

Commerce within 18 months after the date of enactment of this Act.

#### SEC. 6. SEPARABILITY.

If any provision of this Act, or any provision of an amendment made by this Act, or the application thereof to particular persons or circumstances, is found to be unconstitutional, the remainder of this Act or that amendment, or the application thereof to other persons or circumstances shall not be affected.

#### SEC. 7. EFFECTIVE DATE.

The prohibition contained in section 715 of the Communications Act of 1934 (as added by section 2 of this Act) and the regulations promulgated thereunder shall take effect 1 year after the regulations are adopted by the Commission.

### STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DURBIN (for himself and Mr. DEWINE):

S. 178. A bill to amend title XVIII of the Social Security Act to provide adequate coverage for immunosuppressive drugs furnished to beneficiaries under the Medicare program that have received an organ transplant; to the Committee on Finance.

Mr. DURBIN. Mr. President, I rise to make a few remarks concerning this bill I am introducing today with my colleague from Ohio, which will help many Medicare beneficiaries who have had organ transplants.

Last year over 4,400 people died while waiting for an organ transplant, including 257 in my home State of Illinois. Currently, over 80,000 Americans are waiting for a donor organ with 4,349 waiting in Illinois. It is this scarcity that has fueled the controversy over organ allocation.

Given that organs are extremely scarce, Federal law should not compromise the success of organ transplantation. Yet that is exactly what current Medicare policy does, because Medicare denies certain transplant patients coverage for the drugs needed to prevent rejection.

Medicare does this in several different ways. First, Medicare does not pay for anti-rejection drugs for Medicare beneficiaries, who received their transplants prior to becoming a Medicare beneficiary. So for instance, if a person received a transplant at aged 64 through their health insurance plan, when they retire and rely on Medicare for their health care they will no longer have immunosuppressive drug coverage. Transplantation is the only medical condition that Medicare treats as a pre-existing condition so as to deny a Medicare beneficiary a health care service that would otherwise be covered.

Second, Medicare only pays for anti-rejection drugs for transplants performed in a Medicare approved transplant facility. However, many beneficiaries are completely unaware of this fact and how it can jeopardize their future coverage of immunosuppressive drugs. To receive an organ transplant, a person must be very ill

and many are far too ill at the time of transplantation to be researching the intricate nuances of Medicare coverage policy.

Finally, Medicare has a special program for End Stage Renal Disease, ESRD, patients. Medicare pays for their dialysis at a cost of over \$100,000 per year and provides for all their health care costs. However, if a transplant becomes available to an ESRD patient, Medicare only provides them with health care for three years post-transplantation. The fact is, however, that they will need to use immunosuppressive drugs for the rest of their life to maintain their transplant. But after the three years are up, their entire Medicare coverage, including immunosuppressive drug coverage is terminated. If that person's transplant is rejected because they can no longer afford their immunosuppressive drugs, then Medicare will again pay for their dialysis and all of their health care costs. This is ludicrous. It would make more sense for Medicare to continue to provide them with the lifesaving immunosuppressive drugs that they need.

The bill that I am introducing today, the "Comprehensive Immunosuppressive Drug Coverage for Transplant Patients of 2000 Act" would remove these short-sighted limitations. The bill sets up a new, easy to follow policy: All Medicare beneficiaries who have had a transplant and need immunosuppressive drugs to prevent rejection of their transplant, would be covered as long as such anti-rejection drugs were needed.

I am introducing this bill on behalf of some of the constituents that I have met who are unfortunately very adversely affected by the current gaps in Medicare coverage.

Richard Hevrdejs was a Chicago attorney in private practice until 1993. Unfortunately, he suffered a debilitating heart attack that year, which left him unable to work and on disability. In 1997 suffering from congestive heart failure, he was placed on a Heart-Mate machine at the University of Illinois Medical Center, UIC. In April of 1998, he received a heart transplant at UIC but because UIC was not at the time a Medicare approved facility for heart transplants, Medicare will not cover his immunosuppressive drugs. Richard was near death when he had his transplant and was in no condition to research the intricacies of Medicare coverage policies. His drug costs are now around \$25,000 per year. He gets some assistance from the drug company medical assistance plans and he has a Medigap policy that provides a little assistance. But for the most part, he is forced to watch all his savings dwindle because of Medicare's coverage gaps.

Anita Milton was from Morris, Illinois. In 1995, she became so disabled that she was no longer able to work and was forced onto disability. The following year, he lungs gave up and she had to have a bilateral lung transplant.

