women we like to see on the country’s highest Court is pretty much found in all the qualifications of Judge Roberts. He had worked in the private sector. He also worked in the White House under President Ronald Reagan as Associate Counsel. In addition, he earned a highly prestigious clerkship on the Supreme Court for Chief Justice William Rehnquist—that in 1980 and 1981. Then he was appointed by this President and went before the Judiciary Committee.

We watched those hearings with a great deal of interest. I speak not as a member of that committee or even as an attorney, but what we heard more than anything else was how important to my State of Montana—is that we will have a qualified, fair, and competent Supreme Court Justice. That is important. When questioned on all of those qualifications, fairness, and competence, no one challenged any part of those elements. In this respect, Judge Roberts earned the “well qualified” rating from the American Bar Association, which is the highest rating that association offers. There was no challenge there.

He continually impressed my colleagues in the Senate by showing his immense knowledge of the law while reflecting his vast understanding of the rule of law and the importance of precedent. There was no challenge there.

What becomes important is that we know that our Supreme Court Justices understand that they must interpret the law as it is reflected in the cases that come before them and refrain from personal biases and from legislating or putting their biases into those cases.

He impressed me when he said that he wanted to be the umpire. He didn’t want to be the pitcher or the batter; he just wants to call the balls and the strikes. I appreciate that. I spent a lot of years on a football field, and I was one of those who wore the striped shirt. When I look back on that game, maybe I did play a little like this great American sports feature of football. When you think about it, 4 old referees—some of them overweight...
whom I could talk about—go out on a field of 22 young men who are hostile, mobile, and bent on hurting each other, and we have very few problems because those striped shirts are the arresting officers, the judges, and the penal officers do it in 30 seconds, and they do it without very many complaints. Thus the discipline of the game: 22 young men in armor and dead set on winning the contest.

Throughout his hearings before the Judiciary Committee, Judge Roberts proved over and over that he understands the role of the judiciary as an interpreter and not a legislator and why it is important to our governmental system that our judges across America refrain from overstepping their duties. The law is the law. Yes, it can be a subject of interpretation, but look how simple our Constitution is. It doesn’t use very many big words. They are very simple. There is a lot of difference between the word “may” and the word “shall,” and you can interpret them.

He explained his judicial style during his hearings by saying:

I prefer to be known as a modest judge . . . It means an appreciation that the role of the judge is limited, that a judge is to decide the cases before them . . .

They are not to change it or use their biases to execute a judgment. That is pretty important.

When you look at his private life, the values of how he has progressed in his professional life, how he has carried himself and what is personally important to him—honor, being a good husband, a provider— we see all of those values that we Americans hold in very high esteem.

Then we move it over into now what kind of a judge will he be. He was questioned on a lot of social issues that the courts have no business even considering. That falls on us, the elected representatives of America, and our constitution. What their values are should be reflected. Yet what I heard was questioning on human rights.

It is a wonderful thing, this Constitution we have. The Constitution was not written for groups, it was written for you as the individual. It is your personal Bill of Rights and how we structure our Government and the role of each and every one of those equal entities and how they relate and interact with each other—the executive, the judicial, and the legislative.

It is important to me and the people I represent that we have judges on the bench who will not prejudice cases. He may have a bias one way or the other, but what does the law say as it pertains to me as an individual citizen? This is a matter of my own commitment to listening, to hearing both sides of the case, and is committed to a fair and reasonable outcome, whether the judge personally likes or dislikes the eventual results. His approach to the law, in one of restraint. He is shown not to be an ideologue with an intent of imposing his views or his biases on the law.

Will he always rule in a way that would be consistent with my philosophy? I would say no. I have a feeling, though, however he rules will be fair, and he will not compromise any of the principles of the law as written. He explained:

As a judge I have no agenda, I have a guide in the Constitution and the laws that are precedents to the court, and those are what I apply with an open mind after fully and fairly considering the arguments and assessing the considered views of my colleagues on the bench.

I am not sure if it is the job to really draw a consensus when you have nine men and women who have strong views of the law and the Constitution and maybe would interpret them in many different ways, but what this man has shown us is strong character, integrity, and his immense knowledge of the law.

I am privileged to know the nominee by virtue of the fact that we both, at different times in our careers, served in a very prestigious and revered law firm in our Nation’s Capital, the law firm of Hogan & Hartson. When I joined the firm approximately forty-five years ago, Nelson T. Hartson was very active in Hogan & Hartson. I had the good fortune of being one of his aides-de-camp. Mr. Hartson’s philosophy and his standard of ethics permeated that law firm then, as they still do today.

I am privileged to once again introduce Judge Roberts to the Judiciary Committee. I see some two weeks ago at the start of his confirmation hearing to serve in this highest of positions in our land.

I would simply say this: As I have come to know this magnificent individual, he is, in my judgment, an unpretentious legal intellectual. I say that because he is a man of simplicity in habits. He has a lovely family. He has a marvelous reputation among colleagues in the legal profession who are both Democrats and Republicans and conservatives and liberals. He is admired by all. In that capacity, as an unpretentious legal intellectual, he is, in my judgment, a rare if not an endangered species here in America for his personal habits and extraordinary intellect and for the manner he conducts himself every day of his life.

In fact, in the 27 years I have been privileged to serve in the Senate, slightly more than 2,000 judicial nominations have been submitted by a series of Presidents to the Senate for “advice and consent.” John Roberts stands at the top, among the finest.

I commend our President on making such an outstanding nomination—a nomination which will receive strong bipartisan support in this Senate. Just 4 months ago, with the judicial confirmation process stalled in the Senate, and with the Senate on the brink of considering the so-called nuclear option, there was an aura of doubt, at the time, that any Supreme Court nominee would receive a vote reflecting bipartisan support.
But on May 23, 2005, 14 U.S. Senators, of which I was one, committed themselves, in writing, to support our Senate leadership in facilitating the Senate's constitutional responsibility of providing “advice and consent” in accordance with Article II, Section 2.

In crafting our Memorandum of Understanding, the Gang of 14 started and ended every discussion with the Constitution. We discussed how, without question, our Framers put the word “advice” into our Constitution for a reason: to ensure consultation between a President and the Senate prior to the forwarding of a nominee to the Senate for consideration.

Accordingly, in the Gang of 14's Memorandum of Understanding, Senator BYRD and I incorporated language that spoke directly to the Founding Fathers' explicit use of the word “advice.” That bipartisan accord reads as follows:

We believe that, under Article II, Section 2, of the United States Constitution, the word “advice” speaks to consultation between the Senate and the President with regard to Supreme Court nominations. It requires the President's power to make nominations. We encourage the Executive branch of government to consult with members of the Senate, both Democratic and Republican, in advance of a judicial nomination to the Senate for consideration.

Such a return to the early practices of our government may well serve to reduce the rancor that unfortunately accompanies the advice and consent process in the Senate.

With respect to the nomination before us today, I believe that the President has met his constitutional obligations in an exemplary way.

In my view, the Senate was given a meaningful opportunity to provide its advice to the President, and the President respected the Senate's views when he nominated John Roberts. Soon, the Senate will provide its consent to that nomination.

John Roberts' credentials are well-known and of the highest quality.

He earned a B.A., summa cum laude, from Harvard College and his law degree, magna cum laude, from Harvard Law School. At Harvard Law School, he served as managing editor of the Harvard Law Review. Subsequent to graduation, Mr. Roberts worked as a Federal law clerk for Judge Friendly on the U.S. Court of Appeals for the Second Circuit, and later as a law clerk for Justice William Rehnquist on the Supreme Court. He has worked in the Department of Justice, the Reagan administration, the George H.W. Bush administration, and he practiced law for many years in private practice.

But while his legal credentials are unquestionably impressive, equally important is the type of person that he is. Throughout his legal career, both in public service, private practice, and through his pro bono work, John Roberts has demonstrated a mastery of the law and a commitment to decide cases based upon the Constitution and the law of the land, with appropriate respect and deference to prior Supreme Court precedents. He views his role as one of impartial umpire, rather than as one of ideologue with an agenda. He testifies your oath.

To me, all of these qualities—John Roberts' legal credentials and his temperament—represent the embodiment of a Federal judge, particularly a Chief Justice of the United States. And, I am confident that the vast majority of the millions and millions of Americans who watched his confirmation hearings agree.

Indeed, the American Bar Association has given John Roberts its highest rating, unanimously finding him “well qualified” and just slightly more than 2 years ago, the Senate unanimously confirmed him for a Federal appeals court judgeship by voice vote.

Before I conclude my statement in support of this outstanding nominee, I would like to highlight a few key facts of Senate history and tradition with respect to Supreme Court nominees. I find these facts particularly illustrative.

Over the last 50 years, America has seen a total of 27 Supreme Court nominees. Six of those nominees received the unanimous consent of the Senate by voice vote. Another 15 of those nominees, including seven current members of the U.S. Supreme Court, received the consent of the Senate by more than 60 votes. In fact, only three nominees to the Supreme Court over the course of the last 50 years have failed to receive the consent of the Senate.

Chief Justice Rehnquist was confirmed to the Court as an Associate Justice in 1971 with 68 votes in support, the strong vote of bipartisan support he is about to receive. President Bush has reaffirmed his support of Judge Roberts. It was a pleasure to get to know you, Judge Roberts, and through his pro bono work, John Roberts helped the Senate.

Mr. President, I will yield the floor to my distinguished colleague at this time who will be the manager of this period. I say to my colleague, thank you for participating in the Gang of 14, as we have become known. Perhaps in the course of our remarks today we can talk about the mission, the challenge of that group, and how, in my humble judgment, we did succeed in enabling our leadership to once again put in motion the Senate's role in the confirmation of those nominees.

I yield the floor. The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. NELSON of Nebraska. Mr. President, I will yield the floor to my distinguished colleague from Nebraska and I stood, with others in that group, and were able to lay a foundation which, I say with a deep sense of humility, may well have contributed to our being here today and casting that historic vote tomorrow.

I yield the floor. The PRESIDING OFFICER. The Senator from Nebraska is recognized.
to change the rules because of certain practices on the part of certain Members of the Senate that raised doubts about the process, whether we could get up-or-down votes on judicial nominees, particularly appellate court nominees, and perhaps Supreme Court nominees. But by working together, we found a solution that I believe in very many ways held on to the traditions of the Senate that are good but also invoked a process that has resulted now in what we are going to be able to do tomorrow. We were able to refuse to engage in extreme partisanship but worked together in partnership to develop a compromise. We paved the way. We preserved the traditions. And I believe in some respects we have also assisted in leading to the historic outreach by the White House to an overwhelming number of our colleagues for their input under the advice and consent portion of our agreement that we shared with the White House.

I personally thank the White House for reaching out. The administration has reached out to many of our Members on several occasions. Most recently, I had the pleasure and the privilege of being contacted for my thoughts about the next nominee and the process that would be used there.

I think we have also learned not to believe everything we hear about the Senate not being able to accomplish much. The criticism that Senators are lost in partisanship and deadlock through the unwillingness of people to compromise or be able to work together. I believe we disproved that theory with this Gang of 14.

We have gone through divisive elections. We know America needs to be brought together. We do not seek to further divide ourselves. We need to work together. It gave us an opportunity to, in many ways, reduce the partisanship that was ripping this body apart. But it was difficult to get anything done, particularly as it might have been difficult to get through the nomination process for the Supreme Court.

So it is a pleasure for me to be here on the floor and a real privilege to be associated with my colleague from Virginia. We have been joined by other members of the Gang of 14 who I know have some similar thoughts they would like to express.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. WARNER. Mr. President, if I might say, the distinguished Senator from Nebraska was a leader among the Gang of 14. I say to the Senator, I guess you might say you were one of the Founding Fathers of that group, and modesty prevents you from acknowledging that leadership. We are joined on the floor by two of our colleagues. I particularly appeared to coincide with members of the Gang of 14 whom I am privileged to be with today.

But I think, as the Senator pointed out about the advice and consent clause, we, the Gang of 14, want to acknowledge the important contribution of Senator BYRD of West Virginia. He and I sort of partnered together to draw up that last paragraph which we recommend that the Founding Fathers put the word “advice” in the Constitution for a specific purpose. As the distinguished Senator from Nebraska said, indeed, our President fulfilled that. But I wanted to acknowledge Senator FRED TOMPKINS of Arizona for very major participation in our group.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. SALAZAR. Mr. President, I rise today to comment with respect to the Gang of 14. I join my good friend from Nebraska and my good friend from Arkansas here today in again reminding ourselves as a Chamber that the 14 Members of the U.S. Senate who came together that Judge Robert Byrd that they decided to do and we decided to do in the formation of that agreement was to transcend partisan politics to try to find a common purpose for the benefit of this great institution, the U.S. Senate, the institution that raises doubts about the advice and consent portions.

All of the members of the group were very instrumental in putting the compromise together. I would offer two observations with respect to that process and that agreement. The first is, it is my hope, as the newest Member of the U.S. Senate, the Senator who still ranks No. 100, that this is a kind of template that can be used as our Nation faces difficult issues in the near future. It is not a partisan politics to get beyond the gridlock that had existed in this body for some period of time.

We must be able, as a Chamber to do the same thing with respect to other very difficult issues, such as the Federal deficit or how we engage in the recovery of the gulf coast or how we deal with the issues of health care, because my involvement in this group was based on the fact that I believe it is our responsibility, as Members of the U.S. Senate from Virginia, in our country to get about doing the people’s business. What was happening was we had gotten too involved in this impasse that had been going on for a very long time.

The second point I wish to make is to underscore the importance of the advice and consent provision of our Constitution. It was Senator BYRD and Senator WARNER who believed it was important to include that provision as part of the agreement. It was in recognition there is a joint responsibility between the President of the United States and the Senate in the appointment and confirmation of persons to the bench that that advice and consent provision really needed to be part of that agreement.

From my point of view, it is very important that advice and consent provision of the Constitution be honored because the fact that, as we make our decisions, it is very important that these decisions, which will have a long-lasting impact on the history of America, be based on the most informed consent possible. The way you get the most informed consent possible is that there be a communication and a free flow of information between the President and the White House and the members of the Judiciary Committee and this body.

So I again commend the Senators from Virginia and West Virginia for having worked so hard on that long weekend to craft language that became a keystone of this document.

Finally, I would say that through this process I also became comfortable with the Senator from Nebraska. What I learned is that he is in the mainstream of political and, more importantly, legal thought of America. I think the Members who were part of this group, led by the Senator from Nebraska and the Senator from West Virginia, were part of that mainstream of America.

Mr. President, I thank my colleagues from Virginia and Arkansas and Nebraska.

I yield the floor.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. PRYOR. Mr. President, one of the things that was surprising to my constituents in Arkansas is that I would actually come to Washington, DC, and join a gang. They sometimes wonder what we do up here and why we do it. I am very proud to be part of this gang, with my 13 colleagues who stood tall and exercised some of the best traditions and best judgment that Senator FRED TOMPKINS has ever shown. One of the things we learned through the Gang of 14 process and trying to take the nuclear option off the table—and also trying to get some up-or-down votes on some more nominees—is that good things happen when Senators talk to each other.

I have learned since I have been in Washington that we spend a lot of time talking about each other and not enough time talking to each other. I hope this serves as an object lesson. It shows we can work together in this political environment. The truth is, we talk about how bad things are, and sometimes they do get bad. But basically, we are all sent here by our States. Each State gets two Senators. Even the two Senators from the same State don’t always agree. We don’t have to agree. But certainly all 100 of us should, as the Book of Isaiah says, reason together. We should come together and put the country first and put others’ interests ahead of our own. And I think today we are going to work together and build on not just a bipartisan approach but in many ways a nonpartisan approach where we look at
the challenges facing our country and try to approach those as best we possibly can.

I know a lot of people around the country and in this Chamber and this city are focused on the next nomination. I haven't had a vacation. Nonetheless, a lot of people are concerned about the next nomination. I understand that. In some ways, and rightfully so, we should be focused on that. My colleagues have touched on it already. But part of the language that Senator Warner and Senator Byrd crafted during this agreement—we all helped in different ways on this language and had our thoughts incorporated in the language, but Senator Byrd and Senator Warner took the lead on the language—is the advice and consent portion of the agreement. Basically all we do is encourage the President to take the Constitution literally. When the Constitution says that it shall be with the advice and consent of the Senate, we take that literally. We hope the President will seek our advice.

Supposedly either the President or the White House reached out to about 70 of us when we received the John Roberts nomination. That works, and that is very positive. I hope we see that again.

Some of my constituents in Arkansas have asked me: Don't you have some anxiety about John Roberts? Gosh, he used to work for the Reagan administration. There are things in his background that various people don't agree with.

My response is: Certainly, I have anxiety about John Roberts. I have anxiety about any nominee that any President will nominate to the Supreme Court. It is a lifetime appointment. There is no question about the influence and the impact that one Supreme Court Justice can have on the American system of justice and on American society. I have anxiety about anybody. I certainly have some about John Roberts. But nonetheless, he has the right stuff to be on the Court.

I am proud of the courage my colleagues showed in the time when it mattered and we came together and worked it out, the Gang of 14.

I yield the floor.

Mr. BYRD. Mr. President, today I am announcing my support for Judge John Roberts to be Chief Justice of the United States.

From the beginning, I told the White House I would like to see a nominee that the vast majority of the American people would say, yes, that is the quality of person who ought to be on the Supreme Court. When the nomination of Judge Roberts was first announced, my initial impression was that he met that test. I had a chance to visit with him in person, longer in one office, and I concluded from that visit that Judge Roberts is exceptional. Not only is he of high intelligence and strong character, he also is someone of midwestern values of honesty and decency.

I have looked at his record. I find that he is in the judicial mainstream. Yes, he is a conservative, but my own belief is that the Court is strengthened by a range of views. I don't think we should have all progressives or all conservatives. We need to have people of differing views and differing backgrounds to make the Supreme Court function appropriately.

When I first came to my office, I asked him about his association with Judge Friendly. He clerked for Judge Friendly. He is reported to be very impressed by Judge Friendly's service. I asked him what impressed him about Judge Friendly. He told me one of the things that most impressed him is that Judge Friendly did much of his own work. He didn't just rely on clerks to do the work. I also asked him what else impressed him about Judge Friendly.

He said: You know, you could not tell whether he was a liberal or a conservative, a Democrat or Republican. All you could tell from his rulings was that he had profound respect for the law.

I thought that was a pretty good answer. I went on to ask him: Judge, at the end of your service, how would you want to be remembered?

He said: I would want to be remembered as a good judge, not as a powerful judge but as a good judge.

I said to him: What does that mean to you, being a good judge?

He said to me: Listening to both sides, putting aside one's personal prejudices to rule based on the law. He said: I have a profound respect for the law.

In the confirmation hearings, we saw Judge Roberts perform brilliantly. His mastery of the law, his judgment, his demeanor, his capacity to interpret the law without any ideological view as to what you are or are not an ideologue.

He said: Senator, I can tell you, I do not bring an ideological agenda to the court. What I bring is a profound respect for the law.

In the confirmation hearings, we saw Judge Roberts perform brilliantly. His mastery of the law, his judgment, his demeanor, his capacity to interpret the law without any ideological view as to what you are or are not an ideologue.

He said: Senator, I can tell you, I do not bring an ideological agenda to the court. What I bring is a profound respect for the law.

I told him I believed him. I think he is absolutely conservative. That is not disqualifying. I also think he is somebody of extraordinary talent and somebody who will listen to both sides and rule based on the law. He has a healthy conservatism, believing that the job of a Justice is not to make the law but to interpret the law. That is the appropriate role for a judge in our system. He has it right with respect to that issue.

I believe Judge Roberts has the potential for great things on the Court. Rarely have I interviewed anyone with my 19 years who so impressed me with the way their mind works and their basic demeanor. I have interviewed others who struck me as arrogant and pompous and filled with themselves. Somebody I would never want to have in a position of power over the people I represent. I do not feel that way in the least bit about Judge Roberts. He is someone who is steady and even. He is someone who is thoughtful and quite exceptional.

I know there are groups who feel very strongly on one side or another. There are colleagues who have made different judgments. I respect that. But I believe John Roberts is the kind of nominee who deserves our support, and he will have mine.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. WARNER. Mr. President, I thank our distinguished colleague from North Dakota. That was truly a beautiful set of remarks. It is not just that you indicated that you will cast your vote in support; it was a very thoughtful reflection on a very important responsibility we as Senators have.

I thank again the Senator from Nebraska, the Senator from Arkansas, the Senator from Colorado. We have been a team together for some time. I am delighted to have had the privilege to be here on the floor with each of them.

In conclusion, I reflect back on, once again, the Federalist Paper No. 66 in which Alexander Hamilton said: It will be the duty of a Court vacancy to fill, and our distinguished colleagues from West Virginia could join us today. I asked him and he said he would if he possibly could. But were he here, we would all stand again and thank him for his guidance as we worked through this situation.

I thank my colleague from Nebraska and yield the floor.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. NELSON of Nebraska. Mr. President, I thank my colleague from Virginia for his wise counsel through the process of bringing together 13 other colleagues to bring about a confirmation process and nomination process that has worked. Now we are on the eve of this confirmation vote on the 17th Chief Justice of the United States. The question is, what is next? We also have the opportunity of a Court vacancy to fill. I hope the President and the White House will continue to reach out and seek the advice of our colleagues so we
can face that nomination with the same kind of input we did in the case of Judge Roberts.

Let me say that the late Senator from Nebraska Ed Zorinsky said on so many occasions that in Washington there are really two congressional bodies and too many Republican Senators and too many Democratic Senators and not enough United States Senators. I can say as the gang of 14 got together, there were less Republicans and less Democrats than there were United States Senators, anxious to work without a resolution to the judicial impasse, but also to pave the way for where we are today and where we are going to be tomorrow and where we are going to be in the next confirmation process.

I yield the floor.

The PRESIDING OFFICER. Under the previous order, the time from 2 to 3 p.m. will be under the control of the majority.

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

The PRESIDING OFFICIAL (Mr. SUNUNU). Without objection, it is so ordered.

Mr. TALENT. Mr. President, I ask unanimous consent that the next hour under majority control be allocated as follows: 15 minutes for Senator TALENT, 10 minutes for Senator VITTER, 15 minutes for Senator THUNE, and 20 minutes for Senator BUNNING.

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

Mr. TALENT. Mr. President, it is really a privilege for me to spend a few minutes visiting with the Senate about Judge Roberts. He is probably the most analytically scrutinized Supreme Court nominee ever. Based on my study of his record and my discussions with him—which have certainly not been extensive but have been enough to help me get a feel for the man—I believe that he will turn out to be one of the best Chief Justices ever.

We have learned a great deal about who he is. We know about his extraordinary professional accomplishments. We have seen the overwhelming bipartisan sentiment that has earned him from his colleagues in the legal profession. We heard from John Roberts himself on the rule of law, on the judicial role, and the kind of service he intends to provide to the Nation as Chief Justice. The Senate should be convinced by his colleagues on the bar, that he has certainly not been extensive but have been enough to help me get a feel for the man—I believe that he will turn out to be one of the best Chief Justices ever.

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Lloyd Cutler and Seth Waxman, wrote to the Senate calling Judge Roberts one of the very best and most highly respected appellate lawyers in the Nation.

The American Bar Association has given Judge Roberts a rating of “unanimously well-qualified,” its highest possible rating. As Steve Tober, the chairman of the ABA Standing Committee on the Federal Judiciary, explained: Judge Roberts has the admiration of his colleagues on and off the bench, and he is, as we have found, the very definition of collegial. This is another quality that I hope and believe Judge Roberts will bring to the role of Chief Justice. I think he can operate in that Court in a way that pulls the Justices together where their convictions honestly allow them to be pulled together. It is one thing to disagree when you have strongly different opinions on the jurisprudential matters before the Court; it is another to disagree because over time you have become part of one faction or you have become alienated or estranged on some other grounds from some of the other Justices.

That is not good, and I believe, just my gut opinion after talking with him and watching him is that this is a person who can lower the temperature on the Court, who can shed light rather than just heat on many of the issues that are before the Court.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from South Dakota has 6 minutes remaining of the 15 minutes allocated.

Mr. TALENT. I did not want my eloquence to outstrip the time I had available, Mr. President, so thank you for that.

We have heard a lot from Judge Roberts himself, and maybe it is good for me to close by quoting some of what he has said about the judicial function. I thought he did an excellent job of explaining people what the judicial role is, why it is of critical importance, and clearly you have to, to some extent, oversimplify it, and he admitted the times he was doing that.

He talked about the judge being the umpire, and somebody else basically writes the rules. The judge is the umpire. Believe me, that gives plenty of discretion and authority to the judge to develop the law in one direction or another but to develop it within the constraints of an objective rule of law.

Judge Roberts said about this: If the people who framed our Constitution were jealous of their freedom and liberty, they would not have sat around and said, “Let’s take all the hard issues and give them over to the judges.” That would have been the farthest thing from their mind. Now judges have to decide hard questions when they come up, in the context of a particular case. That is their obligation. But they have to decide those questions according to the rule of law, not their own social preferences, not their personal views, not their personal preferences, but according to the rule of law.

That leaves room for Supreme Court Justices, for the rule of law, to include their views developed over time carefully with respect to colleagues and arguments from litigants about how particular provisions of the Constitution ought best to be interpreted in a range of cases so as to reflect the purposes of the document and the impulses of the Framers.

There is room there for that, but always according to the rule of law, not according to a desire to make the case on its particular merits, or to make Americans live the way the judge wants them to live, rather than the way they have chosen to live in the decisions they make about their own lives or the decisions they make through their own legislative initiatives. I think Judge Roberts understands that. He understands that is a judicial role with which we can all live.

He clerked for Judge Henry Friendly. And friendly as a court of appeals judge—he had an interesting name—was Learned Hand. If I had met his parents, I would have asked them why they called him Learned Hand, but they did. Judge Hand said one time, and he was referring to Judge Roberts when he referred to the rule of law: I would not choose to be governed by a bevy of platonic guardians even if I knew how to choose them, which I most assuredly do not.

The first right, the first birthright of every American, is to participate through the representative process in their own governance. The first and most basic right is the right to govern yourself through the processes set up in the Constitution, and it is not out of a desire to avoid difficult decisions but out of a respect for that right that Judge Roberts talked about the rule of law. He manifested in those hearings a respect for that right that I think Judge Roberts understands that.

I believe the guiding question for each of us in determining a nominee’s fitness for this post should be whether the person is dedicated to applying the Constitution to every case considered by the Court, and not adding to or changing the Constitution’s text to suit his or her own personal policy preferences.

I was pleased to have met privately with Judge Roberts just yesterday. I came away from that meeting even more convinced that this man has the ability and temperament necessary to lead the Supreme Court. I believe Judge Roberts is dedicated to the rule of law and the principle of judicial restraint, and most importantly, will not substitute his own policy preferences for those of the elected representatives in the executive and legislative branches of our government.

The Supreme Court gets the last word on some of the most challenging and divisive issues of our day. Because Federal judges and justices have lifetime tenure, we must ensure that those who populate Federal bench are people of strong character and high intellect, who populate the Federal bench are people of strong character and high intellect, who have the most basic right is the right to govern yourself through the processes set up in the Constitution, and it is not out of a desire to avoid difficult decisions but out of a respect for that right that Judge Roberts talked about the rule of law. He manifested in those hearings a respect for that right that I think Judge Roberts understands that.

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Judges and justices must say what the law is, not what they believe it should be. That is the job of the Congress. That is what the authors of the Constitution intended.

I believe Judge Roberts’ career embodies these principles. As Judge Roberts stated during his hearing, judges are like umpires, and umpires don’t make the rules, the rules apply them. I do not believe Judge Roberts will engage in judicial activism that we have witnessed on the Supreme Court and the lower Federal courts in the past few decades.
Even in the recent past, we have witnessed several instances of judicial activism. Judicial activism manifests itself when justices detect “penumbras, formed by emanations” in the Constitution, as Justice Douglas did in the case of ACLU v. Oregon. In other words, judges who rely on their personal views rather than the Constitution when deciding matters of great importance.

We have seen what damage the Supreme Court is able to do when it is composed of individuals who are not committed to judicial restraint. Instead of acting as umpires and applying the law, some on the Supreme Court and the Federal bench are pitching and batting.

The most recent example came in the case of Kelo v. City of New London, decided just this past June. As you know, Mr. President, the Constitution says the government cannot take private property for public use without just compensation. However, in the Kelo case, the Supreme Court emptied any meaning from the phrase “for public use” in the fifth amendment.

In Kelo, the Supreme Court held that a city government’s decision to take private property for private development satisfies the “public use” requirement of the fifth amendment. This case makes private property vulnerable to being taken and transferred to another private owner, so long as the government’s purpose for the taking is deemed “economic development.”

While I understand that many of the principles reflected in the Constitution are written broadly, and sometimes can be subjected to conflicting interpretations, I think we can all agree that the Supreme Court cannot be adding or deleting text from the Constitution. Yet that is what happened in the Kelo case. The majority effectively deleted an inconvenient clause in the fifth amendment.

The Supreme Court is also engaging in a troubling pattern of relying upon international authorities to support its interpretations of the laws of the United States. In Atkins v. Virginia, the Court cited the disapproval of the “world community” as authority for its decision. In Lawrence v. Texas, the Court cited a decision by the European Court of Human Rights as authority for its decision. Most recently, in Roe v. Wade, the Court cited the U.N. Convention on the Rights of the Child—a treaty never ratified by the United States—as authority for that decision.

Article II, section 2 of the Constitution requires two-thirds of the Senate to ratify a treaty. Democratically elected Members of the Senate, accountable to the people, have refused to ratify the U.N. Convention on the Rights of the Child—-a treaty never ratified by the United States.

Unfortunately, the Supreme Court chose to ignore this fact and based their judgment in part on a treaty never ratified by the United States. Clearly, some on the Supreme Court are substituting the policy preferences of democratically elected representatives with their own. This is judicial activism at its worst.

As we near the completion and expected confirmation of Judge Roberts, I want to take a moment and look ahead as the President will soon make another nomination to the Supreme Court. It is important that the nominee to replace Justice O’Connor share Judge Roberts’ commitment to judicial restraint and dedication to the rule of law. It is important because the Supreme Court will be considering several cases in the near future that may have far-reaching consequences.

The Supreme Court will probably consider the Pledge of Allegiance case that was recently decided in the Ninth Circuit at the district court level. In that case, the district court held that the Pledge of Allegiance violate the establishment clause of the first amendment. However, in the Fourth Circuit, the appellate court came to the opposite holding—that the Pledge of Allegiance did not violate the establishment clause. Where there are conflicting holdings in the lower courts, the Supreme Court must become the final authority on the matter, and it is important that Judge Roberts and individuals who share his approach are on the court to confront this issue.

During the next term, the Supreme Court will also consider a case about a State’s parental notification law and possibly a case about partial-birth abortion. Again, these are instances where the Supreme Court will have the last word on one of the most divisive moral issues of our time. It is critical that those who confront these cases are deferential to the decisions of our government, exercise restraint, and follow the law.

After our confirmation vote tomorrow on Judge Roberts, the President will forward his nominee to fill the Court vacancy created by O’Connor. It will then become our duty in the Senate to provide our advice and consent on that nomination. It is a responsibility that we should all take very seriously. The manner in which we handle that nomination will say a lot about the Senate as an institution.

I read in today’s edition of the Washington Post that several of our Democratic colleagues, as well as the Democratic minority leader, are already threatening to filibuster the next nominee to the Supreme Court. It is shocking to me that they are threatening a filibuster of the next nominee before they even know who the nominee is. They are even threatening to filibuster possible nominees who were just confirmed to the appellate courts and explicitly included in the Memorandum of Understanding that seven Democrats and seven Republicans signed onto last May.

That is wrong and the American people will see it for the blind partisanship that it is. I would remind my colleagues on the other side of the aisle that they have sworn to uphold the Constitution through their representation in this body, not to thwart its intent or reshape its application to suit the ever shifting liberal elite and their special interest. It is up to my Democratic colleagues not to blindly abuse the filibuster. These threats are symptomatic of the breakdown of the nomination process, and they must stop.

The process by which justices and judges are nominated and confined has degenerated to a point where ideological litmus tests are too often applied and nominees are torn apart by personal attacks.

The nomination process should not be brought down to the level of personal attacks on the nominee or fishing expeditions into the nominee’s political allegiances. I believe there is a lot of room for improvement in the process, and I hope to see such improvement as we see with the next nominee.

One ideological litmus test I am hearing about a lot these days is that the Supreme Court must somehow somehow have its “balancing” in the Constitution does it say that a certain balance must be maintained on the Supreme Court? According to the Constitution, the President is entitled to nominate the individuals he desires to have on the courts, and it is the Senate that must determine whether the nominee is fit and qualified. There should be no ideological litmus test for nominees. If a nominee is fit and qualified, he or she should be confirmed.

I believe Judge Roberts is eminently fit and qualified to serve as the next Chief Justice. I will proudly cast my vote for him, and I urge my colleagues to do the same.

Thank you, Mr. President. I yield the remainder of my time.

The PRESIDING OFFICER. Under the previous order, the Senator from Louisiana is recognized for 10 minutes.

Mr. VITTER. I thank the Chair.

The PRESIDING OFFICER. Under the previous order, the Senator from Louisiana is recognized for 10 minutes.

Mr. VITTER. I thank the Chair. I, too, rise in strong support of the nomination of John Roberts to be Chief Justice of the U.S. Supreme Court. I do so for two reasons. Two very important reasons. One is the strong qualification and background of Judge Roberts. But the second and perhaps just as important or even more important is the fact that this nomination and this confirmation process I believe has gotten us back as a Senate, as a country to the process that the Founders intended and the sort of values and the sort of qualifications, the sort of judgment by the Senate that the Founders intended.

We are finally remembering that it is the President’s prerogative to nominate qualified persons to fill judicial vacancies, and in the past the
thoughtful legal reasoning. He is not in a straightforward way, that judges the limited role of the judiciary and to be a judge, his appropriate view of important factor which qualifies Judge qualifications.

Circuit Appeals for the District of Columbia President Bush for the U.S. Court of Supreme Court. Of course, as we all know, many different positions during the Supreme Court.

He also said on the same occasion: I come before the committee with no agenda, I have no platform. Judges are not politicians who can promise to do certain things in exchange for votes. I have no agenda. But I do have a commitment. If I am confirmed, I will confront every case with an open mind. I will fully and fairly analyze the legal arguments that are presented. I will be open to the considered views of my colleagues on the bench, and I will decide every case based on the record, according to the rule of law, without fear or favor, the best of my ability, and I will remember it is my job to call balls and strikes, and not to pitch or bat.

That, first and foremost, is the tradition we are getting back to with this confirmation. I sincerely hope that it is a tradition in which we remain grounded. Let’s remember again the lessons of this nomination and this confirmation. Let’s remember that it is the President’s prerogative to nominate qualified persons to the bench. Let’s remember that the Senate does have an important consultative role and let’s all encourage the President to perform that consultation in a full and robust fashion, as he did with Judge Roberts. Let’s remember that qualifications—smarts, academic credentials, practice history—are very important when you are talking about a judicial nominee. And let’s all remember, first and foremost, that judges, unlike umpires, they are not the players in the baseball game. That is the crucial distinction that I think we have lost over the past several decades and that we are finally trying to pull back to.

It is very important for us as a body to remember that lesson of this nomination of this confirmation as we move on. As we move on, I do think that is the most important open question. As the previous speaker mentioned, already certain Democrats in this body are arguing, a filibuster without having the foggiest notion who the next nominee to the U.S. Supreme Court may be. Already they are threatening a filibuster of circuit court nominees who have basically been agreed to in terms of qualifications by the Senate.

That would move us dramatically in the wrong direction. I do not need to spend too much time restating John Roberts’ qualifications. They have been stated. He graduated with honors from Harvard college, and then he graduated from Harvard Law School. He clerked in the Second Circuit Court of Appeals and for Chief Justice Rehnquist when he was an Associate Supreme Court Justice.
John Roberts also worked for the Attorney General, the White House counsel and Solicitor General in previous administrations. In private practice, he was one of the best appellate and Supreme Court litigators. He argued an unprecedented 39 cases before the Supreme Court. Now he is a judge on the DC Circuit Court of Appeals, where he has been since we confirmed him unanimously in 2003.

His resume is what convinces me that he will be a fine Chief Justice. What is clear is that John Roberts respects the law and Constitution and will be faithful to the proper role of a judge. In his confirmation hearings, Judge Roberts used an example to explain the proper role of a judge. It has been stated before. He said a judge is like an umpire, not a player or a coach. And similar to an umpire, a judge applies the rules to the situation at hand. An umpire doesn’t rewrite the rules or enforce what he thinks the rules ought to be.

I know a little bit about umpires. I have dealt with them, and all types of them, for years. Some are liberal and some conservative with the strike zone. Some were unpredictable and made the strike zone up as the game went along. The worst umpires decided the outcome of the game by playing favorites or enforcing their own version of the rules. The best umpires applied the rules and enforced the rules as written in the rule book and let the rules and the players dictate the outcome of the game.

As Judge Roberts said, that is how judges should act. The law, and not judges, should decide the outcome of the cases. The rules of the game, the writing of the laws is done by Congress. The President implements and enforces the laws, the judiciary settles disputes by applying laws and the Constitution. Judges are not lawmakers as umpires are not players. If umpires want to be players, that umpire should quit and join a team. If a judge wants to write laws, he should run for Congress.

We have seen courts try to replace Congress and legislatures. Social issues have been taken out of the political process and decided by unelected judges. The voice of the people has too often been ignored. Activism of a few judges threatens our judicial system.

If judges keep exercising powers not granted by the public and its servants may tune out the courts and ignore them altogether. That would be bad and we would all suffer. I think Judge Roberts sees that danger. As Chief Justice, he will protect the Constitution and reputation of the courts.

At his confirmation hearings, Judge Roberts recognized the damage of an activist judiciary. Their activism undermines the authority and respect needed to overturn truly unconstitutional actions. Courts must not be activists and settle public policy disputes. Judge Roberts also sees that danger, and I trust he will work hard to keep the Court within its boundaries and implore judges to exercise restraint in decisionmaking. A key part of that restraint is to not wade into public policy disputes. I imagine it is tempting for judges to impose their personal views when making decisions.

I believe Judge Roberts will exercise restraint and encourage the Federal court system to do the same. Many of my colleagues are frustrated over Judge Roberts not revealing his views on public policy.

As Chief Justice, Judge Roberts is not going to act like a Senator. He will not let his personal views influence his decision and rulings.

The complaints of some of my colleagues led me to believe that they did not understand the role our Founding Fathers intended for the courts. Congress is the policymaking branch of government. The President and the administration enforce the laws. And the courts act as neutral decisionmakers when disputes arise.

But my colleagues know this. And so I fear they see the courts as a political arm to implement their liberal policy agenda. To them the Supreme Court is a super legislature. But that is not what our Framers envisioned. And that is not how Judge Roberts will use his position as Chief Justice.

The left turns to the courts to impose their agenda because they cannot advance it through elections. They cannot pass their laws through Congress or legislatures. They cannot even get elected by running on their liberal policies. So they must use the courts to impose their agenda.

What is that agenda? Unlimited abortion on-demand; banning schoolchildren from saying the Pledge of Allegiance; banning the Ten Commandments from public places; rewriting the definition of marriage; and banning arms for self-defense.

That agenda does not sell with America or in Congress.

So the last thing I hope for liberals is the judicial bench. And that is why they oppose nominees who do not agree to their liberal activist agenda.

The only thing stopping the rewriting of our Constitution are judges that will support the rule of law. John Roberts is one such judge. He will not write new laws from the bench. As Chief Justice, he will set an example for the court system to follow the same principles.

Many Senators have expressed frustration at not knowing Judge Roberts’ political views. I do not know his views either. I have not asked him. And I will not ask him. They do not matter. I trust him not to let his political beliefs influence his decisions.

During his hearing, Judge Roberts rightly declined to answer how he would rule in specific cases. The current Supreme Court Justices also declined to answer similar questions.

Answering those kind of questions would corrupt and politicize the process. Judicial nominees would turn into politicians campaigning for office to get confirmed—pledging to vote a certain way in order to get their appointment confirmed. They would also have to make promises to the President in order to get nominated.

Judges must be selected based on their qualifications. I have not asked Judge Roberts about his personal political views. I have not asked him about his legal views. I do not need to know how he will rule in a certain particular case—because I know his approach to the law—and that is all I need to know.

John Roberts will lead by example and earn the respect of the other Justices and the American public. He will also be joined on the Court by another new Justice.

I trust President Bush will choose another highly qualified nominee to replace retiring Justice Sandra Day O’Connor.

If the new nominee is in a similar mold and has the same respect for the rule of law, then I will be glad to support the next nominee.

I have seen comments from some of my Democrat colleagues that they will filibuster certain nominees. That is most unfortunate. And it could bring us back to the point where we were earlier this year.

I hope and pray the minority does not do this.

But make no mistake about it. We will ensure that the next nominee receives fair treatment in the Senate and gets a vote.

I thank President Bush for keeping his promise to nominate outstanding individuals to our courts.

I thank Chairman SPECTER for ushering this nomination swiftly through his Judiciary Committee.

And I thank John Roberts for his service to our country.

I vow very strongly to vote for him when his vote comes up tomorrow.

I yield the floor.

Mr. SESSIONS. Mr. President, I would like to express my agreement with the Senator from Kentucky. He stated the case very clearly for the proper role for a judge. I know he faced many an umpire in his Hall of Fame baseball career. But he knows when they make the call, they are stuck with it, and he has every right to expect that that umpire is going to make the call not based on whether they favor one team or another or one side or another but what the rules of the game are.

I think that metaphor Judge Roberts utilized as he talked about the role of a judge is an apt one.

I saw Senator BURNS here. He used to be a football referee. I wanted to ask him: Senator BURNS, if you thought that the holding call was a little bit inadvertent and it wasn’t too bad a holding call but the penalty called for
15 years, should the referee be free to impose 10 years because they think that might be more fair? No. Of course, not. Those are the basic principles of rules.

I am pleased that we have a nominee who I think understands it. Activism is a concern of the American people. It is something that should concern all of us because it represents a movement by unelected, lifetime-appointed judges to impose policy decisions and values on the American people. If it is required by the Constitution, that is their job. If it is not required and not a part of the Constitution, they should not be engaged in those kinds of issues.

The high point I think of activism was when two Supreme Court Justices in every death penalty case declared that they dissented and they would oppose all death penalty cases in the United States because they believed the Constitution prohibited the death penalty. That might sound plausible. But the Constitution itself has half a dozen references to capital crimes for which you may take somebody’s life. It has references to not being able to take life without due process of law. Obviously, you could take life with due process of law. And when the Constitution was written, every single State, every single Colony, members of the Confederacy, had the death penalty, and they did when the Constitution was written.

So it is obviously the judges’ decision that they didn’t like the death penalty. They declared it was an unenlightened public policy involving a standard of decency and all of that, and that justified their opinion. But that wasn’t so, was it? Because State after State has maintained the death penalty. Many have enacted death penalties after they eliminated the penalty. It is not what the American people rejected, in fact, and would never have been rejected by the members of the legislatures of all the States.

They tried to say the Constitution prohibited any State from having a death penalty. That is an extreme abrogation of power, and it is something we should be concerned about.

What did Judge Roberts say?

I see my chairman, Senator SPECTER, who has done such a great job in moving this nomination forward. I want to speak long and will yield the floor to him. I had my opportunity to make a few remarks earlier.

But I think it is important for us to listen to the eloquent, beautifully repeated—I am going to touch on a few of his statements—but the repeated statements Judge Roberts in these different ways that affirm so clearly that he knows what the role of the judge is in the American legal system. I picked out a few.

It is that rule of law that protects the rights and liberties of all Americans. It is the envy of the world, because without the rule of law any rights are meaningless.

Mr. Chairman, I come before this committee with no agenda. I have no platform.

Neither the President nor Members of our side of the aisle are asking any nominee to impose our political agenda on this country. I would never do that. I think that is the role of a judge. But neither do I think the judge ought to be opposing any agenda. And I certainly am offended when they oppose the agenda which I don’t agree with, which I think is the province of the legislative branches. Judge Roberts understands that.

Then he goes on:

That’s a paraphrase, but the phrase, calmly poise the scales of Justice if, if anything, the motto of the court on which I now sit. That would be the guiding principle for me whether I am back on that court or a different one, because some factors may be different, the issues may be different, the demands may be different, but the Bill of Rights remains the same. And the obligation of a court to protect those basic liberties in times of peace and in times of war, in times of stress and in times of calm, that doesn’t change.

What a beautiful statement.

Another:

Like most people, I resist the labels. I have told people who pressed that I prefer to be known as a modest judge, and to me that means some of the things that you talked about in those other labels. It means an appreciation that the role of the judge is limited, that a judge is to decide the cases before them, they’re not to legislate, they’re not to execute the laws.

Another:

I don’t think the courts should have a dominant role in society and stressing society’s problems. It is their job to say what the law is.

Isn’t that correct?

But the Court has to appreciate that the reason they have that authority is because they’re interpreting the law, they’re not making policy, and to the extent they go beyond that, they create improper legislation for which they have the authority to impose any kind of penalty. But they’re not there to make policy or execute the law. They lose their legitimacy, and I think that can be determined by those cases where they are not to act in the face of unconstitutional action.

That is a brilliant statement. If a court consistently abuses its power, does not remain faithful to the Constitution, at some point it may have to take a very unpopular stand to truly and rightfully defend the Constitution against congressional Presidential overreach.

Will they have the credibility to do so? Not so, perhaps, if they have squandered the respect of many years that has undermined public confidence in the Court.

That is exactly what he is saying—a beautiful statement.

If you believe in our Constitution, if you believe in the laws to protect our liberties and that laid the foundations for our prosperity, you must believe that we have to enforce the Constitution, even if you might not agree with some part of it.

He was asked, “Are you an originalist? Are you a strict constructionist? What label do you put on yourself, Judge?”

He said this:

I do not have an overarching judicial philosophy that I bring to every case, and I think that’s true. I tend to look at the cases from the bottom up rather than the top down. And I think all good judges focus a lot on the FACTS. We talk about the law, and that’s a great interest for all of us, but I think most cases turn on the facts, so you do have to know those, you have to know the record.

In other words, we were asking him to blithely make his views known on how he would rule on this case or that case. He said, the time it gets to the Supreme Court of the United States there has been a full trial and maybe hundreds, maybe thousands of pages of transcript and records. There are facts that underlie the dispute, and it is only after the facts are asserted that a judge needs to be making a decision about the outcome of a case.

Judges apply the facts to the legal requirements of the situation, and only then make a decision. He refused to make opinions on cases that may come before him. Of course, he should not make opinions on that. He has not studied the record, the transcript, talked with the other judges, read the briefs, or heard the oral arguments of counsel. He should not be up there making opinions on the cases. That is so obvious. He was pushed, pushed, and pushed to do that and criticized for not doing so. That is the rule of the law: Do not make a decision until you know the facts and the law.

I will say this: We have had a tutorial on the rule of law under the American system. We have had a classroom exercise beyond anything any Member could ask for on the role of a judge in the American system. It was a beautiful thing. I am pleased to see many of my colleagues on the other side of the aisle have seen fit now to announce they intend to support Judge Roberts. That is the right thing. I am confident, also, the President will submit another, just like Judge Roberts, who will be consistent with the same philosophy of Judge Roberts—one who does not seek to impose any political agenda, liberal or conservative, on the American people, but will simply consider the facts, consider the arguments of counsel, and decide the case before them.

That is what we have a right to ask and to insist on to preserve the rule of law in this country, which, more than any other country in the world, reveres and respects and venerates law and order.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania yields the floor, I thank and compliment him for his comments and for his work on the Judiciary Committee. He has been steadfast in his participation in all matters and I yield to the nomination proceedings as to Judge Roberts. It ought to be noted for the record.
Mr. President, Senator DOMENICI was here seeking an opportunity to speak. I ask unanimous consent he be sequenced following my speech.

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

Mr. SPECTER. Mr. President, I have sought recognition today to comment on a story which is in the Washington Post today captioned "Filibuster Showdown Looms in the Senate: Democrats Prepare For Next Court Pick."

I suggest it is in the national interest that there be a lowering of the decibel level of the partisan rhetoric. There is no doubt that the process for the nomination, hearings, and confirmation of a Supreme Court nominee is part of the political process. I further suggest partisanship has its limits.

The partisanship which is demonstrated in this report by the Washington Post today seems to me to be flagrantly excessive partisanship, flagrantly partisan rhetoric, really out of bounds and out of the mainstream.

The core objection raised by certain Democratic political activists as outlined in the Washington Post story is flagrantly partisan rhetoric, flagrantly excessive partisanship, really out of bounds and out of the mainstream.

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heard so many Democrats say they did not like the idea of a filibuster and I heard so many Republicans say they did not like the idea of the constitutional or nuclear option, but Democrats felt constrained to the filibuster and Republicans felt constrained to the nuclear option.

I urged my colleagues to take an independent stand, that when you talked about the long-range composition and the long-range approach of the institution of the Senate, it was more important than the passions of the moment. I went into some detail and quoted how the Senate saved judicial independence in the impeachment proceedings of Supreme Court Justice Chase in 1805 and 1806 and how the U.S. Senate saved the independence of Presidential prerogatives in the impeachment proceeding of President Andrew Johnson. The Congress had passed a law saying there had to be consent by the Senate for the President to remove a Cabinet Secretary for whom Stanton bolted himself in his office. He would not leave. Because President Johnson would not tolerate that kind of usurpation of Presidential power, he was impeached. In this Chamber, he was ultimately saved.

When you talk about the institutions of the Senate, we do not need outsiders telling us when to filibuster. We do not need outsiders and political activists on either side telling us when to filibuster or even the constitutional option. They were elected. They were not.

When you have men of the stature of Senator LEAHY and Senator DODD and Senator LIEBERMAN taking a position, those positions ought to be respected. When you have hard-fighting Senators such as KENNEDY and BIDEN and SCHUMER fighting a nomination and voting no, their positions ought to be respected. I urge Senator LIEBERMAN taking a position, Senator LEAHY and Senator DODD and on either side telling us when to filibuster. We do not need outsiders and political activists telling us when to filibuster. We do not need outsiders and political activists telling us when to filibuster.

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Mr. STEVENS. Mr. President, is it proper now to speak on the nomination of Judge Roberts?

The PRESIDING OFFICER. Yes, it is in order.

The President pro tempore is recognized.

Mr. STEVENS. Mr. President, having lived and studied alongside one of the greatest legal minds of my generation, I believe Judge Roberts’ capability and knowledge of the law is superior to any of his generation. When I was at Harvard Law School, my roommate was H. Reed Baldwin. He had abilities quite similar to those of John Roberts. He was on the Harvard Review. He was a member of the Harvard Law Review. He was what I call a Renaissance man. He could handle almost any subject. Unfortunately, he suffered an untimely death; otherwise, he might have once been in the same place as Judge Roberts is today.

During the Judiciary Committee’s hearings, Juneau Mayor Bruce Botelho testified in support of Judge Roberts’ nomination. Bruce, whom I know well, was Attorney General for the State of Alaska from 1984 through 2002. He employed John Roberts to represent our State before the Supreme Court on a wide range of issues, including the Venetie case involving Indian country claims and cases related to submerged lands issues in the Venetie and the Alaska Statehood Act. As a matter of fact, I met with Judge Roberts then and have met with him since. He has a brilliant legal mind.

I am not alone in that opinion. Judge Roberts has been to our State many times, and he has won the respect of Alaskans who hold a wide range of political beliefs and opinions. Judge Roberts also won the respect of the bar association of the District of Columbia, of which I am a member. In 2002, when Judge Roberts was nominated to serve as a Federal court of appeals judge on the U.S. Court of Appeals for the District of Columbia Circuit, more than 150 Members of the DC bar sent a letter to the Judiciary Committee expressing support for Judge Roberts’ nomination. I know many of the bar members who signed this letter. They are a distinguished and bipartisan group of lawyers, law professors, and public servants. I think they said it best:

John Roberts represents the best of the bar.

I agree with their opinion and the opinion of many Alaskans who have worked with him. I shall vote to confirm Judge Roberts as the 17th Chief Justice of the U.S. Supreme Court. I urge all of my colleagues in the Senate to do the same.

I ask unanimous consent that the letter mentioned be printed in the RECORD.

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

December 18, 2002.


Hon. TOM DASCHLE, Hon. PATRICK LEAHY, Hon. TRENT LOTT.

U.S. Senate, Washington, DC.

Dear Senators Daschle, Hatch, Leahy, and Lott: The undersigned are all members of the Bar of the District of Columbia and are writing in support of the nomination of John G. Roberts, Jr. to serve as a federal court of appeals judge on the United States Court of Appeals for the District of Columbia Circuit. Although, as individuals, we reflect a wide spectrum of political party affiliation and ideology, we are united in our belief that John Roberts will be an outstanding federal court of appeals judge and should be confirmed by the United States Senate. He is one of the very best and most highly respected appellate lawyers in the nation, with a deserved reputation as a brilliant writer and oral advocate. He is also a wonderful professional colleague both because of his enormous skills and because of his unquestioned integrity and fair-mindedness. In short, Judge Roberts represents the best of the bar and, we have no doubt, would be a superb federal court of appeals judge.

Thank you.

Sincerely,

Donald B. Ayer, Jones, Day, Reavis & Pogue; Louis R. Cohen, Wilmer, Cutler & Pickering; Lloyd N. Cutler, Wilmer, Cutler & Pickering; C. Boyden Gray, Wilmer, Cutler & Pickering; Maureen Mahoney, Latham & Watkins; Carter Phillips, Sidley, Austin & Wood; E. Barrett Prettyman, Jr., Hogan & Hartson; George J. Terwilliger III, White and Case; Edward Bruce, Covington & Burling; William Coleman, O’Melveny & Myers; Kenneth Geller, Mayer, Brown & Madow; Mark Levy, Howrey, Simon, Arnold & White; John E. Nolan, Steptoe & Johnson; John H. Pickering, Wilmer, Cutler & Pickering; Allen R. Snyder, Hogan & Hartson; Seth Waxman, Wilmer, Cutler & Pickering; Peter A. Archaribald, Hogan & Hartson; Jeanette L. Austin, Mayer, Brown & Madow; James C. Bailey, Steptoe & Johnson; Stewart Baker, Boardman Ponton & Calamaro; James T. Banks, Hogan & Hartson; Amy Coney Barrett, Notre Dame Law School; Michael J. Barta, Baker, Botts; Kenneth C. Bascomb, Sterne, Kessler, Goldstein & Fox; Richard K. A. Becker, Hogan & Hartson; Joseph C. Bell, Hogan & Hartson; Brigida Benitez, Wilmer, Cutler & Pickering; Douglas L. Beresford, Hogan & Hartson; Edward Berin, Swidler, Berlin, Shereff, Friedmann; Elizabeth Beske (Member, Bar of the State of California); Patricia A. Brannan, Hogan & Hartson; Don O. Burley, Finnegan, Henderson, Farabow, Garrett & Dunner; Raymond S. Calamaro, Hogan & Hartson; George U. Carneal, Hogan & Hartson; Michael Carvin, Jones, Day, Reavis & Pogue;

Charles Davidow, Wilmer, Cutler & Pickering; Grant Dixon, Kirkland & Ellis; Edward A. Diehl, Wilmer, Cutler & Pickering; Donald R. Dummer, Finnegan Henderson Farabow Garrett & Dunner; Thomas J. Eastment, Baker Botts; Clark S. Eddings, Hogan & Hartson; Ta泽well Ellett, Hogan & Hartson; Roy T. Engelert, Jr., Robbins, Russell, Englert, Orbeck, Unterreiner; Marilee E. Evans, Kellogg, Huber, Hansen, Todd & Evans; Frank Fahrenkopf, Hogan & Hartson; Michele C. Farquhar, Hogan & Hartson; Robert Bartow, Farr, Pacheco & Taranto; Jonathan J. Frankel, Wilmer, Cutler & Pickering; Johnathan S. Franklin, Hogan & Hartson; David Frederick, Kellogg, Huber, Hansen, Todd & Evans; Richard W. Garnett, Notre Dame Law School; H.P. Goldfield, Vice Chairman, Stonebridge International; Thomas Goldstein, Goldstein & Rowe; Griffith L. Green, Sidney, Austin, Brown & Wood; Jonathan Hacker, O'Melveny & Myers.

Mary J. Hahn, Hogan & Hartson; Joseph M. Hassett, Hogan & Hartson; Kenneth J. Hautman, Hogan & Hartson; David J. Hensler, Hogan & Hartson; Patrick F. Hofer, Hogan & Hartson; William Michael House, Hogan & Hartson; Janet Holt, Hogan & Hartson; Mark McDavid, Hogan & Hartson; Karen F. Stoll, Finnegan, Henderson, Farabow, Garrett & Dunner; Silvija A. Strikis, Kellogg, Huber, Hansen, Todd & Evans; Clifford D. Stromberg, Hogan & Hartson.

Mary Anne Sullivan, Hogan & Hartson; Richard G. Taranto, Farr & Taranto; John Thorne, Deputy General Counsel, Verizon Communications Inc. & Lecturer, Columbia School of Law; Paul J. Zidlicky, Sidley Austin Brown & Wood; John C. Keeny, Jr., Hogan & Hartson; Michael K. Kellogg, Kellogg, Huber, Hansen, Todd & Evans; Kevin J. Kelly, Hogan & Hartson; J. Hovey Kemp, Hogan & Hartson; David A. Kikel, Hogan & Hartson; R. Scott Kilgore, Wilmer, Cutler & Pickering; Michael D. Kidney, Hogan & Hartson; Duncan S. Kline, Hogan & Hartson; Robert Klonoff, Jones, Day Reavis & Poe.

Jody Manier Kris, Wilmer, Cutler & Pickering; Michael C. Kirby, Kirkland & Ellis; Philip C. Larson, University of Virginia School of Law; Richard T. Rossier, McLeod, Watkinson & Traiger; Erika Z. Jacobs, Mayer, Brown, Rowe & Maw; Jay T. Jorgensen, Sidley Austin Brown & Wood; John C. Keeny, Jr., Hogan & Hartson; Michael A. Maroulis, Hogan & Hartson; Helen M. Sipe, Jr., Steptoe & Johnson; Alan D. Silverman, Hogan & Hartson; Sam
d K. Shapiro, Hogan & Hartson; Richard W. Garnett, Notre Dame Law School; H.P. Goldfield, Vice Chairman, Stonebridge International; Thomas Goldstein, Goldstein & Rowe; Griffith L. Green, Sidney, Austin, Brown & Wood; Jonathan Hacker, O’Melveny & Myers.

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Based upon my previous experiences, it is almost as if Judge Roberts were destined to be a Supreme Court Justice. As I have listened to him, read what he has written, reviewed his background, and watched his conduct before the Judiciary Committee, it has become clear to me that he exemplifies the very highest qualities. When I look at him in comparison with nominees of the past, considering those men and women that I have previously voted for, it has become clear to me that he was born to serve his nation on our highest court.

Frankly, in all deference to the judges I have voted for heretofore, I have never been more confident that the President picked the right person for the right job at the right time as I am today.

If there is a perfect judge that can be visualized based upon all of the judges I have seen, listened to, read about, and voted for, this man seems to me to come closest to such a picture. He will be a judge for whom I will be extremely proud to have voted for.

Many people have described the message I am trying to convey about Judge Roberts in different ways, and there have been some qualifications of his qualifications. The largest newspaper in my home state of New Mexico wrote: “In addition to his encyclopedic fluency in constitutional law and the flesh and blood history behind it, Roberts exhibited a fine quality for a Chief Justice: collegiality. Justices, like Senators, disagree. Roberts showed he can disagree without disrespect, leaving open the door to work toward consensus. If Democrats cannot accept Roberts, is there any suitable Republican nominee?”

I appreciate those words from the Albuquerque Journal, and I agree with the question they raise. Democrats who want a Democratic nominee who fits their mold and agrees with their positions will have to wait until there is another Democratic President for such a nominee to come before the Senate. That is the way it has always been, and my friends from the other side of the aisle cannot expect a Republican President to nominate an individual who will carry their beliefs onto the court. Such a belief is not consistent with history or with tradition.

I will close by telling you I have great confidence that in 5 years, God willing, in 10 years, God willing, I can look back at Judge Roberts’ performance as our Chief Justice and say: I was right in how I analyzed what he has been, what he is today, and what he will be as a Supreme Court Justice. I don’t think I will be surprised or let down.
And I know, looking back at nominees for whom I voted, that such is not an ordinary expectation. Some judges for whom I voted did not turn out to be what I expected. But I am quite confident that Judge Roberts will not be anything but the great judge I expect as I look back on his tenure in the ensuing years.

I congratulate the Judge on his nomination. I hope he will remain loyal to what he has said and the way he has said it. I am pleased with what he wanted to be and what he would be. I wish him the very best because if he is successful, it will be good for America. His success in this job is correlated with good relationships under our Constitution between the great powers of the executive, legislative, and judicial branches.

I yield the floor and thank the Senator for listening.

Mr. THOMAS. Mr. President, I appreciate the opportunity to comment on the issue before us, which of course is Judge John Roberts. Certainly, we have been hearing all about him for the last several days and nearly everything that is to be said has been said at least once. But I do want to take the opportunity to say I am very impressed with this candidate for Supreme Court Chief Justice. I am convinced that he will be a strong defender of the Constitution, that he has an exceptional ability to interpret the Constitution with respect to the law, and that certainly he has the background and qualifications to do that.

I am not an expert in law, but I do feel strongly that the Court is there to measure what is done in other places, what is done in the executive branch, and what is done in the legislative branch with respect to how it fits into the Constitution.

I have met with Judge Roberts, and I appreciated the opportunity to get better acquainted with him. I am very impressed with his strong character. It is comforting to see someone you think is extremely qualified for such an exceptional job and, at the same time, seems to see the world pretty much from the standpoint we all do, just as a human being, a person who wants to live in a country with freedom, in a country with constitutional law, in a country that does the best for everyone, and I have that impression. So I like about him.

He has great respect for the rule of law and that, it seems to me, is one of the most important aspects of our country. I have had a chance to visit other places. I have had a chance to talk to people about other countries. As I have gone about, one of the big differences is we have a rule of law, not a rule of people who happen to be in a strong position at the time, but a rule of law that exists and continues in the Constitution to be interpreted by the Supreme Court.

Of course, Judge Roberts has credentials that are outstanding. His educational background is great. He is a White House Counsel, so he knows how that works. He has been a Deputy Solicitor General, so he knows how that aspect of it works, too. And he is a circuit judge, so he has a background as a judge. I believe that is very important.

I am very impressed, I am very pleased, and I am very proud to be a part of voting for him. I think the vote will be strong.

I share with Judge Roberts a few areas about which I am concerned. I did not ask his opinion on them, but rather in the State I am from, Wyoming, we are very concerned about venue shopping. It is an issue that grows about the idea of people filing suit or going to the proper district court or area to get one that is sympathetic. That is not the way it ought to be. The Federal court that deals with the issue from abroad those issues come up in that history, and I wanted to share that with Judge Roberts.

I am very concerned about eminent domain, with regard to people’s rights and property, gun rights, endangered species, and I was concerned for his opinion on those issues because that is not the issue. The issue is, as legislation is passed, are they consistent with the Constitution, and that is, indeed, the role of judges—to listen to the facts and see how they apply to the rule of law.

I was very impressed, as most of us were as we watched some of the interrogation in the committee, with his conduct. Of course, he was pressed many times with different kinds of questions and tried to be pushed into making specific stands on his own opinion on issues, which really is not what it is all about. That is for him to decide when those issues come up in that history, and I wanted to share that with Judge Roberts.

I am very concerned about the most important aspects of our country, and I believe that is very important.

I must confess that is the strongest point I support and seek to see the Court do. I think that will happen.

Mr. President, if I may, during this time, I wish to divert from this subject for a minute or two.

Mr. President, I wish to talk about a condition that is very much important to us, where we have unusual events happening in our country. We have the situation in the gulf coast and give that situation to us. If we had not spent the money and, indeed, we would have to do something about it. Then you have to decide: How can we make some changes in my economic situation to deal with this excessive spending because of an emergency.

That is where we are now. We are talking about all kinds of ways. I hope we take enough time to deal with these situations on the gulf coast and give the people who happen to be there those people need. That is the responsibility of the Federal Government. I hope we make sure there is accountability with those moneys spent, that we can be sure they are the way for which they are defined to be spent. I hope we make sure the Federal Government does what it is supposed to do and that the other units of government—State, local, and private sector—do what they are supposed to do.

But we still will spend a great deal of money, and, indeed, we should.

We also have to consider that over the past year, because of Iraq and other events, we have also had an increase in our deficit. Our deficit has gone up. So we need to find some ways to do something about it. Obviously, we will take a look at spending and see what areas we can reduce. I hope we do that as we finish our budget for this year. We need to.

We should take a look at some of the ways we raise money. In the case of some taxes, that probably we might otherwise change. Perhaps they will have to be left as they are for a while and continue to offset some of these costs.

I wish to specifically mention a bill I am currently sponsoring that requires the regular review of Federal programs. This should be done anyway, but it makes it particularly important as we look toward this business of spending. It is called the Government Reorganization and Program Performance Improvement Act. It creates the necessary mechanism, I believe, to set up some commissions to take a look, No. 1, at programs that have been in place, let’s say, for 10 years, and to determine if, in fact, the program is still as needed as it was 10 years ago, to see if it accomplished what it was set up to do 10 years ago and now is completed, could be ended, or could be put in with some other program, or could be reduced. It is not be the same as it was when a program was put in place. Even though there probably was a very good reason to have
the program then, is the reason still good? Should we be changing it?

It is really a modernization effort, something we would do in every business, something we should do, which is to take a look at what we have done historically and see if they are appropriate or if they can be done better.

The second half is to not only look at programs that might be unnecessary or wasteful, but take a look at programs that will continue, but are they being done in ways that can make them more efficient?

One of the issues we have to take a look at in terms of excessive spending is controlling the size of the Federal Government. It has continued to grow and grow. We have sort of developed a political notion that if there is anything needed anywhere, let's get the Federal Government to pay for it.

Well, that is a nice thing to do. The fact is we are supposed to be divided up, and there are local governments, State governments, and the Federal Government, each of which has its own responsibilities and its own areas and we ought to be seeking to define what the role of the Federal Government is and sort of restrict those things to that area so that we can control size.

So if we could inventory the programs, would have proactive steps toward improving and eliminating unnecessary and redundant efforts, and it would help us return to fiscal responsibility. It is kind of common sense in Government, each of which has its own responsibilities and its own areas.

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

Mr. CORNYN. Mr. President, I ask unanimous consent that the next hour be unanimous consent that the next hour be

Mr. CORNYN. Mr. President, I yield to the Chair.

Mr. CORNYN. I thank the Chair.

Mr. President, I am going to talk about a matter that I personally have before the Senate, Judge John Roberts, in a moment. First, let me express my concerns about a Washington Post story that was published today entitled "Filibuster Showdown Looms in Senate." The curious thing about this article is it does not talk about the nominee for Chief Justice of the United States, John Roberts, the nominee that is actually pending before the Senate. Rather, what this article talks about is the next nominee of the President of the United States to fill the seat of Justice Sandra Day O'Connor.

I am afraid it is perhaps a sign of the times in which we are living and perhaps a sign of the contentiousness with which the nomination for a vacancy on the Supreme Court has met in the Senate that some of my colleagues are already talking about a filibuster of the next nominee of the President when that nominee has not yet been named. It is a kind of bipartisanship, a new level, to block an up-or-down vote on the Senate floor when we do not even know who that person is.

I am afraid it is perhaps a sign of the times in which we are living and perhaps a sign of the contentiousness with which the nomination for a vacancy on the Supreme Court has met in the Senate that some of my colleagues are already talking about a filibuster of the next nominee of the President when that nominee has not yet been named.

I think it takes bipartisanship to a new level, to threaten to block an up-or-down vote on the Senate floor when we do not even know who that person is. And, indeed, some apparently cannot conceive of the possibility that this President would nominate someone on whom they would at least allow an up-or-down vote. We are not talking about a Senator not following their conscience but talking about Senators, a Senator speaking without a bipartisan majority from casting an up-or-down vote without even knowing who that nominee is going to be.

We ask that nominees for the courts not prejudice cases that will come before them. If we think about that, we should also ask Senators not to prejudice nominees who have not even been nominated by the President yet. Whomever the President nominates should be entitled to an up-or-down vote and majority rule. That is all we would ask for this yet-to-be-nominated nominee. But if the Constitution says that the President has the authority to act in their discretion, then we have to take a look at what we have done historically and in the case, then they will vote in favor of the little guy.

But if the Constitution says that they simply cannot or will not put promises to politicians aside for this greater good of independence and impartiality. One of my colleagues says she wants to know who will be the winners on certain issues when Judge Roberts is on the Court. I can tell you who that is. They are the big guys. They are the ones going to be the parties whose positions are supported by the Constitution and the laws of the United States of America. Judge Roberts eloquently explained this during his confirmation hearing.

He was asked whether he would rule in favor of the little guy. His answer was that if the Constitution and laws of the United States supported the little guy’s position, the little guy will win. But if the Constitution says that the big guys are supported, the big guys are supported. The Constitution is supported by the Constitution and laws of the United States. In the case, then they will vote in favor of the big guy.

This is exactly how it should be. Over the Supreme Court of the United States, as you look at that stately edifice, it says, “Equal justice under the law,” not that justice will be rendered in favor of the little guy all the time or against the big guy all the time or, for that matter, for half of the time and against the little guy. That is the antithesis of equal justice under the law. As a matter of fact, we all recall that Lady Justice wears a blindfold for a very good reason—because justice is about the law, not about persons who are sitting in front of a judge. They are concerned about what the law says.

Mr. President. second, I am not voting for this confirmation hearing because he turned away clients with legal positions with which my constituents or of some of us might disagree. Some of my colleagues have said they will vote against Judge Roberts because they are unsure of his heart. They are saying that his heart may not be pure because...
in private law practice he would not
turn down clients with positions anath-
ema to liberal special interest groups.
Now, although they acknowledge that
Judge Roberts has donated his time to
clients who, for example, were on the
liberal side of a lawsuit over gay
rights, they criticize Judge Roberts
because at his confirmation hearings he
said he would have donated his time to
clients on the conservative side of that
same issue had they approached him
first.

This is perhaps the strangest argu-
ment of all against this nominee. My
colleagues are going to vote against
him because they think it is heartless
to take on clients regardless of wheth-
er he agreed with them or not. That is
the very essence of being a lawyer, a
professional, an advocate. Lawyers are
somewhat like public accommodations
in a sense. Similar to hotels, res-

taurants, and the like, when lawyers
place their shingle out and say, I am
willing to entertain cases that people
may bring to me, they are supposed to
serve anyone who comes through the
door, as long as they have an arguable
legal position or factual position with
which the Court might ultimately agree.
In fact, our adversarial system of justice
depends on law-

yers not just taking cases with which
they perhaps ideologically are inclined
to agree but, rather, they are supposed to
take the facts and the legal argu-
ments and do the very best they can so
that in a clash that plays out in our ad-
versarial system of justice in the court
room, the judge can make the best de-
cision based on the best legal argu-
ments and that jurors can decide what
the truth is based on this clash of op-
posing positions.

People are not supposed to be judged
by the lawyers. Rather, in our system
they are supposed to be judged by a
jury of their peers. But if lawyers were
constrained or prohibited from rep-
resenting people with whom they
might personally not agree, then they
would never have a chance to be judged
by a jury of their peers because they
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munity.
The process of providing advice and consent on a Supreme Court nomination is one of the Senate's most significant constitutional responsibilities, although it is not something we are called upon to do very often. Eleven years have passed since the Senate last exercised its duty to provide advice and consent to the President on his selection of a Supreme Court nominee; 19 years have passed since the Senate last considered a nominee for Chief Justice. By now, all Senate members, and most American lawyers, comprehend the impressive life story of John G. Roberts, Jr. He is a summa cum laude graduate of Harvard University and an honors graduate of the Harvard Law School. He was an editor of the Harvard Law Review.

After graduating from law school with high honors, Judge Roberts served as a law clerk to a judge on the Second Circuit Court of Appeals and as a law clerk to then Associate Justice Rehnquist on the U.S. Supreme Court. He has also served as a Special Assistant to the Attorney General of the United States and as an associate counsel to President Ronald Reagan.

After those years of public service, he spent 3 years practicing at a well-respected law firm, specializing in civil litigation. Judge Roberts then returned to public service as the Principal Deputy Solicitor General of the United States.

During the years of service at the Department of Justice and as a lawyer in private practice, Judge Roberts argued 39 cases before the U.S. Supreme Court. His performance before the Court earned him a reputation as one of the Nation's premier appellate court advocates.

Two years ago Judge Roberts was unanimously confirmed by this Senate to the U.S. Circuit Court of Appeals for the District of Columbia. This circuit court is considered by many to be the Nation's second highest court. Judge Roberts is a devoted husband, a dutiful father of two young children, and he is a good and honest man. I closely followed the Senate Judiciary Committee's hearings on his nomination to be Chief Justice. It is clear to me that he is the right person for this very important responsibility. Judge Roberts has served with distinction in every job he has ever had. His record is compelling evidence that he would be an able and thoughtful member of the Supreme Court, and that his experience and his respect for the rule of law demonstrate he would be an outstanding Chief Justice of the United States.

The process of providing advice and consent on a Supreme Court nomination is one of the Senate's most significant constitutional responsibilities, although it is not something we are called upon to do very often. Eleven
campaign complete with television ads and placards and demonstrations saying that Judge Roberts is out of the mainstream.

I do not know where you go to find mainstream today. I do not know exactly where the mainstream is. I know where the left bank of this particular stream is. The New York Times is against Judge Roberts. That was predictable. That was as sure as the Sun would rise—that the New York Times would not support the President. It has been long a tradition to good George W. Bush proposed.

The Washington Post is usually thought of as being fairly close to the left bank, but the Washington Post looked at this nominee and said this is a qualified nominee. The American Bar Association tries to be as much of the mainstream as they can. They have given Judge Roberts' nomination their highest support, "well qualified," unanimously. Maybe they are not mainstream enough for some of these people who are using this argument.

The Los Angeles Times is not thought of as a rightwing organization. The Los Angeles Times said it would be a travesty if we didn't confirm Judge Roberts by a wide margin.

Why do we want to confirm somebody like Judge Roberts? Why is the President's nomination a good one? In my view, it is because Judge Roberts understands one fundamental truth. Along with the one I have just given, a second fundamental truth, if you will, is that nominations are not elections and judges are not politicians, or more appropriately judges are not legislators. You have elections for legislators. You should not have elections for judges.

Judge Roberts put it this way in describing his understanding of his responsibility. We have heard this before with respect to this nominee, but it is worth repeating. He said to the committee:

I come before the committee with no agenda. I have no platform.

Again, judges are not legislators.

Judges are not politicians who can promise to do certain things in exchange for votes. I have no agenda but I do have a commitment. If I am confirmed, I will confront every case with an open mind. I will fully and fairly analyze the legal arguments that are presented. I will be open to the considered views of my colleagues on the bench, and I will decide every case based on the record, according to the rule of law, without fear or favor, to the best of my ability. I will remember that it is my job to call balls and strikes and not to pitch or bat.

In other words, he is the umpire, he is not a player. We have seen an example brought up in an effort to try to de-rail a nomination. It was an example of how he called "balls and strikes" and how he was not a legislator. It has been dropped now because those people who raised it didn't realize that it was going to be analyzed properly and turn out to be much less threatening to them rather than to the judge.

But there was the case of the 12-year-old girl in Washington who, while waiting with her friend at the Metro station to buy a Metro ticket, happened to eat a single French fry, and she was arrested, handcuffed, and taken down to the station. Judge Roberts upheld the action of the Metro Police.

He was not a legislator. It has been said that there is an election. We can grab onto this as an example that we can sensationalize and win votes on. Then they examined the matter very carefully, and we got Judge Roberts' actual opinion in this case. He did not victimize a 12-year-old girl who was arrested for eating a French fry. This is what he said in his opinion that once again outlines the truth of his position that he will be an umpire, not a player; not a legislator.

He said:

No one is very happy about the events that led to this litigation. A 12-year-old girl was arrested, searched and handcuffed, all for eating a French fry. This is what he said in his opinion that once again outlines the truth of his position that he will be an umpire, not a player; not a legislator.

I will vote for him with great confidence. The real reason so many groups have tried to turn Judge Roberts' nomination into an election rather than a nomination is because they lost the election and they are hoping they can turn the Supreme Court into a super-legislature. That is the only choice for the President. Clearly, that is not what the Founding Fathers had in mind. Clearly, when they put the responsibility to make the choice in the hands of the President, they were saying this will be a nomination and not an election. If the Founding Fathers had in mind that the Supreme Court at the national level to be open to the electoral process, they would have done what others have done at the State level. There are States where the appointment to the supreme court of the State is an electoral process. Whether that is good or bad is the subject for another conversation. But in this circumstance, we are talking about the U.S. Constitution, which every Member of this Chamber has taken an oath to uphold.

We are not going to uphold the Constitution of the United States and defend it against all enemies who would undermine it, be they foreign or domestic, as we should preserve the constitutional process of nominations coming from the President of the United States. He has to answer to the people for his decisions. He should be the one to make the nomination. He is the one who is given the powers specifically.

We can say, Mr. President, we don't consent to that because we think you made a mistake, but we in the Senate should not conspire those who are trying to turn the nomination process into an electoral process. Because we should understand as Members of the legislature that members of the judiciary are not legislators, and we should not have in a nomination into legislators by participating in an election-type process in vetting their credentials. If this man is qualified, he should be confirmed. If he is unpopular with the electorate, that should be irrelevant. The Constitution does not allow for that to intrude upon the confirmation process.

There is no question but that John Roberts is qualified.

I end with a conversation I had with one of my colleagues who made up his mind to oppose Judge Roberts. I said to him: In a theoretical situation, suppose you had everything you own on the line in a nasty lawsuit, and you had a legal problem where you could lose everything. Who would you choose to defend you? Which lawyer would you hire, John Roberts or a member of the Senate Judiciary Committee? He laughed immediately. He said: Bob, it isn't even close. If John Roberts is the obvious choice for a personal attorney for someone who needs real help, why should he not be the obvious choice for the Nation that needs real help?

He will be a superb Chief Justice, and I will vote for him with great confidence.
The PRESIDING OFFICER. Under the previous order, the Senator from Virginia is recognized for 20 minutes.

Mr. ALLEN. Thank you, Mr. President.

Mr. President, I rise this afternoon in strong support of the confirmation of Judge John Roberts to be the 17th Chief Justice of the United States.

When we first learned of this vacancy on the Supreme Court earlier this summer, I laid out the principles of what kind of judge I believe the President should nominate and how the nomination process should proceed. It should be a dignified approach as a due process. It should be fair, and there should be a vote.

Federal judges are appointed for life. When one recognizes those debates in the founding of our country, Mr. Jefferson wanted judges appointed for terms, and Mr. Hamilton wanted them for life. Unfortunately, in my view, Mr. Hamilton of course got the day. And, of course, Federal legislators. Then we have State legislators, parish leaders, county boards of supervisors. At the local level, they elect city councils, representatives of the people. The people in our representative democracy possess the proper judicial philosophy.

I am very comfortable with Judge Roberts back in August. We discussed things one on one. I found him to be a very well grounded individual. He possesses the right judicial philosophy. I know people are concerned that some judges might get in there and somehow get out of touch in the rarefied air of judgeships, particularly on the Supreme Court. I thought it was good he cuts his grass every now and then—not that it is a qualification for a judge, but it shows he understands how people live in a relatively normal way.

Most importantly, we talked about the importance of precedence, individual rights, the interpretation of Federal and State laws, and what deference should be given to laws passed by the representatives of the people, as well as a variety of other issues.

I am very comfortable with Judge Roberts and his understanding of the role of the judge, the Constitution, and that the Constitution should not be amended by judicial decree.

I enjoyed asking him what he thinks the role of international law or laws from other countries should be for judges. We will not have others from another country tell us what our laws ought to be. I love his judicious approach that any judge who uses international laws or the laws from other countries to make decisions upon cases in the United States, those judges are being held as judges from other countries should be for

...
come from the laws that are passed by the people in the United States. If you start trying to get extraneous laws, that is judicial expansion. He understands the modest and respectful way a judge should handle cases.

Later in his confirmation hearings, we saw how Judge Roberts continued to show a rare reverence for our Constitution and the Supreme Court's responsibilities under our Constitution. He declared:

"Judges need to appreciate that the legitimacy of their action is confined to interpreting the law and not to making it, and if they exceed that function and start making the law, I do think that raises legitimate concerns about the legitimacy of their authority to do that."

It is refreshing to hear those words from the lips of a Supreme Court nominee. Many other judges in the Federal court system understand and respect that, as well.

As we get ready to vote tomorrow on Judge Roberts, this is exactly how this system and this process ought to work—fair and open hearings where the nominee explains his or her judicial philosophy but refuses to prejudge individual cases, and following all of the scrutiny and the questions and examination, there is a fair, up-or-down vote on the Senate floor. This is the American tradition. This should not be an exception. This should be the rule and the way we treat judicial nominees, not just this nominee but future nominees.

I remind my colleagues, we will soon have another Supreme Court vacancy to fill. We will need to fill it very soon. We should be fair and dignified, we should be deliberative, and when it is over, we should vote. Yes, that is our responsibility, to vote.

I am looking forward to having John Roberts serve as Chief Justice of the Supreme Court of the United States. I am also looking forward to confirming other well-qualified judges who understand and appreciate the foundational principles of our country and who will reinforce the rule of law by fairly adjudicating disputes protecting our freedom of religion, protecting our private ownership of property, and our freedom of expression.

John Roberts, I believe, will go down in history as one of the great Chief Justices of the Supreme Court. Let him also become a role model for all other men and women who will follow on Federal benches.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Under the previous order, the time from 5 p.m. to 6 p.m. will be under the control of the Democratic side.

The Senator from Delaware. Mr. CARPER. Mr. President, those of us who are privileged to serve in the Senate literally cast thousands of votes during the years we spend here. Some votes are procedural in nature and of little consequence. Others are far more meaningful. Katrina relief, pension reform, and trade agreements come to mind. Once in a great while, though, we are called upon in this body to cast a vote of such importance to our Nation that it will resonate for years to come—whether to authorize the use of military force against another nation or whether to impeach a President. There are few votes, however, we will cast in our time here that are likely to leave a more lasting impact on our country than the one we will cast tomorrow morning. In confirming the nomination of John Roberts—something that is all but certain—we not only will authorize him to serve as the Chief Justice of the U.S. Supreme Court, we will also make him the leader of our Government. God willing, he will hold that post for as long as most of us in the Senate are likely to live. A great deal is riding on this vote for our country and its people, both today and for a long time to come.

For many of us, this one is a close call. Understandable concerns have been raised on a number of fronts about what kind of Chief Justice John Roberts ultimately will make. Do the writings of a young man in his twenties reflect the views of this 50-year-old man today? If not, why was he reluctant to clearly say so publicly when given that opportunity? Why did the current administration refuse to allow any scrutiny of the writings of Judge Roberts from when he served as the No. 2 person in the Solicitor General's Office of former President Bush? What direction would Chief Justice Roberts seek to lead the Supreme Court in the coming years on issues relating to privacy, to civil rights, and to the prerogatives of the Congress to set policy that may be at odds with the views of State and local governments? How will Judge Roberts seek to interpret and apply the Constitution and a Federal system as State and State and Federal? Will the Roberts Court respect precedent or aggressively seek to establish new ones?

The honest answer to most of these questions is that none of us really know for sure—not the President, probably not even Judge Roberts himself. That uncertainty explains at least in part why this vote is so difficult for many Members of this body. So we are asked to make a leap of faith. For some, that leap is large. For others, it is not.

For myself, I have decided to take that leap of faith. After a great deal of deliberation, conversations with many Democrats and Republicans on the Senate Judiciary Committee, as well as with others back home and here, I have decided to vote tomorrow to confirm the nomination of John Roberts as our Nation's Chief Justice. Time will determine the wisdom of that decision, along with the decisions of each of our colleagues who join me in casting our votes tomorrow.

Yesterday, I had the privilege of meeting with Judge Roberts in my office and learned of the concerns and question marks I mentioned just a few minutes ago. His responses were forthright. They were insightful. And I believe they were sincere.

Our conversation also provided me with insights into how a young man from a small town in Indiana could grow up, attend Harvard, become one of the most admired lawyers in America, be nominated for the Supreme Court, not once but twice, and then sit through 3 days of often grueling questioning before the Senate Judiciary Committee, responding calmly and respectfully to questions on a wide range of legal issues without the benefit of any notes or even a pad of paper.

Judge Roberts and I spoke with one another at length about our respective childhoods and of our parents and the roles they played in our lives and the values they instilled in us and in our siblings. We also talked about educational opportunities, our careers, our mentors, our spouses, and even about the children we were raising.

It was a revealing and encouraging conversation. It was a revealing and encouraging conversation in that it provided me with important insights into his personal values and with a measure of reassurance on the direction he may ultimately seek to lead the highest Court of our land.

I shared with him that in the 8 years before coming to the Senate, I served as Governor of Delaware. In that role, I nominated dozens of men and women to serve as judges in our State courts, several of whom enjoy national prominence given my State's role in business and corporate law.

Ironically, and I think wisely, Delaware's Constitution requires overall political balance on our State's courts. For every Democrat who is nominated to serve as a judge in our Delaware courts, the Governor must nominate a Republican, and vice versa. The result has been an absence of political infighting and a national reputation for Delaware's State judiciary regarded by some as the finest of any State in our land.

The qualities I sought in judicial nominees I submitted to the Delaware State Senate included these: unimpeachable integrity, a thorough understanding of the law, a keen intellect, a willingness to listen to both sides of a case, excellent judicial temperament, sound judgment, and a strong work ethic. In applying those standards to Judge Roberts, I believe he meets or
proceed 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.

Mrs. MURRAY. Mr. President, I rise to announce my vote on the nomination of Judge John G. Roberts, Jr., to be the 17th Chief Justice of the United States.

I do not cast this vote lightly. I recognize how critical the courts are in protecting and advancing the rights of all Americans. I know what is at stake. I am also mindful that John Roberts has been nominated for a lifetime appointment to the highest seat on the highest Court in the country. In our system, there is no backstop or review of a Supreme Court justice once he or she is confirmed. That means under the Constitution we in the Senate have the responsibility to fully evaluate each nominee before voting, and that is exactly what I have done.

For me personally, casting a vote on a nominee to the Supreme Court carries special meaning. Thirteen years ago the nomination of another Supreme Court Justice, Clarence Thomas, helped launch my own path from the kitchen table in Shoreline, WA to this historic desk on the floor of the Senate. During the Thomas confirmation, I was deeply frustrated that the questions I believed needed to be answered were not even raised. I was troubled that average Americans, moms and dads, had no voice in a process that would affect their rights and liberties. This time I had the opportunity to ask the key questions that gave me confidence in the nominee. I was pleased to work with my Democratic colleagues to craft a process that would respect the Senate's role and focus on qualifications. This evening I talk about how I have gone about this and the process we developed, but eventually the wisdom of the Constitution will be the test of whether the Senate got it right.

I disagreed on a lot of issues, but we worked together to recommend and support individuals for appointment to the bench. Senator Gorton and I disagreed on a lot of issues, but we did agree that when it came to confirming individuals to the third and coequal branch of our Government, we should set aside partisan-ship and focus on qualifications. That tradition has continued with my colleague Senator CANTWELL. We got off to a rough start this afternoon, but eventually the wisdom of our process prevailed. While there have been hiccups along the way, we have used it to confirm qualified people to serve on the bench.

There is much I do not know about how Judge Roberts will rule, but as history has shown, none of us can predict that. And without a crystal globe, I must make this very difficult decision based on what I do know and upon the criteria I have long used to evaluate nominees for judicial appointments.

This evening I talk about how I have applied my standards to other nominees for the Federal bench. I am especially pleased that in Washington State we do judicial nominations the right way, through a careful, bipartisan process that helps us select qualified candidates without regard to politics. In Washington State, I have worked with different administrations to a much greater than this appointment and confirmed qualified individuals for the Federal bench. We solicit input from a wide variety of respected individuals within the Washington State legal community, personally interview each recommended candidate prior to submitting his or her name to the White House for consideration.

During the Clinton administration, my colleague Senator Gorton and I worked together to recommend and support individuals for appointment to the Federal bench. Senator Gorton and I disagreed on a lot of issues, but we did agree that when it came to confirming individuals to the third and coequal branch of our Government, we should set aside partisanship and focus on qualifications. That tradition has continued with my colleague Senator CANTWELL. We got off to a rough start this afternoon, but eventually the wisdom of our process prevailed. While there have been hiccups along the way, we have used it to confirm qualified people to serve on the bench.

There is much I do not know about how Judge Roberts will rule, but as history has shown, none of us can predict that. And without a crystal globe, I must make this very difficult decision based on what I do know and upon the criteria I have long used to evaluate nominees for judicial appointments.
Some have suggested to me that I use my vote to register my disapproval at things the Bush administration has done or that I use my vote to send a message to the President. While I am angry about mistakes and miscalculations, I do not believe that the actions and inaction of the administration are a reflection of the general breakdown in the process that we use to select and confirm judges today. With this administration, consultation with the Senate is cursory at best, and from the very beginning, it has been an often harsh kind of “spoils of war” approach to how they view appointments to the Federal bench. I believe this approach has resulted in unqualified individuals being forwarded by the administration to the Senate for confirmation. This approach has contributed to the partisan rancor regarding nominations to the courts.

These actions are even more concerning in light of the second vacancy that was available, and then I examined all of the information before the case comes before them. My vote is based on the same standards I have used for years, on not on anger or in sending messages or ignoring a nominee’s actual record.

This would be an easier decision if we had a complete record. The White House has refused to provide more recent memos from Judge Roberts’ work in the Solicitor General’s office which would have provided us with a clearer picture of the nominee. I, frankly, think the White House’s position is a reflection of the general breakdown in the process that we use to select and confirm judges today. With this administration, consultation with the Senate is cursory at best, and from the very beginning, it has been an often harsh kind of “spoils of war” approach to how they view appointments to the Federal bench. I believe this approach has resulted in unqualified individuals being forwarded by the administration to the Senate for confirmation. This approach has contributed to the partisan rancor regarding nominations to the courts.

In reaching a decision on Judge Roberts, I reviewed all of the information that was available, and then I examined how Judge Roberts measured up to my criteria for judicial nominees. I followed the Judiciary Committee hearings closely. I read the transcripts. I have spoken directly with Judge Roberts twice, once in a meeting in my office and once by phone. I have talked with the judge himself. All this has led me to struggle with the decision for many days now.

In the end, I returned to the basic standards of honesty and ethics and qualifications and fairness. Then I evaluate if they will be independent, evenhanded in deciding cases, and if they will uphold our rights and our liberties. These standards help me examine that when any American, regardless of background, comes before the court, he or she receives a fair hearing and that the resulting decision renders justice according to the law.

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Throughout our history, America has always had to confront challenges and enjoyed a lively debate on how to meet them. Today is no different. Our great Nation is confronting enormous challenges, and the debate over how to address those challenges has caused great divisions in our country. Many people, as I do, fear the direction in which this country is headed. They fear for our security. They fear we are not doing enough to ensure a longer, brighter future, and they fear the progress we have made in the last several generations is being eroded by a political agenda. Those fears are well founded, and they are real. But our country was also founded on hope, hope that by securing individual liberty, a free people could govern themselves in the interest of promoting the common good, hope that despite our differences, we could stand together to create strong communities and a better future for generations of Americans to come. That spirit of hope is alive today and should help guide us at least as much as our fears.

My vote tonight is a vote of hope—hope that despite our differences, we can unite around the common good; hope that equal justice under the law means something powerful to every American, regardless of background or political persuasion; and hope that John Roberts responds to the needs of this Nation to have a Supreme Court that administers our laws fairly and helps secure the rights and liberties of every American into the future.

When I asked Judge Roberts what kind of judge he wanted to be, he said: A Justice for all Americans. I hope my vote, along with the diverse group of my Senate colleagues, reminds him every day that he must be a judge for all Americans.

I yield the floor.

Mr. PRESIDENT, OFFICER. The Senator from Arkansas is recognized.

Mrs. LINCOLN. Mr. President, I compliment my colleague from Washington State for the incredible job she does here every day, for the thoughtfulness she brings to this process, and the wonderful job she does representing the people of Washington State. She is a delight to work with and someone who I think brings to the table thoughtful consideration, with a strength and a courage and a wisdom that should fill Judge Roberts with pride and feel proud of Washington State, and I know it does.

I come here today after much thought and prayer over a decision...
that is incredibly important. I agree with my colleague from Washington State that this is a time where our Na-
tion needs much hope, whether it comes from the devastation we have
seen in the gulf coast in the southern region of our Nation, whether it is the
families of victims of the terrorist attacks who fly themselves giving of them-
selves and of their families to protect the rights and the freedoms in which we in this Nation
take great pride, and it is also as we come to the consideration of a Su-
preme Court justice, the Senator who I find to be one of the most im-
portant and consequential duties we have as an institution in our system of
Government.

I think the American people look to us now with hope that we will work in
a bipartisan way, in a way of union, in uniting our Nation to bring about a co-
equal branch of our Government that can reassure the American people of
justice and of hope.

This is especially true when the can-
cidate being considered has been nomi-
nated to the position of Chief Justice of
the United States, not simply an As-
sociate Justice but someone who is go-
ing to provide the leadership to the
highest and broadest level of the
judiciary.

As the Senate performs its duty
under the Constitution with regard to
this nominee, I am also mindful this is
the first Supreme Court nominee I have
been called upon to evaluate as a
Senator from the great State of Arkan-
sas. I have no doubt this is one of the
most important nominations I will
consider during my tenure in public
service.

Given the import of this decision for
the future of this Nation and the re-
sponsibilities I have to my constitu-
ents and my country, I have examined
all of the information available about
Judge Roberts’s nomination to ensure I
have given this matter the full atten-
tion it needs and, most importantly,
that it deserves.

In making my decision, I very care-
fully and deliberately reviewed the
record compiled by the Senate Judici-
ary Committee. Further, I have consid-
ered the views of Arkansans, both
those who think Judge Roberts will
make a fine Supreme Court Justice and
those who have real concerns about the
direction he might lead this very im-
portant Court.

I have also met with Judge Roberts
privately to get a better sense of who
he is as a person, his temperament, and,
most importantly, what his expe-
riences have been in his life that may
form his views and the interpretation
of the Constitution.

Additionally, I have considered the
views of his peers and colleagues in the
legal community on both sides of the
political spectrum who know Judge
Roberts, who have worked with him
firsthand and have a firsthand knowl-
dge of his work and abilities.

Finally, I have prayed. I searched my
conscience and reflected on my prin-
ciples as a Senator for the people of the
State of Arkansas, using my experi-
ence, coming from the salt of the earth
in east Arkansas, a farmer’s daughter,
my experience as a wife, a mother, a
neighbor, to make what I believe is the
right decision and one I will have to
live with for the rest of my life.

I want to say at the outset this has
been one of the hardest decisions I be-
lieve I have been called upon to make
since I came to the Senate more than 6
years ago. It has been difficult because
the consequences of confirming a new
Chief Justice are so profound.

Judge Roberts will likely serve on
the Court for several decades, and I be-
lieve he will have more influence on
the future of our Nation than any Mem-
ber who serves perhaps in this body
today.

This decision has also been difficult
for me because of the manner in which
this administration has handled this
nomination, in some respects, and cer-
tainly many other nominations that
have come before it.

When President Bush first ran for of-
fice in 2000, he told the American
people he was a uniter, not a divider. He
talked about how well he had worked
with Democrats as Governor of Texas
and that he was going to continue that
approach as President to change the
tone in Washington. And, oh, how that
tone in Washington needed to be changed.

But sadly, that did not happen. Presi-
dent Bush has not followed through on
that promise, and judicial nomina-
tions, unfortunately, are one of the
most glaring examples of where his ad-
ministration has fallen short. In my
opinion, this administration has gone
out of its way to divide this Nation and
the Senate on judicial nominations, which
I think is truly a disservice to
the judiciary and to the American peo-
ple.

When the Senate rejected only a
handful of Federal appeals court nomi-
nees during the President’s first term
in office, I expected a uniter who would
work with Senators who expressed
conscerns, and nominate other qualified
candidates who could win confirmation
with broad bipartisan support. Instead,
after winning reelection, the President
renominated many of the same con-
troversial nominees and essentially
dared the Senate to challenge him
again.

Reflecting on the last 5 years, his ad-
ministration apparently believes it is
better to fight over judicial nominees than
it is to pick sometimes qualified nominees
who have earned the support and re-
spect from those on both sides of the
aisle in the legal community in which
they work.

As a pragmatic Democrat who has al-
ways been willing to find common
ground and to work in good faith with
members of both parties to serve the
best interests of my constituents, I am
alarmed by the confrontational ap-
proach this administration has taken.

We can all be proud of the Founders
of this great Nation who created our
system of government, where they
wisely divided the power of appoint-
ment and confirmation of the Federal
court Justices between the executive
and legislative branches of our Govern-
ment. They did this to ensure only the
most qualified candidates who had the
qualities the Senate desires and the
Senate would be confirmed to a life-
time seat on the Federal bench.

I truly worry that the political tug
of war over the judiciary, which President
Bush has encouraged, threatens to un-
preserve the judicial selection process
and with it our framework of checks and
balances which has preserved for
centuries the rights and freedoms we
cherish as Americans, not to mention
the sense of pride and comfort or peace
of mind it provides the American peo-
lpower to know that in that third coequal
branch of Government, they can rest
assured that their freedoms, their
rights will be justly directed.

To work properly, the process de-
pendent on mutual trust and respect be-
tween the executive and the legislative
branches, and when that trust and re-
spect is strained, our ability to do our
very best as a government, to preserve
and to protect a fair and independent
judiciary for future generations, be-
comes in jeopardy.

So it is into this atmosphere of pol-
tical confrontation that Judge Roberts
was nominated to the Supreme Court.
And it is why, frankly, I have had dif-
culty separating my profound dis-
appointment with the administration and
the distrust it has fostered from my
opinion of Judge Roberts as an in-
dividual. So to separate that opinion of
Judge Roberts that I needed to develop
as an individual, as a lawyer, and po-
tentially the next Chief Justice of the
United States, ultimately, I concluded
it is unfair to hold Judge Roberts ac-
countable for the actions of the Presi-
dent who appointed him.

I have set aside the history of the
last 5 years to take a closer look at
this nominee, it has become apparent
to me that Judge Roberts does meet
the test I believe we should strive to
achieve in the judicial selection proc-
cess. After careful thought and delibera-
tion, I have concluded Judge Roberts is
a very smart man who has an enormous
respect for the law.

There is no question in my mind that
Judge Roberts has the legal skills and
the intellect necessary to perform his
duties on the Supreme Court. He has
impeccable academic credentials and
has demonstrated an impressive com-
mmand of the law and Constitution
throughout his professional career and
during his recent confirmation hear-
ing.

I also believe that above all else,
Judge Roberts is devoted to the Con-
stitution and the institutional integ-
rity of the judiciary and the vital role
it plays in our system of Government.
I have no doubt John Roberts is a Re-
publican, like the President who ap-
pointed him. But I don’t believe his
party affiliation will prevent him from
giving both sides in each case before the Court a fair and impartial hearing.

Simply put, I believe John Roberts cares more about following the law and maintaining the respect for the judiciary than he does about politics and ideology.

I base this conclusion on the respect and support he has earned from lawyers and colleagues on both sides of the aisle who know Judge Roberts well—-they know him far better than I do—on the other hand, from his own comments and those of his colleagues that he has had an abiding respect for the Court's decisions and that he understands the value of continuity in the law, and on his distinguished career as a lawyer and advocate before the Federal judiciary over many years.

I regret Judge Roberts has made this decision more difficult than it needed to be by refusing to be more forthcoming about his views on protections in the Constitution for individuals, especially protections which guarantee rights to civil and gender equality.

As many of my colleagues have already mentioned, Judge Roberts wrote several memos when he worked in the Reagan Administration in which he advocated for a narrow application of Federal antidiscrimination statutes, specifically the Voting Rights Act and title IX. Judge Roberts indicated in his response to questions about these memos during his confirmation hearings that he was representing the views of his client, the administration, without elaborating on whether he held those same views today.

He stated he could not say more regarding his views on those subjects because to do so might undermine his ability, if confirmed, to impartially consider similar cases that are likely to come before the Court.

I believe he could have said more on those other issues before crossing that line, but I don't believe Judge Roberts is entirely to blame for failing to be more responsive.

The partisan atmosphere which pervades the confirmation process today almost guarantees that Senators are left with no choice but to ask legitimate questions of a Supreme Court nominee they know will not be answered. So the Senate is left to make a decision based on the limited information in the confirmation process and from a nominee's previous work and life experience.

My vote for John Roberts is by no means an endorsement of his nomination process, nor is it an endorsement of the decision by the administration to withhold documents from Judge Roberts' tenure in the Solicitor General's Office during the first Bush administration. That would be helpful to Senators in forming an opinion about this nomination. These are the types of documents which administrations have made available to the Senate during the consideration of Supreme Court nominees in the past. There is no reason to have not made them available in this instance. Future nominees to the Supreme Court, or any lifetime judicial position, may not possess the same outstanding personal qualities and impeccable reputation that helped Judge Roberts overcome his failure, and the failure to respond more fully to legitimate requests for information. Indeed, there have been past nominees who have failed to receive Senate confirmation, at least partially because they refused to answer questions or release documents.

I feel that I have done my level best, despite my misgivings about the actions of this administration in the past, to fairly and carefully and in good faith evaluate this nomination, which is my duty as a Senator. I believe I have done that. It is my hope and expectation that, if confirmed, Judge Roberts will do likewise with respect to every litigant who comes before the Court, especially those who have not experienced the same opportunities with which he has been so richly blessed.

I believe Judge Roberts will do that, and therefore I will support his nomination. I join my other colleagues who wish to comment briefly on the political positions that Justice Ginsburg stood for in her life before coming to be a judge, I wouldn't agree with many of them. But she was totally qualified to be on the Supreme Court, and I voted for it based upon the proposition that Alexander Hamilton said that the purpose of our activities here of confirming people for the courts is basically two. Maybe there is some historian around who will say GRASSLEY has it all wrong, but I think it was, No. 1, to make sure that people who were not qualified did not get on the courts. In other words, only qualified people get appointed to the courts and that political hacks do not get appointed to the courts. That's somebody who was around when the Constitution was written, and the Federalist Papers, stating those things about our role. So I have a fairly flexible point of view of how I ought to look at people, even those with whom I disagree.

In regard to what the Senator said about hoping what President Clinton would do, or what he has done in the past in regard to these appointments, I would want you to look at that as I look at some in the past. I make more responsive to the needs of the citizens of my State. Perhaps my greatest attribute was the fact that I was naive. It never occurred to me that I didn't belong here; perhaps that as a young woman, this was something that President Bush was hit out of touch for me. But I ran because I believed in my country, I believed in the people of my home State, and I believed in what I had to offer.

I see a good bit of that in Judge Roberts as well. I have tried my best each day that I have been privileged to serve in public office to fulfill that commitment, and today I still have great hope for our Nation's future and its government. I also have hope that we can improve the judicial nomination process so the people of the country, going forward, will good will on both sides of the aisle will work together in a spirit of cooperation and good faith. I stand ready to do my part to overcome our differences as a nation because I believe our country is so much stronger if we are united and not divided.

As we prepare to consider a second Supreme Court nominee in the coming weeks, I hope President Bush will take the opportunity to do the same.

I yield the floor.

Mr. GRASSLEY addressed the Chair. The PRESIDING OFFICER. I note the time is under Democratic control.

Mr. GRASSLEY. I was aware of that. I was asking if there are any Democrats who would object to my starting my comments at this point.

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

Mr. GRASSLEY. Mr. President, before the Senate from Arkansas goes, I do not have prepared remarks, but to try to put her a little bit at ease about these decisions that we have to make on the Supreme Court, I say that if they are very important decisions, I would reflect on some history.

For instance, I probably had the same concerns about President Clinton and Justice Breyer and Justice Ginsberg when I voted for him based on the political positions that Justice Ginsburg stood for in her life before coming to be a judge, I wouldn't agree with many of them. But she was totally qualified to be on the Supreme Court, and I voted for it based upon the proposition that Alexander Hamilton said that the purpose of our activities here of confirming people for the courts is basically two. Maybe there is some historian around who will say GRASSLEY has it all wrong, but I think it was, No. 1, to make sure that people who were not qualified did not get on the courts. In other words, only qualified people get appointed to the courts and that political hacks do not get appointed to the courts.

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is doing exactly what he said he was going to do, and I hope that would enhance credibility to the American people of at least one more politician who keeps his word when he is in office. He appoints whom he said he was going to appoint, and that is what he is doing here. I wish my party had#if I hope he would be respected for doing that and have leeway in doing that, as long as they are not political hacks but they are qualified.

The other one is, over a long period of time, you may take away some worry about whether or not we have to be concerned about this specific person doing exactly what he said he was going to do. I would refer to Judge Souter. I was thinking Judge Souter was maybe not exactly whom I would want on the Court, but he would be pretty close to it. During that debate—I think it was in committee and not on the floor—there was one of the Senators on your side, who I have named but I don't wish to mention him this time, who made this point about Justice Souter—that he didn't have respect for the right to privacy and then there was a threat to Roe v. Wade.

Here is one Republican who thought maybe she would work out OK, from my point of view. There was a Democrat over there who thought Souter would be a threat to Roe v. Wade. We were both wrong.

So it is difficult to predict what people are going to do down the road, so you have to look at are they qualified. I don't have any doubt but that Judge Souter is qualified to be on the Court. But I misjudged him and this Democratic Senator also misjudged him.

The other one is, if you worry about Republicans, to look at what they might appoint versus what Democrats might appoint, and you end up getting something from a Republican you don't like. I assume you are more to the liberal conservative, but you have to stop to think that a Republican appointed John Paul Stevens and a Republican appointed Justice Souter, two of the four most liberal people on the Supreme Court.

To some extent, you get what you want from a Republican President as much as you do from a Democratic President because the other two were appointed by President Clinton.

Then, also, from a historical standpoint, it is going to be a great deal of balance to the Court. Judges change their views sometimes over a period of 25 or 30 years on the Court. Or Presidents that you might be thinking are appointing conservatives end up appointing liberals—they end up being liberals on the own Court.

History is going to bring balance to the Court. Right now, if Justice Roberts is appointed, we will have four liberals, I don't need to name them. Everyone understands who they are. You are going to have three conservatives: Roberts, Scalia and Thomas. And then you are going to have two moderates, Kennedy and O'Connor—O'Connor for a little while now. So you have some balance, but it is tilted a little bit more toward the liberal side than it is to the conservative side.

Maybe, when President Bush gets done with this next nominee, there will be even more moderation. Four conservatives and four liberals and one moderate, Justice Kennedy left as a moderate.

Then I keep thinking about what we ought to do if we want to bring balance to the Court, and I think more about what that is on your side than I do on this side: Let's just say that Justice Ginsburg, obviously a woman, and Justice O'Connor is obviously a woman; we have two women, so maybe we ought to have a woman appointed to the Supreme Court.

The liberal women of America have Justice Ginsburg as voting the way that they think Justices ought to vote. Maybe the conservative women of America are entitled to a seat on the Supreme Court. We might be fortunate enough to get appointed a very qualified woman who is also a strict constructionist. Then we would have one liberal woman and we would have one conservative woman on the Supreme Court, and I don't have more even balance brought to the Court.

So you see history kind of takes care of these things. I hope 25 years from now—and you are a lot younger than I am and you will be around here 25 years from now—then you are satisfied that history will take care of all these problems that are brought up about what the Supreme Court might do 10 or 15 years from now.

Mrs. LINCOLN. If the Senator will yield, I want to say how grateful I am to my chairman because he always does provide helpfulness, without a doubt, as well as a bipartisan attitude, in trying to get things done.

I guess you are exactly right. Some of my colleagues feel that is one of the roles that I have in helping to create history and the thoughtfulness that I need to put into it.

Some of it also certainly comes from recognizing that there is a right way and a wrong way to do everything. My hope is, as we go through these processes, that we become a more united body, looking at the right way to go about things and a more unified way.

I am grateful to the chairman. He is always fair, always open, always one of this body to work with and he always brings balance and helpfulness and I am glad he is my chairman.

Mr. GRASSLEY. She said she is glad I am her chairman. She means she and I serve on the Finance Committee together. I don't want to mislead the audience, I am not chairman of the Judiciary Committee.

Mr. President, I will proceed, then, with the remarks I wanted to make in regard to my support for Judge John Roberts to be the next Chief Justice of the United States. I do support that nomination. Judge Roberts has earned our vote. He understands the proper role of a judge in our constitutional democracy. He understands the courts are not superlegislatures.

He understands that I am elected to be a legislator, to make law. If people do not like the law I make, they can vote me out of office. But if Judge Roberts makes law with a lifetime appointment to the Court, he can never be voted out of office unless he is impeached. He understands that the courts are not responsible for addressing every social ill or injustice that, in fact, ought to be settled through law and public policy. He understands that courts do not create new rights. Rather, courts protect those liberties and rights guaranteed by our Constitution and the laws appropriately enacted by Congress and State legislatures.

He also understands that there are a great deal—infinite number of unenumerated rights out there for you and me that are reserved under our Constitution to the States and to the people thereof.

Judge Roberts said this to the committee:

Judges and Justices are servants of the law, not the other way around. Judges are like umpires. Umpires don't make rules, they apply them.

Judge Roberts underscores that "judges and Justices" make sure everybody plays by the rules. But these rules limiting the power of Government over the people apply to the courts as well. He made it very clear to us. In Judge Roberts' view, "Not everybody went to a ball game to see the umpire."

That is the right approach to the job of a Supreme Court Justice.

Judge Roberts has demonstrated, particularly to the committee, that he understands the limited nature of judges, and especially the humility and the modesty necessary to be the kind of judge we need on our highest Court.

Judge Roberts believes that courts may act only to decide cases and controversies. That is exactly what it says in article III of the Constitution. So judges cannot address every unaddressed and unremedied social problem.

Judge Roberts said:

Judges have to decide hard questions when they come up in the context of a particular case. That is their obligation. But they have to decide those questions according to the rule of law, not their own social preferences, not their policy views, not their personal preferences but according to the rule of law.

That is what he told us in committee.

Judge Roberts also said:

We don't turn a matter over to a judge because we want him to look at what the best idea is, what the best solution is. It is because we want him or her to apply the law. Let me say parenthetically, as I would interpret that, not to make law, but to apply the law.

He went on to say:

They—

Meaning judges—are constrained when they do that. They are constrained by the words that I choose to
enact into law in interpreting that law. They are constrained by the words of the Constitution. They are constrained by the precedents of the other judges that became part of the law and must apply.

This answer he gave to the committee demonstrates that Judge Roberts believes in and will exercise judicial restraint on the bench. This principle of judicial restraint is a cornerstone of our constitutional system, best described by the tenth amendment that that power is not specifically given to the Federal Government or reserved to the States and the people thereof. This is the defining characteristic of the judiciary in our Government's constitutional scheme.

In particular, I was pleased when Judge Roberts told the committee that he has no agenda to bring to the bench. I want to remind you what Judge Roberts said in a very short opening statement. To quote a little bit of it:

I come before the committee with no agenda. I have no platform. Judges are not politicians who can promise to do certain things in exchange for votes. I have no agenda but I do have a commitment. If I am confirmed, I will confront every case with an open mind. I will fully and fairly analyze the legal arguments that are presented. I will be open to the conclusions of my colleagues on the bench, and I will decide every case based on the record according to the rule of law, without fear or favor, to the best of my ability, and I will remember that it's my job to call the balls and strikes and not to pitch or bat.

I was also pleased when Judge Roberts told the committee that:

I had someone ask me in this process: Are you going to be on the side of the little guy? And you obviously want to give an immediate answer. But as you reflect on it, if the Constitution says that the little guy should win, the little guy is going to win in court before me. But if the Constitution says that the big guy should win, well, then the big guy is going to win because my obligation is to the Constitution. That's my oath.

So, obviously, Judge Roberts will strive to uphold the Constitution and the laws of the United States, regardless of his personal beliefs.

I want to take a little time to commend Chairman SPECTER for conducting a fair and respectful hearing. I am pleased we are looking at a timely up-or-down vote on this nominee. Obviously, so many people for so long were inclined to filibuster judges, and to have this important person—this ‘well-qualified’ person—go through in the Senate doing what the Constitution says to do, give its advice and consent with a 51-vote margin, is something that surprises me to some extent after the last 2 years. But to have it happen gives me a very warm feeling toward all my colleagues for having worked so hard.

Article II of the Constitution puts the appointment power in the executive, and says the President gets to nominate the person of his choice to the Supreme Court. And President Bush didn’t have to do that under the Constitution. But it was wise for him to do so.

Even though I have been a member of the Judiciary Committee for my 25th year, I don’t remember a President who has talked to who I think ought to be appointed. I wouldn’t want to say over 25 years that I couldn’t have forgotten some Republican or Democrat talking to me about it, but I don’t remember. I was consulted by this President on the type of person I thought he was interested in, I was even offered to give names, if I wanted to. And I took advantage of giving my advice to him.

At the hearing which Senator SPECTER conducted, Senators were able to ask numerous questions of the nominee over a period of 3 days. The Judiciary Committee also reviewed thousands of documents, opinions, and other information produced by the White House.

Throughout the process, Judge Roberts was asked very closely and candidly and forthrightly in his responses. Judge Roberts clearly has been the most scrutinized judicial nominee to come before the Senate in my years on the committee. No nominee in these days has been more closely scrutinized. I think that honesty and forthrightness and candor were considerably and comprehensively on his judicial philosophy as Judge Roberts. I have gone through 10 Supreme Court hearings. Judge Roberts’ command of the law and the facts of cases was beyond the pale.

Still, some of my colleagues objected to Judge Roberts’ refusal to review the results of cases. But his refusal was absolutely the right thing to do. Judge Roberts wisely resisted the bait to concur in the results of cases. But his refusal was absolutely the right thing to do. Judge Roberts wisely resisted the bait to review the results of cases. But his refusal was absolutely the right thing to do. Judge Roberts wisely resisted the bait to review the results of cases. But his refusal was absolutely the right thing to do.
But we still have a situation that has been demonstrated over the last 3 years, up until May of this year when some judges finally got through for the circuits, that judges were being held up for very partisan reasons. The other party and their outside groups have to their legal rights. They want to use the Supreme Court or courts, generally, to implement it, particularly things they might not be able to get through the Congress of the United States.

My colleagues like to say they voted for nominated by Republican Presidents than judges appointed by Democrat Presidents. But my friends on the other side of the aisle who say this, are not telling the whole picture. Sure, they voted for a lot of Republican nominees during my time in the Senate. More Republican nominees have been sent up for consideration than Democrat nominees. The point is, the Democrats have stuck like glue to their outside interest groups through thick and thin and voted in lockstep against more Republican-appointed judges than Republicans have voted against Democrat-appointed judges. That has been by a landslide margin.

The fact is, a majority of the Democrats voted in lockstep against Judge Bork and Justice Thomas. A majority of Democrats voted in lockstep against Justice Rehnquist when he was elevated to Chief Justice.

On the other hand, Republicans voted overwhelmingly for President Clinton’s two liberal nominees, Justices Ginsburg and Breyer. So I think my party has shown it is not wedded to the single-issue interest groups.

My friends on the other side of the aisle are weaving revisionist history saying the more conservative Justices of the Court, such as Scalia and Thomas, are the ones who are really the judicial activists on the bench. But we all know that is simply not true.

The American people know what is really going on. The liberal leftwing interest groups and Senate enablers, as my friend, Senator HATCH, has sometimes called them, want to win in the courtroom what they cannot win in the ballot box. The Democrats have taken this to a new level. They are already talking about filibustering the next nominee, and we do not even know who that is yet. They are really the only who are judicial activists.

We should take care because the independence of the Federal judiciary is at stake. Our entire framework of government as we know it and was intended by the Framers is at stake.

We are told the Democrats are laying the groundwork for the next Supreme Court nominee by sending a message, I presume, to the President and those of this party. These messages are an argument that Justice O’Connor must be replaced by a liberal or moderate, and that the other party and their outside groups have to their legal rights. They want to use the Supreme Court or courts, generally, to implement it, particularly things they might not be able to get through the Congress of the United States.

I hope I made this clear in my comments that Senator LINCOLN listened to so closely, and that was that history takes care of a lot of this. Of the four liberals on the Supreme Court today, two were appointed by Republicans, President Ford and President Bush 1. The moderates, O’Connor and Kennedy, were appointed by a Republican President. So we do not know what we get. I wish we did. I wish we could predict 25 years from now, but we can’t.

The Democrats used President Clinton to appoint a moderate judge to replace Justice Byron White. I remind my colleagues that Justice White was one of the two Justices who dissented in Roe v. Wade. We Republicans did not say: Well, Justice White is retiring so we need to make sure we appoint another person just like Justice White to the Supreme Court. President Clinton wasn’t elected to appoint people the Republicans wanted.

The PRESIDING OFFICER. Under the previous order, the time from 6:20 to 7:20 is under the control of the Democrat side, if the Senator would like to ask unanimous consent to finish his remarks.

Mr. GRASSLEY. I ask unanimous consent for 3 or 4 more minutes.

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

Mr. GRASSLEY. So we get appointments such as Ruth Bader Ginsburg, totally qualified to be on the Court. I voted for her; Justice Breyer, totally qualified to be on the Court, I voted for him. We did not try to second-guess President Clinton.

Clearly, Justice Ginsburg does not share Justice White’s philosophy. Yet Senate Republicans overwhelmingly confirmed her, with only three “nay” votes. The fact is, the President picked people they thought would be good Justices.

The bottom line is we should not be thinking of liberal, conservative, or moderate judges—men or women for that matter—senate a judge is qualified. If you are qualified for the job, you ought to get the vote of the Senate. Someone who has the right temperament and integrity on the job is also a requirement. But these liberals I voted for have bad that as well.

Judge Roberts recognized this problem, politicizing the Federal bench, and in particular the Supreme Court, when some of my colleagues on the other side of the aisle attempted to pin the nomination of an individual to be Supreme Court Justice last well before the Senator’s term. As my father, Chief Justice of the U.S. Supreme Court, reviewed the decisions during his tenure on the D.C. Circuit Court of Appeals, reviewed the memorandum he may be making critical decisions on constitutional rights when my newborn grandson is welcoming children of his own into this world.

Not surprisingly then, I consider voting on the confirmation of a Supreme Court Justice last well before the Senator’s term. As my father, Chief Justice of the U.S. Supreme Court, reviewed the decisions during his tenure on the D.C. Circuit Court of Appeals, reviewed the memorandum he may be making critical decisions on constitutional rights when my newborn grandson is welcoming children of his own into this world.

But the consequences of confirming a Supreme Court Justice last well before the Senator’s term. As my father, Chief Justice of the U.S. Supreme Court, reviewed the decisions during his tenure on the D.C. Circuit Court of Appeals, reviewed the memorandum he may be making critical decisions on constitutional rights when my newborn grandson is welcoming children of his own into this world.

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The PRESIDING OFFICER. Under the previous order, the time from 6:20 to 7:20 is under the control of the Democrat side, if the Senator would like to ask unanimous consent to finish his remarks.

Mr. GRASSLEY. I ask unanimous consent for 3 or 4 more minutes.

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

Mr. GRASSLEY. So we get appointments such as Ruth Bader Ginsburg, totally qualified to be on the Court. I voted for her; Justice Breyer, totally qualified to be on the Court, I voted for him. We did not try to second-guess President Clinton.

Clearly, Justice Ginsburg does not share Justice White’s philosophy. Yet Senate Republicans overwhelmingly confirmed her, with only three “nay” votes. The fact is, the President picked people they thought would be good Justices.

The bottom line is we should not be thinking of liberal, conservative, or moderate judges—men or women for that matter—who has the right temperament and integrity on the job is also a requirement. But these liberals I voted for have bad that as well.

Judge Roberts recognized this problem, politicizing the Federal bench, and in particular the Supreme Court, when some of my colleagues on the other side of the aisle attempted to pin the nomination of an individual to be Supreme Court Justice last well before the Senator’s term. As my father, Chief Justice of the U.S. Supreme Court, reviewed the decisions during his tenure on the D.C. Circuit Court of Appeals, reviewed the memorandum he may be making critical decisions on constitutional rights when my newborn grandson is welcoming children of his own into this world.

Not surprisingly then, I consider voting on the confirmation of a Supreme Court Justice last well before the Senator’s term. As my father, Chief Justice of the U.S. Supreme Court, reviewed the decisions during his tenure on the D.C. Circuit Court of Appeals, reviewed the memorandum he may be making critical decisions on constitutional rights when my newborn grandson is welcoming children of his own into this world.

But the consequences of confirming a Supreme Court Justice last well before the Senator’s term. As my father, Chief Justice of the U.S. Supreme Court, reviewed the decisions during his tenure on the D.C. Circuit Court of Appeals, reviewed the memorandum he may be making critical decisions on constitutional rights when my newborn grandson is welcoming children of his own into this world.

I have spent a great deal of time the last few weeks considering this nomination. I looked at Judge Roberts’ decisions during his tenure on the D.C. Circuit Court of Appeals. As my father, Chief Justice of the U.S. Supreme Court, reviewed the decisions during his tenure on the D.C. Circuit Court of Appeals, reviewed the memorandum he may be making critical decisions on constitutional rights when my newborn grandson is welcoming children of his own into this world.

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I am in total agreement with that statement. So when Judge Roberts testifies his oath is to uphold the Constitution and the laws of the United States and that he won’t impose a political or social agenda in his decision-making, that is what I hear. The bottom line is, irrespective of Judge Roberts’ impressive resume, brilliant intellect, and personal integrity, he would not be qualified to be a Supreme Court Justice unless he was truly willing and able to subject himself to that judicial restraint.

Judge Roberts says his obligation is to the Constitution and that is his oath. He says he will not impose his personal views on the people but will make decisions in an impartial manner in accordance with the Constitution, the laws enacted by Congress. He says he will be modest in his judging and exercise judicial restraint. He says he will be mindful of the limits of judges in society. That is the kind of Justice we need to see on the Supreme Court. That is the kind of Justice the Senate should support.

I yield the floor.

Mr. JEFFORDS. Mr. President, generally when we vote, the decisions we make can be revisited within a few months or years. This year’s appropriations policy can be replaced by a new one the next year. Unintended consequences can be rectified, legislation fine tuned.

But the consequences of confirming a Supreme Court Justice last well before the Senator’s term. As my father, Chief Justice of the U.S. Supreme Court, reviewed the decisions during his tenure on the D.C. Circuit Court of Appeals, reviewed the memorandum he may be making critical decisions on constitutional rights when my newborn grandson is welcoming children of his own into this world.

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I want the Senate to consider the nomination of an individual to be the Chief Justice.
a decision on a case. A fair, equal application of the law is what Olin Jeffords was known for, which is a reflection of Vermont’s view of the judiciary.

As the former attorney general in Vermont, and as a lawyer, I have always been devoted to the concept of an independent judiciary filled with intelligent, capable individuals serving the law and the public. As a Senator, I have watched in dismay as this independence has increasingly been threatened and demeaned by political bickering.

It has been my general policy while in the Senate to support the executive branch nominations made by a President, provided the individual is appropriately qualified and capable of performing the duties required of the position. However, while a position in the executive branch lasts only as long as the President remains in office, an appointment to the Federal bench is for the life of the nominee.

I believe it would be illogical to assume that our Founding Fathers used the phrase, “... with the Advice and Consent of the Senate...” in the Constitution to mean the Senate can only look at the legal experience and character of a judiciary nominee. So in addition to those factors I also look at a nominee’s judicial temperament and ideology and whether these factors will influence the decisions they make.

This higher standard is especially appropriate for a nominee to the U.S. Supreme Court. This Court is the final authority on the meaning of laws and the U.S. Constitution. The Supreme Court gives meaning to what is the scope of the right of privacy; whether Vermont’s limits on campaign contributions and spending are constitutional; what is an unreasonable search and seizure; how expansive the power of the president can be; or whether Congress exceeded its power in passing a law that affects everyone, and it is the responsibility of the Senate to closely and carefully review every nominee to the Supreme Court.

There are clearly many stances Judge Roberts took as a lawyer in the Reagan administration that I do not agree with. Here it is unfortunate the Senate has been denied access to the memorandums Judge Roberts wrote while part of the Solicitor General’s office. These documents would have provided a complete picture.

From the record we have, nobody has raised a question on whether Judge Roberts has the proper legal experience or character to be the next Chief Justice of the U.S. Supreme Court. It also appears to me from a review of his judicial decisions that Judge Roberts has not allowed his judicial temperament or ideology to influence his decision-making process. This claim was reinforced by Judge Roberts himself in sworn statements he made to the Senate Judiciary Committee. In his opening statement Judge Roberts stated, “I have no platform.” He also said, that he would “confront every case with an open mind... And I will decide every case based on the record, according to the rule of law, without fear or favor, to the best of my ability.” Near the end of 3 days of testimony Judge Roberts reiterated this view when he said, “I set those personal views aside.”

With the information and sworn testimony on the record it is clear Judge Roberts has the necessary legal experience and character to be the Chief Justice of the U.S. Supreme Court. It also appears that Judge Roberts will use the law and the Constitution to make his judicial decisions, not his ideological or personal beliefs. Judge Roberts gave this pledge at the conclusion of his opening remarks, “I will be vigilant to protect the independence and integrity of the Supreme Court, and I will work to ensure that it upholds the rule of law and safeguards those liberties that make this land one of endless possibilities for all Americans.” I trust he will stay true to these words during his tenure as Chief Justice. History will be the judge.

Finally, let me acknowledge and thank the Senate Judiciary Committee, Senator Specter, and Leahy led a dignified, bipartisan and thorough hearing on Judge Roberts. For all this hard work they deserve our thanks and appreciation.

Mr. President, I rise today to speak on the nomination of Judge John Roberts to become Chief Justice of the United States. If confirmed, which is widely expected, Judge Roberts would be the seventeenth Chief Justice in Nation’s history. As such, this nomination is historically significant, both in its relative rarity and its potentially lasting impact on our judiciary. The confirmation process therefore warrants serious, meaningful, and dignified consideration. It is clear that the Senate has met this responsibility over the past weeks, in spite of the efforts by outside groups and the urgings of some members to turn the process into something much different. After closely following the confirmation hearings and careful review of the nominee, I strongly support President Bush’s nomination of Judge Roberts to be the next Chief Justice.

Let me first start by saying the obvious, Judge Roberts is an incredibly talented and gifted attorney. Armed with a sharp legal mind and extensive experience making arguments before the Supreme Court, this man is truly one of the best in a very select group of legal superstars—namely, the exclusive club of Supreme Court appellate specialists. Judge Roberts has therefore rightfully received broad praise from coworkers and from all corners of the legal community. He also is respected by the Justices whom he may soon be joining—Alito and he has served our Nation ably on the D.C. Circuit Court of Appeals. We are all familiar with these facts, and even my colleagues who somehow oppose this nomination have not questioned Judge Roberts’ intellect or legal skills.

Judge Roberts has testified, under oath, about his views regarding the proper constitutional role of a Supreme Court and branch overall. Consistently and repeatedly, he has said that Justices and judges should approach each case with an open mind and decide cases according to the rule of law—and not based on their own personal preferences or policy views. Judge Roberts has testified, again under oath, that he would fully and fairly analyze the legal arguments that come before the Court. He has made it clear that judges are not politicians or legislators, and that he is committed to upholding the cherished liberties and rights that are enshrined in our constitution. Roberts also has stated, under oath, that he is mindful of precedent, recognizes constitutional protections for the right to privacy, and strongly believes in preserving the judiciary’s independence.

During 20 hours of oral testimony and after responding to approximately 500 questions, Judge Roberts made it clear that consistent with precedent, he is looking for other nominees—that he is not going to comment on unsettled areas of law that may come before the Supreme Court. Although some outside groups and some of my colleagues chafe at this, I think it is appropriate and, in fact, ethically required to protect the Court’s integrity. Moreover, many of these same individuals seeking a change in precedent did not complain when previous judicial nominees invoked this requirement, such as now Justice Ruth Bader Ginsburg, whom I supported back in 1993 during her confirmation proceedings. But now, sadly, it appears that some of my colleagues want judicial nominees, or at least those nominated by President Bush, start issuing opinions on unsettled areas of law that may come before the Supreme Court. Although some outside groups and some of my colleagues chafe at this, I think it is appropriate and, in fact, ethically required to protect the Court’s integrity.

This focus on litmus tests and political, even religious, ideology during the confirmation process not only undermines the Supreme Court’s role—namely, that of an impartial arbiter of the most important cases—but also represents a potentially dangerous evolution in the history of the confirmation process. Throughout the history of the Senate, Supreme Court nominees have not been expected to swear under oath what their opinions will be on unsettled areas of law. I believe that this is a good thing. If the confirmation process were to become a series of litmus tests and ideological hurdles, the Senate would be politicizing the one branch of government that the Founding Fathers intended to be non-political. Justices who serve on the Federal bench would no longer be determined on the basis of their legal qualifications and dedication to upholding
the rule of law, but mainly based on who wins at the ballot box and on certain hot button issues. Is this what we or the American people want?

I am hopeful that the Senate will not go down this path and establish a precedent. I will someday look back on with regret. Fortunately, most of my colleagues, led by the majority leader, share this same hope and have done an admirable job throughout the Senate’s review of the Roberts nomination. They have stayed true to the Senate’s proper role under the Constitution and to what truly matters when confirming a judicial nominee. I would never want to come before a court knowing that the judge already has made up his mind based on certain personal views and therefore I will never get a fair hearing. Rather, I want someone who is bright, considerate of different viewpoints, experienced, and dedicated to upholding the rule of law with the Constitution as his guide. In his last letter to me, under oath, Judge Roberts already has shown that he would be precisely this type of Chief Justice. In fact, I cannot recall a judicial nominee in recent memory that lives up to this ideal as much as judge Roberts. I am pleased to support this nomination and applaud President Bush for making such an outstanding choice.

Mr. INOUE, Mr. President, I had the privilege and honor of meeting with Judge Roberts. I was impressed by his legal scholarship, but expressed a hope that he would be forthright and open with the American people as he progressed through the Senate confirmation process. Although I must regretfully conclude that there are still questions outstanding on Judge Roberts’ record, in light of the urgency of ensuring that our Nation’s Supreme Court has its full complement of Justices, I agree with my Democratic and Republican colleagues that his nomination should be given an up-or-down vote.

I have studied the development of the Supreme Court by our Founding Fathers, and it is apparent to me that our Nation’s leaders did not want this group of citizens to be subjected to the political pressures of the day, so they provided for lifetime appointments, with no termination date. Further, candidates were not required to be lawyers, perhaps as a reminder that legal brilliance is not qualities we want in this nation or woman to sit on the bench of our highest court. Integrity, compassion, and wisdom are also required in equal— or perhaps greater—measure.

Reconciling lifetime appointments with the demands of democratic elections created understandable consternation. After much debate, our Founding Fathers provided that the executive and legislative branches of our Federal Government would employ every means available to them to make certain that the selection is a good one and that one that a nation could live with for the lifetime of the judge. Today, we walk again the careful path laid out by the Founding Fathers to ensure for the American people that Judge Roberts is a man worthy of their trust.

Fullly realizing that Judge Roberts will most certainly receive substantial support from the Senate, I will cast my vote. I do not object to Judge Roberts’ politics, nor do I object to his personal beliefs. Our democracy guarantees him both the freedom to think and speak as he chooses, and the opportunity to ascend to any position in our government for which he is qualified. My concerns lie instead with the failure of the Department of Justice and the White House to honor the request of members of the Senate Judiciary Committee to make available certain documents relating to 16 cases Judge Roberts worked on when he served as Principal Deputy Solicitor General. These documents, written during Judge Roberts’ tenure in his most senior executive branch position, are relevant to the determination of his fitness to serve as the Chief Justice of the highest court of this land.

I am not suggesting that these documents might contain dark shadows—far from it. The refusal of the White House to release these documents to the American people to see this corner of Judge Roberts’ record, however, deviates from the careful road our Founding Fathers paved for us so many years ago, and leaves Americans wondering, “Do those papers hide something I should know?”

Many groups have questioned Judge Roberts’ position on civil rights. His early writings outline defiance toward review of civil rights violations by Federal courts, and many have asked how his views have evolved over the years. As one who has spent his life fighting against baseless prejudice and discrimination, I share these concerns. Would the papers withheld from our sight have answered these questions?

We will never know.

Throughout my career I have supported a woman’s right to choose. I have supported Roe v. Wade. I have also supported stem cell research. The responses Judge Roberts provided when questioned about these issues did not assure me that these questions would be seriously considered. I hope I am wrong. Perhaps the papers hidden from our sight would have allayed my fears.

Similarly, my questions on Judge Roberts’ position on death penalty, and habeas corpus review by the Federal courts will never be answered. I am not against the person. As I noted, I am impressed by his legal scholarship. Although we seem to differ on the fundamental issues of the day, I respect his right to freely form and hold his own opinions. I do, however, object to the failure of the White House, the Department of Justice, and ultimately Judge Roberts himself, to make available documents from his career in government service in the first Bush administration, serving as Principal Deputy Solicitor General of the United States.

As a lawyer, Roberts has presented 39 oral arguments before the Supreme Court covering the full range of the Court’s jurisdiction, including admiralty, antitrust, arbitration, environmental law, first amendment, health care, Indian law, tax, regulation of financial institutions, administrative law, labor law, federal jurisdiction and procedure, interstate commerce, civil rights, and criminal law.

During the hearings before the Senate Judiciary Committee, Senators extensively probed the judicial philosophy of Judge Roberts. I think our colleagues Senator SPECTER and Senator LEARY did an excellent job and conducted a fair and thorough hearing.

We do not know how Judge Roberts will rule in many cases. What we do know is that he was nominated by a President who, in the glare of the lights of a campaign, clearly indicated that the type of Supreme Court nominee that he would favor. We also know that Judge Roberts is an extraordinarily accomplished man with the right temperament.

I have long noted that I believe we must retain an appropriate balance on the Supreme Court. I was pleased that during the hearings, Judge Roberts unequivocally acknowledged that the Constitution contains a right to privacy. He further testified that the right to privacy is not a narrow right. He explained his belief that the right to privacy was sufficiently broad to allow the courts to apply it changing circumstances. It was important to confirm Judge Roberts state that as a Supreme Court justice, he would strive to follow precedent in order to ensure stability in the law.
I wish Judge Roberts well as he takes his seat as Chief Justice of the United States Supreme Court.

Mr. HAGEL. Mr. President, 25 years from now most of the events and personalities of September 2005 will have passed into the pages of history. New Orleans will once again stand proudly as one of America’s most vibrant cities; America will have been forced to address its need for energy independence; and the legacies of today’s politicians will have been examined; but the Founders could not have imagined. The history of liberty is a history of the limitation of governmental power, not the increase of it.

As we work to address 21st century challenges like terrorism, the proliferation of weapons of mass destruction and incredible advances in technology, we will constantly be confronted with the need to balance the expansion of the Federal Government’s power with States rights, individual liberties and national security. As we act to secure our Nation, we must also guard against Federal overreaching. That is why measures like the sunset provisions in laws like the Patriot Act are so important.

In years to come, Congress will be under great pressure to reach into areas of law historically reserved for State and local governments, including land use, education, economic development and health care. The proliferation of weapons of mass destruction increases the necessity of governmental power, not the limitation of it.

The powers not delegated to the United States by the Constitution, nor prohibited to it by the States, are reserved to the States respectively, or to the people.

In the late 1930s and early 1940s, the Supreme Court used Article I, Section 8 of the Constitution which gives the Federal Government the power to “regulate commerce,” as a crowbar to pry open the lid of federalism and more fully insert the Federal Government into the lives of the American people. By the 1970s, we saw an expansion of the Federal Government’s power our Founders could not have imagined.

At the same time that Congressman McCollister was invoking the 10th Amendment to hold the Federal Government accountable, Justice William Rehnquist was frequently the lone voice on the Supreme Court for the discretion of States and the integrity of the 10th Amendment. Much has been said about William Rehnquist as the last of a true judicial generation. He was a giant of our time. As history considers his legacy, I believe his ability to move the Court back to a responsible position concerning federalism will be his greatest accomplishment. In this, he had a strong ally in Justice Sandra Day O’Connor.

The Founders did not arrive at the 10th Amendment by accident. It was a necessary compromise in order to get the Constitution ratified. The Founders believed that the Constitution must protect the citizens of the United States from the consolidation of the Federal Government’s power. History has proven them right. A strong meaning of the 10th Amendment is that “all the good things they believe are essential to the Nation’s well-being. History shows that the growth of central governments is no substitute for the ingenuity and energy of individual citizens.

It was President Woodrow Wilson who said:

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In years to come, Congress will be under great pressure to reach into areas of law historically reserved for State and local governments, including land use, education, economic development and health care. The proliferation of weapons of mass destruction increases the necessity of governmental power, not the limitation of it.
He has now served for 3 years as a judge on the D.C. Circuit, which is regarded as among the most important appellate courts in the Nation. As a judge, he has developed a reputation for fairness and producing well-written and well-reasoned opinions.

This impressive background has made Judge Roberts well prepared to be Chief Justice of the Supreme Court. As he displayed during his confirmation hearings, he has an encyclopedic knowledge of the Supreme Court and of constitutional law. Yet, he also has real world experience in Government and in how law interacts with the actual day-to-day operation of Government. Judge Roberts has the perfect balance of academic and practical experience.

Judge Roberts also has an impeccable ethical record. No question has been raised regarding his integrity or professionalism. On the contrary, the record is full of testimony praising his honesty and integrity from former colleagues. Moreover, during his confirmation hearings he properly resisted the temptation to discuss cases and legal disputes that could come before him as Chief Justice so he would not be perceived as prejudicing any of those cases and debates. While some would like to hear how Judge Roberts would decide future cases, it is clear that legal ethics prevent him from doing so. Furthermore, knowing how a nominee is going to decide future cases is not necessary to select good judges.

When I was Governor, I appointed scores of judges and never—not once—did I ask how they would decide a case. Instead, I examined their credentials, reviewed their writings and past decisions and, on several occasions, personally interviewed them.

Given his professional achievements and ethical record, it is not surprising that the American Bar Association has given Judge Roberts its highest rating.

I also believe that Judge Roberts has shown a commitment to the rule of law. Now, no two people will agree on how to interpret every provision of the Constitution or every statute. I may not agree with all of Judge Roberts’ future decisions. However, I think that it is essential that any nominee displays a conscious commitment to deciding cases based on the law rather than on his or her own personal views.

During Judge Roberts’ confirmation hearings, I was struck by how dedicated he is to the law and to correctly applying the law as a judge. As he stated during his testimony, “Judges and Justices are servants of the law, not the other way around.” He also revealed his dedication to the law by recognizing that the judiciary has a limited role in our government. This means that judges are, to use Judge Robert’s words, “unconstrained by the words of the Constitution” and “by precedents of other judges.” Judges must interpret the law based on the text of the Constitution or statute, as the case may be, and based on precedent, rather than on their own personal beliefs about how the case should be resolved. It is the role of Congress to pass legislation and the role of the courts to apply that legislation to particular cases. I believe Judge Roberts not only understands this, but also will prove to be both a skilled practitioner and an eloquent advocate of judicial restraint.

Accordingly, I have every confidence that the person who will preside before Judge Roberts will see a fair and brilliant judge who will decide their case according to the dictates of the law, not his own personal preferences.

When I initially spoke to Ms. Miers about the qualities I was looking for in a nominee, we were discussing a replacement for Justice O’Connor. Now that Judge Roberts has been re-nominated to be Chief Justice, I believe that Judge Roberts’ management skills are an important aspect to consider. The Chief Justice is the top administrator of the Federal Courts, so any nominee to Chief Justice must possess management skills. Former Chief Justice Rehnquist was an excellent administrator, so Judge Roberts has some shoes to fill.

I had an opportunity to sit down with Judge Roberts, and I asked him about his management experience. We discussed his management responsibilities while he was at his law firm where he helped manage the firm’s litigation group. While Judge Roberts has never managed anything as large as the Federal court system, our conversation convinced me that he has the management skills necessary to be Chief Justice. He clearly has already thought about how he will undertake his management responsibilities and what he needs to do in order to effectively carry out those responsibilities.

Finally, I want to offer some personal observations about Judge Roberts. Too often we view executive and judicial nominees through political or ideological glasses and not as human beings. Nominees quickly get labeled as either a “Republican Nominee” or a “Democratic Nominee” or as belonging to a particular “school of thought” or as being a follower of a particular thinker or politician. This is unfortunate, as each nominee’s own personality gets overlooked and we fail to see the individual behind the label.

Judge Roberts is, in my opinion, a very open-minded person. He understands this distinction, but also my Republican friends, but to me they are further signs that Judge Roberts has the ability to persuade people across the spectrum about the importance of judicial restraint.

In short, I believe Judge Roberts displays the openmindedness and humility that should serve as the paradigm of judicial temperament for members of the Federal bench.

Therefore, I believe Judge Roberts’ impeccable academic and professional record, his firm commitment to the rule of law, and his strong character, I believe that Judge Roberts is a nominee of the highest caliber. Indeed, I wonder if a stronger nominee could be found.

I, therefore, urge my colleagues to support the nomination of Judge Roberts to be the next Chief Justice of the Supreme Court.

Mrs. Clinton. Mr. President, the nomination of Judge John Roberts to be Chief Justice of the United States is a matter of tremendous consequence for future generations of Americans. It requires thoughtful inquiry and debate, and I commend my colleagues on the Senate Judiciary Committee for their dedication to making sure that all questions were presented and that those outside of the Senate had the opportunity to make their voices heard. After serious and careful consideration of the committee proceedings and Judge Roberts’ writings, I believe I must vote against his confirmation. I do not believe that the judge has presented his views with enough clarity and specificity for me to in good conscience cast a vote of no confidence.

The Constitution commands that the Senate provide meaningful advice and consent to the President on judicial nominations, and I have an obligation to my constituents to make sure that I cast my vote for Chief Justice of the United States for someone I am convinced will be steadfast in protecting fundamental women’s rights, civil rights, privacy rights, and who will respect the appropriate separation of powers among the three branches. After the Judiciary hearings, I believe the record on these matters has been left unclear. That uncertainly means as a matter of conscience, I cannot support the nomination of Judge Roberts.
vote to confirm despite Judge Roberts’s long history of public service.

In one memo, for example, Judge Roberts argued that Congress has the power to deny the Supreme Court the right to hear appeals from lower courts of constitutional claims involving burning, abortion, and other matters. He wrote that the United States would be far better off with 50 different interpretations on the right to choose than with what he called the “judicial excesses” in Roe v. Wade. The idea that the Supreme Court could be denied the right to rule on constitutional claims had been so long decided that even the most conservative of Judge Roberts’s Justice Department colleagues strongly disagreed with him.

When questioned about his legal memoranda, Judge Roberts claimed they did not necessarily reflect his views and that he was merely making the best possible case for his clients or responses to inferior court opinions that he made a particular argument. But he did not clearly disavow the strong and clear views he expressed, but only shrouded them in further mystery. Was he just being an advocate for a client or was he using his position to advocate for positions he believed in? The record is unclear.

It is hard to believe he has no opinion on so many critical issues after years as a Justice Department and White House lawyer, appellate advocate and judge. His supporters remind us that Chief Justice Rehnquist supported the constitutionality of legal segregation before his elevation to the high court but never sought to bring it back while serving the court system as its Chief Justice. But I would also remind them of Justice Thomas’s assertion in his confirmation hearing that he had never even discussed Roe v. Wade, much less formed an opinion on it. Shortly after he ascended to the Court, Justice Thomas made it clear that he wanted to repeal Roe.

Adding to testimony that clouded more than clarified is that we in the Senate have been denied the full record of Judge Roberts’s writings despite our repeated requests. Combined, these two events have left a question mark on what Judge Roberts’s views are and how he might rule on critical questions of the day. It is telling that President Bush said that the justices he most admires are the two most conservative Justices, Thomas and Scalia. It is not unreasonable to believe that the President has picked someone in Judge Roberts whom he believes holds a similarly conservative philosophy, and that voting as a bloc they could further limit the power of the Congress, expand the purview of the Executive, and overturn key rulings like Roe v. Wade.

Since I expect Judge Roberts to be confirmed, I hope that my concerns are unfounded and that he will be the kind of judge he said he would be during his confirmation hearing. If so, I will be the first to acknowledge it. However, because I think he is far more likely to vote the views he expressed in his legal writings, I cannot give my consent to his confirmation and will, therefore, vote against his confirmation. My desire to maintain the already fragile Supreme Court’s legitimacy, voting rights and women’s rights outweigh the respect I have for Judge Roberts’s intellect, character, and legal skills.

Mr. MCCAIN. Mr. President, this Thursday the Senate will have the opportunity to vote on the nomination of Judge John Roberts to be Chief Justice of the United States. Few decisions made by this body are as consequential as this one. If Judge Roberts is confirmed by the Senate—and I believe he will be confirmed—he will be the youngest Chief Justice in more than 200 years. With the blessing of a long tenure on the Court, his influence as Chief Justice will not just affect us over the next generation but also several generations to come.

In nominating Judge Roberts, the President clearly was mindful of the serious and lasting nature of the vote before us. He respected the Senate’s advice concerning his role and engaged in a thorough, deliberate, and fair nomination process. The President and his staff consulted with more than 70 Members of the Senate, and the President reviewed the credentials of many well-qualified potential nominees. The President also met personally with a number of potential nominees. I believe that this is the process envisioned by the so-called Gang of 14, and that it resulted in an excellent nominee. Judge Roberts has impeccable legal credentials and a strong reputation and record as a fair and sharp-minded lawyer and jurist. The American Bar Association and many others of all political stripes agree that his distinguished career makes him very well qualified for the position of Chief Justice. Indeed, some observers have pointed out that if one were to imagine the perfect training to be a Supreme Court justice, Judge Roberts’s career would be the model. I could not agree more.

As an appellate judge, Judge Roberts has built a record of measure, control, and fairness—characteristics of a justice of our Nation’s highest court. Prior to his tenure as a Federal judge, John Roberts was a widely respected appellate lawyer. The Washington Post recently characterized him as “among the country’s best-regarded appellate lawyers, both in private practice and as deputy solicitor general during the administration of George H.W. Bush.”

The Senate Judiciary Committee has engaged in an extensive review of Judge Roberts’s record. During his confirmation hearings, he acquitted himself with dignity and honesty, answering directly questions that he believed he could address without hindering his ability to carry out his functions on the Supreme Court or in his current position on the DC Court of Appeals. The editorial board of the San Francisco Chronicle wrote some days ago that Judge Roberts “passed the key test before the Senate Judiciary Committee. His command of the law is impressive. He carries no trace of ethical taint. His ability to stay calm and on point in the face of exhaustive questioning from a panel of highly inquisitive—and occasionally posturing—U.S. senators was indicative of judicial temperament.”

The committee has voted to recommend that the full Senate confirm Judge Roberts as the Chief Justice of the United States. Several Democratic members of the committee joined in that recommendation, and rightly so—this nominee’s exceptional credentials and temperament should place him well above the fray of partisanship.

I agree wholeheartedly with the nomination of the President and the recommendation of the Judiciary Committee. I will vote for John Roberts, a man who has proven to be an extraordinarily talented lawyer and judge who approaches the law with modesty and a deep respect for the Constitution and our Nation’s laws.

EMERGENCY HEALTH CARE RELIEF ACT OF 2005

Mr. MCCAIN. Mr. President, I am in the Senate to mention that there is on-going discussions between the Senator from Iowa, Mr. GRASSLEY, the distinguished chairman of the Committee on Finance, and a number of Members who have been concerned about S. 1716, the Emergency Health Care Relief Act of 2005. I fully support the desire of the Senators and members of the Committee on Finance to provide health care relief for the victims of Hurricane Katrina. We have noted that it has about a $9 billion price tag, and we have been in ongoing discussions which I believe will bear fruit with the Senator from Iowa.

It is important to know that the administration also objects to S. 1716, and I ask unanimous consent the letter from Secretary Leavitt be printed in the RECORD.

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


HON. WILLIAM H. FRIST, MAJORITY LEADER, U.S. SENATE, Washington, DC.

Mr. President, I am writing to express my concern that the Administration’s position on S. 1716 is wrongheaded. The Department of Health and Human Services (HHS) with respect to S. 1716, the “Emergency Health Care Relief Act of 2005.”

We understand and appreciate that the intent of S. 1716 is to help provide, in the most timely manner possible, emergency health care relief to the victims of Hurricane Katrina. The Department is strongly committed to this objective, and we have...
engaged in our utmost efforts to furnish such relief directly to Katrina victims as well as to support State efforts to provide emergency health care and related services (see additional below). We believe that these ongoing efforts largely preclude the need for the activities proposed under S. 1716. Moreover, we have serious concerns with S. 1716, as enunciated above.

In addition, the bill spends significant amounts on adjustments to the Medicaid FMAP (Federal medical assistance percentage) formula. If we are not sure about the costs directly resulting from Hurricane Katrina, we think that this is also available for women and children with incomes up to 200% FPL, disabled individuals and other individuals with incomes up to 100% FPL. As a result, a new eligibility category for childless adults is established. There are no resource or residency requirements for DRM. DRM eligibles will receive the benefits package available to categorically needy beneficiaries under the Medicaid state plan. States may also provide mental health benefits and coordination benefits to DRM eligibles, which are not limited to conditions directly resulting from the hurricane.

The bill also establishes a new Medicaid entitlement for Katrina survivors, regardless of whether that will work best for those survivors or the states. This new program is unnecessary. CMS is already acting to meet the health care needs of hurricane survivors through the establishment of a new Medicaid/State Children's Health Insurance Program (SCHIP) waiver program that builds upon existing Medicaid/SClP eligibility and other program rules to provide immediate, comprehensive health care without the need for further congressional action. This waiver program allows individuals who otherwise would be eligible for Medicaid in their home states to receive temporary, comprehensive health care without going through a complex and burdensome application process. Texas, Alabama, Florida, and Mississippi now have these programs in place, and more states with significant numbers of evacuees are very close to establishing similar programs. With this new waiver program, we are providing care rather than waiting to implement an unprecedented new federal program as envisioned by S. 1716.

The bill (section 108) also establishes a mass burial program which would be administered by the Secretary of HHS, rather than states. The fund would provide $500 million for direct payments to Medicaid providers for medical care expenses incurred as a result of Hurricane Katrina, and for payments to state insurance commissioners for health insurance premiums for individuals otherwise eligible for DRM. Again, this is duplicating efforts which are well underway at CMS through the uncompensated care pools referenced in the new waiver program. The HHS believe this would result in an overlap of efforts, which are well underway at CMS through the uncompensated care pools referenced in the new waiver program. The HHS believe this would result in an overlap of efforts.

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

Mr. McCAIN. I say again to my friend from Iowa, I think he does a tremendous job as chairman of our Committee on the Budget. I think he distinguishes himself in that role. But I do believe—and we had, I think, a very productive meeting with the Senator from New Hampshire, Mr. SUNUNU, and Senator LOTT, who, obviously, has a very deep and abiding interest in this situation, as well as the Senator from Iowa. I hope we can work out the objections that the administration has, as well as the concerns that others of us have on this issue.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. BAUCUS. Mr. President, I come to the floor once again to insist that the Senate act on the emergency health care needs of Katrina victims. They need help. They need help now—not tomorrow, not the next day, now. The Senate must pass the Katrina health care package that I have introduced, along with Chair Grassley and I put together. Why? Obviously, to help the victims of Katrina. That is why. They need the help now.

Mr. BAUCUS. Mr. President, I come to the floor once again to insist that the Senate act on the emergency health care needs of Katrina victims. They need help. They need help now—not tomorrow, not the next day, now. The Senate must pass the Katrina health care package that I have introduced, along with Chair Grassley and I put together. Why? Obviously, to help the victims of Katrina. That is why. They need the help now.
I might say, Senator Grassley and I have worked for weeks on this legislation. It has been 4 weeks since Katrina hit—4 weeks.

Now, some suggest the administration was slow to respond, that FEMA was slow to respond, that FEMA was inadequate in responding. We have heard these complaints. A lot of them are accurate.

Where is the Senate? Where is the Congress? Where? I ask Senators, where is the Senate? Where is the Congress? I will tell you where. We are poised to pass legislation, but the same people and the same political party that were slow with respect to FEMA and the administration are now here today slowing down and stopping this legislation from passing. The same group. The same group. I cannot believe it. I cannot understand it.

This legislation has very broad support. It has the support of Senator Grassley, the chairman of the Finance Committee. He, yes, I think of chairman of the Finance Committee, who, I might say, is a very good man. He is a good man. He cares. He puts people above politics. He puts the needs of the Katrina victims above politics. He wants to do the right thing. And I very heartily and soundly congratulate him. He has done such a wonderful job.

We have also consulted with weeks with the Senators from the States affected, working out the details of this legislation, crossing the Ts, dotting the Is, making changes to make sure it works right. We have consulted with the Senators from the States affected, who are from both political parties. They want this legislation. They are from both political parties, and they want it.

We spent a lot of time working on this—a lot of time. We have done the right thing. We made changes, as Senators suggested. We are trying to make it better, trying to make it fair, trying to make it respond to the needs of the people in Louisiana, Alabama, Texas—the States affected. We have tried our very best to do this right.

I might repeat, not only the Senators of the States want this legislation, but the Governors of the States want this legislation. If we want to get to labels here, two of those Governors are Republicans. Today, publicly, I asked the question and Senator Grassley, the chairman, asked the question: Governors, do you think of the people in the States want this legislation? Yes, they want it, they want it now.

Ask Governor Blanco of Louisiana. They know the needs. They are there. They know the stakes. They are the Government. They want this legislation passed now.

Governor Riley of Alabama, he wants it now. Governor Barbour of Mississippi, he wants this legislation passed now. Governor Blanco of Louisiana, she would certainly like it passed now.

I might say, too, this is a compromise. There are Senators here who would like to offer more sweeping legislation and try to get that legislation up for a vote. I daresay, if that legislation was up for a vote, it would pass by a very large margin.

But there are Senators here who do not want to vote, who do not want to vote on that legislation. They do not want to vote on it. They do not want to vote on it. What is my evidence of that? Many times I have asked unanimous consent to bring up this legislation. Many times the chairman of the committee has brought up this legislation. And we get objections from the other side of the aisle. We get objections from the other side of the aisle. Oh, it costs too much, I heard.

That is one complaint. I do not know. This legislation is temporary. It is only for several months. It is only basically until the end of the year. It is basically to help people get health care under Medicaid, to get health care now.

There are examples of people who cannot get health care today, victims of Katrina who cannot get health care today. Why in the world is the Senate, controlled by the same party as the White House, saying no? Oh, we want a compromise. Let me tell you this. What is the compromise I heard? The compromise I heard is: Take it all out of the $65 billion appropriated for Katrina. Take it out of that. That is what I have heard. Can you believe that? Can you believe that? They say some of that money has been misspent. So people who need health care shouldn’t get the dollars? They shouldn’t get support? They shouldn’t get their health care because some of the FEMA dollars might have been misspent? Give me a break. Give me a break.

What is going on here? What, in fact, is going on here? I don’t understand it. I thought we were Senators. I thought we were elected to do the right thing, to rise up and help people who need help, particularly immediately. Sure, we should scrub this stuff and look at it closely. And we have. We have. Senator Grassley and I have. Our staffs have—very closely. We have tailored this down and cut it back down compared to what other Senators in the body want passed, some of the Senators in the committee wanted passed. We said: Oh, no, no, we are not going to go that far. We will take this a step at a time. We will amend the legislation, only until the end of this year.

These provisions, the Medicaid provisions, the FMAP provisions, the eligibility requirements only apply for several months, to the end of this year. Then they drop.

Let me tell you, we met today, the Finance Committee, with experts—one was George Yin, head of the Joint Tax Committee staff—trying to learn some lessons from New York that might be applied in this case. He made a very interesting point to us. He said: You must know, Senators, it is very hard to know the effectiveness of tax breaks because we don’t have a lot of evidence. He also said something else. He said: Because these are of a short duration, the ones proposed in this bill, they probably will not be utilized very much because people don’t know about them. People don’t know they are there. It is hard to get the word out.

So those Senators should not be too concerned this bill will be “too expensive.” If they are concerned about fraud, FEMA fraud, they are concerned about waste, if they are concerned about money not being properly spent under FEMA, and so forth, I suggest when the next appropriations bill comes up to spend more money at FEMA, to give more cash, that is the proper place to look at any potential waste, any problems, if any, that occur under FEMA. I don’t know what occurs and does not occur, but the Senators I have heard don’t want this bill passed because they say: Oh, it is wasteful. FEMA wasted money. If that is the case, don’t take it out of the hides of poor people who need help. You take it out of the hide of FEMA. You take it out of the hide of additional appropriations.

I heard something else here tonight. I have heard the administration is opposed to this legislation. They quietly kind of are. I don’t think they want to fraud. They want this legislation. They quietly kind of are. I don’t think they want to fraud. They want this legislation. They quietly kind of are. I don’t think they want to fraud. They want this legislation. They quietly kind of are. I don’t think they want to fraud. They want this legislation.

Oh, we hear: We want a compromise. Why isn’t it going to work? It is not going to work. Why isn’t it going to work? Because this waiver process is so vague, it is so amorphous. Nobody knows what it is. Nobody knows when it might go into effect.

Let me give you an example of that. Today at the Finance Committee hearing, I raised the question: Governor Barbour, Governor Riley, Governor Blanco, what about waivers?

Governor Barbour did not know anything about it. They sent this letter that the Senator from Arizona put in the RECORD. They say: Well, maybe we can do it with waivers. Maybe we can do it a little bit better. Come on. That is not going to work. Why isn’t it going to work? It is not going to work. Why isn’t it going to work? Because this waiver process is so vague, it is so amorphous. Nobody knows what it is.

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We have, however, chosen different paths for achieving our shared goal. We have introduced a bill to pass the Emergency Health Care Relief Act, S. 1716, which will provide immediate coverage for a temporary period for Americans displaced by Hurricane Katrina in the states of Louisiana, Mississippi, and Alabama, and provide a means for survivors to retain private health insurance coverage. We believe that this program will be very quickly and efficiently implemented by the Department. We have noted your opposition to our bill and are puzzled at how you expect to achieve our shared goal using the Department’s waiver process. Specifically, we would raise the following questions:

1. After the September 11, 2001, attacks on New York City, the Department quickly approved a waiver to provide Medicaid coverage for New Yorkers, even those not normally eligible for Medicaid, for a temporary basis. While you refer to the coverage provided through the waiver program as “comprehensive relief,” the waiver in Texas does not provide the same eligibility for Katrina evacuees as was provided through the New York waiver. Could you please explain to us why the Katrina evacuees do not deserve the same assistance provided the people of New York.

2. Your waiver process appears to contemplate having those Katrina evacuees without existing coverage covered by an uncompensated care fund. Providers will provide charity care and then seek reimbursement from the uncompensated care fund. Does this make sense? First, how does the Department believe it has the statutory authority to provide funding for this uncompensated care fund when we believe it is fairly obvious the Department does not have statutory authority to do so? Second, it is unclear to us how much money will be needed for the uncompensated care fund for Texas and all other host states. How much money does the Department anticipate needing for the fund? Finally, the Medicaid program has known costs, payment rates, and claims, which is why we sought to use the Medicaid program for the temporary assistance program. How does the Department plan to control expenditures for the uncompensated care fund to protect against fraud and abuse? What accountability measures will apply to these new funds?

3. The states of Louisiana, Mississippi, and Alabama have suffered tremendous devastation that will drastically affect their ability to meet state obligations, including their share of Medicaid. The Department’s waiver process simply bills claims for Katrina evacuees in Texas (and other host states) back to Louisiana and Alabama. We are puzzled at the bill comes due for those claims we would anticipate that the Department is going to meet state obligations, including their share of Medicaid. The Department’s waiver process simply bills claims for Katrina evacuees in Texas (and other host states) back to Louisiana and Alabama. When the bill comes due for those claims we would anticipate that the Department is going to meet state obligations, including their share of Medicaid. The Department’s waiver process simply bills claims for Katrina evacuees in Texas (and other host states) back to Louisiana and Alabama. We are puzzled at the Department’s rapid implementation of the program.

4. We believe that allowing individuals to preserve their private insurance coverage is an important principle. The bill that you oppose, the Emergency Health Care Relief Act, provides for Disaster Relief Fund so that people may keep private coverage. Your waiver process to provide for assistance to people wishing to keep private coverage except perhaps through the uncompensated care fund which we have already explained. However, you have established the requirement to preserve private coverage for Katrina survivors.

5. We believe that the welfare provisions of S. 1716 are very important. Through H.R. 3672 the TANF Emergency Response and Recovery Act of 2005 (Public Law 109-68) makes a number of improvements to P.L. 109-68. It provides funding to non-recurrent short-term cash benefits S. 1716 allows funding to be available for any allowable TANF expenditure. We understand that the Department claims to use these funds to provide non-cash services such as employment readiness and job training for a period of time that is not limited to four months. This is inappropriate to give states the greatest amount of flexibility to serve the broad needs of these families. Additionally, the Senate bill lifts the maximum TANF cap which would direct additional resources to states that are providing services to Katrina survivors. Do you agree that states should be confident that they will be reimbursed for the costs of helping these families?

6. We note that in your letter, you took special exception to the provision in Title II—TANF RELIEF that would allow states such as Tennessee, that are currently drawing down Contingency Funds in order to meet the needs of their existing caseload to also qualify for the Contingency Fund in order to meet the needs of evacuees. Are we to infer from your letter that states like Tennessee should be prohibited from accessing the existing Contingency Fund to evacuate simply because of a state fiscal condition that made them eligible for the Contingency Fund? Under existing law would we also like to bring to your attention certain provisions of our bill that we would be surprised to find the Department opposes. The bill provides the Secretary with the authority and funding to assist providers whose ability to stay in business has been jeopardized. We consider it critical that hospitals, physician practices and other providers get immediate assistance so that they may continue to function. If the doors close at a hospital, affecting that community that much more difficult. We hope you would agree.

7. The bill provides additional assistance for people who have lost their job through extensions of unemployment insurance. We feel that it is appropriate and necessary.

8. The bill provides additional funding for the Office of the Inspector General to ensure that relief funds are appropriately spent. We certainly hope you approve of that provision.

I might say, at that point, for 9/11 Familia Health Care Relief Act was passed, and FEMA did not pay for it. In this case the administration, in the waiver process, says, well, there might be some money for hospitals for all the uncompensated care they have provided. It is a promise. Who knows if it is real or not empty. There are no dollars behind it.

We have dollars in our legislation. It is $800 million. It goes for uncompensated care to hospitals. You talk to the administrators of the hospitals in these areas—Louisiana, New Orleans; other States—Arkansas, Texas—that are overwhelmed—and most of this is uncompensated care—they need help. We are providing it in this bill, $800 million.

We also provide help for people who need care, who do not have health insurance, who live up to 100 percent of poverty. They are not wealthy people; only up to 100 percent of poverty, and 200 percent of poverty for mothers who have children, pregnant women and children. That is not very much. But no, we cannot pass that. Senators say that is too much. That might be wasteful.

I don’t get it. I don’t get it. It reminds me of when I graduated from high school. This fellow sent me a congratulation card for graduating from high school. He said basically: Congratulations, and all this stuff. He said: Best of luck in those interstitial spaces when your brain runs against headlong perversity. This is one of those interstitial spaces in the sense that I don’t get it. I can’t fathom why people would not want to get this passed.

We can go to conference. We can modify this bill in conference. There are no problems. That is what we do around here. If something is not perfect—nothing is ever perfect—you don’t let perfection be the enemy of the good.
around here. We go to conference. By that time, little wrinkles crop up, lit- tle problems. We take care of them in conference. No, we can't do that. We can't even pass the legislation. Some Senators say: No, we can't pass it. Wrong. Talk to FEMA. It won't work. For the life of me, I don't understand why we are here.

One small example, not so small for Tina. Who is Tina? Tina Eagerton is a lady who fled Louisiana 7 months pregnant but could not find a Florida doctor who would accept her Louisiana Medicaid card, wouldn't do it. With this legislation, Tina can get some help.

I can talk about Rosalind Breaux, who has colon cancer and was sched- uled for her third round of chemotheraphy on August 31, the day after the flooding began. Her husband has lost his job. There is no health insurance. Rosalind is in a real bind.

I mentioned the letter we sent in re- sponse, the chairman of the committee, Senator Grassley, and I, that letter from the administration says the ad- ministration’s waiver policy claims it can provide relief without the need for congressional action. It can’t. I must also say they do not have the authority. They do not have the authority to provide additional appropriations. That takes an act of Congress. They say, apparently, by implication, they do not need any dollars. That is the implication of that process. They don’t appropriate dol- lars. It is against the law. We have to do that. They do not want us to do it.

The waivers, I might say, also limit eligibility for Medicaid coverage to only those groups of people tradition- ally eligible for Medicaid. Adults with- out children, no matter how poor they are, or how much they need health care, are covered under the administration’s waiver policy sug- gested by the letter the Senator from Arizona mentioned.

The woman with diabetes would not be covered. She would not be covered. Diabetes is a very time-sensitive ill- ness. Limiting access to benefits in the waiver would mean leaving tens of thousands of Katrina victims without aid.

After Katrina, Louisiana dispatched Medicaid eligibility workers to more than 200 shelters to enroll evacuees in Medicaid. Of the 4,000 potentially eligi- ble families screened in these shelters, more than 1 in 5 were screened out as ineligible. They did not meet Louisi- ana’s traditional eligibility rules—1 out of 5. No help there. One out of five: You do not meet the traditional screening test.

Our legislation would address that. One out of every three people who have applied for Medicaid in Louisiana follow- ing Katrina have been denied coverage. The waiver process is not going to help that out because the eligibility re- quirements are not raised. Most of these people are denied because they don’t meet the eligibility criteria.

Wrong. Adults without children need access to health care. A recent study of Katrina evacuees in Houston shelters found that most of the adult evacuees without children were uninsured. Among those, more than 40 percent re- ported patient limitation, condition. A third reported having trouble getting the prescription drugs they need. I can’t believe it. What is going on here? Differentiating among individuals during this time of need is not right. This isn’t legislation that is usual; this is an emergency. People need health care right now. Katrina did not dif- ferentiate. Katrina hit all the residents of the gulf hard. We should not differ- entiate in our efforts to help those in need.

The second key difference between the administration’s policy and what our bill does is the funds provided to defray the cost of uncompensated care that thousands of health care providers across our Nation are giving to Katrina victims. It clearly appears that Congressional action is necessary to provide that. Let me repeat that point. The ad- ministration has said it will provide an uncompensated care fund. But the ad- ministration, in this waiver letter re- ferred to on the floor a few minutes ago, has not given any further information about how much would be pro- vided, not one iota, whether it be $1 or zero dollars. The administration has not even given information about how it will be spent.

By contrast, the Grassley-Baucus bill includes an uncompensated care fund of up to $800 million to be spent on compensating those health care providers—that is, hospitals—who have seen a dramatic increase or drop in their utilization as a result of Katrina. The administration promises, but under our bill, there would be no doubt. We would be there. It is not words but deeds. The administration is words. Our legislation is deeds. It is getting it done.

Third, our bill provides 100 percent Federal funding for all evacuees cov- ered under Medicaid, wherever they are, and for the affected States. By contrast, the administration’s waiver policy promises to make State’s whole. What does that mean? I have serious questions about how they can deliver on that without legislation, because it is unclear what the administration could, under its current statutory au- thority, provide these additional funds to States. I referred to that earlier. I don’t think they have the legal authority to provide additional funds. I have no doubt they intend to do so. I am sure they do. Why wouldn’t they? I just do not believe they have the legal au- thority to do so. So why are we going to sit and argue about this, while the people need health care? I don’t get it. At the same time the administration has asked for the three most affected States to sign a memorandum of understand- ing making them financially re- sponsible for the costs of evacuees’ care in other States. Louisiana, Mississippi, Alabama need our help, not more bills to pay—not now. We could straighten that out later.

It is an outrage that a small number of wontful Senators continue to stall this bill. Hurricane Katrina’s health costs continue to spill in waves across the gulf coast region. Victims continue to suffer without proper medical care. Our bill will restore immediate access to basic health care. Our bill would re- lieve the financial burden health care providers have shouldered. We must act. Thus, at the appropriate time, I int- end to join with my colleagues and ask unanimous consent for the Senate to pass our bill.

In fact, I do so now. I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 214, S. 1716; that the Grassley-Baucus substitute amendment is at the desk be considered and agreed to, that the bill as amended be read a third time, passed, and that the motion to reconsider be laid on the table, and that all of this occur with no inter- vening action or debate.

The PRESIDING OFFICER. In my capacity as a Senator from Oklahoma, I object.

Objection is heard. The unanimous consent request is not agreed to. The Senator from Iowa.

MORNING BUSINESS

Mr. GRASSLEY. Mr. President, I ask unanimous consent that there now be a period of morning business with Sen- ators permitted to speak for up to 10 minutes each.

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

NATIONAL SECURITY LETTERS AND PATRIOT ACT REAUTHORIZ-ATION

Mr. DURBIN. Mr. President, the USA PATRIOT Act greatly expanded the Government’s authority to use na- tional security letters, documents issued by FBI agents without judicial oversight. Just last week, the Department of Justice obtained sensitive infor- mation about innocent American citi- zens. The recipient of a national secu- rity letter is subject to a permanent automatic gag order.

The Justice Department claims that they are not interested in the library records of innocent Americans. How- ever, they acknowledge that they do not know how often FBI agents have obtained library records since enact- ment of the PATRIOT Act. And just 3 weeks ago, the点击Justice Department again refused my request to make pub- lic the number of national security let- ters that FBI agents have issued since
Power.

be able to hear from librarians and ot-
the private lives of innocent American
This Justice Department seems to
amendment rights. Now they have gone
TRIOT Act. Unfortunately in the past
leading the fight to reform the PA-
S.1752, a bill to reauthorize the U.S.
KENNEDY and I introduce hate

For-

home to speaking publicly about a legal
challenge to the national security let-
ter power.

In our democracy, the government
be supposed to be open and accountable
to the people and the people have a right
to keep their personal lives private. This
Justice Department seems to
want to reverse this order, keeping
their activity secret and prying into
the private lives of innocent American
citizens.

The President has asked Congress
to reauthorize the PATRIOT Act. In order
to have a fully informed public debate,
the American people should know how
often the national security letter au-
thority has been used and they should
be able to hear from librarians and oth-
ers who are concerned about this
power.

LOCAL LAW ENFORCEMENT
ENHANCEMENT ACT OF 2005

Mr. SMITH, Mr. President, I rise
today to speak about the need for hate
crimes legislation. Each Congress, Sen-
ator KENNEDY and I introduce hate
crime legislation that would add new
categories to current hate crimes law,
sending a signal that violence of any
category is unacceptable in our society.
Likewise, each Congress I have come to
the floor to highlight a separate hate
crime that has occurred in our coun-
try.

On June 1, 2004, a man was attacked
and stabbed by three men in the downtown
area of Seattle, WA. The apparent
motivation for the attack was sexual
orientation.

I believe that the Government’s first
duty is to defend its citizens, to defend
them against the harms that come out
of hate. The Local Law Enforcement
Enhancement Act is a symbol that can
become substance. I believe that by
passing this legislation and changing
current law, we can change hearts and
minds as well.

U.S. GRAIN STANDARDS ACT

Mr. CHAMBLISS, Mr. President, I
am pleased that the Senate passed
S.1752, a bill to reauthorize the U.S.
Grain Standards Act. I understand that
the House of Representatives is sched-
uled to consider this legislation today
and look forward to its swift approval,
as the act expires September 30, 2005.

This reauthorization bill is identical
to the administration’s requested lan-
guage provided to the committee ear-
lier this year, a simple 10-year exten-
sion of current law.

The Agriculture, Nutrition, and For-
erestry Committee held a hearing to re-
view the U.S. Grain Standards Act on
May 24. The Committee held a hearing on
behalf of the National Grain and Feed
Association and the North American
Export Grain Association highlighted
industry’s desire to be cost-competitive
and remain viable for bulk exports of
U.S. grains and oilseeds in the future.

Specifically, these organizations pro-
posed the U.S. Department of Agri-
culture’s, USDA, utilization of third-
party entities to provide inspection
and weighing services at export fa-
cilities with 100-percent USDA over-
sight using USDA-approved standards
and procedures. Support for this pro-
posal in the hearing was provided by
the American Farm Bureau Federa-
tion, American Soybean Association,
National Association of Wheat Grow-
ers, National Wheat Growers, Natio-
nal Sorghum Producers, and the American
Association of Grain Inspection and
Weighing Agencies. Testimony provided
by USDA stated that the “proposal of
the Secretary of Agriculture to
changing the delivery of services with-
out compromising the integrity of the of-
ficial system.”

During the hearing, the Committee
also learned of challenges currently
facing the U.S. Department of
Agriculture’s Grain Inspection,
Packers and Stockyards Administra-
tion, GIPSA. The majority of official
grain inspectors will be eligible for re-
irement over the next several years.
Testimony presented explained that
transitioning the delivery of services
through attrition would minimize the
impact on Federal employees.

Since the hearing, I have extensively
reviewed legislative proposals and dis-
cussed my concerns on cost effec-
tiveness with various Senators, organi-
izations, and USDA. Chairman Bob
GOODLATTE of the House Agriculture
Committee and I wrote to USDA to de-
termine if they had existing authority
to use private entities at export port
locations for grain inspection and
weighing services, and if they did, how
they would implement this authority.

Accompanying this statement is a
copy of the letter we received from
USDA responding to our questions.
The letter clearly states that the U.S.
Grain Standards Act “currently au-
thorizes the Secretary of Agriculture
to contract with private persons or en-
tities for the performance of inspection
and weighing services at export port
locations.” The letter further explains
that GIPSA considers the use of this
authority as an option to address fu-
ture attrition within the Agency and to
address expanded service demand. I
fully expect USDA to use this author-
ity by transitioning to third-party entities
of the U.S. grain industry, that main-
tains the integrity of the Federal grain inspection system, and

that provides benefits to employees
who may be impacted.

The committee greatly appreciates
the work provided by GIPSA, and we
are pleased to extend the authorization
of current law for 10 years.

I am unanimous in my support of
that the letter to which I referred be printed
in the Record.

There being no objection, the mate-
rial was ordered to be printed in the
Record, as follows:

THE SECRETARY OF AGRICULTURE,
Washington, DC, September 21, 2005.

Hon. SAXBY CHAMBLISS,
Chairman, Committee on Agriculture, Nutrition,
and Forestry, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: This is in response to
your letter of this date, also signed by Bob
Goodlatte, Chairman of the U.S. House of
Representatives Committee on Agriculture,
posing two questions regarding legislation
which is currently pending before the Con-
gress.
The legislation, for an additional period of years, the United
States Grain Standards Act, 7 U.S.C. §§71 et
seq. (Act), which is presently scheduled to
expire on September 30, 2005.

Our questions and our responses are as follows:

1. Would existing authority under the U.S.
Grain Standards Act allow for the pri-
ivate entities at export port locations for
grain inspection and weighing services?

Response. The Act currently authorizes the
Secretary of Agriculture to contract
with private persons or entities for the per-
formance of inspection and weighing services
at export port locations. See 7 U.S.C.
§§6(i), 7(h)(3).

2. If so, how would USDA implement this
authority?

Response. The Act currently authorizes
the Secretary to contract with a person(s)
to provide export grain inspection and
weighing services at export port locations. The Grain
Inspection, Packers and Stockyards Admin-
istration (GIPSA) has reserved this author-
ity to supplement the current Federal
workforce if the workload demand exceeded the
capacity of current staffing. GIPSA has also considered use of this authority as one of
several options to address future attrition
within the Agency and to address expanded
service demand as states have decided or are
considering to cancel their Delegation of Authority with GIPSA.

In accordance with federal contracting re-
quirements, GIPSA would request a person(s) (defined as any individual, partner-
ship, corporation, association, or other busi-
ness entity) to provide inspection and
weighing services to the export grain industry.
The person(s) awarded the contract
would adhere to all applicable provisions of the Act
to ensure the integrity of the official inspec-
tion system during the delivery of services
to the export grain industry. The person(s)
would charge a fee directly to the export
grain customer to cover the cost of service
delivery and the cost of GIPSA’s inspection.

Contract terms would require reimburse-
ment to GIPSA for the cost of supervising
the contractor’s delivery of official inspec-
tion and weighing services.

GIPSA would comply with OMB Circular
No. A-76 for any contracting activity that
may replace or displace federal employees.
The Circular would not apply if the contract
for outsourcing services intends to fill work-
force gaps, not affect Federal employees, or
supplement rather than replace the federal
workforce. The A-76 process typically takes
two years and involves an initial cost-bene-
fits analysis, an open competitive process,
and an implementation plan.

I hope that the explanations provided
above are fully responsive to the questions

September 28, 2005
With this stamp every dollar we continue to raise will help save lives until a cure is found. Again, I thank my colleagues for supporting this important legislation to extend the breast cancer research stamp for 2 more years.

THE 2005 BRAC PROCESS

Mr. GRASSLEY. Mr. President, I rise to speak on the Base Realignment and Closure, or BRAC, process that occurred this year. I have always voted to authorize base closure rounds in deference to the Department of Defense’s stated need to restructure our military facilities to meet current and future needs. Nevertheless, the ceding of significant authority by Congress to an independent commission is an extraordinary step that should not be undertaken frequently or lightly. When Congress does lend its power to an independent commission, it must retain the responsibility to closely monitor the commission’s deliberations and actions. I have done so with respect to the 2005 BRAC Commission, naturally paying the closest attention to the issues before the Commission that affect Iowa.

My observation of the Commission’s final deliberations raised some concerns about the information and reasoning used in making its decisions. I am following up to the Commission to clarify these concerns and have recently received a response that did nothing to allay my concerns. As a result, I have now concluded that I do not have full confidence that this was a thorough and fair process.

A joint resolution to disapprove the 2005 BRAC recommendations has been introduced in the House and has just been marked up by the House Armed Services Committee. It will now be considered under expedited procedures. I have written to the House Armed Services Committee expressing confidence that this resolution will pass. In fact, the move would cost the taxpayers millions per year, and in the long run, it will cost significantly more in the long term to pay those employees at the new location. This is not a temporary fix. It is like a machine shop and live fire range. In addition, there will be no space to house the outside contractors currently based at the Rock Island Arsenal. The Quad Cities community would also lose millions of dollars in payroll.

This point was made clear in a letter to the Department of Defense andaltering BRAC recommendations would cost millions of dollars more out of the budget. In fact, the move would cost the taxpayers millions per year, and in the long run, it will cost significantly more in the long term to pay those employees at the new location.

The Quad Cities community challenged this proposed move on the basis of military value, and the enormous costs both up front and in the long run. The move would cost the taxpayers millions per year, and in the long run, it will cost significantly more in the long term to pay those employees at the new location.

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September 28, 2005

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Furthermore, despite all the briefings from the community, the BRAC staff presented a summary of the community’s concerns that omitted the critical issue of the long-term costs of the move. The summary’s only reference was a relatively minor concern that the number of positions to move were underestimated. When Commissioner Skinner asked how increased estimates of the military construction costs at the Detroit Arsenal would affect the payback, the BRAC staff responded that “Payback with the new scenario, new MILCON, is $1.8 billion over 20 years, still a large saving.” However, that figure refers to the entire recommendation package, not just the otherwise unrelated TACOM move. I believe that response by the BRAC staff was intellectually dishonest and misleading.

The disturbing fact is that the TACOM move will actually squander $128.23 in taxpayer money. I pointed out this problem in a message delivered to Commissioner Skinner before the Commission’s final vote on the BRAC report, but no action was taken. Only after the final vote has the Commission permitted to me in a letter that the TACOM move, if cost $128.23 million over the 20 year time frame used in their estimate. The Commission’s letter also confirmed that the Commissioners were never told about the cost of the TACOM move by itself.

In its response to me, the BRAC Commission continued to justify considering the cost of the TACOM move in terms of the net present value of the entire recommendation. However, in reference to another portion of the same recommendation regarding a cryptological unit at Lackland Air Force Base, the slide used by the BRAC staff for its presentation read, “The extent and timing of potential costs outweigh benefits with the payback of investment.” The same could have been said about the TACOM portion of the recommendation. The Commission then voted to overturn the portion of the recommendation to realign Lackland Air Force Base. In this case, the Commission did consider one portion of the larger recommendation separately, including a staff analysis of the payback for just that portion of the recommendation, and voted to overturn the portion of the largest recommendation. The Commission’s justification for its failure to do so with respect to the TACOM portion of that recommendation therefore falls flat.

In fact, there is evidence that the selective presentation of facts by the BRAC staff resulted in Commissioners misunderstanding the issue when voting. In justifying his decision on the TACOM move in an interview with the Rock Island Argus, Commissioner Skinner said of the BRAC staff’s analysis, “There’s still the payback by doing that and that was the major objection that they (the community) had.” Commissioner Skinner should have known the most about this proposed move from his site visits to both the Rock Island Arsenal and the Detroit Arsenal, but his statement is inaccurate. It seems clear from this quote that he was misled by relying on the faulty presentation by the BRAC staff.

Of course, while cost is a major consideration in BRAC, it is not the only consideration. Still, if a recommendation contains significant costs, like the TACOM move, there must be a very compelling case for an increase in military value to justify the costs. In this case, I think it is clear that more is lost in terms of military value than is gained. Moreover, the Commission never got to this point since the BRAC staff represented that the move was justified based on cost.

I don’t believe that DOD made this recommendation based on a conclusion that consolidating TACOM in one location would increase military value in the first place. Several smaller components of TACOM in other locations were not proposed for consolidation. Still, if there was a compelling case for merging the two TACOM organizations together, then why wasn’t the Rock Island Arsenal considered as a receiving site? The Rock Island Arsenal could accommodate all the personnel at Detroit Arsenal without major military construction, possibly even allowing Detroit Arsenal to close entirely. The Rock Island Arsenal was considered as a receiving installation by DOD since it was assumed to be closing during much of DOD’s internal BRAC process.

In fact, the preliminary assumption that the Rock Island Arsenal would close is why it was not considered as a receiving site for the consolidation of the Defense Finance and Accounting Service, Installation Management Agency, and Civilian Personnel Operations Center. The BRAC staff who presented this issue to the Commission pointed out that this was not fair and equal treatment, which is a violation of the BRAC rules. The Commission then voted to overturn the recommendation based on the fairness issue. I asked the BRAC Commission to answer why this same logic did not apply to their actions in each of these areas. The response stated that the consolidation was developed and briefed separately by DOD supporting different initiatives. This does not answer my question as to why the Commission did not overturn each of these recommendations on the basis of fairness as they did, rightly, with the Civilian Personnel Operations Center.

For instance, like the Civilian Personnel Operations Center at the Rock Island Arsenal, the Defense Finance and Accounting site was ranked No. 1 for the number of sites. Given the low labor costs and room to expand, it would be an ideal location to which to consolidate other sites if it were given fair and equal consideration. The Commission even questioned the sites chosen by DOD as receiving sites based on higher costs and lower value. Yet, in the end, the Commission chose to rearrange the sites to receive Rock Island and two smaller sites with lower value than Rock Island. At a minimum, the Commission should have voted to keep open the Defense Finance and Accounting Service at the Rock Island Arsenal based on the same fairness production as the Civilian Personnel Operations Center. Ideally, it should have chosen the Rock Island Arsenal as a receiving site.

I knew going into this BRAC process that the Rock Island Arsenal could lose jobs. In fact, I am relieved that DOD did not recommend full closure as first contemplated. Moreover, as I testified before the BRAC Commission, if it was determined that an organization would be more efficient and less expensive somewhere else, then I could have lived with that. On this basis, I was even prepared for the BRAC Commission to disagree with my assessment about the proposals for the Rock Island Arsenal that I didn’t think made any sense.

However, what I saw in the BRAC Commission’s final deliberations took me by surprise. The Commission did not refute the concerns raised by the community. No evidence was produced that the TACOM move made economic sense or would be more efficient. Instead, the staff gave a misleading presentation that gave the impression that the move made economic sense when it didn’t, based on the data used by the Commission. That doesn’t mean I absolve the Commissioners from responsibility in this either. Four of them had seen a presentation by the community and all of them had been contacted by Members of Congress. They had a responsibility to challenge the staff when the staff analysis didn’t match what they had heard previously. In this respect, both the BRAC staff and the Commissioners failed in their responsibilities. In some areas, I have seen has caused me to lose confidence in the work of the BRAC Commission. As a result, I cannot endorse their final product.

I ask unanimous consent to have the Rock Island Argus article to which I referred printed in the RECORD. There being no objection, the material was ordered to be printed in the RECORD, as follows:

SKINNER: ARSENAL DODGED A BULLET

By Edward Felker

WASHINGTON—BRAC Commissioner Samuel K. Skinner on Thursday said the Rock Island Arsenal “dodged a major bullet” in the base closing process by losing jobs but not closing completely.

During a brief interview, Mr. Skinner, who visited the Arsenal on behalf of the commission, defended the panel’s decision to send 1,129 Quad-Cities jobs to the Detroit Arsenal. The panel approved the move despite protests that the transfer will cost too much and not further Army integration.

Mr. Skinner said that he looked into arguments that the Detroit Arsenal did not have
the space for the incoming workers, but was satisfied that additional construction costs will not hamper expected savings to the taxpayers.

"They said there's still significant payback by doing that," he said of the BRAC staff's review of the move, "and that was the major objection that they had."

He conceded that it was only fair to keep open the Arsenal's 251-job Civilian Personnel Office and Civilian Human Resource Agency. It was originally slated to move to Fort Riley, Kan., as part of a sweeping consolidation of defense personnel offices.

But Mr. Skinner urged the panel to delete it because it was targeted as part of a complete closure of the Rock Island Arsenal, and the move was never re-examined after the Pentagon decided to keep the Arsenal open.

"They had no chance to be heard, it wasn't even considered, and on that basis it wasn't fair. So we got a little life," Mr. Skinner said.

He also defended the closure of the Arsenal's 301-job Defense Finance and Accounting Service office. The commission voted to keep other offices on bases of higher military and had the Pentagon targeted for closure, but Mr. Skinner said they were on bases of higher military and had the worst economic closure impact among DFAS locations.

He said the overall result for the Arsenal was better than it could have been. "They dodged a major bullet. Not perfect, but it could have been a lot worse."

GOVERNMENT REORGANIZATION AND PROGRAM PERFORMANCE IMPROVEMENT ACT OF 2005

Mr. THOMAS. Mr. President, we are facing times of record spending. Whether it is in the form of relief to the hurricane ravaged gulf coast, financing the war on terrorism, or meeting our obligations to seniors with the Medicare prescription drug benefit, Federal spending is higher now than ever. We have committed ourselves to funding these priorities.

In doing so, I believe we must also look for ways to save in other areas to offset these costs. I liken our current fiscal situation to that of any common American household. When emergencies or unforeseen obligations arise, such as an illness or a major repair, you find a way to pay the bill. But in doing so, you must also look at your household budget and find places to save.

So I come to the Senate floor today to speak a little bit about legislation I recently introduced to require regular reviews of programs to the goal of identifying areas where savings can be made. S. 1399, the Government Reorganization and Program Performance Improvement Act, will create the necessary mechanisms to require Congress and the executive branch to regularly and formally examine whether Federal programs and agencies are achieving, or have achieved desired results for the American people, and make the necessary adjustments.

The bill would do this through the creation of a sunset commission and individual results commissions. The sunset commission would hold the Federal Government accountable for performance by reviewing and providing recommendations to retain, restructure, or end Federal agencies or programs. Congress and the President would enact a 10-year schedule for the administration to assess the performance of various agencies and programs. Acting on those assessments, the seven-member bipartisan sunset commission, appointed by the President in consultation with Congress, will recommend ways to improve effectiveness and spend taxpayer dollars more wisely.

The commission will provide an important framework to facilitate the reform, restructuring, or possible elimination of those agencies or programs and agencies by restructuring and consolidation. This will reduce unnecessary costs and waste paid for by the American taxpayer.

We need to continue to evaluate the way the Federal Government operates and look for ways to make it more cost effective for the long term. I believe this legislation presents a good step toward dealing with the large number of Federal programs out there, many of which are, frankly, wasteful and unnecessary, and to duplicate other Federal, State and private efforts. S. 1399 provides a commonsense framework for reorganization and review of Federal programs, and provides for a way to abolish them if determined unnecessary.

S. 1399 is a good government measure. It is about efficiency, accountability to the American taxpayer, and identifying potential savings. It is a fiscally responsible measure that will provide a way for the Federal Government to save even as it meets its spending obligations in the future. I invite my colleagues to take a serious look at this proposal and to join me in advancing this effort.

AUGUST 2005 CODEL TO LATIN AMERICA

Mr. SPECTER. Mr. President, from August 14 to the 22, I traveled to Latin America to investigate first hand important issues relating to national security, immigration and the war on drugs. I would like to share the details of this trip and some of the insights I gained with my colleagues.

On Sunday, August 14, we flew to Havana, Cuba. Upon our arrival we drove to the U.S. Mission where we met with James Cason, our chief of mission, and members of his staff. I started off the meeting by asking my hosts if Cuba could help the U.S. combat the smuggling of illegal drugs into our country. Mr. Cason said that the Coast Guard, who currently serves as the U.S. Drug Interdiction Specialist based in Havana, noted that there is a good working relationship between the Coast Guard and the Cuban Border Guard on drug interdictions. It is in the form of the Cubans sharing information with the United States as to suspicious ships passing through its territorial waters. The United States then interdicts these ships when they cross into U.S. waters. While the number of such reports has fallen in recent years, Mr. Rojas believes that this is a testament to the success of Cuban efforts: now that they know they will be reported, drug smugglers seem to be avoiding Cuban waters.

These reports confirm my long-held view that we should be working more closely with Cuba on drug interdiction efforts. This is why since 2001 I have sought to include language in the Foreign Operations appropriations bill to fund joint drug interdiction efforts between our two countries. This language is in the Senate version of the fiscal year 2006 bill, and I intend to press to secure its retention in the bill through conference.

From this positive report on the drug interdiction situation, our conversation turned to a troubling report on the current human rights situation in Cuba. Mr. Cason told us that there has been a deterioration of human rights in Cuba in recent years as Castro has cracked down on political dissent. In 2003, Castro jailed 75 dissidents and has thus far released fewer than 20 from this group. These arrests were followed by others including the arrest of over 200 dissidents earlier this year. In addition to arrests, Castro has begun to employ other atrocious practices including having dissidents assaulted on the streets and generating demonstrations at the homes of dissidents to prevent them from stepping outside.

This repression has spread to the economic realm as well. In the late 1990s, Castro had opened a very limited window to free enterprise in Cuba by issuing licenses for private businesses. This trend could have helped Cuba had followed the path of China and Vietnam towards a limited market economy and higher living standards. Instead, Castro has abandoned this liberalization and cut back the number of licenses for private business. Both politically and economically, there are signs that Cuba is going backwards.

Finally, our conversation turned to the issue of immigration. In an effort to provide a legal outlet for immigration and avoid the massive boatlifts of the past, the United States allows 20,000 Cubans to legally immigrate every year. This number includes family reunifications, visas given out by
Since our conversation was classified, I will not comment in this forum on what was said. After this meeting we returned to Havana.

On Tuesday, August 16, we returned to the U.S. Mission to meet with two brave Cuban dissidents: Vladimir Rojas and Martha Roque. Mr. Rojas is the President of the Social Democratic Party of Cuba. Knowing that I would meet with President Castro later in my trip, I felt it important to meet with the dissidents who had been censored on both sides. I learned after my visit that the Governor of Nebraska, who was in town at the same time I was, also met with Castro but declined to meet with the dissidents.

Since political parties are banned in Cuba, Mr. Rojas’s “party” has only 35 members. Mr. Rojas was jailed by Castro for 5 years from 1997 to 2002 for criticizing his government. Yet Mr. Rojas continues to speak out and tells us that his freedom of conscience and expression is the subject of intimidation and demonstrations designed to keep him from leaving his home.

Like Mr. Rojas, Ms. Roque has also been jailed. Her st house is currently under anti-Castro views. She spent 3 years in jail from 1997 to 2000. Upon her release from prison she immediately returned to her activism. In 2003, she was arrested for a second time while attending an anti-Castro demonstration and sentenced to twenty years in jail. One year and five months into her term, Ms. Roque suffered a heart attack and was released.

While both Mr. Rojas and Ms. Roque had trials, many political people are not as lucky as if it was worthy of the name. According to Mr. Rojas, he was told prior to his trial that the verdict and sentence would be. Mr. Rojas and Ms. Roque are not alone. They inform me that there are still 1,500 prisoners of conscience languishing in Cuban jails for doing nothing more than exercising a right to free speech that their government refuses to recognize.

Following this meeting we drove to a luncheon meeting with President Fidel Castro. I had met with Castro during two prior visits to Cuba in 1999 and 2002 and found the experience to be worthwhile. As before, I found Castro to be an engaging host. He has an easy wit and enjoys a good-natured exchange. Yet beneath the joking was a serious undercurrent. Having just come from a meeting with dissidents, I pressed Castro to release the political prisoners in his jails. Castro launched into a diatribe on his efforts to provide health care to third world countries. Castro discussed this topic at length, and it quickly became clear that he believes this effort will be his central legacy. Cuba, a country of 11 million, has 70,000 doctors due to Castro’s early emphasis on teaching Venezuelans to be doctors. Mr. Brownfield sets forth a pragmatic approach to Venezuela. While fundamental differences exist between our two countries, he argues, we can and must cooperate on those issues where we share an agenda, namely oil and drugs.

Oil. Venezuela lacks the infrastructure to refine more than one-fourth of the oil it produces. Venezuelan oil is heavier than most and needs special refineries, and these refineries are located in the United States. In addition, Venezuela is relatively close to the United States when compared to other United States suppliers and other Venezuelan markets. Thus continued cooperation on oil is imperative for both nations.

Venezuela also has an interest in combating drugs. There have been some recent conflicts over the specifics of fighting drugs. Only a week
before our trip, President Chavez announced that he was suspending all cooperation with our DEA. The United States, in turn, suspended the visas of three high ranking Venezuelan law enforcement officials. Yet beneath the conflict of the interests and goals remain and can serve as a motivation to overcome these differences and proceed with the important work of drug interdiction.

The Venezuelan President, Hugo Chavez, has been criticized for governing in an anti-democratic fashion. While in Caracas, I wanted to hear directly from those who held this view and arranged a meeting with an activist named Alejandro Plaz and one of his associates. Mr. Plaz is the President of Sumate, a Venezuelan non-governmental organization dedicated to electoral observation and what he calls “democratic observation” — i.e. monitoring the leading indicators of a healthy democracy such as human rights and freedom of speech. These activities have stirred the ire of President Chavez’s regime. Mr. Plaz has been charged with conspiracy to destroy the Republican system in Venezuela and if convicted would face 8 to 16 years in prison.

The core element of the allegation of “conspiracy” is that Mr. Plaz accepted a $31,000 grant from the National Endowment for Democracy. The Venezuelan Government argues that since teaching about democracy is a political activity, and political activities cannot be funded from abroad, Mr. Plaz has violated the law. By all accounts, however, including an analysis conducted by the American Bar Association, this is a political trial aimed to intimidate a man perceived to be a political opponent.

Mr. Plaz also detailed how Chavez loyalists in the legislature used a simple majority vote to change the rule requiring a supermajority to amend certain basic laws of the nation. Having thus lowered the threshold, the legislature has used simple majorities to expand the number of seats on the Supreme Court and pack these seats with Chavez loyalists as well as to fill the election boards with Chavez loyalists.

We next drove to the Venezuelan foreign ministry where we met with the Venezuelan Foreign Minister Ali Rodriguez Araque and the Venezuelan Minister of Interior and Justice Jesse Chacon. Foreign relations are the hottest “mule” trade. In the sixties the government started this practice, but it’s a positive note by stating that despite the differences which the United States and Venezuela may have in the political sphere, our two nations have many shared interests in oil and drug interdiction and must emphasize our common goals. Interior Minister Chacon picked up on the theme of drug interdiction and went on at some length about Venezuela’s efforts to fight the use of its territory as a transit point for Colombian drugs. According to the Ministry of the Interior, over 1,800 tons of cocaine and heroin in 2004 and 42 tons in 2003. He then spent some time discussing the recent controversy between our DEA agents in Venezuela and the Venezuelan government. He set forth his government’s side of the story, and focused on alleged inappropriate actions by our DEA agents including the use of “controlled deliveries” to ship illegal drugs out of Venezuela in contravention of Venezuelan law.

Immediately following this meeting, we drove to Miraflores Palace where I met with Venezuelan President Hugo Chavez. We were joined by the two Ministers with whom I had previously met as well as U.S. Ambassador Brownfield. President Chavez began the meeting with an extended discussion about the importance of drug interdiction to both of our countries. He noted that drugs are a destabilizing force in the countries victimized by them. He then spoke about the deteriorating relations between the United States and Venezuela. He expressed concern in particular about statements coming from the US. trying to destabilize Latin America. He also said he is concerned about his U.S. ambassador’s lack of access to the White House and high ranking executive branch officials.

President Chavez was about having met President Clinton on three occasions, one of which was at the United Nations. President Chavez believed that his relations with President Clinton were good and would like to see similar relations restored. President Chavez also spoke about Venezuela’s oil resources and his plans for billions of dollars of investments to increase oil production.

After the President’s extensive opening statement, I responded that good relations between the United States and Venezuela are very important to both countries. I told the President that we appreciate his help in stopping the flow of drugs from Columbia and South America and the importance of Venezuelan oil to the United States and the world. I expressed my view that United States companies would be willing to invest substantial sums to improve Venezuelan oil production and help them produce oil for the world and help Venezuela generate revenue money to fight poverty. I then took up the dispute between Venezuelan narcotics officers and the DEA and suggested that all facts should be put on the table exactly what occurred so that both parties are then in a position to decide what steps could be taken to resolve the dispute. President Chavez said that this was a good idea and that consideration ought to be given to having a new agreement on drug interdiction.

President Chavez later spoke at some length about President Castro and his efforts to provide extensive medical personnel to Venezuela. Chavez commented that he had discussed my meetings with Castro and thought that they were productive. Chavez then returned to the topic of oil and pointed out that a Venezuelan company, presumably Citgo, had 12,000 gas stations and 8 refineries in the United States. He then reiterated his concern about statements from the U.S. regarding Venezuela destabilizing Latin America. Chavez said that public opinion in Venezuela was running against the United States because of these statements.

At the conclusion of our meeting, President Chavez agreed that it would be useful for his Foreign Minister and Minister of the Interior to meet with our Ambassador the following week to try to resolve United States/Venezuela differences on drug enforcement. Previously, all of our Ambassador’s efforts to arrange such a meeting had been rejected.

On Thursday, August 18 we flew to Liberia, Costa Rica. Our first meeting that afternoon focused on the drug issue. We sat down with Paul Knierim, our top DEA agent in Costa Rica, and his counterparts, Alfonso Solorano, who is the Director of the Costa Rican Drug Control Police. Although no drugs are grown or processed in Costa Rica, the nation and the rest of Central America act as a crucial transit route for smugglers bringing South American drugs to the markets in North America and Europe.

Drugs are transported overland on Costa Rica’s roads, by sea through both its Pacific and Caribbean territorial waters, as well as over Costa Rica’s air-space in private planes and on passenger jets. These operations are often sophisticated. In one smuggling ring that was uncovered, re-fueling ships and smuggling boats at fixed points along the Costa Rican coast so that the boats would not have to risk detection by coming ashore.

The region faces its own set of issues. The Trans American Highway, an important overland corridor for drugs, passes through this region and has been the site of increased drug traffic in recent years. Also, the Daniel Oduber international airport outside of Liberia has become a major passenger traffic in recent years, especially to and from the United States, as the local tourist industry and real estate markets have developed. This increase traffic provides an opportunity for smugglers to blend into the crowd. Thus authorities have found that drug traffickers are sending more smugglers on the planes to transport drugs northward. These “mules” typically transport the drugs by placing them in latex bags and swallowing them, a practice which can prove fatal if the latex bags break.

I was pleased to learn that in Costa Rica cooperation between our DEA and the local authorities is excellent. We have five of our agents stationed in Costa Rica with the Costa Ricans to investigate and interdict drug shipments. Success is difficult. Mr. Knierim of our DEA told me that they know they are having an impact, since their actions force the traffickers to take fewer risks. But he also realizes that they have not been able to defeat the smugglers. The battle continues.
Later in my visit, I met with Dr. Rolando Herrero, a leading cancer researcher who has been a pioneer in the exploration of the connection between viral infections and cancer. In particular, in a series of studies conducted in the 1980s and early 1990s, Dr. Herrero demonstrated that an infection with the Human Papilloma Virus, HPV, a sexually transmitted disease, and cervical cancer. Having proven this connection, Dr. Herrero is now conducting a trial of a vaccine that could prevent the spread of the virus and thus significantly lower the incidence of cervical cancer. This vaccine trial received $5 million in NIH funding through the National Cancer Institute this year. Given the prevalence of the HPV virus among sexually active young Americans, and the enormous expense of pap smears and treatments, this trial has obvious importance for the protection of women's health in the U.S.

Dr. Herrero has conducted his studies, including the current vaccine trial, in the Guanacaste Province in northwest Costa Rica. He explained that because of the relative stability of the local female population aged 18-25, this region has been an ideal location for the extensive yearly follow up that would not be possible in the more mobile societies of America and Europe. As a result of his extensive prior work in the region, Dr. Herrero also has an impressive infrastructure in place to support these on-going studies by a highly professional team of 150 scientists and health care workers who know the local population and its habits well.

Finally, we drove to the offices of Mr. Bernardo Rojas, the Director of Ecodesarrollo, a private company which has been given a concession from the Costa Rican government to develop an area known as the Papagayo Peninsula on the Pacific Coast of northern Costa Rica. Rojas and this innovative public/private partnership can serve as a model for other countries wishing to develop their tourism industry while preserving the environment and respecting local populations.

Specifically, the Ecodesarrollo Company has been given the rights to develop and manage an 840 hectare peninsula for a period of 49 years, with a right to renew the concession for another 21 years. To achieve this, the company must meet a series of significant requirements. First, it must build 9 hotels and 3 golf courses in this area within a 28-year period which began in 1999. To date, two hotels and one golf course have been built to very impressive standards and have begun attracting tourists from around the world.

While conducting extensive construction, the developers are required to preserve the environment. They must preserve 70 percent of the green areas and set aside two conservation zones. They have also put into place extensive water treatment and recycling and a project to repopulate the local forests with local species of plants. The developers have focused on the prevention of forest fires with great success. Before the project began, there were 18 consecutive years of forest fires during the dry season. Since development began, there have been six dry seasons without any fires.

Finally, they must assist the local population. The company is required to build 2,000 residential units in the region. It must also provide additional funding and programs to the local schools and colleges.

While in Costa Rica I learned that the day after my meeting with Venezuela’s President Chavez, Secretary of Defense Donald Rumsfeld made some critical comments about the Venezuelan leader during a visit to Peru. I was concerned that Mr. Rumsfeld's rhetoric had the potential to erode the progress we had made with President Chavez during our visit. Accordingly, I wrote to Secretary Rumsfeld and indicated my concerns with Chavez, and my belief that a window of opportunity had been opened to resolve our disagreement with Venezuela over drug interdiction policy. I suggested that, at least for the time being, we should have an open line of communication with Venezuela.

Our next and final destination was Mexico City, Mexico. Given our long common border, Mexico presents the greatest challenges and opportunities in the war on drugs and terror and on the immigration issue. Good relations with Mexico are crucial to both of our nations, and I was very glad for the opportunity to learn about these issues first hand.

On my first morning in Mexico we were met at our hotel by our Ambassador, Antonio Garza. Prior to his assignment to Mexico, Ambassador Garza was elected Railroad Commissioner of Texas and appointed by then Governor Bush to be Texas’s Secretary of State. Ambassador Garza has a detailed knowledge of the issues facing our two countries, and I believe he is serving us very well in Mexico.

From the hotel we drove to the Mexican Foreign Ministry for a breakfast with a group of Mexican government officials to discuss the two most important issues before us: drugs and immigration. The group included Geronomo Gutierrez, Mexico’s Under Secretary of Defense, President Bush’s personal representative to Mexico, and Eduardo Medina Mora, the Director of Mexico’s Center for National Security Investigations, Mexico’s equivalent of the CIA.

I began our breakfast by asking my hosts about the problem of the drug cartels and the recent violence in Nuevo Laredo, a town just south of the border with Texas, where rival cartels have been fighting each other in the streets with machine guns and rocket launchers. Mr. Mora informed us that the authorities have been successful in fully prosecuting the leaders of some of the country’s largest drug cartels, including a major cartel in Baja, California and the Gulf Cartel operating south of Texas. I was also informed that the U.S. has been providing crucial assistance in this effort. We have helped to train, equip and fund a new, professional Federal police force to replace the corrupt and inefficient predecessor. The new force now numbers at 7,000 members. According to Mr. Mora, the next big challenge facing the Mexicans in the war on drugs is to replicate at the state and local level what they have accomplished at the federal level by replacing ineffective and/or bribed police forces with professional police forces capable of winning the fight against the cartels. I was informed that the U.S. can be helpful in this effort much as we were in building the Federal police by providing money, equipment and training.

Extradition of drug lords to the U.S. is a key component in this fight against the drug cartels. Mexican prisons fail to deter drug lords, and there are stories of many who, through bribes, have been able to get everything they need to manage their empires from behind bars. I have been told repeatedly, however, that Mexican drug lords are terrified by the prospect of going to American prisons where they serve hard time.

Unfortunately, the Mexican courts have created a serious impediment to extradition to the U.S. Like many European countries, Mexico is opposed to the death penalty and will not extradite an individual to the U.S. if that individual may face the death penalty upon conviction. Yet the Mexican courts have extended this policy in a unique way. Three years ago the Mexican Supreme Court held that life imprisonment without the possibility of parole is the equivalent of the death penalty since the prisoner will die in jail, and therefore a prisoner who would face a life sentence in the U.S. cannot be extradited to the U.S. In the meantime, the Mexican courts have gone so far as to declare that a 20-year sentence is the equivalent of the death penalty when imposed on a 60-year old convict, since someone of that age will likely die in prison.

My Mexican hosts expressed displeasure with these court decisions and told me they will seek their review. Still, despite these setbacks, extraditions are at their highest level ever, exceeding thirty a year in recent years. Unfortunately, the drug lords are terrified by the prospect of going to American prisons where they serve hard time.
possibility of parole, it may well facilitate the extradition while still providing a serious sentence for the offenders.

On the immigration front my hosts assured me that Mexico is making a serious effort to reduce the flow of illegal immigrants from Mexico into the United States. These efforts are largely focused on limiting the flow of illegals from third countries as opposed to the flow of Mexicans themselves. Before they seek to illegally enter the United States, hundreds of thousands of would-be immigrants from South and Central America must first illegally enter Mexico. But Mexico is cracking down on these illegals and is deporting them back to their home countries in large numbers. I was informed that last year the Mexicans deported over 200,000 such illegals. The Mexicans are also requiring visas for visitors from countries such as Brazil and Ecuador who did not previously need them.

The Mexicans have also agreed to permit the U.S. to implement an interior repatriation program. Typically, when we catch an illegal immigrant, we deposit them on the other side of our border with Mexico where they are detained, while in jail some drug lords have been asked to extradite 34 people to the United States. Last year the Mexicans had never extradited anyone, and a long-term approach. In the short term, President Fox replied that it was winnable. President Fox stated that the cause of the cartels could be won having observed the problems in Colombia since the early 1980s and having now seen the problems in Venezuela and Costa Rica.

On the violence in Nuevo Laredo, President Fox stated that the cause was the fight between rival drug cartels for control of the city. He is using his military in Nuevo Laredo. I told President Fox that I was not optimistic that the war over the drug cartels could be won having observed the problems in Colombia since the early 1980s and having now seen the problems in Venezuela and Costa Rica. I asked the President if he felt that war was winnable. President Fox replied that it would be very difficult to win the war on drugs as long as the demand for drugs remains strong. But he believes that the fight must continue.

On the issue of violence in Nuevo Laredo and elsewhere, the President told me that Mexico has both a short-term and a long-term approach. In the short term, Mexico has jailed 40,000 members of the drug cartels in a 4-year period. Among those in prison are six of the country’s major drug lords. The President complained, however, that even while in jail some drug lords have been able to influence the cartels by bribing prison guards for access to telephones and other means of communication. Fox then spoke in more general terms about the problem of police corruption at the local level. He noted that police earn a salary of $600 a month but are offered bribes in the thousands. In Nuevo Laredo alone, 1,100 policemen were fired from their jobs last month for corruption. The Federal Government has sent over 1,500 policemen into the area to stem the violence.

In the long term, President Fox told us that he is trying to foster greater cooperation between the Mexican Federal Government and other Mexican states. To do so would require passage of legislation that has long been pending in the Mexican Congress. President Fox’s party controls neither house of Congress and so far this legislation has not been enacted. To emphasize the importance of better cooperation from local police, President Fox pointed out that there are approximately 400,000 local police and only 10,000 Federal police. He also noted that approximately 95 percent of all crime consists of violations of state and local laws, while only 5 percent is Federal.

On the issue of extradition, President Fox told me that he would like to extradite more criminals to the United States but is limited by what his Supreme Court has done. While he would like to see this opinion overruled, he is sensitive not to take any action which would be counterproductive. But he is working hard in the fight against drugs. He told me that earlier that day he spent 2 hours with his counter-narcotics experts. He plans to meet with the governors of Arizona and New Mexico to discuss the states of emergency that they have declared in response to the influx of illegal drugs and immigrants.

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ADDITIONAL STATEMENTS

HONORING RALPH CURTIS

Mr. ALLARD. Mr. President, I would like to take a moment to recognize one of my constituents, Mr. Ralph Curtis. Mr. Curtis has served as manager of the Rio Grande Water Conservation District for 25 years. He took over the managerial position when the organization was very small, consisting of just Ralph and one other employee. The time and energy that Ralph has given...
to the Rio Grande Water Conservation District has made this organization the well respected entity that it is within the San Luis Valley and Colorado.

Because he grew up on—and later managed—his family’s ranch in Saguache, Ralph has long been aware of the importance of water to the San Luis Valley. Under his direction, the district took a leadership role in fighting against the American Water Development Inc., water grab, in water conservation and in proactive efforts on behalf of endangered species such as the Southwestern Willow Flycatcher.

Ralph’s community contributions have not gone unmarked either. He has been honored with numerous awards such as: the Wayne Aspinall Water Leader of the Year, San Luis Valley Wetlands Stewardship Award, Friend of 4-H, Distinguished Service Award for Conservation of Natural Resources, Support of Colorado Water Resources for the Conservation Districts, and he was inducted into the Honorable Order of the Water Buffalo.

Ralph has always looked ahead to the next challenge. He always has looked forward to the next hill, in order to see where the road will lead him. I would like to wish Ralph and his wife Gloria the very best as they walk down that new road together looking for new challenges.

CONGRATULATIONS TO JAY DAVIDSON

- Mr. BUNNING, Mr. President, I pay tribute and congratulate Jay Davidson on his reception of an America Honors Recovery Award given to him by the Johnson Institute, a nationally recognized organization dedicated to helping people overcome alcohol and substance addiction.

- Mr. Davidson has dedicated his life to the cause of fighting addiction. He does this by serving as the president and CEO of The Healing Place, based in Louisville, KY. Under Mr. Davidson, this center has achieved a success rate of 65 percent, which is five times the national average. The efforts of The Healing Place have been so successful that this year Governor Ernie Fletcher has announced that it will serve as a model to 10 other shelter and recovery centers throughout Kentucky. In fact, this model has been effective enough that other branches of The Healing Place have been opened in Lexington, KY, Raleigh, NC, and Richmond, VA.

The citizens of Kentucky are fortunate to have the leadership of Jay Davidson. His example of dedication, hard work and compassion should be an inspiration to all throughout the Commonwealth.

He has my most sincere appreciation for this work and I look forward to his continued service to Kentucky.

TRIBUTE TO PATRICIA M. DIXON

- Mr. GRAHAM, Mr. President, today I wish to recognize the outstanding service and dedication in the field of economic development of Mrs. Patricia M. Dixon, this on the occasion of her retirement from the Economic Development Administration, United States Department of Commerce effective today, September 28, 2005.

- Mrs. Dixon has been honorably at the Economic Development Administration for 33 years, most recently and prominently as the Economic Development Representative to the State of South Carolina. Her contributions to the work of the South Carolina Economic Development Districts are numerous and have greatly contributed to the economic progress of the most distressed areas of the State. Her work has been widely recognized most notably by the South Carolina Association of Regional Councils, which awarded her their highest honor, the Outstanding Staff Award in 1991.

- Mrs. Dixon has demonstrated her work in disaster recovery and base closures, saving jobs, solving solid waste problems, expediting opportunities and rebuilding tax bases. Her innovative approaches to economic development problems and issues have been replicated in other communities. She also served as the first Federal cochair of the South Carolina Rural Development Council under the President’s Initiative for Rural Development.

- Mrs. Dixon continues to serve on the executive committees of both the North and South Carolina rural development councils. In addition, she was instrumental in the establishment of revolving loan funds for economic development districts in South Carolina.

- Mrs. Dixon has garnered the personal and professional respect and admiration of her friends and colleagues at the Economic Development Administration and elsewhere. She represents the finest of qualities in a public servant and has been an incomparable asset to the greater effort of improving quality of life for the people of South Carolina. In celebration of the retirement of Mrs. Patricia M. Dixon will be a great loss to the EDA and the State of South Carolina, but I wish her great success and happiness in her future.

HONORING IOWA COMMUNITY LEADERS

- Mr. HARKIN, Mr. President, every year the Iowa Council for International Understanding honors immigrants and refugees in Iowa who have in the words of the council, “achieved, belonged and contributed to our community in a significant way.”

The ICUI began in 1938 when a group of volunteer joined forces to aid immigrants fleeing the war in Europe. Since their founding, the ICUI has continued to provide cultural services to both the immigrant community and to native-born Iowans. The United States has always been a land of hope for many around the world seeking refuge from oppressive regimes, and it is my belief that each generation of immigrants has enriched our Nation both culturally and economically. My mother was an immigrant from Slovenia, and I am proud to be a first generation American.

I take this opportunity to join in honoring the recipients of this year’s ICUI awards and to thank and congratulate them for all they have achieved and contributed to Iowa’s communities.

Joe Gonzalez was born in Mexico and immigrated to Des Moines in 1957. In 1971, he joined the Des Moines Police Department. He was one of the first Hispanic officers in the department and has garnered numerous awards, on both the State and national level, over his 33-year tenure. Among other things, Officer Gonzalez has been particularly active in aiding crime victims and victims of sexual and domestic abuse. After the September 11 attacks, he worked at Ground Zero.

- Sonia Parras Konrad immigrated to the United States 9 years ago from Granada, Spain. She was trained as a lawyer and is most recently a graduate of Drake University Law School. Today she practices law and Konrad is being honored today for her passionate dedication to helping victims of domestic and sexual violence, particularly within Spanish speaking communities. Among the programs she has founded is LUNA, Latinas Unidas por un Nuevo Amanecer—Latinas United for a New Dawn—designed to prevent and deal with the effects of domestic and sexual violence. This program has aided countless Iowans and has been used as a model in the United States.

Juliet Cunningham emigrated from Kirkuk, Iraq, to the United States in 1979 to pursue advanced educational opportunities. She is actively involved with many Iowa Institutions, including the Iowa State University College of Engineering and Research Complex, Des Moines Science Center, Society of Women Engineers and the West Des Moines United Methodist Church. In 1994 Ms. Cunningham founded Interactive Services Inc., a soil, environmental, and construction materials consulting firm with her husband. Of particular note is her role in helping get a TEAM Services laboratory in central Iowa accredited for the testing of construction materials, making it the first laboratory in Iowa with these capabilities.

- Dr. Liansuo Xie was born in 1958 and grew up in China’s Hebei Province. He worked as a mechanic in a paper manufacturing plant there before studying to receive a B.S. from the Beijing Agricultural Engineering University in 1982. Shortly thereafter, he married and came to the U.S. to study further at Iowa State University where he eventually earned a Ph.D and was honored with a Research Excellence award. He is widely considered to be one of the best engineers at the Townsend Engineering Company in Des Moines, where he has worked since 1990, for his work on defect detection productivity. Finally, Dr. Liansuo is a long-standing contributor to his community, serving as a founding member of...
the Iowa Chinese Language School, the Sister States of Iowa, Hebel Committee, and acting as a tour guide for Chinese delegations to Iowa and the United States.

B.J. Do arrived in Iowa in 1975 at the age of 15. He arrived wearing very shorts and speaking very limited English, having fled Vietnam at the end of the Vietnam War. Despite his humble beginning, he went on to earn both B.S. and M.S. degrees in electrical and computer engineering from the University of Iowa. From there the sky was the limit, as Mr. Do went on to work on, design for, and manage projects for major international companies all over the United States. He has since returned to Iowa where he is the co-founder and CEO of ABC Virtual Communications, a software product and services company based in west Des Moines. He has received recognitions for his accomplishments from myriad institutions, including the University of Iowa and the State of Iowa, along with receiving the Ernst and Young Entrepreneur of the Year Award in 1999.

We are proud of their achievements and are pleased they are members of our community. I am sure that the ICUIU would agree that for every story told today, countless others remain untold.

TRIBUTE TO THE SOUTHEAST MISSOURIAN

• Mr. TALENT. Mr. President, I wish to pay tribute to a historically significant anniversary for one of Southeast Missouri's most widely recognized and respected institutions. For the past year, the Southeast Missourian, located in Cape Girardeau, MO, has been celebrating its grand centennial.

Its first issue rolled off the presses on October 3, 1904, with George and Fred Naeter at the helm. The brothers had purchased the small business with hopes of one day transforming it into the thriving company thousands of faithful readers are familiar with today. After a number changes, the Southeast Missourian was formally purchased by the Ernst and Young Entrepreneurs of the Year Award in 1999.

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MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, 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 and a treaty which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

ENROLLED BILLS SIGNED

At 9:34 a.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

H.R. 3703. An act to designate the facility of the United States Postal Service located at 8501 Philatelic Drive in Spring Hill, Florida, as the “Karl Malden Staley Lights On After School”.

H.R. 3863. An act to provide the Secretary of Education with waiver authority for the reallocation rules in the Campus-Based Aid and to extend the deadline by which funds must to be reallocated to institutions of higher education due to a natural disaster.

H.R. 3864. An act to assist individuals with disabilities affected by Hurricane Katrina or Rita through vocational rehabilitation services.

H.J. Res. 66. Joint resolution supporting the goals and ideals of “Lights On After School”, a national celebration of after-school programs.

The message also announced that the Senate has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 209. Concurrent resolution supporting the goals and ideals of Domestic Violence Awareness Month and expressing the sense of Congress that Congress should raise awareness of domestic violence in the United States and its devastating effects on families.

The message further announced that the House agrees to the amendment of the Senate to the bill H.R. 3200, an act to amend title 38, United States Code, to enhance the Servicemembers’ Group Life Insurance program, and for other purposes.

The message also announced that the House disagrees to the amendment of the Senate to the bill H.R. 2360 making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2006, 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 behalf of the House: Mr. Roggens of Kentucky, Mr. Wamp, Mr. Latham, Mrs. Emerson, Mr. Sweeney, Mr. Kolbe, Mr. Istook, Mr. LaHood, Mr. Crenshaw, Mr. Carter, Mr. Lewis of California, Mr. Sabo, Mr. Price of North Carolina, Mr. Serrano, Ms. Roybal-Allard, Mr. Bishop, Mr. Berry, Mr. Edwards, and Mr. Obey.

At 3:13 p.m., a message from the House of Representatives, delivered by Mr. Croatt, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

H.R. 3212. An act to extend the waiver authority of the Secretary of Education with respect to student financial assistance during a war or other military operation or national emergency.

H.R. 3200. An act to amend title 38, United States Code, to enhance the Servicemembers’ Group Life Insurance program, and for other purposes.

H.R. 3657. An act to designate the facility of the United States Postal Service located at 200 South Barrington Street in Los Angeles, California, as the “Karl Malden Station.”

H.R. 3767. An act to designate the facility of the United States Postal Service located at 57 West Street in New York, New York, as the “Randall D. Shughart Post Office Building”.
at 2600 Oak Street in St. Charles, Illinois, as the “Jacob L. Frazier Post Office Building”.

MEASURES REFERRED

The following bills and joint resolution were referred as indicated:

H.R. 2062. An act to designate the facility of the United States Postal Service located at 57 West street in Newville, Pennsylvania, as the “Randall D. Shughart Post Office Building”; to the Committee on Homeland Security and Governmental Affairs.

H.R. 3739. An act to provide assistance to families affected by Hurricane Katrina, through the program of block grants to States for temporary assistance for needy families. A bill to provide the Secretary of Education with waiver authority for students who are eligible for Federal student grant assistance who are adversely affected by a major disaster. A bill to designate the facility of the United States Postal Service located at 8501 Philadelic Drive in Spring Hill, Florida, as the “Staff Sergeant Michael Schafer Post Office Building”; to the Committee on Homeland Security and Governmental Affairs.

H.R. 3736. An act to protect volunteers assisting the victims of Hurricane Katrina; to the Judiciary.

H.J. Res. 66. Joint resolution supporting the goals and ideals of “Lights On After-school!”; a national celebration of after-school programs; to the Committee on Agriculture, Nutrition, and Forestry.

EC-4015. A communication from the Committee on Agriculture, Nutrition, and Forestry; to the Committee on Agriculture, Nutrition, and Forestry.

EC-4016. A communication from the Chairman and Chief Executive Officer, Farm Credit Administration, transmitting, pursuant to law, the report of a rule entitled “Amicable Resolution of Disputes” (RIN 5700-AE10) received on September 21, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC-4017. A communication from the Chairman and Chief Executive Officer, Farm Credit Administration, transmitting, pursuant to law, the report of a rule entitled “Methylamine, Isocyanate and_isocyanate; reporter;” (RIN 5700-AE15) received on September 21, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC-4018. A communication from the Chairman and Chief Executive Officer, Farm Credit Administration, transmitting, pursuant to law, the report of a rule entitled “Amicable Resolution of Disputes” (RIN 5700-AE10) received on September 21, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC-4019. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled “Amicable Resolution of Disputes” (RIN 5700-AE10) received on September 21, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC-4020. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled “Amicable Resolution of Disputes” (RIN 5700-AE10) received on September 21, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC-4021. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled “Amicable Resolution of Disputes” (RIN 5700-AE10) received on September 21, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC-4022. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled “Amicable Resolution of Disputes” (RIN 5700-AE10) received on September 21, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC-4023. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled “Amicable Resolution of Disputes” (RIN 5700-AE10) received on September 21, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC-4024. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled “Amicable Resolution of Disputes” (RIN 5700-AE10) received on September 21, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

EC-4025. A communication from the Principal Deputy Associate Administrator, Office of Policy, Economics, and Innovation, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled “Amicable Resolution of Disputes” (RIN 5700-AE10) received on September 21, 2005; to the Committee on Agriculture, Nutrition, and Forestry.

MEASURES DISCHARGED

The following measure was discharged from the Committee on Energy and Natural Resources by unanimous consent, and referred as indicated:

S. 1219. A bill to authorize certain tribes in the State of Montana to enter into a lease or other temporary conveyance of water rights to meet the water needs of the Dry Prairie Rural Water Association, Inc.; to the Committee on Indian Affairs.

MEASURES PLACED ON THE CALENDAR

The following bill was read the first and second times by unanimous consent, and placed on the calendar:

S. 1783. A bill to amend the Employee Retire- ment Income Security Act of 1974 and the Internal Revenue Code of 1986 to reform the pension funding rules, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, were read the first and the second times by unanimous consent, and referred as indicated:

EC-4033. A communication from the Director, Division for Strategic Human Resources Policy, Office of Personnel Management, transmitting, pursuant to law, the report of a rule entitled “Recommended Final Employment System: Death Benefits and Employee Refunds” (RIN2006-AC57) received on September 18, 2005; to the Committee on Homeland Security and Governmental Affairs.

EC-4034. A communication from the Secretary of Agriculture, transmitting, a report of draft legislation to authorize the Secretary of Agriculture, at the request of a participating State to convey to the State, by quitclaim deed, without consideration, and on a free and clear basis, lands of the United States held within the State under the Forest Legacy Program; to the Committee on Agriculture, Nutrition and Forestry.

EC-4035. A communication from the Secretary of Energy and the Secretary of Agriculture, transmitting, pursuant to law, a report entitled “Final Interpretation and Development Initiative for Fiscal Year 2004”; to the Committee on Agriculture, Nutrition, and Forestry.

EC-4036. A communication from the Chairman and Chief Executive Officer, Farm Credit Administration, transmitting, pursuant to law, the report of a rule entitled “Amicable Resolution of Disputes” (RIN 5700-AE10) received on September 21, 2005; to the Committee on Agriculture, Nutrition, and Forestry.
REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. STEVENS, from the Committee on Appropriations, with an amendment in the nature of a substitute:

H.R. 3828, a bill making appropriations for the Department of Defense for the fiscal year ending September 30, 2006, and for other purposes.

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. AKAKA (for himself and Mr. LEVIN):

S. 1779. A bill to amend the Humane Methods of Livestock Slaughter Act of 1958 to ensure the humane slaughter of nonambulatory livestock, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

By Mr. SANTORUM (for himself, Mr. LIEBERMAN, Mr. FRIST, Mr. HATCH, Mr. LEVIN, Mr. INOUYE, Mr. COLEMAN, and Mr. RUNNING):

S. 1780. A bill to amend the Internal Revenue Code of 1986 to provide incentives for charitable contributions by individuals and businesses, to improve the public disclosure of activities of exempt organizations, and to enhance the life expectancy of individuals by providing a tax deduction for contributions to charitable organizations for financial security purposes, and for other purposes; to the Committee on Finance.

By Mr. HATCH:

S. 1781. A bill to amend the Internal Revenue Code of 1986 to allow full expensing for the cost of qualified refinery property in the year placed in service, and to classify petroleum refining property as 5-year property for purposes of depreciation; to the Committee on Finance.

By Mr. BROWNBACK:

S. 1782. A bill to amend the Internal Revenue Code of 1986 to clarify that qualified personal services may continue to use the cash method of accounting, and for other purposes; to the Committee on Finance.

By Mr. GRASSLEY (for himself, Mr. ENZI, Mr. KENNEDY, and Mr. BAUCUS):

S. 1783. A bill to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to reform the pension funding rules, and for other purposes; placed on the calendar.

By Mrs. CLINTON (for herself and Mr. OBAMA):

S. 1784. A bill to amend the Public Health Service Act to promote a culture of safety within the health care system through the establishment of a National Medical Error Disclosure and Compensation Program; to the Committee on Health, Education, Labor and Pensions.

By Mr. CORNYN (for himself, Mr. LEAHY, Mr. HATCH, and Mr. KOHL):

S. 1785. A bill to amend chapter 13 of title 17, United States Code (relating to the vessel hull design protection), to clarify the distinction between a hull and a deck, to provide further protection of the protectability of a revised design, to provide guidance for assessments of substantial similarity, and for other purposes; to the Committee on the Judiciary.

By Mr. LOTT (for himself, Mr. COCHRAN, Mr. VITTER, Ms. LANDREU, Mr. CORNYN, and Mr. BURNs):

S. 1786. A bill to authorize the Secretary of Transportation to make emergency airport improvement project grants-in-aid under title 49, United States Code, for airport repairs and costs related to damage from Hurricanes Katrina and Rita; considered and passed.

By Mr. VITTER (for himself, Mr. GRASSLEY, Mr. CORNYN, and Mr. DEWINE):

S. 1787. A bill to provide bankruptcy relief for victims of natural disasters, and for other purposes; to the Committee on the Judiciary.

By Mr. BAUCUS:

S. 1788. A bill to amend section 524(g)(1) of title 11, United States Code, to predicate the discharge of debts in bankruptcy by any vermiculite mining company meeting certain criteria on the establishment of a health care trust fund for certain individuals suffering from an asbestos related disease; to the Committee on the Judiciary.

By Mrs. LINCOLN (for herself and Mr. COCHRAN):

S. Res. 255. A resolution recognizing the achievements of the United States Fish and Wildlife Service and the Waterfowl Population Survey; to the Committee on Environment and Public Works.

By Mr. SCHUMER (for himself, Mrs. CLINTON, Mrs. MURRAY, Mr. BINGHAMAN, and Mr. KENNEDY):

S. Res. 256. A resolution honoring the life of Sandra Feldman; considered and agreed to.

By Mr. BURR (for himself and Mr. MENENDEZ):

S. Res. 257. A resolution recognizing the spirit of Jacob Mock Doub and many young people who have contributed to encouraging youth to be physically active and fit, and expressing support for National Take a Kid Mountain Biking Day; considered and agreed to.

By Mr. FRIST (for himself, Mr. REID, and Mr. BENNETT):

S. Res. 258. A resolution to commend Timothy Scott Wineman; considered and agreed to.

By Mr. CRAIG (for himself and Mr. AKAKA):

S. Res. 259. A resolution commending the efforts of the Department of Veterans Affairs in responding to Hurricane Katrina; to the Committee on Veterans’ Affairs.

By Mr. SCHUMER:

S. Con. Res. 54. A concurrent resolution expressing the sense of Congress regarding a commemororative postage stamp honoring Jasper Francis Cropsey, the famous Staten Island-born 19th Century Hudson River Painter; to the Committee on Homeland Security and Governmental Affairs.

ADDITIONAL COSPONSORS

S. 258

At the request of Mr. DEWINE, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. 258, a bill to amend the Public Health Service Act to enhance research, training, and health information dissemination with respect to urologic diseases, and for other purposes.

S. 347

At the request of Mr. NELSON of Florida, the name of the Senator from California (Mrs. BOXER) was added as a cosponsor of S. 347, a bill to amend titles XVIII and XIX of the Social Security Act and title III of the Public Health Service Act to improve access to information about individuals’ health care operations and legal rights for care near the end of life, to promote advance care planning and decision-making so that individuals’ wishes are known should they become unable to
At the request of Mr. Bunning, the name of the Senator from South Dakota (Mr. Johnson) was added as a cosponsor of S. 1007, a bill to prevent a severe reduction in the Federal medical assistance percentage determined for a State for fiscal year 2006.

At the request of Mr. Kyl, the name of the Senator from North Carolina (Mr. Burr) was added as a cosponsor of S. 1046, a bill to amend title 28, United States Code, with respect to the jurisdiction of Federal courts over certain cases and controversies involving the Pledge of Allegiance.

At the request of Mr. Specter, the name of the Senator from Vermont (Mr. Jeffords) was added as a cosponsor of S. 1172, a bill to provide for programs to increase the awareness and knowledge of women and health care providers with respect to gynecologic cancers.

At the request of Mr. Biden, the names of the Senator from Arkansas (Mrs. Lincoln) and the Senator from Minnesota (Mr. Coleman) were added as cosponsors of S. 1197, a bill to reauthorize the Violence Against Women Act of 1994.

At the request of Mr. Bingaman, the names of the Senator from South Dakota (Mr. Johnson) and the Senator from Illinois (Mr. Durbin) were added as cosponsors of S. 1272, a bill to amend the Internal Revenue Code of 1986 to provide an alternative simplified credit for qualified research expenses.

At the request of Mr. Hatch, the names of the Senator from Colorado (Mr. Allard) and the Senator from Arkansas (Mrs. Lincoln) were added as cosponsors of S. 627, a bill to amend the Internal Revenue Code of 1986 to permanently extend the research credit, to increase the rates of the alternative incremental credit, and to provide an alternative simplified credit for qualified research expenses.

At the request of Mr. Roberts, the name of the Senator from Wyoming (Mr. Enzi) was added as a cosponsor of S. 713, a bill to amend the Internal Revenue Code of 1986 to allow self-employed individuals to deduct health insurance costs in computing self-employment taxes.

At the request of Mr. Bunning, the name of the Senator from Ohio (Mr. DeWine) was added as a cosponsor of S. 755, a bill to authorize the Secretary of Health and Human Services to make grants to nonprofit tax-exempt organizations for the purchase of ultrasound equipment to provide free examinations to women needing such services, and for other purposes.

At the request of Mr. Conrad, the name of the Senator from Iowa (Mr. Harkin) was added as a cosponsor of 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.

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S. 1007

S. 1046

S. 1060

S. 1172

S. 1197

S. 1272

S. 627

S. 713

S. 755

S. 911

S. 1238

S. 1358

S. 1402

S. 1406

S. 1407

S. 1409

S. 1411

S. 1479

S. 1573

S. 1575

S. 1579

S. 1589
At the request of Mr. CUBIN, the name of the Senator from South Dakota (Mr. JOHNSON) was added as a co-sponsor of S. 1700, a bill to establish an Office of the Hurricane Katrina Recovery Chief Financial Officer, and for other purposes.

At the request of Ms. CANTWELL, the name of the Senator from Hawaii (Mr. AKAKA) was added as a co-sponsor of S. 1735, a bill to improve the Federal Trade Commission's ability to protect consumers from price-gouging during energy emergencies, and for other purposes.

At the request of Mr. BAYH, the name of the Senator from Indiana (Mr. SCHUMER) was added as a co-sponsor of S. 1761, a bill to clarify the liability of manufacturers, distributors, and dealers of animal feed products for their role in the spread of diseases, and for other purposes.

At the request of Mr. THUNE, the name of the Senator from South Carolina (Mr. GRAHAM) was added as a co-sponsor of S. Con. Res. 25, a concurrent resolution expressing the sense of Congress regarding the application of Air Force for launch aid.

At the request of Mr. OBAMA, the name of the Senator from New York (Mr. SCHUMER) was added as a co-sponsor of S. Con. Res. 53, a concurrent resolution expressing the sense of Congress that the United States Department of Agriculture is not adequately prepared to address the threat of bovine spongiform encephalopathy (BSE) to animal and human health.

At the request of Mr. COLEMAN, the name of the Senator from Indiana (Mr. BAYH) was added as a co-sponsor of S. Res. 236, a resolution recognizing the need to pursue research into the causes, a treatment, and an eventual cure for idiopathic pulmonary fibrosis, supporting the goals and ideals of National Idiopathic Pulmonary Fibrosis Awareness Week, and for other purposes.

At the request of Mr. AKAKA (for himself and Mr. LEVIN):

S. 1779. A bill to amend the Humane Methods of Livestock Slaughter Act of 1958 to ensure the humane slaughter of nonambulatory livestock, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

Mr. AKAKA. Mr. President, I rise today to introduce the Downed Animal Protection Act, legislation intended to protect people from the unnecessary spread of disease. This bill would prohibit the use of nonambulatory animals for human consumption.

Nonambulatory animals, also known as downer animals, are data from European countries, downer cattle are among the highest risk population for BSE. According to the Harvard Study, the removal of nonambulatory cattle from the population intended for slaughter would reduce the potential spreading BSE by 82 percent. The USDA and the FDA have acknowledged that downed animals serve as a potential pathway for the spread of BSE. While both have entertained the idea of prohibiting the rendering of downed cattle, they have taken no formal action. It is imperative that we, Congress, ensure that downer livestock does not enter our food chain, and the best way to accomplish this task is to codify the prohibition of downer livestock from entering our food supply.

The Downed Animal Protection Act fills a gap in the current USDA and FDA regulations. The bill calls for the humane euthanization of nonambulatory livestock, both for interstate and foreign commerce. The euthanization of nonambulatory livestock would remove this high risk population from the portion of livestock reserved for our consumption. Due to the presence of other TSE diseases throughout the world, all animals that fit under the definition of livestock will be included in this bill.

The benefits of my bill are numerous, for both the public and the industry. On the face of it, the bill will prevent needless suffering by humanely euthanizing nonambulatory animals. The removal of downed animals from our products will insure that they are safer and of better quality. The reduction of the likelihood of spreading diseases would result in safer working conditions for persons handling livestock. This added protection against disease would help the flow of livestock and livestock products in interstate and foreign commerce, making commerce in livestock more easily attainable.

Some individuals fear that this bill would place an excessive financial burden on the livestock industry. I want to remind my colleagues that one single downed cow in Canada diagnosed with BSE in 2003 shut down the world's third largest beef exporter. It is estimated that the Canadian beef industry lost more than $1 billion when more than 30 countries banned Canadian cattle and beef upon the discovery of BSE. As the Canadian cattle industry continues to recover from its economic loss, it is prudent for the United States to be proactive in preventing BSE and other animal diseases from entering our food chain.

Today, the USDA has increased its efforts to test approximately ten percent of downed cattle per year for BSE, however, they do not go far enough. Because they still allow the processing of downer cattle.

According to a study performed by the Harvard School of the Public Health in conjunction with the USDA and the National Institute of Allergy and Infectious Diseases, downer cattle are among the highest risk population for BSE. According to the Harvard Study, the removal of nonambulatory cattle from the population intended for slaughter would reduce the potential spreading of BSE by 82 percent. The USDA and the FDA have acknowledged that downed animals serve as a potential pathway for the spread of BSE. While both have entertained the idea of prohibiting the rendering of downed cattle, they have taken no formal action. It is imperative that we, Congress, ensure that downer livestock does not enter our food chain, and the best way to accomplish this task is to codify the prohibition of downer livestock from entering our food supply.
However, it is my understanding that the USDA is looking to revisit this issue. I do not believe that now is the time to lower our defenses. We must protect our livestock industry and human health from diseases such as BSE. This bill reduces the threat of passing diseases from downed livestock to our food supply. It ensures downed animals will not be used for human consumption. It also requires higher standards for food safety and protects the human population from diseases and a livestock industry from economic distress.

American consumers should be able to rely on the Federal Government to ensure that meat and meat-by-products are safe for human consumption. I urge my colleagues to support this important bill. I ask unanimous consent that the text of the measure be printed in the RECORD.

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

S. 1779

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

SECTION 1. SHORT TITLE.

The text of the measure be printed in the RECORD.

Mr. SANTORUM (for himself, Mr. LIEBERMAN, Mr. FRIST, Mr. HATCH, Mr. LUGAR, Mr. SMITH, Mr. INOUYE, Mr. COLEMAN, and Mr. BUNNING):

S. 1780. A bill to amend the Internal Revenue Code of 1986 to provide incentives for charitable contributions by individuals and businesses, to improve the public disclosure of activities of exempt organizations, and to enhance the ability of low-income Americans to gain financial security by building assets, and for other purposes; to the Committee on Finance.

Mr. SANTORUM. Mr. President, I rise to introduce the CARE Act of 2005 along with Senator LIEBERMAN, a bill we have been trying to push through Congress since 2000. However, at no point in the last five years has the passage of this bill been so timely.

At a time where America appears divided on a War on Terror, Supreme Court nominations, and the relief effort in the gulf region, Americans are identifying with and giving to charitable organizations. In a recent Zogby poll, 86 percent of those polled rated private charities' response to Hurricane Katrina as excellent or good. By contrast, 32 percent described the government's response as excellent or good, and 67 percent said fair or poor.

The work of charitable organizations and their volunteers have been inspirational at a time when hopelessness recently held a hearing in the Finance Subcommittee of Social Security and Family Policy to hear from charitable organizations about their efforts around the gulf coast. Though the hearing was scheduled before the events of Hurricane Katrina, the amazing work being done by these organizations highlighted the need for charitable incentives to continue and expand the generosity we are seeing.

In response to Hurricane Katrina, we have seen organizations such as America's Second Harvest and the Florida Boulevard Baptist Church feed the hungry. We have seen that within 48 hours of Katrina, the Nation's fraternal benefit societies were housing, and providing supplies, clothes, toiletries, cash and beds to those in need in shelters both in Houston and in New Orleans. During the first week of this effort, fraternals had already expended upwards of $14 million on hurricane relief, a sum which is expected to increase as these efforts broaden. We see community foundations, such as the Baton Rouge Area Foundation, literally saving people's lives by helping Louisiana State University open a field hospital for 1,000 people in an old Kmart. And we see national organizations such as the YMCA of the USA providing program services such as emergency child care, recreation, and grief counseling. The YMCA has provided showers and other physical comforts and opened up their facilities as staging areas for relief, recovery and clean-up efforts. And the list goes on and on—not even considering the response of these same organizations and many others to Hurricane Rita.

The CARE Act is a bipartisan bill that received strong bipartisan support as it passed the Senate in the 108th Congress by a vote of 95-5. The House of Representatives passed companion legislation, the Charitable Giving Act, by a vote of 408-13. Sadly, this bill was blocked this bill from going to conference despite overwhelming support from both Houses and the general public.

The CARE Act of 2005 provides commonsense provisions to induce charitable giving. Among these include the above-the-line deduction for non-itemizers. More than two-thirds of Americans do not itemize on their tax returns, yet this group is estimated to contribute $36 billion to charities. Research indicates that lower and moderate-income individuals are more likely not to itemize on their tax returns, and that they give a greater percentage of their income than higher income individuals. It is only fair that they benefit for their generosity. As Major Hood from the Salvation Army
so eloquently wrote in his testimony at my hearing. "[t]he provision allowing non-itemizers to deduct charitable contributions can only encourage those Americans with smaller incomes—including young professionals who might otherwise be unlikely to give—to contribute to worthy causes. We do not discriminate among those in need, and we ask Congress not to discriminate in providing tax incentives for charitable giving.

The CARE Act also provides asset accounts for tax-free IRA charitable distributions for individuals aged 70 1/2 and over. My home State of Pennsylvania has the second highest percentage of seniors in the country. Many of these older Americans want to experience the joy of making a difference by giving, and this provision provides them that opportunity. Certainly, these individuals should not be penalized for contributing portions of their life's savings to a worthy cause.

Organizations have been generous during this crisis by donating food to those who need it. The CARE Act provides expanded incentives that will yield over $2 billion worth of food donations from farmers, restaurants, and corporations to help those in need. America's Second Harvest estimates that this is the equivalent of 676 million meals for hungry Americans over 10 years. Last year, the North American Mission Board of the Southern Baptist Convention helped provide 3 million meals to hungry people. At the time of my hearing they were serving one million meals a day. By allowing businesses to recoup production costs this provision will incentivize food donations and help our action fight hunger. For the first time, farmers, ranchers, small business and restaurant owners will benefit from the same tax incentives afforded major corporate donors for the donation of food to the needy.

The CARE Act also provides asset accounts for low-income individuals. 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 saving 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 small savings should add up, 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 poorest Americans by allowing them a one-time 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.

We have also seen the philanthropy of corporations such as Home Depot and Coca-Cola Company. The Home Depot Foundation has donated nearly $1 million to assist in the relief efforts. Coca-Cola Company donated $5 million and water and other beverages to the Federal Emergency Management Agency for its relief efforts. This is an appropriate time to gradually raise the caps on corporate contributions from 10 to 20 percent to encourage corporations to continue their social responsibility. We must also level the playing field for all corporate donations by expanding charitable incentives for S corporations to increase charitable giving.

In my home State of Pennsylvania, I have worked closely with the Pennsylvania Association of Nonprofit Organizations. I have heard from many of the nonprofits in my State about the pressing need for the charitable incentives we have in the CARE Act.

The time is now to expand charitable giving, both in my home State and throughout the Nation. One certainty we have seen is in every disaster that occurs in the world is the desire of fellow Americans to help those that are in need. We should commend that generosity by passing this legislation.

By Mr. HATCH:

S. 1781. A bill to amend the Internal Revenue Code of 1986 to allow full expensing for the cost of qualified refinery property in the year in which the property is placed in service, and to classify petroleum refining property as 5-year property for purposes of depreciation; to the Committee on Finance.

Mr. HATCH. Mr. President, just this past May, I stood at a gas station in Salt Lake City and announced the introduction of S. 1039, the Gas Price Reduction Through Increased Refining Capacity Act of 2005.

By standing near a gas pump charging $2.25 a gallon, I thought I was making a strong statement about the high price of gas and the need for greater refining capacity in our country.

That was only a few months ago, but hurricanes Katrina and Rita have since exposed the vulnerability of our Nation's refining infrastructure, and the gas prices in May now seem like the good old days.

I am pleased that the energy bill signed by President Bush this summer included the principal concept of S. 1039—that of providing a strong tax incentive to expand refinery capacity by allowing the cost to be written off immediately. Unfortunately, because of budget restrictions, my legislation had to be cut.

I have long been concerned that our shrinking number of refineries and the current 10-year depreciation period for refining equipment are a long-term obstacle to new investment in increased capacity. The current 10-year depreciation schedule for refineries is unwarranted, and it is past time that we level the playing field on depreciation for this critical and important sector of our energy industry.

On September 6, in the aftermath of Katrina, Mr. Bob Slaughter of the National Petrochemical & Refiners Association testified before the Senate Energy and Natural Resources Committee. He said that an important solution to our energy crisis would be "to expand the refining tax incentive provision in the Energy Act. Reduce the depreciation period for refining investments from 10 to five years in order to remove a current disincentive for refining investment. Allow expensing under the current language to take place as the investment is made rather than when the equipment is actually placed in service. Or decrease the percentage of expenses that could be increased as per the original legislation introduced by Senator HATCH."

I think it is important to recognize that, over time, this legislation will not cost the U.S. Treasury one dime. It will only allow refineries to change the timing of the depreciation of their equipment, but not the amount. And, we should keep in mind that when this...
bill leads to more refineries and increased capacity, we will have also increased the tax base.

I want to throw my full support behind the proposals recently announced by House Energy and Commerce Chairman Barton and House Resource Committee Chairman Pombo, which would take other approaches to increase the number of refineries in our Nation. From both a national security and an energy security perspective, I especially endorse a proposal by Chairman Pombo to locate new refineries on public lands near oil reserve deposits. Such a move will make our Nation more secure from attacks from terrorists and from Mother Nature. I understand that Senate Energy and Natural Resource Committee Chairman Pete Domenici is promoting similar proposals on the Senate side. And I applaud these men for their leadership.

We have learned that when it comes to our Nation’s energy security, refining is where we are the most vulnerable. It is not the time for half measures, but bold immediate action to establish a secure and independent refining program in this country. I hope my colleagues will join me in my efforts to achieve this goal. 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. 1781
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 “Refinery Investment Tax Assistance Act of 2005”.

SEC. 2. FULL EXPENDING FOR QUALIFIED REFINERY PROPERTY.

(a) IN GENERAL.—Subsection (a) of section 199 of the Internal Revenue Code of 1986, as added by section 123 of the Energy Policy Act of 2005, is amended by striking “50 percent of”.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in section 123 of the Energy Policy Act of 2005.

SEC. 3. PETROLEUM REFINING PROPERTY TREATED AS 5-YEAR PROPERTY.

(a) IN GENERAL.—Subparagraph (B) of section 168(e)(3) of the Internal Revenue Code of 1986 (relating to 5-year property) is amended by striking the period at the end of clause (v), by inserting “any petroleum refining property,” and by adding at the end the following new paragraph:

“(vi) any petroleum refining property.”;

(b) PETROLEUM REFINING PROPERTY.—Section 168(i) of such Code is amended by adding at the end the following new paragraph:

“(b) PETROLEUM REFINING PROPERTY.—

“(A) IN GENERAL.—The term ‘petroleum refining property’ means any asset for petroleum refining, including assets used for the distillation, fractionation, and catalytic cracking of crude petroleum into gasoline and its other components.

“(B) ASSET MUST MEET ENVIRONMENTAL LAWS.—Such term shall not include any property which does not meet all applicable environmental laws in effect on the date such property was placed in service. Purposes of the preceding sentence, a waiver under the Clean Air Act shall not be taken into account in determining whether the applicable environmental laws have been met.

“(c) SPECIAL RULE FOR MERGERS AND ACQUISITIONS.—Such term shall not include any property which was a part of an acquisition which was taken under subsection (e)(3)(B) by any other taxpayer in any preceding year.”;

(c) EFFECTIVE DATE.—(1) IN GENERAL.—The amendments made by this section shall apply to property placed in service after the date of the enactment of this Act.

(2) EXCEPTION.—The amendments made by this section shall not apply to any property with respect to which the taxpayer has entered into a binding contract for the construction thereof on or before the date of the enactment of this Act.

By Mrs. CLINTON (for herself and Mr. OBAMA):

S. 1781. A bill to amend the Public Health Service Act to promote a culture of safety within the health care system through the establishment of a Patient Safety Improvement and Compensation Program; to the Committee on Health, Education, Labor, and Pensions.

Mrs. CLINTON. Mr. President, I am pleased today to introduce legislation that will improve patient safety while helping to provide some relief to health care providers dealing with escalating medical liability costs.

We are dealing with a medical malpractice problem in this country that is jeopardizing patient safety and hurting our health care system. As I visit with doctors and hospitals in New York and around the Nation, I hear about the pressures and problems of escalating medical liability costs.

At the same time, we have all heard the terrifying statistic from the landmark 1999 IOM report stating that as many as 98,000 deaths every year are the result of medical errors. But, far fewer people know that the IOM suggests that 90 percent of medical errors are the result of failed systems and procedures, not the negligence of physicians.

We must do better. If properly designed, these systems and procedures could go a long way towards seriously reducing medical errors.

But, understanding the root causes of errors requires their disclosure and analysis. And that’s the fundamental tension between the medical liability system and our common goal of providing high quality care and improving patient safety in the health care system.

Studies have consistently shown that health care providers are reticent to report and analyze errors.

Moreover, we need to protect providers, insurers, and hospitals where these programs are in place. We need to protect providers, insurers, and hospitals from lawsuits in place. We need to protect providers, insurers, and hospitals from lawsuits where these programs are in place. We need to protect providers, insurers, and hospitals from lawsuits where these programs are in place. We need to protect providers, insurers, and hospitals from lawsuits where these programs are in place. We need to protect providers, insurers, and hospitals from lawsuits where these programs are in place.

That’s where this legislation comes in. We build on the patient safety bill that was signed into law earlier this summer by creating a voluntary program to encourage disclosure of errors, an opportunity to enter negotiations and early settlement, while, at the same time, protecting patients’ rights and providing liability protection for health care providers who participate in the program.

Our bill is designed to bridge the gap between the medical liability and patient safety perspectives, and to provide the benefits of patients and providers.

The truly unfortunate result of the current congressional stalemate over caps is that patients and physicians are left waiting for someone to break the logjam and work to find bipartisan solutions that have an opportunity to mitigate this problem. I believe it’s critical that we find a way around this stalemate and that Congress work in good faith to find solutions that can get common enough support to find their way to the President’s desk.

I believe that this is an exciting and innovative program that will improve patient-physician communication, reduce the rates of preventable patient injuries, reduce the liability premiums that physicians are facing, and insures that patients have access to fair compensation for medical injury: Four fundamental goals that I believe are necessary components of any solution we consider.

There are a number of successful programs across the country that are consistent with the provisions of our legislation, including one at the University of Michigan, and even one initiated by a medical malpractice insurance provider in Colorado. I am excited about the results these programs are producing—fewer numbers of suits being filed, more patients being compensated for injuries, greater patient trust and satisfaction, and significantly reduced administrative and legal defense costs for providers, insurers, and hospitals where these programs are in place.

I am hopeful that our legislation will provide an opportunity for more hospitals and physicians to use this program and see for themselves the benefits they—and their patients—will reap.

Mr. OBAMA. Mr. President, it is my pleasure to join Senator CLINTON to introduce legislation that will help us all find common ground on the debate over patient safety and medical malpractice claims.

Today, medical error is the eighth leading cause of death in the United States. Every year, these tragic mistakes cost the lives of up to 98,000 Americans. This is unacceptable in America, and we must do more to ensure that every patient gets the right care, at the right time, in the right way.

The debate in Washington over this issue has been centered on caps and lawsuits. But across America, hospitals and medical providers are proving that...
there’s a better way to protect patients and doctors, all while raising the quality of our care and lowering its cost.

From the Children’s Hospitals and Clinics of Minnesota to the VA hospital in Lexington, Kentucky, doctors and administrators aren’t trying to cover up mistakes. They’re trying to admit them. Instead of closing ranks and keeping the patient in the dark, they’re investigating potential errors, apologizing if mistakes have been made, and offering a reasonable settlement that keeps the case out of court.

This program is often known as “Sorry Works,” and it’s led to some amazing results. When patients are treated with respect and told the truth, they sue less. More are actually compensated for their injuries, but medical professionals actually learn from their mistakes and they’re not repeated and lives are saved.

At the VA hospital in Lexington, Kentucky, this program has reduced the average settlement to $16,000, compared with $98,000 nationwide. This ranks the lowest quartile of all VA facilities for malpractice payouts. At the University of Michigan’s hospital system, this program helped them cut their lawsuits in half and save up to $2 million in defense litigation.

The program today builds on these hopeful results and incorporates them into a national program. The National Medical Error Disclosure and Compensation Act, or MEDIC Act, will help reduce medical error rates and medical malpractice costs by opening the lines of communication between doctors and patients—encouraging honesty and accountability in the process.

The bill will also set up a National Patient Safety Database, which will be used to best practices for preventing medical errors, improving patient safety, and increasing accountability in the healthcare system.

We expect participants to see a cost savings, and we will require them to re-invest a portion of these savings into patient quality measures that will reduce medical errors. This bill also requires that some of these savings be passed along to providers in the form of lower malpractice insurance premiums.

Certainly, these are lofty goals. But what Senator CLINTON and I hope to do with this legislation is promote the type of creative thinking that will be required if this country is going to overcome some of the gridlock in the healthcare debate. The Medicare Act of 2005 brings together some of the best ideas currently out there, and I hope my colleagues in the Senate will work with Senator CLINTON and me to put these ideas in action.

By Mr. CORNYN (for himself, Mr. LEAHY, Mr. HATCH, and Mr. KOHL): S. 1785. A bill to amend chapter 13 of title 17, United States Code (relating to the vessel hull design protection), to clarify the distinction between a hull and a deck, to provide factors for the determination of the protectability of a revised design, to provide guidance for avoiding similitude, and for other purposes; to the Committee on the Judiciary.

Mr. CORNYN. Mr. President, I rise today along with the Senior Senator from Vermont, the Senior Senator from Minnesota to the VA hospital in Lexington, Kentucky, doctors and administrators aren’t trying to cover up mistakes. They’re trying to admit them. Instead of closing ranks and keeping the patient in the dark, they’re investigating potential errors, apologizing if mistakes have been made, and offering a reasonable settlement that keeps the case out of court.

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At the VA hospital in Lexington, Kentucky, this program has reduced the average settlement to $16,000, compared with $98,000 nationwide. This ranks the lowest quartile of all VA facilities for malpractice payouts. At the University of Michigan’s hospital system, this program helped them cut their lawsuits in half and save up to $2 million in defense litigation.

The program today builds on these hopeful results and incorporates them into a national program. The National Medical Error Disclosure and Compensation Act, or MEDIC Act, will help reduce medical error rates and medical malpractice costs by opening the lines of communication between doctors and patients—encouraging honesty and accountability in the process.

The bill will also set up a National Patient Safety Database, which will be used to best practices for preventing medical errors, improving patient safety, and increasing accountability in the healthcare system.

We expect participants to see a cost savings, and we will require them to re-invest a portion of these savings into patient quality measures that will reduce medical errors. This bill also requires that some of these savings be passed along to providers in the form of lower malpractice insurance premiums.

Certainly, these are lofty goals. But what Senator CLINTON and I hope to do with this legislation is promote the type of creative thinking that will be required if this country is going to overcome some of the gridlock in the healthcare debate. The Medicare Act of 2005 brings together some of the best ideas currently out there, and I hope my colleagues in the Senate will work with Senator CLINTON and me to put these ideas in action.

By Mr. CORNYN (for himself, Mr. LEAHY, Mr. HATCH, and Mr. KOHL):
Resolved, That the Senate—
(1) recognizes the Honorable Gaylord Nelson’s environmental legacy;
(2) celebrates the dedication of the Gaylord Nelson Wilderness within the Apostle Islands National Lakeshore; and
(3) requests that the Secretary of the Senate transmit an enrolled copy of this resolution to the Lake Superior National Lakeshore.

Mr. FEINGOLD. Mr. President, December 8, 2004, approximately 80 percent of the Apostle Islands National Lakeshore in Wisconsin was designated the Gaylord Nelson Wilderness. Although we did not celebrate the new wilderness area until August 8, 2005, we have been delighting in the designation ever since December of last year.

The designation of the Gaylord Nelson Wilderness within the Apostle Islands National Lakeshore on August 8, 2005 was a tremendous occasion for both Wisconsin and the country. I was deeply honored to participate in the ceremony marking the creation of the Gaylord Nelson Wilderness. All the members of Congress knew Gaylord, and am proud to occupy his Senate seat. Like all of those in attendance at the dedication ceremony, including Tina Nelson, Governor Doyle, Congressman Obey, local officials, tribal chiefs, and many others, I was deeply saddened that Gaylord wasn’t able to be sitting among us, having passed away on July 3, 2005.

However, I do believe that, because the area, the magnificent Apostles, and the many achievements we were celebrating were such a part of Gaylord, he was in fact there with us that day, urging us to mark the achievement and to continue his life’s work of building a national conservation ethic. As we all know, while his record of achievements is long and impressive, it is Senator Nelson’s passion and commitment to protecting our environment that will remain the centerpiece of his legacy. For this reason, Senator Kohl and I have submitted a resolution to bring recognition to Gaylord’s unwavering efforts on behalf of the environment and to celebrate the dedication of a wilderness area rightly named in his honor.

Gaylord so believed in his responsibility to the environment that he started a revolution that has inspired millions of people from across the globe. The day he created in 1970—Earth Day—has become a cause for celebration and reflection for all. Simply stated, Gaylord Nelson changed the consciousness of a Nation, and quite possibly the world. He was a distinguished Governor and Senator, a recipient of the Presidential Medal of Freedom, and a personal hero of mine. Most importantly, he was the embodiment of the principle that one person can change the world.

August 8, 2005 marked the beginning of a new period for the Apostle Islands and I could not be more proud of this. In 1970, Representative Obey and I asked for a wilderness survey. Seven years later, we finally gathered to salute the awe-inspiring resource as well as the man who dedicated himself to protecting our environment, particularly those places where we humans are but humble visitors—wilderness areas. Let us not forget, however, that before we could talk about having a wilderness area within the Apostle Islands National Lakeshore, we had to have a National Lakeshore. I am sure it will come as no surprise that Gaylord was essential in the effort to recognize the Apostle Islands as a national treasure. This coast and protected area of the Apostles and now the Gaylord Nelson Wilderness has always been an attraction, not only for Wisconsin residents but for people from across the globe. At the Apostles you can find pristine old growth forests; wetlands that are home to an astounding ecological diversity; birds that travel long distances and use the islands for respite; and amphibians, which can act as indicators of the Park’s environmental health.

It is a truly amazing place. And people know it. In fact, just recently, the Apostles was rated the #1 National Park in the U.S. by National Geographic Traveler. The rating was based on a variety of factors, most notably environmental and ecological quality, social and cultural integrity, and the outlook for the future.

We have it all in the Park—ecological and cultural resources intertwined with one another. The history of the islands is a history of people living off, and protecting, the land and water surrounding them. A visit to the Apostles and the Gaylord Nelson Wilderness can be, if we let go of the trappings of modern society, an enlightening voyage that challenges us to think about those who came before us, those who will follow us, and the connections between us and the natural resources we depend on for our survival.

The Ojibwe, who Wisconsinites know were the original inhabitants of the Apostles, had great respect for the resources. They believed in taking something only if they were giving something in return. The Ojibwe people understood their dependence on the environment long before many others began contemplating such a relationship. Unfortunately, as a society, we have not always heeded their example. We must be better stewards of our land, our air, and our water. Gaylord Nelson leaves behind a legacy that challenges us to preserve the precious land and water that he so loved.

No one person can do it alone, but we can still make a difference. Let us honor Gaylord’s memory by doing so. And let the Gaylord Nelson Wilderness, named in his honor, continue to be a sanctuary for all, a refuge for all species, a place where people from across the globe can come and be inspired to take action to protect our precious environment.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 254—MARKING THE DEDICATION OF THE GAYLORD NELSON WILDERNESS WITHIN THE APOSTLE ISLANDS NATIONAL LAKESHORE

Whereas the Honorable Gaylord Nelson, a State Senator, Governor, and United States Senator from Wisconsin, devoted his life to protecting the environment by championing issues of land protection, wildlife habitat, environmental health, and increased environmental awareness, including founding Earth Day;

Whereas the Honorable Gaylord Nelson authored the Apostle Islands National Lakeshore Act, which led to the protection of one of the rarest areas in Wisconsin and recognized the rich assemblage of natural resources, cultural heritage, and scenic features on Wisconsin’s north coast and 21 islands in the Apostle Archipelago;

Whereas the Apostle Islands National Lakeshore was designated a National Park on September 26, 1970;

Whereas, on December 8, 2004, approximately 80 percent of the Apostle Islands National Lakeshore was designated the Gaylord Nelson Wilderness;

Whereas the Gaylord Nelson Wilderness within the Apostle Islands National Lakeshore provides a refuge for many species of birds, including threatened bald eagles and endangered whooping cranes, numerous herons, gulls, double-crested cormorants, and great blue herons, and is a safe haven for a variety of amphibians, such as blue-spotted salamanders, spotted turtles, painted turtles, gray treefrogs, and mink frogs, and is a sanctuary for several mammals, including river otters, black bears, snowshoe hares, and fishers;

Whereas the official dedication of the Gaylord Nelson Wilderness occurred on August 8, 2005, 36 days after the Honorable Gaylord Nelson’s passing; and

Whereas the Honorable Gaylord Nelson changed the consciousness of our Nation and embodied the principle that 1 person can change the world, and the creation of the Gaylord Nelson Wilderness is a small but fitting, recognition of his efforts: Now, therefore, be it...
the whole Apostle Islands and now the Gaylord Nelson Wilderness. Future generations whom none of us will ever know will benefit deeply from their commitment to one of Wisconsin’s most treasured places.

Every time I visit the Apostles and pieces of the now Gaylord Nelson Wilderness, I depart with a sense of inner peace and clarity. A New York Times journalist wrote about the Apostle Islands National Lakeshore in 1972, saying he encountered a “silence so profound you can’t hear it.” I believe that what all those who visit the Gaylord Nelson Wilderness are bound to hear through that “intense silence” is Gaylord himself calling them to action.

SENATE RESOLUTION 256—RECOGNIZING THE ACHIEVEMENTS OF THE UNITED STATES FISH AND WILDLIFE SERVICE AND THE WATERFOWL POPULATION SURVEY

Mrs. LINCOLN (for herself and Mr. COCHRAN) submitted the following resolution; which was referred to the Committee on Environment and Public Works:

S. Res. 256

Whereas every spring and summer teams of United States Fish and Wildlife Service pilot-biologists take to the skies to survey North America’s waterfowl breeding grounds flying an average of 80,000 miles a year, crossing the country just above the treetops and open fields, they and observers on the ground record the number of ducks, geese, and swans and assess the quality and quantity of water-fowl breeding habitats.

Whereas the pilot biologists operate from the wide open bays and wetlands of the eastern shores of North America to some of the most remote regions of Canada and Alaska, and are documenting an important part of our wildlife heritage.

Whereas the Waterfowl Population Survey, operated by the United States Fish and Wildlife Service, is celebrating its 50th anniversary this year, and the 2005 Duck Stamps, and has been recognized by the Congressional Sportsmen’s Foundation for its contribution to waterfowl hunting;

Whereas the Waterfowl Population Survey Program has evolved into the largest and most reliable wildlife survey effort in the world;

Whereas for more than 50 years cooperative waterfowl surveys have been performed by the United States Fish and Wildlife Service, the Canadian Wildlife Service, State and provincial biologists, and nongovernmental partners; and

Whereas survey results determine the status of North America’s waterfowl populations, play an important role in setting annual waterfowl hunting regulations, and help guide the decisions of waterfowl managers throughout North America: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes the achievements and contributions of the Waterfowl Population Survey Program; and

(2) expresses strong support for the continued success of the Waterfowl Population Survey Program;

(3) praises the United States Fish and Wildlife Service in its efforts to broaden understanding and public participation in the Waterfowl Population Survey Program by increasing partnerships to continue growth and development of the Survey; and

(4) reaffirms its commitment to the Waterfowl Population Survey Program and the conservation of the rich natural heritage of the United States.

SENATE RESOLUTION 256—HONORING THE LIFE OF SANDRA FELDMAN

Mr. SCHUMER (for himself, Mrs. CLINTON, Mrs. MURRAY, Mr. BINGAMAN, and Mr. KENNEDY) submitted the following resolution; which was considered and agreed to:

S. Res. 256

Whereas Sandra Feldman was born Sandra Abramowitz in October, 1926, to blue-collar parents living in a tenement in Coney Island, New York;

Whereas Sandra Feldman, while at James Madison High School, Brooklyn College, and New York University, began a life-long dedication to education both in the United States and abroad;

Whereas Sandra Feldman began her career by teaching fourth grade at Public School 34 on the Lower East Side of New York City;

Whereas during her service as union leader at Public School 34, Sandra Feldman became employed by the United Federation of Teachers in New York City, and was elected president in 1986, after 20 years of service;

Whereas Sandra Feldman’s tenure as president of the United Federation of Teachers was distinguished by her devotion to better working conditions for the teachers she represented;

Whereas in 1997, the American Federation of Teachers elected Sandra Feldman to serve as their president, until she retired 7 years later;

Whereas Sandra Feldman effectively represented the educators, healthcare professionals, public employees, and retirees who made up the membership of the American Federation of Teachers;

Whereas Sandra Feldman was a tireless advocate for public schools, working with President George W. Bush on the No Child Left Behind Act of 2001 to improve accountability standards and provide increased resources to schools, promoting increased benefits and compensation for workers, and spreading her message beyond her own membership by advocating for working class and public employee rights;

Whereas Sandra Feldman was a tireless advocate for public schools, working with President George W. Bush on the No Child Left Behind Act of 2001 to improve accountability standards and provide increased resources to schools, promoting increased benefits and compensation for workers, and spreading her message beyond her own membership by advocating for working class and public employee rights;

Whereas Sandra Feldman lent her expertise to both the national and international labor movements in her capacities as a member of the AFL-CIO executive council and a vice president of Education International; and

Whereas Sandra Feldman succumbed on September 18, 2005, to a difficult struggle against breast cancer at the age of 65: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes—

(A) the health risks associated with childhood obesity;

(B) the spirit of Jacob Mock “Jack” Doub and so many others who have been actively promoting physical activity to combat childhood obesity; and

(C) Jack Doub’s contribution to encouraging youth of all ages to be physically active and fit, especially through bicycling;
(2) supports the goals and ideals of “National Take a Kid Mountain Biking Day”, which was established in honor of Jack Doub in 2004 by the International Mountain Bicycling Association. The holiday is celebrated on the first Saturday in October of each year; and
(3) encourages parents, schools, civic organizations, and students to support the International Mountain Bicycling Association’s “National Take a Kid Mountain Biking Day” to promote increased physical activity among youth in the United States.

SENATE RESOLUTION 258—TO COMMEMORATE TIMOTHY SCOTT WINEMAN

Mr. FRIST (for himself, Mr. REID, and Mr. BENNETT) submitted the following resolution; which was considered and agreed to:

S. Res. 258

Whereas Timothy S. Wineman became an employee of the United States Senate on October 19, 1970, and since that date has ably and faithfully upheld the high standards and traditions of the staff of the United States Senate for a period that included 19 Congresses;
Whereas Timothy S. Wineman has served in the senior management of the Disbursing Office for more than 25 years, first as the Assistant Financial Clerk of the United States Senate from July 28, 1977, to March 3, 2000, and finally as Financial Clerk of the United States Senate from May 1, 1998, to October 14, 2005;
Whereas Timothy S. Wineman has faithfully discharged the difficult duties and responsibilities of his position as Financial Clerk of the United States Senate with great pride, integrity, dedication, integrity, and professionalism;
Whereas Timothy S. Wineman has earned the respect, affection, and esteem of the United States Senate; and
Whereas Timothy S. Wineman will retire from the United States Senate on October 14, 2005, with 36 years of service with the United States Senate all with the Disbursing Office: Now, therefore, be it
Resolved, That the United States Senate commends Timothy S. Wineman for his exemplary service to the United States Senate and the Nation, and wishes to express its deep appreciation and gratitude for his long, faithful, and outsanding service.
Sincerely, the Secretary of the Senate shall transmit a copy of this resolution to Timothy S. Wineman.

SENATE RESOLUTION 259—COMMEMORATING THE EFFORTS OF THE DEPARTMENT OF VETERANS AFFAIRS IN THE RESPONSE TO HURRICANE KATRINA

Mr. CRAIG (for himself and Mr. AKAKA) submitted the following resolution; which was referred to the Committee on Veterans’ Affairs:

S. Res. 259

Whereas Hurricane Katrina physically devastated many areas in the States of Alabama and Louisiana;
Whereas the Department of Veterans Affairs operates 11 medical centers, 18 community-based outpatient clinics, 5 regional offices, and 8 national cemeteries in the States of Alabama, Mississippi, and Louisiana;
Whereas the Department of Veterans Affairs evacuated over 1,000 patients, employees, and family from facilities in the affected areas without any loss of life due to the evacuations;
Whereas over 1,000 employees of the Department of Veterans Affairs are volunteering to assist veterans and their families affected by Hurricane Katrina throughout the United States;
Whereas the Department of Veterans Affairs is providing shelter to over 500 staff and their families who have been displaced as a result of Hurricane Katrina;
Whereas patients and employees of the Department of Veterans Affairs in Texas provided extraordinary support and medical assistance to veterans, staff, and families affected by Hurricane Katrina and coordinated numerous medical efforts as part of the overall Federal Government response and recovery efforts in the aftermath of Hurricane Katrina;
Whereas heroic actions and efforts on the part of numerous employees and volunteers of the Department of Veterans Affairs saved countless lives and provided immeasurable comfort to the victims of Hurricane Katrina: Now, therefore, be it
Resolved, That the United States Senate commends the employees and volunteers of the Department of Veterans Affairs, who risked life and limb to assist veterans, staff, and their respective families who were affected by Hurricane Katrina;

Mr. CRAIG. Mr. President, I rise today to submit a resolution that honors the extraordinary heroic efforts exhibited by employees of the Department of Veterans Affairs in the response to the catastrophic conditions caused by Hurricane Katrina.

The Department of Veterans Affairs operates 11 medical centers, 18 community-based outpatient clinics, three regional offices, and eight national cemeteries in the States of Alabama, Mississippi, and Louisiana. Throughout this tragedy, VA moved employees, their families, equipment, and even patients from many of these places. Incredibly with over 1,000 people evacuated in total, not one life was lost.
While it is impossible for me to recognize every act of bravery and courage exhibited, I would be remiss if I did not highlight the incredible story of two VA nurses and their efforts to ensure continued patient care during the aftermath of Katrina. These two nurses not only braved the danger of the storm, but they risked their own lives to ensure that their patients could survive. These two women fed their own water supply to their patients, and even more incredibly, they then administered intravenous fluids to another to stay hydrated so that they could continue to deliver care. Clearly, this was going far above and beyond the call of duty. The example set by these two courageous women must be recognized.
I also want to note that VA’s success in responding to this storm was largely due to the extensive preparation by VA workers before Katrina hit the Gulf Region. This preparation ensured the successful administration of continued medical care to veterans upon relocation as well as the safe evacuation of all staff and their families.

Before the storm hit, VA workers oversaw the evacuation of 166 patients in Mississippi and Louisiana. In addition, VA workers had the foresight to transfer copies of electronic medical records from the New Orleans VA Medical Center to the VA facility in Houston so that those records would be available on a national level. The bottom line is that this careful preparation before the storm hit saved lives.

The examples of sacrifice and heroism are endless. Instead of forgetting those who simply stayed put in the right place and did their job—sometimes for days on end, I am speaking most specifically of the valiant efforts of the employees in the VA facilities throughout Texas. These dedicated doctors, nurses, and supporting staff worked countless hours providing medical assistance, shelter and comfort to the evacuated VA patients, employees, and their families.

As Chairman of the Senate Committee on Veterans’ Affairs, it is my distinct honor to commend the heroic efforts of VA workers throughout the country in this resolution. I am also pleased to note that Ranking Member AKAKA has joined with me in expressing our sincere appreciation. The dedication of Hurricane Katrina is something with which we are all familiar. It gives me great pleasure to highlight the dedication, sacrifice, and courage of VA workers in light of the terrible devastation caused by what many have called the worst natural disaster in our Nation’s history.

SENATE CONCURRENT RESOLUTION 54—EXpressing THE SENSE OF CONGRESS REGARDING A COMMEMORATIVE POSTAGE STAMP HONORING JASPER FRANCIS CROPSEY, THE FAMOUS STATEN ISLAND-BORN 19TH CENTURY HUDSON RIVER PAINTER

Mr. SCHUMER submitted the following resolution; which was referred to the Committee on Homeland Security and Governmental Affairs:

S. Con. Res. 54

Whereas Jasper Francis Cropsey was born on February 18, 1823, in Rossville, Staten Island, New York to Jacob Cropsey and Elizabeth Hilyer Cortelyou;
Whereas Jasper Francis Cropsey was a famous second generation 19th Century Hudson River Valley Painter, and became known as America’s “Painter of Autumn” after his vibrant depiction of Autumn on the Hudson River was unveiled in London in 1862;
Whereas Jasper Francis Cropsey contributed greatly to the Hudson River Valley, Staten Island, and the United States through his creative and architectural talent by producing, throughout his lifetime, more than 1,300 oil paintings, 400 water colors, and numerous architectural drawings; and
Whereas Jasper Francis Cropsey admired the work of Thomas Cole and other American landscape painters and he believed in the natural unspoiled beauty of the United States depicting serene landscapes of man’s peaceful coexistence with nature and harmonious American naturalism: Now, therefore, be it
Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that...
(1) a commemorative postage stamp should be issued by the United States Postal Service honoring Jasper Francis Cropsey, the famous Staten Island-born 19th Century Hudson River Painter; and

(2) the Citizens’ Stamp Advisory Committee should recommend to the Postmaster General that such a stamp be issued.

**AMENDMENTS SUBMITTED AND PROPOSED**

SA 1875. Mr. GRAHAM (for Mrs. Hutchison (for herself and Mr. Nelson of Florida)) proposed an amendment to the bill S. 1281, to authorize appropriations for the National Aeronautics and Space Administration for scientific research and exploration, exploration capabilities, and the Inspector General, and for other purposes, for fiscal years 2006, 2007, 2008, 2009, and 2010.

SA 1876. Ms. SNOWE (for herself and Ms. Collins) submitted an amendment intended to be proposed by her to the bill S. 1042, to authorize appropriations for fiscal year 2006 for military activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table.

SA 1877. Ms. SNOWE (for herself and Ms. Collins) submitted an amendment intended to be proposed by her to the bill S. 1042, supra; which was ordered to lie on the table.

SA 1878. Ms. SNOWE submitted an amendment intended to be proposed by her to the bill S. 1042, supra; which was ordered to lie on the table.

SA 1879. Ms. SNOWE submitted an amendment intended to be proposed by her to the bill S. 1042, supra; which was ordered to lie on the table.

SA 1880. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill S. 147, to express the policy of the United States regarding the United States relationship with Native Hawaiians and to provide a process for the recognition by the United States of the Native Hawaiian governing entity; which was ordered to lie on the table.

SA 1881. Ms. SNOWE submitted an amendment intended to be proposed by her to the bill S. 1042, to authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table.

**TEXT OF AMENDMENTS**

SA 1875. Mr. GRAHAM (for Mrs. Hutchison (for herself and Mr. Nelson of Florida)) proposed an amendment to the bill S. 1281, to authorize appropriations for the National Aeronautics and Space Administration for scientific research and exploration, exploration capabilities, and the Inspector General, and for other purposes, for fiscal years 2006, 2007, 2008, 2009, and 2010; as follows:

On page 2, after line 8, beginning with the item relating to section 107 strike through the item relating to section 152 on page 9 and insert the following:

Sec. 137. Lessons learned and best practices.

Sec. 138. Safety management.

Sec. 139. Critical infrastructure protection.

Sec. 140. Earth observing system.

Sec. 141. NASA healthcare program.

Sec. 142. Assessment of extension of data collection from Ulysses and Voyager spacecraft.

Sec. 143. Program to expand distance learning in rural underserved areas.

Sec. 144. Institutions in NASA’s minority educational programs.

Sec. 145. Aviation safety program.

Sec. 146. Atmospheric, geophysical, and rocket research authorization.

Sec. 147. Orbital debris.

Sec. 148. Continuation of certain educational programs.

Sec. 149. Establishment of the Charles ‘Pete’ Conrad Astronaut Awards Program.

Sec. 150. GAO assessment of feasibility of Moon and Mars exploration missions.

Sec. 151. Workforce.

Sec. 152. Major research equipment and facilities.

Sec. 153. Data on specific fields of study.

On page 3, before line 1, strike the second item relating to section 161 and insert the following:

Sec. 162. Facilities management.

On page 3, before line 1, strike the item relating to section 301 and insert the following:

Sec. 302. Power and propulsion reporting.

Sec. 303. Utilization of NASA field centers and workforce.

On page 3, before line 1, strike the item relating to section 507 and insert the following:

Sec. 502. Commercial technology transfer program.

Sec. 503. Authority for competitive prize program to encourage development of advanced space and aeronautical technologies.

Sec. 504. Commercial goods and services.

TITLE V—AERONAUTICS RESEARCH AND DEVELOPMENT

Sec. 505. Governmental interest in aeronautics.

Sec. 506. National policy for aeronautics research and development.

Sec. 507. High priority aeronautics research and development programs.

Sec. 508. Test facilities.

Sec. 509. Miscellaneous provisions.

TITLE VI—MISCELLANEOUS ADMINISTRATIVE IMPROVEMENTS

Sec. 601. Extension of indemnification authority.

Sec. 602. Intellectual property provisions.

Sec. 603. Retrocession of jurisdiction.

Sec. 604. Recovery and disposition authority.

Sec. 605. Requirement for independent cost analysis.

Sec. 606. Electronic access to business opportunities.

Sec. 607. Reports elimination.

Sec. 608. Small business contracting.

Sec. 609. Government accountability office review and report.

On page 4, strike lines 16 through 22, and insert the following:

(4) The exploration, development, and permanent habitation of the Moon will inspire the Nation, spur commerce, imagination, and excitement around the world, and open the possibility of further exploration of Mars. NASA should return to the Moon within the next decade.

On page 10, line 7, strike “schedules;” and insert “schedules, and may place a greater emphasis on the programs described in this paragraph, throughout the fiscal years for which funds are authorized by this Act (and for this purpose, of the funds authorized by section 101(1) of this Act, no less than $5,341,000,000 shall be for science, and of the funds authorized by section 102(1) of this Act, no less than $5,695,000,000 shall be for science);”.

On page 14, line 12, strike “and.”.

On page 14, line 17, strike “orbit.” and insert “orbit.”.

On page 14, between lines 17 and 18, insert the following:

(5) conduct a program to assure the health and safety of astronauts during extended space exploration missions which include more effective countermeasures to mitigate deleterious effects of such missions, and the means to provide in-flight elaborative medical care delivery to crews with little or no real-time support from Earth, relevant issues such as radiation exposure, exercise countermeasures, cardiac health, diagnostic and monitoring devices, and medical imaging;

(6) utilize advanced power and propulsion technologies, including nuclear and electric technologies, to enable or enhance robotic and human exploration missions when feasible; and

(7) develop a robust technology development program to provide surface power for use on the Moon and other locations relevant to NASA space exploration goals which, to the extent feasible, address needs for modular, scalable power sources for a range of applications on the Moon including human and vehicular use.

On page 14, beginning with line 8, strike through line 12 on page 18.

On page 18, line 13, strike “SEC. 139.” and insert “SEC. 137.”.

On page 19, line 9, strike “SEC. 140.” and insert “SEC. 138.”.

On page 20, line 20, strike “SEC. 141.” and insert “SEC. 139.”.

On page 21, line 17, strike “SEC. 142.” and insert “SEC. 140.”.

On page 23, line 9, strike “SEC. 143.” and insert “SEC. 141.”.

On page 23, line 17, strike “SEC. 144.” and insert “SEC. 142.”.

On page 24, line 8, strike “SEC. 145.” and insert “SEC. 143.”.

On page 25, line 4, strike “SEC. 146.” and insert “SEC. 144.”.

On page 25, line 23, strike “SEC. 147.” and insert “SEC. 145.”.

On page 26, line 6, strike “SEC. 148.” and insert “SEC. 146.”.

On page 26, line 13, strike “SEC. 149.” and insert “SEC. 147.”.

On page 26, line 18, strike “SEC. 150.” and insert “SEC. 148.”.

On page 27, line 1, strike “SEC. 151.” and insert “SEC. 149.”.

On page 28, line 3, strike “SEC. 152.” and insert “SEC. 150.”.

On page 28, line 12, after “schedules,” insert “The Comptroller General shall include in this assessment the short- and long-term impact of the exploration program on other NASA program areas, including aeronautics, space science, earth science, and NASA’s overall research and technology development budget.”.

On page 28, between lines 12 and 13, insert the following:

SEC. 151. WORKFORCE.

(a) In general.—The Administrator shall develop a human capital strategy to ensure that NASA has a workforce of the appropriate size and with the appropriate skills to carry out the programs of NASA, consistent with the policies and plans developed pursuant to this section. The strategy shall ensure that the personnel and programs to the maximum extent feasible, in implementing the vision for space exploration and NASA’s...
other programs. The strategy shall cover the period through fiscal year 2011.

(b) CONTENT.—The strategy shall describe, at a minimum:
(1) the categories of employees NASA intends to reduce, the expected size and timing of those reductions, the methods NASA intends to use to make the reductions, and the reasons NASA no longer needs those employees;
(2) any categories of employees NASA intends to increase, the expected size and timing of those increases, the methods NASA intends to use to recruit the additional employees, and the reasons NASA needs those employees;
(3) the steps NASA will use to retain needed employees; and
(4) the budget assumptions of the strategy, which for fiscal years 2006 and 2007 shall be consistent with the authorizations provided in subtitle A, and any expected additional costs or savings from the strategy by fiscal year.

(c) SCHEDULE.—The Administrator shall transmit the strategy developed under this section to the Senate Committee on Commerce, Science, and Transportation and House Committee on Science, Space, and Technology, respectively, Science not later than the date on which the President submits the proposed budget for the Federal Government for fiscal year 2007 to the Congress. At least 60 days before transmitting the strategy, NASA shall provide a draft of the strategy to its Federal Employee Unions for a 30-day consultation period after which NASA shall respond in writing to any written concerns provided by the Unions.

(d) LIMITATION.—
(i) In general.—NASA may not initiate any buyout offer after the date of enactment of this Act or any other action that takes into account uniqueness, mission dependency, and other studies required by this Act.

(ii) Reductions in force.—The strategy shall describe any buyout offers after the date of enactment of this Act, pro- viding for the expected number of employees, and identifying the specific job categories affected.

(iii) An explanation of why the relevant scientific peer review panels in the United States will not have adequate personnel by transmitting to the Committee on Science, House of Representatives Committee on Commerce, Science, and Transportation and the National Research Council, at least 60 days before transmitting the strategy, that the National Science Foundation shall collectively statistically reliably data from the American Community Survey on the field of degree of college-educated individuals.

(b) ADDITIONAL CENSUS QUESTION.—In order to facilitate the implementation of subsection (a), the Secretary of Commerce shall expand the American Community Survey to include a question to elicit information concerning the field of study in which college-educated individuals received their degrees. The Director of the Bureau of the Census shall consult with the Director of the National Science Foundation to determine the wording of the question or questions to be added to the Survey.

On page 35, beginning with line 21, strike through line 5 on page 35 and insert the following:

SEC. 153. DATA ON SPECIFIC FIELDS OF STUDY.
(a) In general.—The National Science Foundation shall collect statistically reliable data from the American Community Survey on the field of degree of college-educated individuals.

(b) Additional Census Question.—In order to facilitate the implementation of subsection (a), the Secretary of Commerce shall expand the American Community Survey to include a question to elicit information concerning the field of study in which college-educated individuals received their degrees. The Director of the Bureau of the Census shall consult with the Director of the National Science Foundation to determine the wording of the question or questions to be added to the Survey.

On page 35, beginning with line 21, strike through line 5 on page 35 and insert the following:

SEC. 154. REPORT.
(a) In General.—Notwithstanding any provision of law, in 2008 the National Science Foundation shall convene a workshop to examine the major research equipment and facilities construction account for the design and development of projects that—
(i) are given a very high rating by relevant scientific peer review panels in the relevant discipline;

SEC. 152. MAJOR RESEARCH EQUIPMENT AND FACILITIES.
(a) In General.—Notwithstanding any other provision of law, the National Science Foundation shall convene a workshop to examine the major research equipment and facilities construction account for the purpose of identifying projects that—
(i) are given a very high rating by relevant scientific peer review panels in the relevant discipline;

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(i) are given a very high rating by relevant scientific peer review panels in the relevant discipline;
Aeronautical research and development remains a core mission of NASA. NASA is the lead agency for civil aeronautics research. NASA shall conduct a robust program of aeronautics research and development that includes fundamental aeronautical research as well as research in the fields of vehicle systems and of safety and security.

SEC. 502. NATIONAL POLICY FOR AERONAUTICS RESEARCH AND DEVELOPMENT.

(a) In GENERAL.—The President shall develop and submit to Congress, the Senate Committee on Commerce, Science, and Transportation, the House Committee on Transportation and Infrastructure, and the Senate, the House Committee on Science, and the Senate Committee on Commerce, Science, and Transportation a national aeronautics policy to guide the aeronautics programs of the United States through the year 2020. The development of this policy shall utilize external studies that have been conducted on the state of United States aeronautics and aviation research and have suggested policies to enhance the competitiveness of United States aeronautics research.

(b) CONTENT.—At a minimum the national aeronautics policy shall describe:

(1) national goals for aeronautics research;
(2) the priority areas of research for aeronautics research through fiscal year 2011;
(3) the basis of which and the process by which priorities for ensuing fiscal years will be selected; and
(4) respective roles and responsibilities of various Federal agencies in aeronautics research.

(c) NASA INPUT.—In providing input to and executing the National Aeronautics Policy, the Administrator, shall consider the following issues:

(1) The established governmental interest in conducting research and development programs for improvement of the usefulness, performance, speed, safety, and efficiency of aeronautical and vehicles, as described in section 102(c)(2) of the National Aeronautics and Space Act of 1958 and reaffirmed in section 501.

(2) The established governmental interest in conducting research and development programs for improvements to preservation of the role of the United States as a global leader in aeronautical and aerospace technologies and in the application thereof in section 102(c)(5) of the National Aeronautics and Space Act of 1958 and reaffirmed in section 501.

(3) The appropriate balance between long-term, high risk research and shorter, more incremental research, and the expected impact on the United States economy and public good.

(4) The appropriate balance between in-house research and procurement with industry and academia.

(5) The extent to which NASA should address military and commercial aviation needs.

(6) How NASA will coordinate its aeronautics program with other Federal agencies.

(7) Opportunities for partnerships with the private sector.

(d) SCHEDULE.—The Administrator shall submit the national aeronautics policy to the Committee on Transportation and Infrastructure of the House of Representatives and the Senate, the House Committee on Science, and the Senate Committee on Commerce, Science, and Transportation.

SEC. 503. HIGH PRIORITY AERONAUTICS RESEARCH AND DEVELOPMENT PROGRAMS.

(a) In GENERAL.—In its role as lead agency for civil aeronautics research and development, NASA shall develop programs and projects in accordance with the National Aeronautics Policy described in section 502, as well program areas listed in subsection (b). The programs must be driven by scientific merit.

(b) RESEARCH AND DEVELOPMENT.—In executing the national aeronautics research and development program, the Administrator shall, at a minimum, within the budgetary and programmatic resources provided, conduct programs in the following areas:

(1) FUNDAMENTAL RESEARCH.—The Administrator shall establish a program of long-term fundamental research in aeronautical sciences and technologies that is not tied to specific development projects. The Administrator shall set aside no less than 5 percent of the aeronautics budget for this program. As part of this program, the Administrator is encouraged to make merit-reviewed grants to institutions of higher learning, including such institutions located in states that participate in the Experimental Program to Stimulate Competitive Research.

(2) VEHICLE SYSTEMS RESEARCH AND TECHNOLOGY, IN ORDER TO MAINTAIN UNITED STATES COMPETITIVENESS AND SECURITY, THE ENVIRONMENTAL AIRSPACE SYSTEM, THE NATIONAL POLICY FOR AERONAUTICS RESEARCH AND DEVELOPMENT, THE Administrator shall establish an initiative with the objective of developing and maintaining a relevant environment, technologies to enable the following commercial aircraft performance characteristics:

(i) NOISE.—Noise levels on takeoff and on airport approach and landing that do not exceed ambient noise levels in the absence of aircraft operations in the vicinity of airports from which such commercial aircraft would normally operate;

(ii) ENERGY CONSUMPTION.—Twenty-five percent reduction in fuel required for medium to long range flights, compared to aircraft in commercial service as of the date of enactment of this Act; and

(iii) EMISSIONS.—Nitrogen oxides on takeoff and landing that are significantly reduced, without adversely affecting hydrocarbons and smoke, relative to aircraft in commercial service as of the date of enactment of this Act.

(3) SUPersonic TRANSPORT RESEARCH AND DEVELOPMENT.—The Administrator shall establish a program of developing and demonstrating in a relevant environment within airframe and propulsion technologies to enable efficient, economical overland flight of supersonic civil transport aircraft with no significant impact on the environment.

(4) ROTORCRAFT AND OTHER RUNWAY-DEPENDENT AIR VEHICLES.—The Administrator shall establish a rotocraft and other runway-dependent air vehicle research and development program whose objective shall be to explore the science and technology of rotocraft flight using air-breathing propulsion concepts, through theoretical work, basic and applied research, and development of flight research demonstration vehicles. Emphasis in the program shall be given to advancing and demonstrating hybrid engine technology in the transition to hypersonic range Mach 3 to Mach 5.

(5) HYPERSONIC RESEARCH.—The Administrator shall establish a research program whose objective shall be to explore the science and technology of hypersonic flight using air-breathing propulsion concepts, through theoretical work, basic and applied research, and development of flight research demonstration vehicles.

(6) REVOLUTIONARY AERONAUTICAL CONCEPTS.—The Administrator shall establish a research program which covers a unique range of subsonic, fixed wing vehicles and propulsion concepts. This research is intended to push technology barriers beyond current subsonic technology. Propulsion concepts include advanced materials, morphing engine design, and advanced flight control technologies.

SEC. 504. TEST FACILITIES.

(a) Prior to completion of the National Aeronautics Policy described in section 502 and transmittal of such policy pursuant to subsection (d) of that section, the Administrator shall not close, suspend, or terminate NASA contracts for the operation of major aeronautical test facilities, including wind tunnels, unless the Administrator:

(1) certifies in writing that such closure will not have an adverse impact on NASA's ability to execute the National Policy and achieve the goals described in that Policy; and

(2) provides notification to and receives concurrence from the Appropriations Committees of the House of Representatives and the Senate, the House Committee on Science, and the Senate Committee on Commerce, Science and Transportation 60 days in advance of such action.

SEC. 505. MISCELLANEOUS PROVISIONS.

(a) Workforce Development.—The Administrator shall encourage the development of a skilled and diverse aeronautics research workforce using appropriate available tools such as grants, scholarships for service, and fellowships.

(b) ALIGNMENT OF PROGRAMS.—Notwithstanding any other provision of this title, the Administrator shall align NASA's aeronautics program with priorities established by the Joint Planning and Development Office and by the National Aeronautics Policy described in section 502 of this Act.
SEC. 608. SMALL BUSINESS CONTRACTING.

(a) PLAN.—In consultation with the Small Business Administration, the Administrator shall develop a plan to maximize the number of small business concerns awarded contracts in each fiscal year to meet established contracting goals for such concerns.

(b) PRIORITY.—The Administrator shall establish, as a priority, meeting the contracting goals developed in conjunction with the Small Business Administration to maximize the amount of prime contracts, as measured in dollars, awarded in each fiscal year to small business concerns (within the meaning given that term in section 3 of the Small Business Act (15 U.S.C. 632)).

SEC. 609. GOVERNMENT ACCOUNTABILITY OFFICE REVIEW AND REPORT.

(a) REVIEW.—The Comptroller General of the United States shall conduct a review of NASA's policies, processes, and procedures in the planning and management of applications research and development implemented in calendar years 2001 to 2005 within the Applied Sciences Directorate and former Earth Science Applications Program. A formal and transparent peer review process that instills public confidence in NASA sponsored applications research and development programs is important and the process by which this program defines requirements, scopes programs, selects peer reviewers, manages the research competition, and selects proposals is of concern. The review shall include—

(1) program planning and analysis process used to formulate applied science research and development requirements, priorities, and solicitation schedules, including changes in the process within the period under review, and the effects of such planning on the quality and clarity of applied sciences research announcements;

(2) the peer review process including—

(A) membership selection, determination of qualifications and use of NASA and non-NASA reviewers;

(B) management of conflicts of interest, including reviewers funded by the program with a significant consulting or contractual relationship with NASA, and individuals who both govern and participate in the submission of proposals under the same solicitation announcement;

(C) compensation of non-NASA proposal reviewers;

(3) the process for assigning or allocating applied research to NASA researchers and to non-NASA researchers; and

(4) alternative models for NASA planning and management of applied science and applications research, including an evaluation of—

(A) the National Institutes of Health's intramural and extramural research program structure, peer review process, management of conflicts of interest, compensation of reviewers, and the effects of compensation on reviewer efficiency and quality;

(B) the Department of Agriculture's research structure, peer review process, management of conflicts of interest, compensation of reviewers, and the effects of compensation on reviewer efficiency and quality; and

(C) the “best practices” of both in the planning, selection, and management of applied sciences research and development.

(b) NOTIFICATION.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General shall submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science describing the results of the review conducted under subsection (a), including recommendations for NASA best practices.

(c) IMPLEMENTATION.—Not later than 90 days after receipt of the report, NASA shall provide the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science a plan describing the implementation of those recommendations.

SA 1876. Ms. SNOWE (for herself and Ms. COLLINS) submitted an amendment intended to be proposed by her to the bill S. 1042, to authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

On page 371, between lines 8 and 9, insert the following:

SEC. 2887. TRANSFER TO REDEVELOPMENT AUTHORITY WITHOUT CONSIDERATION OF PROPERTY LOCATED AT MILITARY INSTALLATIONS CLOSED OR REALIGNED UNDER 2005 ROUND OF DEFENSE BASE CLOSURE AND REALIGNMENT PENDING READINESS OF RECEIVING LOCATIONS.


(1) by striking “shall seek” and all that follows through “with respect to the installation” and inserting the following: “may not obtain consideration in connection with any transfer under this paragraph of property located at the installation. The redevelopment authority to which such property is transferred shall—

(2) in clause (1), by striking “agrees” and inserting “agree”; and

(3) in clause (1)—

(A) by striking “executes” and inserting “execute”; and

(B) by striking “accepts” and inserting “accept”.

SA 1877. Ms. SNOWE (for herself and Ms. COLLINS) submitted an amendment intended to be proposed by her to the bill S. 1042, to authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; which was ordered to lie on the table; as follows:

On page 371, between lines 8 and 9, insert the following:

SEC. 330. NAVY HUMAN RESOURCES BENEFIT CALL CENTER.

Out of the amount authorized to be appropriated by section 301(2) for operation and maintenance for the Navy, $1,500,000 may be available for Civilian Manpower and Personnel for a Human Resources Benefit Call Center in Machias, Maine.

SA 1880. Mr. BROWNBACK submitted an amendment intended to be proposed by him to the bill S. 147, to express the policy of the United States regarding the United States relationship with Native Hawaiians and to provide a process for the recognition by the United States of the Native Hawaiian governing entity; which was ordered to lie on the table; as follows:

On page 73, between lines 12 and 13, insert the following:

SEC. 4. RESOLUTION OF APOLOGY TO THE NATIVE PEOPLES OF THE UNITED STATES.

(a) FINDINGS.—Congress finds that—
(1) the ancestors of today’s Native Peoples inhabited the land of the present-day United States since time immemorial and for thousands of years before the arrival of people of European descent; 
(2) the Native Peoples have for millennia honored, protected, and stewarded this land we cherish; 
(3) the Native Peoples are spiritual peoples with a deep and abiding belief in the Creator, and for millennia their people have maintained a powerful spiritual connection to this land, as is evidenced by their customs and legends; 
(4) the arrival of Europeans in North America opened a new chapter in the histories of the Native Peoples; 
(5) while establishment of permanent European settlements in North America did stir conflict with nearby Indian tribes, peaceful and mutually beneficial interactions also took place; 
(6) the foundational English settlements in Jamestown, Virginia, and Plymouth, Massachusetts, owed their survival in large measure to the cooperation and aid of the Native Peoples in their vicinities; 
(7) in the infancy of the United States, the founders of the Republic expressed their desire for peaceful relations with the Indian tribes, as evidenced by the Northwest Ordinance enacted by Congress in 1787, which begins with the phrase, “The utmost good faith shall always be observed toward the Indians”; 
(8) Indian tribes provided great assistance to the fledgling Republic as it strengthened and grew, including invaluable help to Meriwether Lewis and William Clark on their epic journey from St. Louis, Missouri, to the Pacific Coast; 
(9) Native Peoples and non-Native settlers engaged in numerous armed conflicts; 
(10) the United States Government violated many treaties and agreements with the Native Peoples, and other diplomatic agreements with Indian tribes; 
(11) this Nation should address the broken treaties and many of the more ill-conceived Federal policies that followed, such as extermination, termination, forced removal and relocation, the outlawing of traditional religious practices, and violation of sacred sites; 
(12) the United States forced Indian tribes and their citizens to move away from their traditional homelands and onto federally established reservations, in accordance with the Indian Removal Act of 1830 (4 Stat. 411, chapter 148) (commonly known as the “Indian Removal Act”); 
(13) many Native Peoples suffered and perished: 
(A) during the execution of the official United States Government policy of forced removal, including the infamous Trail of Tears and Long Walk; 
(B) during bloody armed confrontations and massacres, such as the Sand Creek Massacre of 1864 and the Wounded Knee Massacre in 1890; and 
(C) on numerous Indian reservations; 
(14) the United States Government condemned Native American traditions, beliefs, and customs of the Native Peoples and endeavored to assimilate them by such policies as the redistribution of land under the Act of February 8, 1897 (25 U.S.C. 331; 24 Stat. 390, chapter 119) (also known as the “General Allotment Act”), and the forcible removal of Native American children from their families to faraway boarding schools where their Native customs and languages were degraded and forbidden; 
(15) officials of the United States Government, including United States citizens harmed Native Peoples by the unlawful acquisition of recognized tribal land and the theft of tribal resources and assets from recognized tribal land; 
(16) the policies of the United States Government toward Indian tribes and the break-up of tribal lands have contributed to the severe social ills and economic troubles in many Native communities today; 
(17) despite the wrongs committed against Native Peoples by the United States, the Native Peoples have remained committed to the protection of this great land, as evidenced by the fact that on a grassroots basis, more Native people have served in the United States Armed Forces and placed themselves in harm’s way in defense of the United States in major military conflicts than any other ethnic group; 
(18) Indian tribes have actively influenced the public life of the United States by continued cooperation with Congress and the Department of the Interior, through the involvement of Native individuals in official United States Government positions, and by leadership of their own sovereign Indian tribes; 
(19) Indian tribes are resilient and determined to preserve, develop, and transmit to future generations their unique cultural identities; 
(20) the National Museum of the American Indian was established in the Smithsonian Institution as a memorial to the Native Peoples and their traditions; and 
(21) Native People are endowed by their Creator with certain unalienable rights, and that among those rights are life, liberty, and the pursuit of happiness. 
(b) ACKNOWLEDGMENT AND APOLOGY.—The United States, acting through Congress— 
(1) recognizes the special legal and political relationship the Indian tribes have with the United States and the solemn covenant with the land we share; 
(2) commends and honors the Native Peoples for the thousands of years that they have stewarded and protected this land; 
(3) recognizes that there have been years of official deprivations, ill-conceived policies, and the breaking of covenants by the United States Government regarding Indian tribes; 
(4) apologizes on behalf of the people of the United States and all Native Peoples for this and many instances of violence, maltreatment, and neglect inflicted on Native Peoples by citizens of the United States; 
(5) expresses its regret for the ramifications of former wrongs and its commitment to build on the positive relationships of the past and present to move toward a brighter future where this land live reconciled as brothers and sisters, and harmoniously steward and protect this land together; 
(6) urges the President to acknowledge the wrongs of the United States against Indian tribes in the history of the United States in order to bring healing to this land by providing a proper foundation for reconciliation between the United States and Indian tribes; and 
(7) commends the States governments that have begun reconciliation efforts with recognized Indian tribes located in their boundaries and encourages all State governments similarly to work toward reconciling relationships with Indian tribes within their boundaries. 
(c) DISCLAIMER.—Nothing in this section— 
(1) authorizes or supports any claim against the United States; or 
(2) serves as a settlement of any claim against the United States. 

SA 1881. Ms. SNOWE submitted an amendment intended to be proposed by her to the bill S. 1042, to authorize ap- propriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes, which was ordered to lie on the table; as follows: 

On page 378, between lines 10 and 11, insert the following: 

SEC. 3114. SMALL AND RENEWABLE POWER CONTRACTS. 

Section 501(b)(1) of title 40, United States Code, is amended by striking subparagraph (B) and inserting the following: 

“(B) A CKNOWLEDGMENT AND APOLOGY.—The United States utility electric services may be made for a period of not more than 20 years. 

“(ii) DEFINITION OF PUBLIC UTILITY ELECTRIC SERVICES.—In this subparagraph, the term ‘public utility services’, with respect to electricity services, includes electricity supplies and services, including transmission, generation, distribution, and other services directly used in providing electricity.”.

NOTICES OF HEARINGS/MEETINGS COMMITTEE ON INDIAN AFFAIRS Mr. MCCAIN. Mr. President, I would like to announce that the Committee on Indian Affairs will meet on Wednesday, September 28, 2005, at 2:30 p.m. in Room 485 of the Russell Senate Office Building to conduct an oversight hearing on Indian Housing.

Those wishing additional information may contact the Indian Affairs Committee at 224–2251.

SUBCOMMITTEE ON WATER AND POWER Mr. MURKOWSKI. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Subcommittee on Water and Power of the Committee on Energy and Natural Resources.

The hearing will be held on Thursday, October 6, 2006 at 3 p.m. in Room SD–366 of the Dirksen Senate Office Building.

The purpose of the hearing is to receive testimony on S. 1025, to amend the Act entitled “An Act to provide for the construction of the Cheyenne diversion, Wichita Federal reclamation project, Kansas, and for other purposes” to authorize the Equus Beds Division of the Wichita Project; S. 1498, to direct the Secretary of the Interior to provide certain water distribution facilities to the Northern Colorado Water Conservancy District; S. 1529, to provide for the conveyance of certain Federal land in the city of Yuma, Arizona; S. 1578, to reauthorize the Upper Colorado and San Juan River Basin endangered fish recovery implementation programs; and S. 1760, to authorize early repayment of obligations to the Bureau of Reclamation within the Rogue River Valley Irrigation District or within the Medford Irrigation District, and for other purposes.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those
wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510-6150.

For further information, please contact Kellie Donnelly at 202-224-9260 or Shannon Ewan at 202-224-7555.

**COMMITTEE ON ENERGY AND NATURAL RESOURCES**

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.

The hearing will be held on Thursday, October 6, 2005 at 10 a.m. in Room SD-366 of the Dirksen Senate Office Building.

The purpose of the hearing is to receive an update on Hurricanes Katrina and Rita's effects on energy infrastructure and the status of recovery efforts in the Gulf Coast region.

Because of the limited time available for the hearing, witnesses may testify invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to Committee on Energy and Natural Resources, United States Senate, Washington, DC 20510-6150.

I would also like to announce that the hearing to evaluate and receive a status report on the Environmental Management Programs of the Department of Energy which was previously scheduled before the Committee for this date and time has been postponed and will be rescheduled at a later date.

For further information, please contact Lisa Epifani at 202-224-5209 or Shannon Ewan at 202-224-7555.

**AUTHORITY FOR COMMITTEES TO MEET**

**COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION**

Mr. BURR. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Wednesday, September 28, 2005, at 10 a.m., on S. 1114—Professional Athletes Drug Testing bill and S. 1334—Professional Sports Integrity and Accountability Act, in Hart 216.

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

**COMMITTEE ON ENERGY AND NATURAL RESOURCES**

Mr. BURR. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Wednesday, September 28, at 11:30 a.m. to consider pending calendar business.

**Agenda**

Agenda Item 3: S. 166—To amend the Oregon Resource Conservation Act of 1996 to reauthorize the participation of the Bureau of Reclamation in the Deschutes River Conservancy, and for other purposes.

Agenda Item 4: S. 206—To designate the Ice Age Floods National Geologic Trail, and for other purposes.

Agenda Item 5: Mr. Burr to direct the Secretary of the Interior to convey certain Federal land to Rio Arriba County, NM.

Agenda Item 6: S. 242—To establish four memorials to the Space Shuttle Columbia in the State of Texas.

Agenda Item 7: S. 251—To authorize the Secretary of the Interior, acting through the Bureau of Reclamation, to conduct a water resource feasibility study for the Little Butte/Bear Creek Sub-basins in Montana.

Agenda Item 8: S. 592—To extend the contract for the Glendo Unit of the Missouri River Basin Project in the State of Wyoming.

Agenda Item 9: S. 652—To provide financial assistance for the rehabilitation of the Benjamin Franklin National Memorial in Philadelphia, PA, and the development of an exhibit to commemorate the 300th anniversary of the birth of Benjamin Franklin.

Agenda Item 11: S. 761—To rename the Snake River Birds of Prey National Conservation Area in the State of Idaho as the Morley Nelson Snake River Birds of Prey National Conservation Area in honor of Mr. Nelson, an international authority on birds of prey, who was instrumental in the establishment of this National Conservation Area, and for other purposes.

Agenda Item 12: S. 777—To designate Catoctin Mountain Park in the State of Maryland as the “Catoctin Mountain National Recreation Area,” and for other purposes.

Agenda Item 13: S. 819—To authorize the Secretary of the Interior to reallocate costs of the Pactola Dam and Reservoir, SD, to reflect increased demands for municipal, industrial, and fish and wildlife purposes.

Agenda Item 14: S. 891—To extend the water contract for the Ainsworth Unit, Sandhills Division, Pick-Sloan Missouri Basin Program, NE.

Agenda Item 15: S. 895—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.

Agenda Item 16: S. 955—To direct the Secretary of the Interior to conduct a special study to determine the suitability and feasibility of including in the National Park System certain sites in Williamson County, TN, relating to the Battle of Franklin.

Agenda Item 17: S. 958—To amend the National Trails System Act to designate the Star-Spangled Banner Trail in the States of Maryland and Virginia and the District of Columbia as a National Historic Trail.

Agenda Item 18: S. 1154—To extend the Acadia National Park Advisory Commission, to provide improved visitor services at the park, and for other purposes.

Agenda Item 19: S. 1170—To establish the Fort Stanton-Snowy River National Cave Conservation Area.

Agenda Item 20: S. 1238—To amend the Public Lands Corps Act of 1993 to provide for the conduct of projects that promote forests, wildlife, and other purposes.

Agenda Item 21: S. 1338—To require the Secretary of the Interior, acting through the Bureau of Reclamation and the United States Geological Survey, to conduct a study on groundwater resources in the State of Alaska, and for other purposes.

Agenda Item 23: H.R. 126—To amend Public Law 89-366 to allow for an adjustment in the number of free roaming horses permitted in Cape Lookout National Seashore.

Agenda Item 24: H.R. 409—To provide for the exchange of land within the Sierra National Forest, CA, and for other purposes.

Agenda Item 26: H.R. 539—To designate certain National Forest System land in the Commonwealth of Puerto Rico as a component of the National Wilderness Preservation System.

Agenda Item 27: H.R. 584—To authorize the Secretary of the Interior to recruit volunteers to assist with, or facilitate, the activities of various agencies and offices of the Department of the Interior.

Agenda Item 28: H.R. 606—To authorize appropriations to the Secretary of the Interior for the restoration of the Angel Island Immigration Station in the State of California.

Agenda Item 29: H.R. 1101—To revoke a Public Land Order with respect to certain lands erroneously included in the Cibola National Wildlife Refuge, CA.


In addition, the Committee may turn to any other measures that are ready for consideration.

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

**COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS**

Mr. BURR. Mr. President, I ask unanimous consent that the Committee on Environment and Public Works be authorized to meet Wednesday, September 28, 2005, at 9:30 a.m. to conduct a hearing to discuss the role of science in environmental policy making.

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

**COMMITTEE ON FINANCE**

Mr. BURR. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet during the session on Wednesday, September 28, 2005, at 10 a.m., to hear testimony on “Hurricane Katrina: Community Rebuilding Needs and Effectiveness of Past Proposals.”

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

**COMMITTEE ON FOREIGN RELATIONS**

Mr. BURR. Mr. President, I ask unanimous consent that the Committee on
The purpose of the hearings is to re-
view the Grazing programs of the Bu-
reau of Land Management and the For-
est Service, including proposed changes
to grazing regulations, and the status
of grazing permit renewals, monitoring
programs and allotment restocking
plans.

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

Mr. BURR. Mr. President, I ask unan-
imous consent that the Senate
receive the nomination of Judge Roberts.

Mr. HARKIN. I ask unanimous con-
sent that Judge Roberts be a
member of the Senate
Judiciary Committee.

Mr. BROWNBACK. Mr. President, I ask
unanimous consent that Judge Roberts
be a member of the Senate
Judiciary Committee.

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

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

Mr. BROWNBACK. Mr. President, I ask
unanimous consent that Judge Roberts
be a member of the Senate
Judiciary Committee.

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

Mr. BURR. Mr. President, I ask unan-
imous consent that the Committee on
Homeland Security and Governmental
Affairs be authorized to meet on
Wednesday, September 28, 2005, at 2:30
p.m. in Room 485 of the Russell Senate
Office Building to conduct an oversight
hearing on Indian Housing.

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

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the crew aboard the International Space Station, and the entire NASA team conducted an extremely successful first test flight to assess the progress made in the space shuttle program since the tragic Columbia accident. On July 25, 1986, the Space Shuttle Columbia accident occurred. During liftoff—the direct cause of the damage to Columbia—was reduced to a level far below that previously experienced, it has not been eliminated and more work remains to understand and address the problem. Progress made, among the major improvements in the Shuttle program is the vast increase in the ability to monitor and collect visual information on the health of the Orbiter both during launch and in orbit. That unprecedented level of information was combined with new on-orbit repair techniques to further enhance our confidence in the shuttle program’s flight readiness. All of us, I’m sure, were thrilled to watch astronaut Steve Robinson deftly pluck the small satellite from Discovery’s underside, and the amazing never before seen images of the orbiter’s thermal protection system. Our subcommittee will continue to monitor the application of the findings of this first test flight to subsequent flights, as we approach the launch of the second test flight next year, which continues this first step in the Vision for Exploration.

The legislation we bring before the Senate today supports the Vision of Exploration outlined by the President. It provides an opportunity for the Congress to fulfill its responsibility to help set the stage for the commencement of our new national journey of exploration. It has been 5 years since the Congress enacted authorization legislation for NASA and its programs. Those 5 years have seen a great deal of change in the realm of space exploration. First and foremost, for nearly all of that time, humans have been living and working continuously only 240 miles above the earth aboard the International Space Station. Despite the interruption of its assembly by the Columbia accident, the space station has already provided a great deal of important scientific information resulting from the research the expedition crews aboard the ISS have been able to accomplish. And most of our laboratory facilities are not yet on orbit. The space station represents an immensely valuable asset for this Nation and our international partners that will multiply the research that can only be done in the microgravity of space.

This bill acknowledges and reaffirms our commitment to fulfill the promise of the ISS. We recognize that NASA has limited total resources and has been given an enormous task to lead the Vision for Exploration. The demands of many valuable and important existing programs have forced NASA to make difficult choices in focusing those scarce resources in ways which support the space station—two-thirds of us consistently supported it in the votes following those debates—was that the ISS represents a unique laboratory in space, which holds the promise for scientific findings that can directly benefit us on Earth and it is interesting to hear statements that the space station has not fulfilled that promise. Those who suggest that seem to have forgotten that it is not yet completed. In fact, only one of the three planned laboratories is on orbit now—the US Destiny laboratory—and it is not yet fully equipped. The remaining modules are completed, and are at the Kennedy Space Center, awaiting their launch and outfitting so that the long-standing plans for ISS reassembly can finally become a reality. Our international partners have invested far too much in building and preparing those facilities, and the on-orbit structure that will provide their home and supporting power and crew accommodations, to back away from that investment now. To do so would not only represent a wasteful, irresponsible and inexcusable breach of faith with the American taxpayers, but an unconscionable betrayal of scientists and researchers in a wide variety of disciplines who have invested years of effort and resources preparing to conduct research that can only be done in the microgravity of space.

Over the past 17 years, this Chamber has been the scene of vigorous discussion and debate on the International Space Station, long before the first module was launched in November of 1998. Through all that discussion, the central theme of those of us who supported the space station and two-thirds of us consistently supported it in the votes following those debates—was that the ISS represents a unique laboratory in space, which holds the promise for scientific findings that can directly benefit us on Earth and it is interesting to hear statements that the space station has not fulfilled that promise. Those who suggest that seem to have forgotten that it is not yet completed. In fact, only one of the three planned laboratories is on orbit now—the US Destiny laboratory—and it is not yet fully equipped. The remaining modules are completed, and are at the Kennedy Space Center, awaiting their launch and outfitting so that the long-standing plans for ISS reassembly can finally become a reality. Our international partners have invested far too much in building and preparing those facilities, and the on-orbit structure that will provide their home and supporting power and crew accommodations, to back away from that investment now. To do so would not only represent a wasteful, irresponsible and inexcusable breach of faith with the American taxpayers, but an unconscionable betrayal of scientists and researchers in a wide variety of disciplines who have invested years of effort and resources preparing to conduct research that can only be done in the microgravity of space.

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At the same time, we have encouraged, and as I noted earlier, the increased participation and involvement of commercial interests and capabilities, in a way that can relieve NASA of some of the basic burdens of space operations. With respect to space station research, we believe additional steps must be taken to enable NASA to conduct the research it must to support long-duration human spaceflight, and to return to the Moon, and to Mars, which will require commitments to international partners and—must add—our commitments to our scientific partners.
International Space Station as national laboratory facility. It further directs the NASA Administrator to develop a plan, within one year after enactment of the bill, to establish a ground-based national laboratory structure that will be responsive for maintaining and operating the research capabilities of the on-orbit laboratory facilities. The ISS national laboratory will be empowered to establish scientific—and funding—relationships with other governmental and non-governmental entities and to include international participation as well. The infusion of new participants and non-NASA resources will free NASA of much of the financial burden it would require to sustain broad-based research aboard ISS, and would thus enable it to focus its ISS research, as planned, on those disciplines and experiments which directly support the needs of the Vision for Exploration.

We believe this represents a creative and innovative approach to meeting our international commitments and fulfilling the long-standing research promise of the ISS, while not inhibiting NASA’s pursuit of its exploration objectives.

In order to continue the Nation’s exploration activities, both in continuing essential activities in low-Earth orbit and moving outward, back to the Moon, Mars, and beyond, we must have a new generation of launch and flight vehicles. The Vision for Exploration calls for the development of a new crew exploration vehicle and associated launch systems, to meet that objective. As I have stated, this legislation supports the goals and objectives of the Vision for Exploration. As the saying goes, however, sometimes “the devil is in the details.” As those details have been revealed in the planning to implement the vision, I have expressed concerns about some of the early transitional steps NASA’s approach has taken from low-Earth orbit to exploration of the Moon and Mars. I have already addressed the question of ensuring the maximum use of the International Space Station. My other primary concern has to do with the transition from the Space Shuttle to the new crew exploration vehicle. The initial announcement of the Vision for Exploration called for the termination of Shuttle flights in 2010, and the first flight of the new vehicle by 2014. The resulting 4-year hiatus in this Nation’s ability to launch humans into space was simply unacceptable to me. It would represent a serious degradation of our national and economic security, as the community of spacefaring nations expands with the advent of Chinese human spaceflight capability and the potential of even more nations developing such capability, potentially challenging U.S. leadership in this important strategic area and major engine of technological advancement.

S. 1281, as introduced, stated that uninterrupted U.S. spaceflight capability is essential to our Nation, and required, in Section 202 of the bill, that the Space Shuttle Orbiter not be retired until a replacement crew-capable space vehicle be made operational. NASA’s new Administrator, Dr. Michael Griffin, made the following confirmation hearing before the Commerce Committee, and again in a subsequent subcommittee hearing on the space shuttle, that he shared our concern about a lengthy hiatus period in U.S. spaceflight capability. Since assuming his leadership of NASA, he has undertaken an effort to approach the development of the replacement vehicle in such a way as to close that gap as much as possible. In anticipation of the success of those efforts, Senator NELSON and I agreed to a modification of the language in the bill—included in the manager’s amendment to the bill—which provides some flexibility in meeting the goal of uninterrupted U.S. spaceflight capability, but continues to state it as an objective. The Exploration Systems Architecture Study was recently completed and I am very pleased to say that the results track very closely to the provisions of S. 1281. The CEV development would be accelerated and a question of moving its operational date to 2011. The key to CEV acceleration is largely a question of resources, and sufficient funding could enable an even earlier operational date, possibly closing the gap in potential in spaceflight capability altogether.

In Dr. Griffin’s appearance before the Science and Space Subcommittee during our hearing on the space shuttle program, he pointed out that the plan for space shuttle retirement involves the retirement of the Orbiters, not necessarily the additional components that make up what we call the space shuttle. Those additional components are the solid rocket boosters and the external fuel tank. I remind my colleagues that the Orbiter is a vehicle that has two major spaceflight functions combined in a single vehicle: the delivery of crew to and from orbit, and the delivery of cargo, or payloads, to and from orbit. The future developments of U.S. human spaceflight capability are intended to separate those functions. That will enable the development of much more simplified—and arguably more cost-effective—vehicles to serve each separate function. The provisions of S. 1281—coupled with the revised plans for vehicle development recently announced, will fulfill those objectives using major elements of our existing systems and adapting them to meet the requirements of both manned and unmanned launch systems.

Launch vehicles and spaceflight vehicles do not prepare and launch themselves into orbit or maintain themselves entirely independently while in space. They require ground-based support facilities, institutions and skilled personnel. The maintenance of those capabilities are, in fact, the most labor and resource-intensive elements of a spaceflight program, over time. They must be maintained even when the vehicles themselves are not flying, and must be kept in a high state of readiness. Human spaceflight systems, especially, the expansion and reuse of launch systems are fundamental elements of flight safety.

The non-orbiter elements of the space shuttle program, both in flight hardware and ground support, represent an enormous national asset and, with modifications and reengineering, can potentially be adapted to meet—in separate configurations—the requirements for human spaceflight and for the launch of large, heavy payloads. Those large payloads are beyond the reach of either evolved expendable launch vehicles or privately-developed launch vehicles—or the current or planned launch vehicles of any other country for that matter. For those reasons, and others, this legislation directs and encourages NASA to make the maximum possible utilization of the personnel, assets and capabilities of the space shuttle program in developing the next generation of crew and cargo launch vehicles. The NASA plans will do just that, as envisioned by this legislation.

Another important and historical NASA research activity is aeronautics—a fundamental component of NASA’s activities since its inception. Indeed, not only is “aeronautics” the first “a” in NASA, but NASA came into being as an expansion of the National Advisory Committee on Aeronautics, which was established in 1915. That heritage is an important NASA legacy and the continued health of the Nation’s aerospace industry in a very competitive global market-place makes it essential that our Nation have solid aeronautical research capabilities. Equally important, given the environment of limited resources, is that decisions about priorities for funding and programs be guided by a clear statement of policy, based on a thorough understanding of both available assets and essential requirements. This legislation directs the development of a national policy to guide the Nation’s aeronautical research—including that conducted by NASA. The policy is to be developed within one year after enactment of the legislation, to provide time for a thorough and complete assessment of every aspect of aeronautics research, and yet provide the earliest possible guidance for both the administration and the Congress in determining the appropriate funding levels for that research. We have chosen not to establish a specific level of funding for that research in the legislation, in order to provide the flexibility for the NASA Administrator to establish those levels using the national policy we have required to be developed.

Finally, let me say something about the broad range of science activities
for which NASA has always been known. The remarkable feat of the Deep Impact asteroid interception mission and the extraordinary success of the Spirit and Opportunity Mars Rovers are, of course, only the most recent and dazzling elements of NASA’s Science expertise. Less spectacular, but equally significant, are the earth observation and earth sciences programs which help us understand—and better care for—the spaceships of which all of us are members of the planetary Earth. As with aeronautics research, we have not spelled out specific funding authorization levels for the full 5 years authorized among the various science disciplines, providing flexibility for the NASA Administrator to make the best judgments about resource allocations. However, we express clearly in this bill the need for maintaining a balanced science portfolio which helps us understand and improve our world.

In addition, we require accountability and will maintain careful oversight over the plans and decisions made to implement that balance.

This legislation provides a comprehensive and responsible approach to the transition of our Nation’s space exploration programs into a new era of discovery. I believe that, together with our colleagues in the other body, we will be able to craft a congressional consensus that will help ensure this Nation’s leadership in space exploration and provide benefits beyond measure and beyond imagination to this Nation and the world.

I want to thank my friend and colleague from Florida, Senator Nelson, for the spirit of cooperation he and his staff have brought to the development and refinement of this legislation. It represents a truly bi-partisan—really a non-partisan—result, as is appropriate for the Nation’s space exploration programs. I also want to express my appreciation to the staff of my Subcommittee and the full Commerce Committee, who have worked with us to bring this measure before the Senate. And, of course, I want to acknowledge the leadership of Senators Stevens and Inouye, who have supported our efforts to provide authorization and a strong policy foundation to our Nation’s space exploration efforts.

I urge my colleagues to support S. 1281.

Mr. NELSON of Florida, Mr. President, I am pleased to join Senators Hutchison, Stevens, Inouye, and Lott today in sponsoring an amended NASA Authorization Act and managers package that provides policy guidance for keeping NASA on track to achieve their goals to explore space and to ensure that there is a good balance between the different activities that NASA performs.

Just a few days ago, NASA released their Exploration Systems Architecture Study. The study describes how NASA plans to implement the President’s Vision for Space Exploration by returning to the Moon and preparing to go beyond.

Through this NASA bill, Congress can provide constructive support to the good work being done by Administrator Michael Griffin, as they begin to implement the President’s vision and prepare NASA for the challenges of the future.

This is a 5-year bill, authorizing NASA from 2006 through 2010. It authorizes NASA appropriations in excess of the President’s budget request.

For fiscal 2006, the President requested $16.456 billion, which is a 2.4 percent increase over the fiscal year 2005 NASA operating budget. Recently the Commerce, Justice, and Science Appropriations Subcommittee approved $16.556 billion for fiscal year 2006, which is a 3 percent increase over the fiscal year 2005 NASA operating budget. This bill authorizes $16.556 billion for fiscal year 2006, which is a 3 percent increase over the fiscal year 2005 NASA operating budget. This bill authorizes increases at a level of about 3 percent each year, consistently providing more than the President’s budget projection.

Like many of our colleagues, Senator HUTCHISON and I believe that recent NASA budget requests have been below the levels required for NASA to perform its various missions effectively. Once this bill is enacted, we intend to work with the Appropriations Committee to ensure that adequate funds are provided for NASA to succeed.

This legislation authorizes NASA to return humans to the Moon, to explore it, and to maintain a human presence on the Moon. Consistent with the President’s vision, it also requires using what we learn and develop on the Moon as a stepping stone to future exploration of Mars.

To carry out these missions, our bill requires NASA to develop an implementation plan for the transition from shuttle to crew exploration vehicle, CEV. The plan will help NASA make a smooth transition from retirement of the space shuttle orbiters to the replacement spacecraft systems. The implementation plan will help make sure that we maintain the skills and the focus that are needed to ensure that each space shuttle flight is safe through retirement of the orbiters, and to retain those personnel needed for the CEV and heavy-lift cargo spacecraft.

It is essential to our national security that we prevent any hiatus or gap in which the United States cannot send astronauts to space without relying on a foreign country. The Russians have failed to construct an alternative to the International Space Station, and the Soyuz spacecraft has been a reliable vehicle for our astronauts. But with all of the uncertainties in our relationship with Russia, we simply cannot afford to lose this critical capability of two nations being totally dependent on the Soyuz.

We need to maintain assured access to space by U.S. astronauts on a continuous basis. We therefore require in this legislation that there not be a hiatus in the transition from the space shuttle orbiters and the availability of the next generation U.S. human-rated spacecraft.

We have worked with NASA to address their concerns regarding the hiatus, and have crafted language that expresses our desire not to have a gap, and that NASA feels is suitable. We are aware of Dr. Griffin’s efforts to reduce this risk, but we want to make sure that we are doing everything possible to lessen this risk. We have crafted language that can provide constructive support to the good work being done by Administrator Michael Griffin, as they begin to implement the President’s vision and prepare NASA for the challenges of the future.

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have stated their intent to dominate the airplane market by 2020. It is not in our national interest to let that occur.

We are calling on NASA to develop and demonstrate aviation technologies for reducing commercial aircraft noise levels at airports, making aircraft more fuel efficient, improving airport safety and security, and continuing the pursuit of revolutionary concepts such as hypersonic flight. Aeronautics is a very important function of NASA and needs to be continued and further developed. This bill calls on NASA to assure that at least 5 percent of the aeronautics budget be allocated for fundamental aeronautical research.

NASA has a new direction, and they have outstanding leadership in Dr. Michael Griffin. We have an opportunity to authorize NASA for: implementing the Vision for Space Exploration; renewing our commitment to U.S. aviation and NASA aeronautics research; retaining or reusing very important science activities at NASA; and assuring that America has continuous human access to space.

By passing this legislation, we will continue to advance our national security, reinvigorate our economy, inspire the next generation of explorers, and fulfill our destiny as explorers.

Mr. STEVENS. Mr. President, passage of S. 1281, the NASA Authorization Act of 2005, is a milestone in our country's continuing efforts to open and develop new frontiers.

One year after the Columbia space shuttle tragedy, President Bush gave us a bold, new vision for the future of space exploration. This legislation provides the framework we need to implement the President's vision.

The Moon is the strategic gateway to the rest of the solar system. It will ultimately be a critical point for many human endeavors. It will support economic growth, cutting-edge research and technology, and innovative partnerships.

This legislation also provides NASA with important guidance for its other missions. It outlines a national aeronautics policy, which will be developed by the administration. This policy will enable us to take into account emerging challenges in aeronautics research as we plan our investments going forward.

S. 1281 also calls for the implementation of a balanced space science program and highlights the need for better access to data which can meet local and national challenges.

This is a bipartisan bill which provides a solid foundation for our current and future space activities. I am pleased we are sustaining our long-standing commitment to space exploration.

Mr. GRAHAM. I ask unanimous consent that the Hutchinson amendment at the desk be agreed to; the committee reported amendments, as amended, if amended, be agreed to; the bill, as amended, be read a third time and passed; the motions to reconsider be laid upon the table; and that any statements relating to the bill be printed in the RECORD.

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

The amendment (No. 1875) was agreed to.

The bill (S. 1281), as amended, was read the third time and passed, as follows:

S. 1281
Be it enacted by the Senate and House of Representatives of the United States of America in Congress as follows:

SECTION 1. SHORT TITLE, TABLE OF CONTENTS.
(a) Short Title.—This Act may be cited as ‘‘National Aeronautics and Space Administration Authorization Act of 2005’’.
(b) Table of Contents.—The table of contents for this Act is as follows:

TITLE I—AUTHORIZATION OF APPROPRIATIONS

SUBTITLE A—AUTHORIZATIONS

Sec. 102. Fiscal year 2007.
Sec. 103. Fiscal year 2008.
Sec. 104. Fiscal year 2009.
Sec. 105. Fiscal year 2010.
Sec. 106. Evaluation criteria for budget requests.

SUBTITLE B—GENERAL PROVISIONS

Sec. 131. Implementation of a science program that extends human knowledge and understanding of the Earth, sun, solar system, and the universe.
Sec. 132. Biennial reports to Congress on science programs.
Sec. 133. Status report on Hubble Space Telescope servicing mission.
Sec. 134. Develop expanded permanent human presence beyond low-Earth orbit.
Sec. 135. Ground-based analog capabilities.
Sec. 136. Space launch and transportation transition, capabilities, and development.
Sec. 137. National policy for aeronautics research and development.
Sec. 138. Identification of unique NASA core aeronautics research.
Sec. 139. Lessons learned and best practices.
Sec. 140. Safety management.
Sec. 141. Creation of a budget structure that aids effective oversight and management.
Sec. 142. Earth observing system.
Sec. 143. National space program.
Sec. 144. Assessment of extension of data collection from Ulysses and Voyager spacecraft.
Sec. 145. Program to expand distance learning in rural underserved areas.
Sec. 146. Institutions in NASA’s minority institutions program.
Sec. 147. Aviation research program.
Sec. 148. Atmospheric, geophysical, and rocket research authorization.
Sec. 149. Orbital debris.
Sec. 150. Contracting of certain educational programs.
Sec. 151. Establishment of the Charles ‘‘Pete’’ Conrad Astronaut Awards Program.
Sec. 152. GAO assessment of feasibility of Moon and Mars exploration missions.
Earth orbit are in the national policy interests of the United States, including maintenance and development of an active and healthy stream of research from ground to space. This program will uniquely benefit from access to this facility.

(8) NASA should develop vehicles to replace the Shuttle orbiter’s capabilities for transporting crews and cargo to and from space to ensure United States leadership. A national effort is needed to assess NASA’s aeronautics programs and infrastructure to allow a consolidated national approach that ensures efficiency and national preeminence in aeronautics and aviation.

(9) The United States must remain the leader in aeronautics and aviation. Any erosion of this preeminence is not in the Nation’s economic or security interest and should align its aerospace leadership to ensure United States leadership. A national effort is needed to ensure that NASA’s aeronautics programs are leading contributions to the Nation’s civil and military aviation needs, as well as to its exploration capabilities.

SEC. 3. DEFINITIONS.

In this Act:
(1) ADMINISTRATOR.—The term “Administrator” means the Administrator of the National Aeronautics and Space Administration.
(2) ISS.—The term “ISS” means the International Space Station.
(3) NASA.—The term “NASA” means the National Aeronautics and Space Administration.
(4) SHUTTLE-DERIVED VEHICLE.—The term “shuttle-derived vehicle” means any new space transportation vehicle, piloted or unpiloted, that—
(A) is capable of supporting crew or cargo missions; and
(B) uses a major component of NASA’s Space Transportation System, such as the solid rocket booster, external tank, engine, and orbiter.
(5) IN-SITU RESOURCE UTILIZATION.—The term “in-situ resource utilization” means the technology or systems that can convert indigenous or locally-situated substances into useful materials and products.

TITLe I—AUTHORIZATION OF APPROPRIATIONS

SubTitle A—Authorizations

SEC. 101. FISCAL YEAR 2006.

There are authorized to be appropriated to the National Aeronautics and Space Administration, for fiscal year 2006, $16,556,400,000, as follows:

(1) $10,549,800,000 for science, aeronautics and exploration (including amounts for construction of facilities).
(2) For exploration capabilities, $6,469,600,000 for space transportation systems (including amounts for construction of facilities), of which $6,469,600,000 shall be for space operations.
(3) To the Office of Inspector General, $53,500,000.

SEC. 102. FISCAL YEAR 2007.

There are authorized to be appropriated to the National Aeronautics and Space Administration, for fiscal year 2007, $17,052,900,000, as follows:

(1) $10,383,000,000 for science, aeronautics and exploration (including amounts for construction of facilities).
(2) For exploration capabilities, $6,680,000,000 for space transportation systems (including amounts for construction of facilities), of which $6,680,000,000 shall be for space operations.

SEC. 103. FISCAL YEAR 2008.

There are authorized to be appropriated to the National Aeronautics and Space Administration, for fiscal year 2008, $17,470,900,000.

SEC. 104. FISCAL YEAR 2009.

There are authorized to be appropriated to the National Aeronautics and Space Administration, for fiscal year 2009, $17,969,000,000.

SEC. 105. FISCAL YEAR 2010.

There are authorized to be appropriated to the National Aeronautics and Space Administration, for fiscal year 2010, $18,524,900,000.

SEC. 106. EVALUATION CRITERIA FOR BUDGET REQUEST.

It is the sense of the Congress that each budget of the United States submitted to the Congress after the date of enactment of this Act should be evaluated for compliance with the findings and priorities established by this Act and the amendments made by this Act.

Subtitle B—General Provisions

SEC. 131. IMPLEMENTATION OF A SCIENCE PROGRAM THAT EXTENDS HUMAN KNOWLEDGE AND UNDERSTANDING OF THE EARTH, SUN, SOLAR SYSTEM, AND THE UNIVERSE.

The Administrator shall—
(1) conduct a rich and vigorous set of science activities aimed at better comprehension of the universe, solar system, and Earth, and ensure that the various areas within NASA’s science portfolio are developed and maintained in a balanced and healthy manner; manner; and 
(2) as part of this balanced science research program, provide, to the maximum extent feasible, continued support and funding for the Magnetospheric Multiscale Mission, SIM-Planet Quest, and Future Explorers programs, including determining whether these delayed missions and planned missions can be expedited to meet previous schedules;

(3) any activities undertaken by the Administrator to conform with the Sun-Earth science and applications direction provided in section 131; and
(4) to develop a permanently sustained human presence on the Moon, in tandem with an extensive precursor program, to support secure, commerce, and scientific pursuits, and as a stepping-stone to future exploration of Mars.

The Administrator is further authorized to develop and conduct international collaborations in pursuit of these goals, as appropriate.

SEC. 132. STATUS REPORT ON HUBBLE SPACE TELESCOPE SERVICING MISSION.

Within 90 days after the landing of the second Space Shuttle mission for return-to-flight certification, the Administrator shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science a one-time status report on a Hubble Space Telescope servicing mission.

SEC. 133. DEVELOP EXPANDED PERMANENT HUMAN PRESENCE BEYOND LOW-EARTH ORBIT.

(a) IN GENERAL.—As part of the programs authorized under the National Aeronautics and Space Act of 1958 (42 U.S.C. 2451 et seq.), the Administrator shall establish a program to develop a permanently sustained human presence on the Moon, in tandem with an extensive precursor program, to support secure, commerce, and scientific pursuits, and as a stepping-stone to future exploration of Mars.

(b) EXTENSION.—In carrying out this section, the Administrator shall—
(1) implement an effective exploration technology program that is focused around the key needs to support human and robotic operations;

(2) as part of NASA’s annual budget submission, submit to the Congress the detailed science, schedule, and budget for key lunar mission-enabling technology areas, including areas for possible innovative governmental and commercial activities and partnerships;

(3) as part of NASA’s annual budget submission, submit to the Congress a plan for NASA’s lunar robotic precursor and technology programs, including current and near-term science and scientific research that support the lunar program; and
(4) conduct an intensive in-situ resource utilization technology program in order to develop the capability to use space resources to increase independence from Earth, and sustain exploration beyond low-Earth orbit.

SEC. 135. GROUND-BASED ANALOG CAPABILITIES.

(a) IN GENERAL.—The Administrator shall establish a ground-based analog capability in remote United States locations in order to assist in the operation of lunar operations, life support, and in-situ resource utilization experience and capabilities.

(b) LOCATIONS.—The Administrator shall select locations for subsection (a) in places that—

(1) are regularly accessible;
(2) have significant temperature extremes and radiation environments;
(3) have access to energy and natural resources (including geothermal, permafrost, volcanic, and other potential resources);

(c) INVOLVEMENT OF LOCAL POPULATIONS; PRIVATE SECTOR PARTNERS.—In carrying out this section, the Administrator shall involve local populations, academia, and industrial partners as much as possible to ensure that ground-based benefits and applications are encouraged and developed.

SEC. 136. SPACE LAUNCH AND TRANSPORTATION TRANSITION, CAPABILITIES, AND DEVELOPMENT.

(a) POST-ORBITER TRANSITION.—The Administrator shall develop an implementation plan for the transition to a new crew exploration vehicle and heavy-lift launch vehicle that uses the personnel, capabilities, assets, and infrastructure of the Space Shuttle to the fullest extent possible and addresses how NASA will accommodate the docking of the crew exploration vehicle to the ISS.

(b) AUTOMATED RENDEZVOUS AND DOCKING.—The Administrator is directed to pursue aggressively automated rendezvous and docking capabilities that can support ISS and other mission requirements and include these activities, progress reports, and plans in the implementation plan.

(c) CONGRESSIONAL SUBMISSION.—Within 120 days after the date of enactment of this Act the Administrator shall submit a copy of the implementation plan to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science.

SEC. 137. NATIONAL POLICY FOR AERONAUTICS RESEARCH AND DEVELOPMENT.

(a) IN GENERAL.—The President, through the Director of the Office of Science and Technology Policy, shall develop, in consultation with NASA and other relevant Federal agencies, an aeronautics policy to guide the aeronautics programs of the United States through the year 2020. The development of this policy shall utilize external studies that have been conducted on the state of United States aeronautics and aviation research and have suggested policies to ensure continued competitiveness.

(b) DUTIES.—At a minimum the national aeronautics policy shall describe—

(1) national goals for aeronautics research;
(2) the priority areas of research for aeronautics research for its current and potential applications;
(3) the basis of which the process by which priorities for ensuring fiscal years will be selected; and
(4) the process and responsibilities of various Federal agencies in aeronautics research.

(c) NATIONAL ASSESSMENT OF AERONAUTICS INTER-AGENCY CAPABILITIES.—In developing the national aeronautics policy, the President, through the Director of the Office of Science and Technology Policy, shall conduct an assessment of aeronautics research infrastructure to assure—

(1) uniqueness, mission dependency, and industry need; and
(2) the development or initiation of a consolidated national aviation research, development, and demonstration program.

(1)(1) SEC. 138. IDENTIFICATION OF UNIQUE NASA CREDENTIALS FOR SPACE SCIENCE.

Within 180 days after the date of enactment of this Act, the Administrators shall submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science that assesses the aeronautics research program for its current and potential application to new aeronautical and space vehicles and the unique aeronautical research and associated capabilities that must be retained and supported by NASA to further space exploration and support United States economic competitiveness.

SEC. 139. LESSONS LEARNED AND BEST PRACTICES.

(a) IN GENERAL.—The Administrator shall provide an implementation plan describing NASA's science, aeronautics, and exploration, implementing, and sharing lessons learned and best practices for its major programs and projects within 180 days after the date of enactment of this Act. The implementation plan shall be updated and maintained to assure that it is current and consistent with the burgeoning culture of learning and safety that is emerging at NASA.

(b) REQUIRED CONTENT.—The implementation plan shall contain as a minimum the lessons learned and best practices requirements for NASA, the organizations or positions responsible for enforcement of the requirements, the reporting structure, and the objective performance measures indicating the effectiveness of the activity.

(c) INCENTIVES.—The Administrator shall provide incentives to encourage sharing and implementation of lessons learned and best practices by employees, projects, and programs; as well as penalties for programs and projects that do not demonstrate use of those resources.

SEC. 140. SAFETY MANAGEMENT.

Section 6 of the National Aeronautics and Space Administration Authorization Act, 1968 (42 U.S.C. 2477) is amended—

(1) by inserting “(a) IN GENERAL.—” before “There shall be”;
(2) by striking “to it,” and inserting “to it, including evaluating NASA’s compliance with the return-to-flight and continue-to-fly recommendations of the Columbia Accident Investigation Board;”;
(3) by inserting “and the Congress” after “advise the Administrator”;
(4) by striking “and with respect to the adequacy of the existing safety standards and shall” and inserting “with respect to the adequacy of proposed or existing safety standards, and with respect to management at Science, The Panel and I also”;
(5) by adding at the end the following:

“(b) ANNUAL REPORT. The Panel shall submit an annual report to the Administrator and to the Congress. In the first annual report submitted after the date of enactment of this Act, the Panel shall report on the status of the National Aeronautics and Space Administration Authorization Act of 2005, the Panel shall include an evaluation of NASA’s safety management culture.

(c) CREATION OF A BUDGET STRUCTURE THAT AIDS EFFECTIVE OVERSIGHT AND MANAGEMENT.

In developing NASA’s budget request for inclusion in the Budget of the United States for fiscal year 2007 and thereafter, the Administrator shall—

(1) line items for—

(A) science, aeronautics, and exploration;
(B) exploration capabilities; and
(C) the Office of the Inspector General;
(2) enumerate separately, within the science, aeronautics, and exploration account, the requests for—

(A) space science;
(B) Earth science; and
(C) aeronautics;
(3) include, within the exploration capabilities account, the requests for—

(A) the Space Shuttle; and
(B) the ISS; and
(4) enumerate separately the specific request for the independent technical authority within the appropriate account.

SEC. 142. EARTH OBSERVING SYSTEM.

(a) IN GENERAL.—Within 6 months after the date of enactment of this Act, the Administrator, in consultation with the Administrators of the National Oceanic and Atmospheric Administration and the Director of the United States Geological Survey, shall submit a plan to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science that describes the framework for the Earth observing system at NASA.

(b) PLAN REQUIREMENTS.—The plan shall—

(1) address such issues as—

(A) out-year budgetary projections;
(B) technical requirements for the system;
(C) integration into the Global Earth Observing System of Systems; and

(2) evaluate—

(A) the need to proceed with any NASA missions that have been delayed or canceled; and
(B) the need to strengthen research and analysis programs; and

(E) the need to strengthen the approach to obtaining important climate observations and data records.

(c) EARTH OBSERVING SYSTEM DEFINED.—In this section, the term “Earth observing system” means the series of satellites, a science component, and a data system for long-term global observations of the land surface, biosphere, solid Earth, atmosphere, and oceans.

SEC. 143. NASA HEALTHCARE PROGRAM.

The Administrator shall develop policies, procedures, and plans necessary to—

(1) establish a lifetime healthcare program for NASA astronauts and their families; and

(2) study and analysis of the healthcare database in order to understand the longitudinal health effects of space flight on humans better.
SEC. 144. ASSESSMENT OF EXTENSION OF DATA COLLECTION FROM ULYSSES AND VOYAGER SPACECRAFT.

(a) ASSUMPTION.—Not later than 60 days after the date of the enactment of this Act, the Administrator shall carry out an assessment of the costs and benefits of extending, to such date as the Administrator considers appropriate for purposes of the assessment, the date of the termination of data collection from the Ulysses spacecraft and the Voyager spacecraft.

(b) REPORT.—Not later than 30 days after completing the assessment required by subsection (a), the Administrator shall submit a report on the assessment to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science.

SEC. 145. PROGRAM TO EXPAND DISTANCE LEARNING IN RURAL UNDERSERVED AREAS.

(a) IN GENERAL.—The Administrator shall develop or expand programs to extend science and space educational outreach to rural communities and to carry out the following activities through video taping and cable TV programming:

(1) to utilize community-based partnerships in the field;

(2) to build and maintain video conference and exhibit capacity;

(3) to travel directly to rural communities and small towns and present programs;

(4) with a special emphasis on increasing the number of women and minorities in the science and engineering professions.

(b) PRIORITIES.—In carrying out subsection (a), the Administrator shall give priority to existing programs, including Challenge Centers—

(1) that utilize community-based partnerships in the field;

(2) that build and maintain video conference and exhibit capacity;

(3) that travel directly to rural communities and small towns and present programs;

(4) with a special emphasis on increasing the number of women and minorities in the science and engineering professions.

SEC. 146. INSTITUTIONS IN NASA’S MINORITY INSTITUTIONS PROGRAM.

The matter appearing under the heading “SMALL AND DISADVANTAGED BUSINESS” in title III of the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (42 U.S.C. 2473; 103 Stat. 863) is amended by striking “Historically Black Colleges and Universities and Minority-serving Institutions” and inserting “Historically Black Colleges and Universities and Institutions that are part B institutions (as defined in section 322(c) of the Higher Education Act of 1965 (20 U.S.C. 1061(2)), Hispanic-serving Institutions (as defined in section 902(a)(2) of that Act (20 U.S.C. 1101a(a)(5)), Tribal Colleges or Universities (as defined in section 316(b)(3) of that Act (20 U.S.C. 109(b)(3)) and Historically Black Colleges and Universities that are Hispanic-serving Institutions (as defined in section 317(b)(4) of that Act (20 U.S.C. 109(d)(4))), and”.

SEC. 147. AVIATION SAFETY PROGRAM.

The Administrator shall make available upon request satellite imagery of remote terrain to the Administrator of the Federal Aviation Administration, or the Director of the Five Star Medal Program, for aviation safety and aerial photography programs to assist and train pilots in navigating challenging topographical features of such terrain.

SEC. 148. ATMOSPHERIC, GEOPHYSICAL, AND ROCKET RESEARCH AUTHORIZATIONS.

There are authorized to be appropriated to the Administrator for atmospheric, geophysical, or rocket research at the Poker Flat Research Range and the Kodiak Launch Complex, not more than $15,000,000 for each of fiscal years 2006 through 2010.

SEC. 149. ORBITAL DEBRIS.

The Administrator, in conjunction with the heads of other Federal agencies, shall take steps to develop and deploy technologies that will enable NASA to decrease the risks associated with orbital debris.

SEC. 150. CONTINUATION OF CERTAIN EDUCATIONAL PROGRAMS.

From amounts appropriated to NASA for educational programs, the Administrator shall ensure continuation of the Education Program, the Experimental Program to Stimulate Competitive Research, and the NASA Explorer School to motivate and develop the next generation of explorers.

SEC. 151. ESTABLISHMENT OF THE CHARLES ‘PETE’ CONRAD ASTRONOMY AWARDS PROGRAM.

(a) IN GENERAL.—The Administrator shall establish a program to be known as the Charles “Pete” Conrad Astronomy Awards Program.

(b) AWARDS.—The Administrator shall make an annual award under the program of—

(1) $3,000 to the amateur astronomer or group of amateur astronomers who in the preceding calendar year discovered the intrinsically brightest near-Earth asteroid among the near-Earth asteroids that were discovered during that year by amateur astronomers or groups of amateur astronomers; and

(2) $3,000 to the amateur astronomer or group of amateur astronomers who made the greatest contribution to the Minor Planet Center’s mission of cataloging near-Earth asteroids during the preceding year.

(c) QUALIFICATION FOR AWARD.—

(1) RECOMMENDATION.—These awards shall be made based on the recommendation of the Minor Planet Center of the Smithsonian Astrophysical Observatory.

(2) LIMITATION.—No individual who is not a citizen or permanent resident of the United States at the time of that individual’s discovery or contribution may receive an award under this program.

SEC. 152. GAO ASSESSMENT OF FEASIBILITY OF MARS EXPLORATION MISSIONS.

Within 9 months after the date of enactment of this Act, the Comptroller General shall transmit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science an assessment of the feasibility of NASA’s planning for exploration of the Moon and Mars, giving special consideration to the long-term cost implications of program architecture and schedules.

Subtitle C—Limitations and Special Authority

SEC. 161. OFFICIAL REPRESENTATIONAL FUND.

Amounts appropriated pursuant to paragraphs (1) and (2) of section 101 may be used by the Administrator only for official representation and representation expenses.

SEC. 162. FACILITIES MANAGEMENT.

(a) IN GENERAL.—Notwithstanding any other provision of law, the Administrator may convey, by sale, lease, exchange, or other means, including through leaseback arrangements, real property to the extent that it is no longer necessary for the purposes of the Federal Government.

(b) DETERMINATION.—Before making any change in the ISS assemblage, the Administrator shall determine whether the ISS needs. All net proceeds realized under this program shall be deposited as funds of the Treasury in the account from which the transfer was made.

SEC. 163. INTERNATIONAL SPACE STATION.

The term "International Space Station" means the rental and other sums received in connection with the International Space Station.

SEC. 201. INTERNATIONAL SPACE STATION COMPLETION.

(a) ELEMENTS, CAPABILITIES, AND CONFIGURATION CRITERIA.—The Administrator shall ensure that the ISS will be able to—

(1) fulfill international partner agreements and provide a diverse range of research capabilities, including a high rate of human and robotic research, as authorized by appropriations Acts. To aid in the identification of research protocols, countermeasures, applied bio-technologies, technology and exploration research, and other priority areas;

(2) have an ability to support crew size of at least 6 persons;

(3) support crew exploration vehicle docking and automated docking of cargo vehicles or modules launched by either heavy-lift or commercially-developed launch vehicles; and

(4) be operated at an appropriate risk level.

(b) CONTINGENCY PLAN.—The contingency plan to support ISS shall include contingency options to ensure sufficient logistics and on-orbit capabilities to support any potential hiatus between flights. Shuttle availability and follow-on crew and cargo systems, and provide sufficient pro-positioning of spares and other supplies needed to accommodate any such interruption.

(c) CERTIFICATION.—Within 180 days after the date of the enactment of this Act, and before making any change in the ISS assembly sequence in effect on the date of enactment of this Act, the Administrator shall certify in writing to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science NASA’s plan to meet the requirements of subsections (a) and (b).

(d) COST LIMITATION FOR THE ISS.—Within 6 months after the date of enactment of this Act, the Administrator shall submit to the Congress information pertaining to the impact of the Columbia accident on the implementation of full cost accounting on the development costs of the International Space Station. The Administrator shall also identify any statutory changes needed to section 202 of the NASA Authorization Act of 2000 to address those impacts.

SEC. 202. RESEARCH AND SUPPORT CAPABILITIES ON INTERNATIONAL SPACE STATION.

(a) IN GENERAL.—The Administrator shall—

(1) within 60 days after the date of enactment of this Act, provide an assessment of biomedical and life science research planned for implementation aboard the ISS that includes the identification of research which can be performed in ground-based facilities and then, if appropriate, validated in space to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science;

(2) ensure the capacity to support ground-based research leading to the development of technologies and pyrotechnical research with potential direct national benefits and applications that can advance significantly from the uniqueness of microgravity; and

(3) preserve and protect all ISS research activities as molecular crystal growth, animal research, basic fluid physics,
combination research, cellular biotechnology, low temperature physics, and cellular research at a level which will sustain the existing scientific expertise and research capabilities as well as additional research or resources from sources other than NASA can be identified to support these activities within the framework of the National Laboratory provided for in section 203 of this Act; and

(4) within 1 year after the date of enactment of this Act, develop a research plan that will demonstrate the process by which NASA will evolve the ISS research portfolio in a manner consistent with the planned growth and evolution of ISS on-orbit and transportation capabilities.

(b) MAINTENANCE OF ON-O  
OVER THE ACTIVIT  
RATIONS FOR ISS SATE  
UTATION AND UTILIZATION.

The Administrator shall conduct, in consultation with the Associate Administrator for Science, the Office of the Chief Technologist, the Office of the Chief Scientist, the Office of the Chief Engineer, and the Office of the Deputy Administrator for Management and Operations, a comprehensive assessment of the ISS to determine the capabilities of any proposed human-rated crew and launch vehicles that meet the requirements of the implementation plan under section 136 of this Act.

SEC. 205. USE OF THE INTERNATIONAL SPACE STATION AND ANNUAL REPORT.

(a) POLICY.—It is the policy of the United States to:

(1) to establish an ISS national laboratory facility which, at a minimum, shall include:

(i) proposed on-orbit laboratory functions;

(ii) detailed laboratory management structure, concept of operations, and operational feasibility;

(iii) detailed plans for integration and conduct of ground and space-based research operations; and

(iv) description of funding and workforce resource requirements necessary to establish and operate the laboratory; and

(b) NATIONAL LABORATORY STATUS FOR INTERNATIONAL SPACE STATION.

(a) In General.—In order to accomplish the objectives listed in section 202, the United States segment of the ISS is hereby designated a national laboratory facility. The Administrator, after consultation with the Director of the Office of Science and Technology Policy, shall develop the national laboratory facility to oversee scientific utilization of the ISS national laboratory within the organizational structure of NASA.

(b) NATIONAL LABORATORY FUNCTIONS.—The Administrator shall seek to use the national laboratory to increase the utilization of the ISS by other national and commercial users and to maximize available NASA funding for research through partnerships, cost-sharing agreements, and arrangements with non-NASA entities.

(c) IMPLEMENTATION PLAN.—Within 1 year after the date of enactment of this Act, the Administrator shall provide an implementation plan to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science containing a detailed and comprehensive Space Shuttle transition plan that includes any necessary recertification, including requirements, assumptions, and implementation decisions, in order to use the Space Shuttle orbiter beyond calendar year 2010.

(3) detailed laboratory management structure, concept of operations, and operational feasibility;

(4) detailed plans for integration and conduct of ground and space-based research operations; and

(5) description of funding and workforce resource requirements necessary to establish and operate the laboratory; and

(6) a comprehensive assessment of existing international partner research obligations and commitments; and

(7) detailed outline of actions and timeline necessary to implement and initiate operations of the laboratory.

(b) U.S. SEGMENT DEFINED.—In this section, the term ‘‘United States Segment of the ISS’’ means those elements of the ISS manufactured—

(1) by the United States; or

(2) for the United States by other nations in exchange for funds or launch services.

(c) USE OF INTERNATIONAL SPACE STATION.—The Administrator shall conduct, in consultation with the House of Representatives Committee on Science, the Office of the Chief Scientist, and other relevant agencies, a comprehensive assessment of the ISS national laboratory to determine the capabilities of the ISS for purposes, with implementation milestones and associated results.

TITLE III—NATIONAL SPACE TRANSPORTATION POLICY

SEC. 301. UNITED STATES HUMAN-RATED LAUNCH CAPACITY ASSESSMENT.

Notwithstanding any other provision of law, the Administrator shall, within 60 days after the date of this Act, provide to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science, a full description of the requirements needed to support the space launch and transportation transition implementation plan required by section 136 of this Act, as well as for the ISS, including:

(1) the manner in which the capabilities of any proposed human-rated crew and launch vehicles meet the requirements of the implementation plan under section 136 of this Act;

(2) a retention plan of skilled personnel from the legacy Shuttle program which will ensure the level of safety for that program throughout the transition and plan that will ensure that any NASA programs can utilize the human capital resources of the Shuttle program, to the maximum extent practicable;

(3) the implications for and impact on the Nation’s aerospace industrial base;

(4) the manner in which the proposed vehicles contribute to a national mixed fleet launch and flight capacity;

(5) the nature and timing of the transition from the Space Shuttle to the workforce, the proposed vehicles, and any related infrastructure;

(6) support for ISS crew transportation, ISS utilization, and lunar exploration architecture;

(7) for any human rated vehicle, a crew escape system, as well as substantial protection against orbital debris strikes that offers a high level of safety;

(8) development risk areas; and

(9) the schedule and cost;

(a) IN GENERAL.—In order to ensure continuous human access to space, the Administrator may not retire the Space Shuttle orbiter until a replacement human-rated spacecraft system has demonstrated that it can take humans into Earth orbit and return them safely, except as may be provided by law enacted after the date of enactment of this Act.

The Administrator shall provide an implementation plan required by section 301 to the Committee.

(b) USE OF INTERNATIONAL SPACE STATION.—The Administrator shall conduct broad-focused research and exploration research and development activities using the ISS in a manner consistent with the provisions of this title, and advance the Nation’s exploration of the solar system by using the ISS as a test-bed and outpost for operations, engineering, and scientific research.

(c) REPORTS.—No later than March 31 of each year, the Administrator shall submit a report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Science on the use of the ISS for these purposes, with implementation milestones and associated results.

TITLE IV—ENABLING COMMERCIAL ACTIVITY

SEC. 401. COMMERCIALIZATION PLAN.

(a) IN GENERAL.—The Administrator, in consultation with the Associate Administrator for Space Transportation of the Federal Aviation Administration, the Director of the Office of Space Commercialization of the Department of Commerce, and other relevant agencies, shall develop a commercialization plan to support the human missions to the Moon and Mars, to support Low-Earth orbit and beyond that are supported by national and commercial space transportation capabilities.

(b) U.S. SEGMENT DEFINED.—The term ‘‘United States Segment of the ISS’’ means those elements of the ISS manufactured—

(3) detailed laboratory management structure, concept of operations, and operational feasibility;
agreements under the National Aeronautics and Space Act of 1958 (42 U.S.C. 2451 et seq.).

(b) REPORT.—Within 180 days after the date of enactment of this Act, the Administrator shall submit a copy of the plan to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committees on Science, Space, and Transportation.

SEC. 402. AUTHORITY FOR COMPETITIVE PRICE PROGRAM TO ENCOURAGE DEVELOPMENT OF ADVANCED SPACE AND AERONAUTICAL TECHNOLOGIES.

Title III of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2451 et seq.) is amended by adding at the end the following:

"SEC. 316. PROGRAM ON COMPETITIVE AWARD OF PRIZES TO ENCOURAGE DEVELOPMENT OF ADVANCED SPACE AND AERONAUTICAL TECHNOLOGIES."

(a) PROGRAM AUTHORIZED.—The Administrator may carry out a program to award prizes to stimulate innovation in basic and applied research, technology development, and prototype demonstration, where the Administrator has the potential for application to the performance of the space and aeronautical activities of the Administration.

(2) Use of Prize Authority.—In carrying out the program, the Administrator shall seek to develop and support technologies and areas of innovation 134 of the others areas that the Administrator determines to be providing impetus to NASA’s overall exploration and science architecture and plans. The Administrator may, with the efforts to detect near Earth objects and, where practicable, utilize the prize winner’s technologies in fulfilling NASA’s missions. The Administrator shall ensure, through any agreements conducted under the program and must include advertising to research universities.

(3) Coordination.—The program shall be implemented in compliance with section 138 of the National Aeronautics and Space Administration Authorization Act of 2005.

(b) Program Requirements.—(1) COMPETITIVE PROCESS.—Recipients of prizes under the program under this section shall be selected through one or more competitive processes conducted under the program and shall include advertising to research universities.

(2) Advertising.—The Administrator shall widely advertise any competitions conducted under the program.

(c) Assumption of Risk.—(1) REGISTRATION.—Each potential recipient of a prize in a competition under the program described in this section shall register for the competition.

(2) ASSUMPTION OF RISK.—In registering for a competition under paragraph (1), a potential recipient shall accept all risks and, waive claims against the United States Government and its related entities, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from participation in the competition, whether such injury, death, damage, or loss arises in negligence or otherwise, except in the case of willful misconduct.

(3) RELATED ENTITY DEFINED.—In this subsection, the term ‘related entity’ includes a contractor, or subcontractor at any tier, only supplier, user, customer, cooperating party, grantee, investigator, or detailee.

(d) Limitations.—(1) TOTAL AMOUNT.—The total amount of cash prizes available for award in competitions under the program under this section in any fiscal year may not exceed $50,000,000.

(2) Approval Required for Large Prizes.—No competition under the program may result in the award of more than $1,000,000 in cash prizes to any one recipient without the approval of the Administrator or a designee of the Administrator.

(e) Relationship to Other Authority.—The Administrator may utilize the authority in this section in conjunction with or in addition to the utilization of any other authority of the Administrator to acquire, support, or stimulate basic and applied research, technology development, or prototype demonstration, where the Administrator has the potential for application to the performance of the space and aeronautical activities of the Administration.

(4) AVAILABILITY OF FUNDS.—Funds appropriated for the program authorized by this section shall remain available until expended.

SEC. 403. COMMERICAL GOODS AND SERVICES.

It is the sense of the Congress that NASA should purchase commercially available space goods and services to the extent feasible in support of the human missions beyond Earth and should encourage commercial use and development of space to the greatest extent practicable.

TITLE V—MISCELLANEOUS

ADMINISTRATIVE IMPROVEMENTS

SEC. 501. EXTENSION OF IMPELIFICATION AUTHORITY.

Section 309 of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2459c) is amended by striking ‘December 31, 2002’ and inserting ‘December 31, 2005’.

SEC. 502. INTELLECTUAL PROPERTY PROVISIONS.

Section 305 of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2457 et seq.), as amended by section 307 of the Stevenson-Wydler Technology Innovation Act of 1998 (15 U.S.C. 2710a(c)(1)), is amended by inserting in advance of the following:

‘‘(2) CONTROL OF REMAINS.—In consideration for the Government’s contribution under the agreement, grants under this subsection shall be subject to the following explicit conditions:

(A) A nonexclusive, nontransferable, irrevocable, paid-up license from the participating party to the Administration to practice the invention or have the invention practiced throughout the world by or on behalf of the Government. In the exercise of such license, the Government shall not publicly disclose trade secrets or commercial or financial information that is privileged or confidential within the meaning of section 552(b)(4) of title 5, United States Code, or which would be privileged as such if it had been obtained from a non-Federal party.

(B) If the Administration assigns title or grants an exclusive license to such an invention, the Government shall retain in the right:

(i) to require the participating party to grant to a responsible applicant a nonexclusive, partially exclusive, or exclusive license to use the exclusive license field of use, on terms that are reasonable under the circumstances; or

(ii) if the participating party fails to grant such a license, to grant the license itself.

(C) The Government may exercise its rights under paragraph (B) only in exceptional circumstances and only if the Government determines that—

(i) the action is necessary to meet health or safety needs that are not reasonably satisfied by the participating party;

(ii) the action is necessary to meet requirements for public use specified by Federal regulations, and such requirements are not reasonably satisfied by the participating party; or

(iii) the action is necessary to comply with an agreement containing provisions described in section 12(c)(4)(B) of the Stevenson-Wydler Technology Innovation Act of 1998 (15 U.S.C. 2710a(c)(4)(B)).

‘‘(4) APPEAL AND REVIEW OF DETERMINATION.—A determination under paragraph (3)(C) is subject to administrative appeal and judicial review under section 20(b) of title 35, United States Code.’’.

SEC. 503. RETROCESSION OF JURISDICTION.

Title III of the National Aeronautics and Space Act of 1958, as amended by section 502 of this Act, is further amended by adding at the end the following:

‘‘SEC. 317. RETROCESSION OF JURISDICTION."

Notwithstanding any other provision of law, the Administrator may, whenever the Administrator considers it desirable, relinquish to a State all or part of the legislative, executive, or judicial powers over lands or interests under the Administrator’s control or jurisdiction, or with State or local government or as otherwise provided by State or local government, or with the consent of the Congress, surrendered to the United States over lands or interests under the Administrator’s control or jurisdiction.

The Administrator shall, to the extent possible, with respect to the assumptions concerning a notice of relinquishment to take effect upon acceptance thereof, or (2) as the laws of the State or States may otherwise provide.

SEC. 504. RECOVERY AND DISPOSITION AUTHORITY.

Title III of the National Aeronautics and Space Act of 1958, as amended by section 503 of this Act, is further amended by adding at the end the following:

‘‘SEC. 318. RECOVERY AND DISPOSITION AUTHORITY."

(a) IN GENERAL.—

(1) CONTROL OF REMAINS.—Subject to paragraph (2), when there is an accident or mishap resulting in the death of a crewmember of a NASA human space flight vehicle, the Administrator may take control over the remains of the crewmember and any associated property or other material.

(2) TREATMENT.—Each crewmember shall provide the Administrator with his or her preferences regarding the treatment accorded to his or her remains and the Administrator shall, to the extent possible, respect those stated preferences.

(b) DEFINITIONS.—(1) CREWMEMBER.—The term ‘crewmember’ means an astronaut or other person assigned to a NASA human space flight vehicle.

(2) NASA HUMAN SPACE FLIGHT VEHICLE.—The term ‘NASA human space flight vehicle’ means a space vehicle, as defined in section 306(f)(1), that—

(A) is intended to transport 1 or more persons; and

(B) is designed to operate in outer space;

and

(C) is either owned by NASA, or owned by a NASA contractor or cooperating party operating as part of a NASA mission or a joint mission with NASA.’’.

SEC. 505. REQUIREMENT FOR INDEPENDENT COST ANALYSIS.

Section 301 of the National Aeronautics and Space Administration Authorization Act of 2000 (42 U.S.C. 2459b) is amended—
(1) by striking “Phase B” in subsection (a) and inserting “implementation”; (2) by striking “$150,000,000” in subsection (a) and inserting “$250,000,000”; (3) in subsection (b) changing “Chief Financial Officer” each place it appears in subsection (a) and inserting “Administrator”; (4) (3) by inserting “and consider” in subsection (c) and inserting “and” at the end of said subsection; and (5) by striking subsection (b) and inserting the following: “(b) IMPLEMENTATION.—In this section the term ‘implementation’ means all activity in the life cycle of a program or project after preliminary design, independent assessment of the preliminary design, and approval to proceed into implementation, including critical design, development, certification, launch, operations, disposal of assets, and, for technology programs, development, testing, analysis and communication of the results to the customers.”.

SEC. 506. ELECTRONIC ACCESS TO BUSINESS OPPORTUNITIES. 
Title III of the National Aeronautics and Space Act of 1958, as amended by section 604 of this Act, is further amended by adding at the end the following:

“SEC. 319. ELECTRONIC ACCESS TO BUSINESS OPPORTUNITIES. 
“(a) In General.—The Administrator may implement a pilot program providing for reduction in the waiting period between publication of notice of a proposed contract action and release of the solicitation for procurements conducted by the National Aeronautics and Space Administration.

“(b) Applicability.—The program implemented under subsection (a) shall apply to non-commercial procurements.

“(1) with a total value in excess of $100,000 but not more than $5,000,000, including options;

“(2) that do not involve bundling of contract requirements as defined in section 3(e) of the Small Business Act (15 U.S.C. 632(d)); and

“(3) for which a notice is required by section 8(e) of the Small Business Act (15 U.S.C. 637(e)) and section 18(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 418(a)).

“(c) Notice.— (1) Notice of acquisitions subject to the program authorized by this section shall be made available through the single point of entry designated in the Federal Acquisition Regulation, consistent with section 38(c)(4) of the Office of Federal Procurement Policy Act (41 U.S.C. 428(c)(4)).

“(2) Providing access to notice in accordance with paragraph (1) satisfies the publication requirements of section 8(e) of the Small Business Act (15 U.S.C. 637(e)) and section 18(a) of the Office of Federal Procurement Policy Act (41 U.S.C. 418(a)).

“(d) Solicitation.—Solicitations subject to this program authorized by this section shall be made available through the single point of entry designated in the Federal Acquisition Regulation, except for adjustments to the waiting periods as provided in subsection (e).


“(f) Implementation.—(1) Nothing in this section shall be construed as modifying regulatory requirements set forth in the Federal Acquisition Regulation, except with respect to section 8(e)(3)(B) of the Small Business Act and section 18(a)(3)(B) of the Office of Federal Procurement Policy Act for submission of bids or proposals for procurements conducted in accordance with the terms of this pilot program.

“(2) This section shall not apply to the extent the President determines it is inconsistent with any international agreement to which the United States is a party.

“(g) Study.—Within 120 days after the effective date of the program, NASA, in coordination with the Small Business Administration, the General Services Administration, and the Office of Management and Budget, shall evaluate the impact of the pilot program and submit to Congress a report that— (1) sets forth in detail the results of the test, including the impact on competition and small business participation; and (2) addresses whether the pilot program should be made permanent, continued as a test program, or allowed to expire.

“(h) Regulations.—The Administrator shall publish final regulations in the Federal Register not later than 240 days after the date specified in the final regulations promulgated pursuant to subsection (b)(2).

“(i) Limitation.—The date so specified shall be no less than 90 days after the date on which the final regulation is published.

“(j) Expiration of Authority.—The authority to conduct the pilot program under subsection (a) and to award contracts under such program shall expire 2 years after the effective date established in the final regulations published in the Federal Register under subsection (h).

SEC. 507. REPORTS ELIMINATION. 
(a) Repeal.—The following provisions of law are repealed:


(b) Amendments.— (1) Section 315 of the National Aeronautics and Space Administration Act of 1958 (42 U.S.C. 2459j) is amended by striking subsection (a) and redesignating subsection (b) as subsection (a) and redesignating subsection (d) as subsection (c).

VETERANS’ BENEFITS IMPROVEMENT ACT OF 2005
Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar 218, S. 1235.

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

The assistant legislative clerk read as follows:

A bill (S. 1235) to amend chapters 19 and 37 of title 38, United States Code, to extend the availability of $300,000 in coverage under the servicemembers’ life insurance and veterans’ group life insurance programs, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Veterans’ Affairs with an amendment.

(Strike the part shown in black brackets and insert the part shown in italics.)

S. 1235

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 “Veterans’ Benefits Improvement Act of 2005”.

[SEC. 2. GROUP LIFE INSURANCE.

Group Life Insurance.—Section 1967 of title 38, United States Code, as in effect on October 1, 2005, is amended—

(i) in subsection (a)—

(1) in paragraphs (2), by adding at the end the following:

“(C) With respect to a policy of insurance covering an insured member, the Secretary of Defense shall make a good-faith effort to notify the spouse of a member if the member elects, at any time, to—

(I) reduce amounts of insurance coverage of an insured member; or

(II) name a beneficiary other than the insured member’s spouse.

(D) The failure of the Secretary of Defense to provide timely notification under subparagraph (C) shall not affect the validity of an election by the member.

(E) If a servicemember marries or remarries after making an election under subparagraph (C), the Secretary of Defense is not required to notify the spouse of such election, and the members of a group life insurance program shall be subject to the notice requirement under subparagraph (C).”;

and
(B) in paragraph (3)—

(i) in the first sentence, by striking “para-

graph (1), (2), or (3)” and inserting “subpar-

agraph (A), (B), (C), or (D) of paragraph (2)”;

and

(ii) in the second sentence, by striking “the second sentence” and inserting “paragraph (3)”;

(3) in subsection (d)—

(i) in the first sentence, by striking “para-

graph (1)” and inserting “paragraph (2)”; and

(ii) in the second sentence, by striking “para-

graph (2)” and inserting “paragraph (3)”; and

(3) in subsection (a)—

(i) by inserting after “(A)” the following:

“ASSISTANCE TO MEMBERS OF THE ARMED

FORCES.”;

(2) by striking subsection (d); and

(3) by striking subsection (e).

SEC. 203. 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 this subchapter is to permit Native American veterans to purchase, construct, or improve dwellings on trust land.”

(b) Conforming Amendments.—Section 3762 of this title is amended—

(1) in subsection (a), by inserting “under this subchapter” after “Native American veteran” in the matter preceding paragraph (1); and

(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), 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”; and

(ii) in subparagraph (E), by striking “in participating in the making of direct loans under this subchapter”; and

(b) by striking subsection (i); and

(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 matter:

“SUBCHAP-TER 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.”
amended by inserting after section 523 the following new section:

§523A. Annual plan on outreach activities

(a) ANNUAL PLAN REQUIRED.—The Secretary shall prepare each year a plan for the outreach activities of the Department for the following year.

(b) ELEMENTS.—Each annual plan under subsection (a) shall include the following:

(1) To identify veterans who are not enrolled or registered with the Department for benefits or services under the programs administered by the Secretary.

(2) Plans for veterans and their dependents of modifications of the benefits and services under the programs administered by the Secretary, including eligibility for medical and nursing care and services.

(c) COORDINATION IN DEVELOPMENT.—In developing an annual plan under subsection (a), the Secretary shall consult with the following:

(1) Directors or other appropriate officials of organizations approved by the Secretary under section 5902 of this title.

(2) Other individuals and organizations that assist veterans in adjusting to civilian life.

(d) INCORPORATION OF ASSESSMENT OF PRIORITY ANNUAL PLANS.—In developing an annual plan under subsection (a), the Secretary shall take into account the lessons learned from the implementation of previous annual plans under such subsection.

(e) INCORPORATION OF RECOMMENDATIONS TO IMPROVE OUTREACH AND AWARENESS.—In developing an annual plan under subsection (a), the Secretary shall incorporate the recommendations for the improvement of veterans outreach and awareness activities included in the report submitted to Congress by the Secretary pursuant to section 805 of the Veterans Benefits Improvement Act of 2004 (Public Law 108-454)."

(b) CLERICAL AMENDMENT.—The table of sections of this title is amended by inserting after the item relating to section 523 the following new item:

"§523A. Annual plan on outreach activities."

SEC. 302. EXTENSION OF REPORTING REQUIREMENTS ON EQUITABLE RELIEF CASES.

Section 503(c) of title 38, United States Code, is amended by striking "December 31, 2004" and inserting "December 31, 2009."

SEC. 303. INCLUSION OF ADDITIONAL DISEASES AND CONDITIONS IN DISEASES AND DISABILITIES PRECLUDED FROM PREVIOUSLY ASSOCIATED WITH PRISONER OF WAR STATUS.

(a) Section 1112(b)(3) of title 38, United States Code, is amended by adding at the end the following new subparagraphs:

"(L) Atherosclerotic heart disease or hypertensive vascular disease (including hypertensive heart disease) and their complications (including myocardial infarction, congestive heart failure and arrhythmia).

(M) Stroke and its complications."

SEC. 304. POST-TRAUMATIC STRESS DISORDER CLAIMS.

The Secretary shall develop and implement policy and training programs to standardize the assessment of post-traumatic stress disorder disability compensation claims.

Amend the title so as to read: "To amend title 38, United States Code, to extend the availability of and to provide life insurance coverage to servicemembers and veterans, to make a stillborn child an insurable dependent for purposes of the Servicemembers' Group Life Insurance program, to make technical corrections to the Veterans Benefits Improvement Act of 2004, to make permanent the pilot program for direct housing loans for Native American veterans, and to require an annual plan on outreach activities of the Department of Veterans Affairs."

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the committee-reported substitute be agreed to, the bill, as amended, be read a third time and passed, the amendment to the title be agreed to, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The committee amendment in the nature of a substitute was agreed to.

The bill (S. 1235), as amended, was read the third time and passed.

The title amendment was agreed to.

ASSISTANCE FOR INDIVIDUALS WITH DISABILITIES AFFECTED BY HURRICANES KATRINA AND RITA ACT OF 2005

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 3864 which was received from the House.

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

The assistant legislative clerk read as follows:

A bill (H.R. 3864) to assist individuals with disabilities affected by Hurricanes Katrina or Rita through vocational rehabilitation services. There being no objection, the Senate proceeded to consider the bill.

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be printed in the RECORD.

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

The bill (H.R. 3864) was read the third time and passed.

HONORING THE LIFE OF SANDRA FELDMAN

Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of S. Res. 256, which was submitted earlier today.

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

The assistant legislative clerk read as follows:

A resolution (S. Res. 256) honoring the life of Sandra Feldman.

There being no objection, the Senate proceeded to consider the resolution.

Mr. KERRY. Mr. President, I extend my deepest sympathies to the family and friends of Sandra Feldman at her untimely passing. We have lost a dedicated educator, a proud labor leader, a committed reformer, and someone my wife Teresa, and I were so proud to have as a friend in our lives.

From her early days as a civil rights advocate, Sandy had an unshakable sense of justice and fairness. Sandy did not just talk about helping teachers and their students—she actually did it. While her career spanned more than four decades, Sandy’s commitment grew out of her early work in the civil rights movement. An advocate for civil rights and social justice, she was an active force in the Freedom Rides and the 1963 March on Washington for Jobs and Freedom. It was her firsthand knowledge of the power of an excellent teacher that led Sandy to a lifetime of activism. Sandy understood the importance of quality of life in Congress, and the wealth of opportunities it can unleash for every student, regardless of who they are or where they’re from.

"Created my future," that is what Sandy always said about growing up in Brooklyn and the public schools and libraries she spent her childhood in. Sandy’s commitment to education was fueled by her childhood experiences and her dedication to bettering the lives of students and teachers. Beginning as a second grade teacher, Sandy quickly became a union activist when she led the teachers at her elementary school to organize. In 1986, Sandy became president of AFT’s largest affiliate, New York City’s United Federation of Teachers, UFT. During her years as UFT president and then since 1997 when she became president of the AFT, Sandy earned the respect of Presidents, of her colleagues, and of many of us in Congress.

Calling early childhood education “getting it right from the start,” Sandy consistently called for greater investment in public education and a greater emphasis on high standards and accountability according to Sandy’s focus on early childhood education led her to introduce a program that would provide extended learning opportunities for disadvantaged students before and after the normal kindergarten school year. As Chair for 13 years, Sandy’s program, Kindergarten-Plus, had been introduced as Federal legislation, passed or considered in several State legislatures, and passed into law in at least one State.

My hope is that her tragic passing after a courageous battle with cancer will inspire all of us to do just what Sandy fought her entire life for—to make sure we are getting it right from the start and to stand by our children and our teachers. Sandy was an amazing American. I will miss her wisdom and her counsel very much. Our hearts go out to her husband Arthur and their family in this difficult time.

Mr. GRASSLEY. 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. 256) was agreed to.
The preamble was agreed to. The resolution, with its preamble, reads as follows:

S. Res. 256

Whereas Sandra Feldman was born Sandra Abramowitz in October, 1939, to blue-collar parents living in a tenement in Coney Island, New York; Whereas Sandra Feldman, while at James Madison High School, Brooklyn College, and New York University, began a lifelong dedication to education, both in the United States and abroad; Whereas Sandra Feldman began her career by teaching fourth grade at Public School 34 on the Lower East Side of New York City; Whereas during her service as union leader at Public School 34, Sandra Feldman became employed by the United Federation of Teachers in New York City, and was elected president in 1986, after 20 years of service; Whereas Sandra Feldman’s tenure as president of the United Federation of Teachers was distinguished by her devotion to better working conditions for the teachers she represented; Whereas in 1997, the American Federation of Teachers elected Sandra Feldman to serve as their president, until she retired 7 years later; Whereas Sandra Feldman effectively represented the educators, healthcare professionals, public employees, and retirees who made up the membership of the American Federation of Teachers; Whereas Sandra Feldman was a tireless advocate for public education, working with President Bush on the No Child Left Behind Act of 2001 to improve accountability standards and provide increased resources to schools to help improving professional development to better equip teachers to instruct students, and using research-driven methods to redesign school programs; Whereas Sandra Feldman was equally devoted to promoting the rights of public servants, fighting against discrimination, raising the nursing shortage into national public awareness, advocating for smaller class sizes and spreading her message beyond her own school; Whereas research conducted by the National Institute of Health indicates that, while genetics do play a role in childhood obesity, the large increase in childhood obesity rates over the past few decades can be traced to overeating and lack of sufficient exercise; Whereas the Surgeon General and the President’s Council on Physical Fitness and Sports estimate that only 19% of children and adolescents participate in vigorous physical activity, including bicycling, for the prevention of overweight and obesity; Whereas Jacob Mock ‘Jack’ Doub, born July 11, 1955, was actively involved in encouraging others, especially children, to ride bicycles and was an active youth who was introduced to mountain biking at the age of 11 near Grandfather Mountain, North Carolina, and quickly became a talented cyclist; Whereas Jacob Doub died unexpectedly from complications related to a bicycling injury on October 21, 2002; Whereas Jacob Doub’s family and friends have joined, in association with the International Mountain Bicycling Association, to honor Jack Doub’s spirit and love of bicycling by establishing the Jack Doub Memorial Fund to promote and encourage children of all ages to learn to ride and lead a physically active lifestyle; Whereas the International Mountain Bicycling Association’s worldwide network, which is based in Boulder, Colorado, includes 32,000 individual members, more than 450 bicycle clubs, 140 corporate partners, and 240 bicycle retailer members, who coordinate more than 5000 miles of new trails; and (C) Jack Doub’s contribution to encouraging youth of all ages to be physically active and fit, especially through bicycling; (2) supports the goals and ideals of “National Take a Kid Mountain Biking Day”, which was established in honor of Jack Doub by the International Mountain Bicycling Association, and is celebrated on the first Saturday in October of each year; and (3) encourages parents, schools, civic organizations, and students to support the International Mountain Bicycling Association’s “National Take a Kid Mountain Biking Day” to promote increased physical activity among youth in the United States.

RESOLVED, That the Senate—

(A) recognizes—

(1) the health risks associated with childhood obesity; and (B) the spirit of Jacob Mock “Jack” Doub and so many others who have been actively promoting physical activity to combat childhood obesity; and

(C) Jack Doub’s contribution to encouraging youth of all ages to be physically active and fit, especially through bicycling; (2) supports the goals and ideals of “National Take a Kid Mountain Biking Day”, which was established in honor of Jack Doub by the International Mountain Bicycling Association, and is celebrated on the first Saturday in October of each year; and (3) encourages parents, schools, civic organizations, and students to support the International Mountain Bicycling Association’s “National Take a Kid Mountain Biking Day” to promote increased physical activity among youth in the United States.

CONGRESSIONAL RECORD — SENATE S10623 September 28, 2005
Mr. GRASSLEY. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S. 1786, introduced earlier today.

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

The assistive legislative clerk read as follows:

A bill (S. 1786) to authorize the Secretary of Transportation to make emergency airport improvement grants-in-aid under title 49, United States Code, for repairs and costs related to damage from Hurricanes Katrina and Rita.

There being no objection, the Senate proceeded to consider the bill.

Mr. GRASSLEY. I ask unanimous consent that the bill be read a third time and passed, the motion to reconsider be laid on the table, and any statements be printed in the RECORD.

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

The bill (S. 1786) was read the third time and passed, as follows:

S. 1786

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


(a) IN GENERAL.—The Secretary of Transportation may make project grants under part B, subtitle VII, of title 49, United States Code, for emergency airport improvements, under title 49, United States Code, for repairs and costs related to damage from Hurricanes Katrina and Rita. The Secretary may make grants only to an airport described in subsection (b)(1) or to a State in which such airport is located; or (2) from funds available for discretionary grants to such an airport under section 47115 of such title.

(b) ELIGIBLE AIRPORTS AND USES.—The Secretary may make grants under subsection (a) for—

(1) emergency capital costs incurred by a public use airport in Louisiana, Mississippi, Alabama, or Texas that is listed in the Federal Aviation Administration’s National Plan of Integrated Airport Systems of Repairing or replacing public use facilities that have been damaged as a result of Hurricane Katrina or Hurricane Rita; and

(2) emergency operating costs incurred by an airport described in paragraph (1) as a result of Hurricane Katrina or Hurricane Rita.

(c) PRIORITIES.—In making grants authorized by subsection (a), the Secretary shall give priority to—

(1) airport development within the meaning of section 47102 of title 49, United States Code; (2) terminal development within the meaning of section 47100 of title 49, United States Code; (3) repair or replacement of other public use airport facilities; and

(4) emergency operating costs incurred at public use airports in Louisiana, Mississippi, Alabama, and Texas.

(d) MODIFICATION OF CERTAIN OTHERWISE APPLICABLE REQUIREMENTS.—For purposes of any grant authorized by subsection (a)—

(1) the Secretary may waive any otherwise applicable limitation on, or requirement for, grants under section 47102, 47105(a)(17), 47110, or 47119 of title 49, United States Code, if the Secretary determines that the waiver is necessary to respond, in as timely and efficient a manner as possible, to the urgent needs of the region damaged by Hurricane Katrina or Hurricane Rita; (2) the United States Government’s share of allowable project costs shall be 100 percent, notwithstanding the provisions of section 47109 of that title; (3) any project funded by such a grant shall be treated as an airport development project (within the meaning of section 47102 of that title), except for the purpose of establishing priorities under subsection (b) of this section among projects to be funded by such grants; and

(4) no project funded by such a grant may be considered, for the purpose of any other applicable law, to be a major or substantial action significantly affecting the quality of the human environment.

ORDER FOR THURSDAY, SEPTEMBER 29, 2005

Mr. GRASSLEY. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. on Thursday, September 29. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time of the two leaders be reserved, and the Senate proceed to executive session and continue consideration of Calendar No. 317, John Roberts to be Chief Justice of the United States; provided further that the time until 10:30 be equally divided between the two leaders or their designees.

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

PROGRAM

Mr. GRASSLEY. Mr. President, we will resume the Roberts nomination tomorrow for a short period of debate. The debate from 10:30 to 11:30 has previously been allocated to the two managers and the two leaders. At 11:30 tomorrow, the Senate will vote on the nomination of Judge Roberts to be Chief Justice of the Supreme Court. I remind all Senators that the majority leader has asked all Senators to be in the Chamber by 11:20 and seated at their desks for this historic vote.

Following that vote, the Senate is expected to begin consideration of the Defense appropriations bill. Additional votes will occur on Thursday and Friday this week.

ORDER FOR ADJOURNMENT

Mr. GRASSLEY. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order, following the time controlled by the minority.
The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRASSLEY. I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana is recognized.

EMERGENCY HEALTHCARE RELIEF FOR THE SURVIVORS OF HURRICANE KATRINA

Ms. LANDRIEU. Mr. President, before the chairman leaves the floor—he has put in a long day today and has some more things probably to do this evening—I wish to thank him for his extraordinary leadership at this time and also the Senator from Montana who was here earlier. They have been working on this bill now for weeks because they are aware of the great need, the extraordinary need of the people from the State I represent, Louisiana, but also our neighbors now in Texas and in Mississippi and in Alabama.

As the Senator from Iowa knows, and the Senator from Montana, this is the largest natural disaster in the history of the United States. We had one hurricane and major levee failings in a region with over 2 million people. Then on the heels of that we have had another hurricane, not quite as large but equally as damaging to some rural areas, and another hurricane, not quite as large but equal-

Mr. President, that you are very familiar with, not big cities but small cities that are gone. They are just gone. There is no more city. There is no more that are gone. They are just gone.

It also helps private employers. I have had private employers, little ones, medium ones, and big ones pouring into my office. And this is what they say: Senator, we are not leaving. We want to stay. We are going to exhaust the money in our bank accounts to keep our employees whole. But could you please ask the Federal Government to give us a little help here? We want to keep their coverage. We want to keep our employees intact to come back. We don’t want our companies to leave. But a lot of them had to leave. They had no choice. They are going to Oklahoma, they are going to Houston but at a lot of cost.

I talked to a pipeline company. They are having their employees come back this weekend right in Cameron Parish. But they need our help.

One of the things this bill does is it helps them—if they were giving insurance to their people—continue to give private insurance. If some companies had to leave temporarily, their employees can still get private coverage through a program that already exists.

The chairman and the ranking member put their heads together and said, Let us do this for 5 months.

I know there is an objection, because some have expressed a few objections, that said let us not extend it to all States, let us keep it targeted to Louisiana, Mississippi, Alabama, and Texas.

We thought about that. But the reason there is one provision that allows the other States to keep their Medicaid, 100-percent reimbursement, is because they have taken a lot of our people. Arkansas didn’t have a hurricane, but they took our people. They had 75,000 people.

So if we cut the State of Arkansas’ health care benefits which may go into effect soon, that is what we were antici-pating. It puts so much strain on Arkansas for the 75,000 people.

We think it is reasonable to ask for a 5-month waiver for all of the States just to help us through this difficult period.

We are not trying to expand a Government program. We are trying to use what is available now in the law and extend it to millions of people who need help immediately.

It is not everything we need in health care. The people who need immediate medical attention and care. As a doctor, you can understand the anxiety of people who do not know where to go for health care. They are in strange places. They need to be qualified.

This has been well researched by the staffs. We have had input, of course, Senator Vitter and myself, but this is coming straight from the Finance Committee, to conduct that already in the law for people to help them get coverage for 5 months, just 5 months until people can catch their breath, get up on their feet, try to find their fami-

There are good-sized cities, such as Lake Charles and other cities that are in that area. We have large cities, medium-sized cities, and small villages and communities—such as Cameron—that have been very hard hit.

It is very important that we try to work through whatever the difficulties might be. We don’t have that much time.

If we can move on this package in the next day or two, and work out whatever objections there are, I think it would be a great signal to send from this Congress.

I know we have to get it past the House. I know we have to get it signed by the President. But the President has been to our State many times. I have been with him on almost every trip. He assured me that he understands that people are in desperate need, and he wants to see the Federal Government use the resources that we have to meet that need. I know we can’t do everything. But this is minimal. This is basic coverage for people who have nothing right now.

While churches are helping and while the private employers are doing a good job, private employers cannot take on more risk than is their fiduciary responsibility. They have a responsibility to their stakeholders, to their share-

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There is no more city. There is no more that are gone. They are just gone. There is no more city. There is no more that are gone. They are just gone.

When they went along this gulf coast. When they went along this gulf coast. When they went along this gulf coast. When they went along this gulf coast. When they went along this gulf coast.
Ms. LANDRIEU. That is what this bill does.

Mr. DURBIN. I understand that this is a bipartisan bill that Senator Grassley, Republican of Iowa, Senator Baucus, a Democrat of Montana, have written to make sure that the millions of people who have been displaced will have basic health care.

Is that is what this bill does?

Ms. LANDRIEU. Is that what this bill does?

Mr. DURBIN. I would like to ask the Senator how many times she has brought this bill to the floor. How many times have we tried to provide this basic health care, basic protection to these victims of Hurricane Katrina and Hurricane Rita so far?

Ms. LANDRIEU. I believe the Senator from Iowa and the Senator from Montana are working on this for 2 weeks. We are into our fourth week of Katrina and the first week of Rita.

But again, it is the largest natural disaster that has hit the Continental United States. We are getting ready to rebuild, after we work out our differences, a major American city for the first time since the Civil War and the region that surrounds it. We are learning as we go. There is not a textbook to follow. So we have to use our common sense to help each other on some of these things.

The Senator from Iowa and the Senator from Montana have run this committee, and their members have put a great bill together that is modest but so needed.

I am hoping the Senator from Illinois can help us figure out how to move this legislation quickly.

Mr. DURBIN. If the Senator would further yield for a question through the Chair, I thought our biggest complaint about the Federal Government’s response to Katrina was that, even when we were warned, we weren’t ready. Many of us are calling for a non-partisan commission to answer some basic questions. Why weren’t we ready? But when it comes to this issue about health care for the victims of Hurricane Katrina and Hurricane Rita, we know what the need is. And apparently, because of objections heard in the Senate, it is delaying, postponing, this basic health care for these victims of this hurricane.

Ms. LANDRIEU. That is what it seems to be. It is unfortunate.

I am hoping, through the Chair to the Senator from Illinois—and I see that our minority leader from Nevada is here with us—that we could do our best to work in the hours, either through amendments on this floor or hearings, to answer questions that a few Senators may have. I have heard objections, such as too much corruption. We have problems with Mississippi spending money on insurance, and corruption, but we didn’t blame people. All they want is health care benefits. We can fix that issue. We can work on that issue. But let us not hold up health care to people until we get the system perfect. If that is the case, we should stop working tonight. The system is never going to be perfect. It can be better.

Let us not take it out on these people. They have already been victimized outside of any of their control.

The Senator should know that one of the objections was that we shouldn’t expand a Government program.

But again, I just want to reiterate to the Senator that this is not an expansion. It is in the law. It is 5 months of special help to people who need it and to people who have lost insurance that have lost it and can’t have it, if we don’t meet their employers halfway.

The only expansion for the country is to say in the next 5 months the Federal Government will not cut any State’s Medicaid Program because so many of our States are helping our people. Again, in Arkansas, 75,000. It would not be fair to Arkansas, even though they didn’t get hit by the hurricane, to cut their State program when they are absorbing some extra people from Louisiana, Texas, and Mississippi.

I think that makes common sense.

I see the Senator from Nevada. Maybe he can shed some light on this.

I will yield the floor. I have spent the time and more asked for.

I thank the Senators who are here who are trying to get this important bill passed by the end of the week.

The PRESIDING OFFICER (Mr. VITTER). The Senator from Nevada.

Mr. REID. Mr. President, I want the RECORD to be spread with my appreciation for the statements made today by Senator Baucus, Senator Landrieu, and Senator Durbin regarding this most important issue. We saw with Katrina, a catastrophe in America, a safety net that has some holes in it. We saw in graphic description some of the people fell through that safety net. That is what this is all about—helping medically. The poorest of the poor and those in our country who rely on Medicaid. That is what this is all about.

For those people who are watching this, who are listening, this is an instance where there is a bipartisan measure that is now before the Senate that should pass. The Finance Committee, headed by Democrats Senators Grassley and Baucus—Republican and Democrat—came up with this most important piece of legislation. They did it. They worked it out. No one can challenge the conservative credentials of either of these Senators. They are both fiscally sound. They do good work for their Finance Committee.

There are a few people on the Republican side of the aisle who are holding this up. It is not right. No one wants to waste money for Katrina. No one wants to waste money with the billions of dollars that will be spent with Katrina. I would be happy if Congress selected someone to be a czar to make sure the money was spent properly.

But here we have people who are waiting. This is going for 5 months. They will be waiting for the most simple medical measures that would help the States that are taking care of them.

The State of Arkansas alone has 60,000 evacuees, most of whom, in some way or another, their family member, would qualify for some part of this.

It is the right thing to do to help States such as Arkansas.

PANDEMIC INFLUENZA

Mr. REID. Mr. President, in 1918, the Spanish flu pandemic swept the world for a number of reasons—not the least of which we had soldiers coming from all over the world going places and coming home. As a result, this pandemic that swept our world claimed the lives of about 50 million people, and 500,000 people in the United States alone before it completed its deadly run.

Today, many public health experts are warning us that another flu pandemic is not a matter of if, but when. They tell us that this next pandemic has the potential to be every bit as devastating as what the world witnessed nearly 100 years ago.

Flu pandemic occurs when a new strain of flu emerges in the human population and causes serious illness and death and can easily spread between humans.

The avian flu, referred to as H5-N1 flu strain by scientists, already meets the first step: Roughly half of the 115 people who have been diagnosed with this virus to date have died. At present, all that stands between avian flu and pandemic status is the fact that scientists do not believe the avian flu can easily be transmitted between humans.

Scientists fear it is only a matter of time before the avian flu virus mutates into a form that can spread easily from human to human.

According to the Centers for Disease Control Director Julie Gerberding:

... many influenza experts, including those at CDC, consider the threat of a serious influenza epidemic to the United States to be high. Although the timing and impact of an influenza pandemic is unpredictable, the occurrence is inevitable and potentially devastating.

That was her word, “inevitable.” You do not have to be an expert to understand the dramatic toll a flu pandemic could have on our Nation and on
the world. Given our capacity for rapid travel around the globe compared to 1918 and the interdependence of our economic markets compared to 1918, both of which have increased dramatically since the last flu pandemic, the potential human and economic costs of the next pandemic is unimaginable.

A respected U.S. health expert has concluded that almost 2 million Americans would die in the first year alone of an outbreak. Pandemic flu outbreak in the United States could cost our economy hundreds of billions of dollars due to death, lost productivity and disruption in commerce, and to our society generally.

Maybe the only thing more troubling than contemplating the possible consequences of the avian flu pandemic is recognizing that neither this Nation nor the world are prepared to deal with it. Administration documents say it will take months to develop an effective vaccine against the avian flu—something as serious as 9 months—and we have been able to identify the particular flu strain in circulation. Administration officials say one of the best opportunities to limit the scope and consequence of any outbreak is to rapidly vaccinate those—those who have an antiviral pill that is capable of sustained human-to-human contact. Yet we are not devoting enough resources to effective surveillance abroad.

The Administration has acknowledged an uninsured pandemic but has failed to outline our national strategy to address this pandemic. Among other matters, such a plan needs to address those who will spearhead our response to pandemic.

How will our response be coordinated across all levels of Government? And how will we rapidly distribute limited medical resources? Yet our national preparedness plan is still in draft form.

We all know State and local health departments on the front lines of a pandemic. They will need to conduct surveillance, coordinate local responses, and help distribute the vaccines and antivirals. Yet we are poised to approve a $130 million cut for State and local preparedness funding at the Centers for Disease Control. At this time, that is unconscionable.

We also know that once a flu strain has been identified, we will need to develop an effective vaccine, as I have talked about, and produce enough to eventually inoculate the entire 300 million people in America. Yet our existing stockpile of vaccines, assuming they are effective against the yet unidentified strain, may protect less than 1 percent of all Americans, and we have only one domestic flu vaccine manufacturer located in the United States. It is estimated if our capacity to produce vaccines is not improved, it could take 15 months to vaccinate first responders, medical personnel, and other high-risk groups.

Given it will take months to develop, produce, and distribute a vaccine once we have one that is effective, we know that antiviral medication will be a crucial stopgap defense against a pandemic. The World Health Organization recommended that countries stockpile enough antiviral medication to cover 25 percent of their populations. Other nations, including Great Britain, France, Japan, Portugal, Switzerland, Finland, and New Zealand, have ordered enough Tamiflu, an antiviral pill to cover between 20 and 40 percent of their populations.

We should have learned. It was only last year that we did not have enough vaccine to take care of the people in America. We did not have enough vaccine to take care of the flu strain last time, and everyone knew what that was. As important as this Tamiflu is, we now have only 2.3 million courses of this pill. Given country, national, and international production capacity, even if we were to increase our order of Tamiflu today, we have been told the United States could not secure enough Tamiflu to cover 25 percent of our population. The consequences of pandemic could be far reaching, impacting virtually every sector of our society and economy.

We also know our medical community needs to be trained to distinguish between the annual flu and avian flu so that an outbreak could be recorded immediately. Doctors, hospitals, and other health care must develop surge capacity plans so they can respond to a pandemic. Business, as well, need to be prepared. They should be encouraged to develop their own plans, establish or expand telecommunicating and network access plans, update medical needs policies, and provide suggestions on how to promote employee health to lessen the likelihood of exposure. The American public also needs to be educated about the importance of annual flu vaccines and steps they can take to prepare for and respond to an avian flu outbreak.

Yet this administration has failed to take appropriate action to prepare the medical community, business community, and the American public. We can do better. We need to do better. Most importantly, we cannot afford to wait to do better. America can do better.

The Federal Government’s poor response to Katrina has only served to exacerbate this problem. But the facts are clear such an outbreak would have on our Nation and the world. Given the very real possibility of an outbreak, its potentially severe consequences, and our relative lack of preparedness, we need to take action on several fronts to prepare our Nation and the American people for a potential outbreak and reduce its impact, should it occur.

What are some of the steps necessary? We need to improve surveillance and international partnerships so we may detect new flu strains and do it early. We need to prepare for a pandemic by finalizing, implementing, and funding pandemic preparedness response plans. Remember, the director of the Centers for Disease Control has told us this is going to happen. It is inevitable. We need to protect Americans with the development, production, and distribution of an effective vaccine. We need to plan ahead for pandemic by committing to antiviral medications, medical, and other supplies. We need to strengthen our public health infrastructure. We need to educate Americans by increasing awareness of and education about this flu. Finally, we need to commit to antiviral medications by devoting adequate resources to pandemic preparedness.

Experts have warned that an avian flu pandemic is inevitable. But the devastating consequences that can ensue from an outbreak are not—provided this Nation and the world heed the science community warnings and take action immediately.

I propose to start by committing the resources necessary to protect Americans. We need to start today. We know today that funding certain programs can make dramatic reductions for the consequences of a future avian flu outbreak. We also know many of these programs are either unfunded or massively underfunded.

Tomorrow, when we take up the Defense appropriations bill after we finish the Roberts vote, Senators HARKIN, KENNEDY, OBAMA, and many others, including myself and Senator DURBIN, the two Democrat leaders here who have been elected by our colleagues, will join in this.

This is important. We are going to offer an amendment that will ensure that we begin making the investments necessary to make sure this Nation and the world do everything possible to ensure that history does not repeat itself and we do not have to relive the terror of 1918.

The PRESIDING OFFICER. Under the previous order, the Senate is scheduled to adjourn at this time.

Mr. REID. The junior Senator from Illinois wish to speak?

Mr. REID. I ask unanimous consent that the Senator from Illinois be recognized to speak.

Mr. OBAMA. I am aware of that.

Mr. REID. The junior Senator from Illinois?

Mr. OBAMA. I was not aware my senior colleague from Illinois was going to speak so I don’t want to unnecessarily hold up the entire Chamber.

Mr. REID. The Senator should know I did use your name.

Mr. OBAMA. I am aware of that.

Mr. REID. The junior Senator from Illinois?
Mr. DURBIN. I will be glad to take 5 minutes and yield to my colleague 5 minutes.

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

Mr. REID. I appreciate that. I know I have presided over a few of the late nights.

Mr. DURBIN. Mr. President, I preface my remarks by saying that the first person who brought the avian flu epidemic to my attention was my colleague Senator OBAMA, who identified this issue before most other Senators. I commend the Senator for his leadership on this issue. I am glad he is here this evening to speak to it.

I have had two public health briefings in my time as a Congressman and Senator which stopped me cold. The first one was about 20 years ago. It was on the global AIDS epidemic. I knew it was a problem, but I didn’t know what kind of a problem. I left that briefing in the House Committee on the Budget and went home to speak in very sincere terms to my family about what I considered to be a real threat to all of us.

It was in the earliest stages.

Today, I had the second public health briefing which stopped me cold again. We were briefed by Secretary Leavitt from the Department of Health and Human Services, Dr. Gerberding from the Centers for Disease Control, and Dr. Fauci, well-known doctor at the National Institutes Of Health. They talked about the latest update on the bird flu and avian flu epidemic. Senator REID has gone into detail.

Mr. President, the images from Katrina are still with us—children, senior citizens, people with disabilities and chronic medical problems, waiting for days for care and medicine. These are not images we hope to see again anytime soon, and yet, we are told that these scenes will be repeated, in larger numbers, in more cities, and for far longer when the avian flu breaks out in this country.

Scientists and government officials alike, worldwide, agree that the outbreak of avian flu is virtually inevitable and that, like we were for Katrina, this country is woefully underprepared.

A few weeks ago at the U.N., the World Health Organization warned the Assembly of a pending global pandemic. President Bush acknowledged, “If I could have, I would have changed this virus...” Department of Health and Human Services Secretary Leavitt and Senator PRIST are as worried as I am. There is a general sense that we are not prepared.

The only antiviral drug that appears to be effective in minimizing the flu’s effect is in short supply. The U.S. has enough doses in its stockpile to treat just 2.3 million people. The only vaccine we have in the pipeline is experimental. It may or may not be effective against the mutation that breaks out in humans in this country. And supplies of that vaccine are limited.

Right now, the avian flu primarily infects birds, but we are aware of 115 cases in which people have been infected by the flu. Fifty-nine of them have died. If that pattern were to hold, 55 percent of the people infected with this flu could die.

In many ways, we are better off than we were in 1918 when a flu pandemic struck this country and took 675,000 lives. We know how germs are spread and how to minimize that spread. In other ways we are far more susceptible to this threat. The American Society for Microbiology believes the avian flu could spread from China to Japan to New York to San Francisco within the first week.

The Council on Foreign Relations dedicated its last volume of Foreign Affairs to the impact of a global pandemic—the prospect of battling an epidemic of flu in several countries at the same time. ABC News reports that officials in London are quietly looking for additional morgue capacity.

The Bush administration is preparing a plan for responding to an outbreak of avian flu. I think there is more that we can do and that we must do—now. If you listen to the leaders in infectious disease and public health around the world, we must not have the luxury of time on this one.

We need to step up surveillance of infectious disease here in the U.S. and internationally, so that we can track this thing and begin to contain it immediately. We need to invest in research and development to pursue all possibilities for effective vaccines and antiviral drugs. If the avian flu hits with a 55 percent mortality rate within days of infection, as it appears to be doing, we could lose hundreds of thousands of Americans in the first few months. We need to aggressively pursue vaccines now—not after the outbreak has begun.

We need to help states develop their own preparations. We need to know about who gets treatment when there is not enough. We need to help states understand the limits and capabilities of their hospitals before our eyes.

I hope we don’t— if we simply wring our hands and hope for the best—when the avian flu hits this country, it will make the scenes of Katrina pale in comparison.

Before I turn it over to my colleague, I will not repeat the remarks of Senator REID, but I will say if you believe you can survive this flu epidemic because you are not an infant or sickly or elderly, that is not the situation. It turns out we have no resistance to this flu strain, and as a consequence we are all in the same situation in terms of vulnerability. That is why this is so serious.

We had a briefing today, and I am sure Senator OBAMA will go into detail on it, but it raises questions as Senator REID raised.

I will yield the rest of my time to my colleague and thank him for his leadership.

I close by saying, we left the Defense appropriations bill, brought it out of committee today. It contains $50 billion for our continuing efforts in Iraq. I will provide and vote for every penny of that revenue, but I also believe we have an obligation to Americans here. A stronger America starts at home. That means being prepared for the next challenge we face, and this avian flu pandemic could easily be that challenge.

The PRESIDING OFFICER. (Mr. DE MINT.) The Senator from Illinois.

Mr. OBAMA. Thank you very much, Mr. President. I will be brief. I know we have gone way over the time here today.

Mr. President, in the midst of so much difficulty that our Nation is facing—Katrina and Rita, the ongoing challenges in Iraq and Afghanistan—I recognize it is hard to get the public, the leadership in Congress, and senior administration officials to focus on yet one more challenge.

But as has already been stated by the Democratic leader, HARRY REID, and my senior colleague, the minority whip, Senator DURBIN, this is a crisis which to which the entire country simply must awaken itself.

When I started talking about this 7 months ago, not too many folks paid attention. Perhaps because the short-term challenge in Katrina, the crisis is the “bird flu,” people assume it is just going to get birds and animals sick.

In reality, however, what is at stake here is the potential of a pandemic that we have not seen in the United States since 1918, 1919. As has already been said this evening, our top scientists and medical personnel, including the heads of the NIH, CDC, and the Department of Health and Human Services, all agree that it is almost inevitable that an avian flu pandemic will strike.

The key question is the extent of the damage, especially in terms of lives lost. The answer to this question will,
in large measure, depend on our level of preparedness and the amount of resources we are willing to immediately commit to deal with this looming crisis.

Over the last few months, we have seen alarming reports from countries all over Asia—Indonesia, China, Vietnam, Thailand, and Russia, just to name a few—about deaths that have resulted from the avian flu. The situation has turned so ominous that Dr. Julie Gerberding, the Director of the CDC, said that an avian flu outbreak is “the most important threat that we are facing [today].”

International health experts say that two of the three conditions for an avian flu pandemic in Southeast Asia already exist. First, a new strain of the virus, called H5N1, has emerged, and humans have little or no immunity to it. Second, this strain has demonstrated the ability to jump between species.

The only thing preventing a full blown pandemic is a lack of efficient transmission of this strain from human to human. Once that happens, as a consequence of international travel and commerce, there is not going to be any way to effectively contain this pandemic.

Moreover, the news on this last point is not good. In recent months, the virus has been detected in mammals that have never previously been infected, including tigers, leopards, and domestic cats. This suggests that the virus is mutating and could eventually emerge in a form that is readily transmissible among humans.

Mr. President, Senator Reid and Senator Durbin both outlined some of the measures that have to be put in place here domestically to protect our population. We have to drastically ramp up our stockpiles of Tamiflu, which, if taken properly, could act as a treatment from the avian flu once a person is infected. Right now, we only have a couple of million doses. We need 80 million to 100 million doses in order to be adequately prepared. That is going to cost us significant amounts of money, as the cost of Tamiflu is approximately $20 per dose.

In addition, we are going to have to develop flu vaccines of a sort we have not seen in the past. In order to create sufficient quantities, we are going to have to break the boundaries of existing technologies and science—going beyond the agricultural mechanisms of developing vaccines that we have used in the past.

Third, we are going to make sure that local and State governments understand how urgent this is. We have to ensure there are clear plans, coordination mechanisms, and lines of authority—that will stand up in a time of crisis. Right now, we do not have sufficient plans in place to make sure local and State authorities are able to respond to the kinds of rapid responses that are going to be necessary in the case of a flu outbreak.

After Katrina, I hope that local and State governments understand they have to work with the Federal agencies more effectively to deal with these kinds of emergencies. Another issue I would mention is that we are going to have to establish international protocols to ensure we can alert ourselves rapidly if we have confirmed cases of human-to-human transmission of the avian flu anywhere in the world. Why do I mention this? If we detect efficient human-to-human transmission, it is likely that we are going to have only weeks before we are going to see those first cases in the United States.

This means placing effective trigger mechanisms in all these countries to make sure everyone is cooperating and providing rapid information, which could mean the difference in terms of tens or hundreds of thousands of lives.

Now I don’t want to suggest that nothing is being done. For example, months ago, there was a bipartisan basis including myself, Senator Lugar, Senator McConnel, and Senator Leahy—including $25 million as part of the Iraq supplemental to make contribution to an urgent WHO appeal on this issue. Today, this money is making a difference in the field trying to set up some of the international measures I just described.

I, along with Senators Lugar, Durbin and others, introduced legislation, S. 969, to enhance our ability to deal with this potential crisis. But that was months ago, and we need to broaden the number of people involved in this effort.

Moreover, these are modest first steps. Going forward, we are going to need significantly more resources. I am eager to work with leaders on health issues, including Senator Harkin and Senator Reid, as well as others across the aisle.

I hope we can work not only to make sure we have an effective international regime to deal with this problem overseas but that we also invest the time, the energy, and the resources needed to put in place effective measures well before we have a full blown crisis on our hands.

An outbreak of the avian flu could occur in a year, 5 years, 10 years, or if we were incredibly lucky, not happen at all. But the one good thing about influenza is that we now have efficient human-to-human transmission. It is likely that we will see efficient human-to-human transmission in the world. Why is this the case? The risk of some sort of pandemic, and the mutations of flus for which we have no immunity, is almost inevitable. The H5N1 strain may not be the strain that will stand up in a time of crisis—and I will end on this point—if we spend the money now, it will pay dividends, even if this particular strain of the avian flu outbreak does not occur.

Why do we do this? The risk of some sort of pandemic, and the mutations of flus for which we have no immunity, is almost inevitable. The H5N1 strain may not be the strain that leads to a full blown pandemic. But, another strain could easily come along and cause far more damage in the future.

Presently, we simply do not have the public health infrastructure to deal adequately with this contingency. My point is this: undertaking these measures is going to be a wise investment that will help protect the lives of millions of people here in the United States and across the globe.

Mr. President, I appreciate your patience very much and look forward to working with you on this issue.

The PRESIDING OFFICER. I thank the Senator.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 9:30 a.m. tomorrow.

Thereupon, the Senate, at 7:37 p.m., adjourned until Thursday, September 29, 2005, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate September 28, 2005:

AFRICAN DEVELOPMENT FOUNDATION

JENNY B. ALLEN, OF OHIO, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE AFRICAN DEVELOPMENT FOUNDATION FOR THE REMAINDER OF THE TERM EXPIRING SEPTEMBER 27, 2009, VICE CONSTANCE HIRSHMANN.

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

R. JAMES HILLERY, OF TEXAS, TO BE GENERAL COUNSEL, DEPARTMENT OF EDUCATION, VICE BRIAN JONES, RESIGNED.

EXECUTIVE OFFICE OF THE PRESIDENT

CAROL R. DINKINS, OF TEXAS, TO BE CHAIRMAN OF THE PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD, (NEW POSITION)

DEPARTMENT OF EDUCATION

KENT D. TALBERT, OF VIRGINIA, TO BE GENERAL COUNSEL, DEPARTMENT OF EDUCATION, VICE BRIAN JONES, RESIGNED.

EXECUTIVE OFFICE OF THE PRESIDENT

RONALD B. THOMPSON, OF MISSISSIPPI, TO BE A MEMBER OF THE OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION FOR A TERM EXPIRING APRIL 27, 2011, VICE JAMES M. STEPHENS, TERM EXPIRED.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

SUBJECT TO QUALIFICATIONS PROVIDED BY LAW, THE FOLLOWING FOR PERMANENT APPOINTMENT TO THE GCONES EDUCATED IN THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION.

To be lieutenant junior grade

MELISSA M. FORD

To be ensign

MADELEINE M. ADLER

CAROL N. ARSENAULT

JAMES L. BRINKLEY

JOHN E. CHRISTENSEN

KEVIN M. FABIAN

JEFFREY A. FINCH

LAUREL K. JENNINGS

GUYNEVERE R. LEWIS

ALISON R. MARTIN

JASON R. RAE

PAUL M. SMDANSKY

DAVID A. STRAUSS

BERNICE J. WADDINGTON

JAMIE S. WAZNACK

PUBLIC HEALTH SERVICE

THE FOLLOWING CANDIDATE FOR PERSONNEL ACTION IN THE REGULAR COMPONENT OF THE PUBLIC HEALTH SERVICE SUBJECT TO QUALIFICATIONS THEREOF AS PROVIDED BY LAW AND REGULATIONS:

In FOR APPOINTMENT

To be assistant surgeon

LEAH HILL

The following candidates for personnel action in the regular component of the Public Health Service subject to qualifications therefor as provided by law and regulations:

In FOR APPOINTMENT

To be medical director

GREGORY A. ABBOTT

To be senior surgeon

WANDA DENISE BARFIELD

THERESA M. GIUSTI

Sonia S. Hutchings