Because Medicare is not available for 2 years after a person becomes eligible for disability, Anita was not on Medicare when she had the transplant. The huge bills for the transplant remained at collection agencies till her death several years ago. Because Anita was not on Medicare when she received her transplant, she did not receive Medicare coverage for the anti-rejection drugs that she needs. She received \$940 in disability payments per month. She then went on Medicaid but due to the spend down requirements in Illinois, she had to spend \$689 on drug costs to get Medicare coverage for her drugs. In effect she got coverage every second month. Anita couldn't afford her anti-rejection drugs and she tried to scale back on them. This caused her to nearly reject the transplant. Consequently, she lost a third of her lung capacity permanently. As Anita said at a Town Hall meeting in Chicago in January 1998 "these Medicare and Medicaid rules make no sense."

I am introducing this bill on the same day that another bill the "Living Donor Access Act of 2003", which I am an original cosponsor, is also being introduced by my colleague Senator DeWine. The "Living Donor Access Act" also seeks to improve the lives of transplant patients. The "Living Donor Access Act" would prohibit insurers in the group market from imposing additional premiums or preexisting condition exclusions on living organ donors. There are currently more than 25,000 living organ donors, but no law protects these individuals against discrimination in the group health insurance market. The two bills are good companions. It is important that we root out all discrimination against both those who have received transplants and those who are so generous as to donate.

I ask unanimous consent that the text of the bill, the "Comprehensive Immunosuppressive Drug Coverage for Transplant Patients of 2003", be printed in the RECORD.

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

S. 178

*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 "Comprehensive Immunosuppressive Drug Coverage for Transplant Patients Act of 2003".

#### SEC. 2. COMPREHENSIVE COVERAGE OF IMMUNOSUPPRESSIVE DRUGS UNDER THE MEDICARE PROGRAM.

(a) IN GENERAL.—Section 1861(s)(2)(J) of the Social Security Act (42 U.S.C. 1395x(s)(2)(J)) is amended by striking " , to an individual who receives" and all that follows before the semicolon at the end and inserting "to an individual who has received an organ transplant".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to drugs furnished on or after the date of enactment of this Act.

**SEC. 3. PROVISION OF APPROPRIATE COVERAGE OF IMMUNOSUPPRESSIVE DRUGS UNDER THE MEDICARE PROGRAM FOR ORGAN TRANSPLANT RECIPIENTS.**

(a) CONTINUED ENTITLEMENT TO IMMUNOSUPPRESSIVE DRUGS.—

(1) KIDNEY TRANSPLANT RECIPIENTS.—Section 226A(b)(2) of the Social Security Act (42 U.S.C. 426-1(b)(2)) is amended by inserting “(except for coverage of immunosuppressive drugs under section 1861(s)(2)(J))” after “shall end”.

(2) OTHER TRANSPLANT RECIPIENTS.—The flush matter following paragraph (2)(C)(ii)(II) of section 226(b) of the Social Security Act (42 U.S.C. 426(b)) is amended by striking “of this subsection)” and inserting “of this subsection and except for coverage of immunosuppressive drugs under section 1861(s)(2)(J))”.

(3) APPLICATION.—Section 1836 of the Social Security Act (42 U.S.C. 1395o) is amended—

(A) by striking “Every individual who” and inserting “(a) IN GENERAL.—Every individual who”; and

(B) by adding at the end the following new subsection:

“(b) SPECIAL RULES APPLICABLE TO INDIVIDUALS ONLY ELIGIBLE FOR COVERAGE OF IMMUNOSUPPRESSIVE DRUGS.—

“(1) IN GENERAL.—In the case of an individual whose eligibility for benefits under this title has ended except for the coverage of immunosuppressive drugs by reason of section 226(b) or 226A(b)(2), the following rules shall apply:

“(A) The individual shall be deemed to be enrolled under this part for purposes of receiving coverage of such drugs.

“(B) The individual shall be responsible for the full amount of the premium under section 1839 in order to receive such coverage.

“(C) The provision of such drugs shall be subject to the application of—

“(i) the deductible under section 1833(b); and

“(ii) the coinsurance amount applicable for such drugs (as determined under this part).

“(D) If the individual is an inpatient of a hospital or other entity, the individual is entitled to receive coverage of such drugs under this part.

“(2) ESTABLISHMENT OF PROCEDURES IN ORDER TO IMPLEMENT COVERAGE.—The Secretary shall establish procedures for—

“(A) identifying beneficiaries that are entitled to coverage of immunosuppressive drugs by reason of section 226(b) or 226A(b)(2); and

“(B) distinguishing such beneficiaries from beneficiaries that are enrolled under this part for the complete package of benefits under this part.”.

(4) TECHNICAL AMENDMENT.—Subsection (c) of section 226A of the Social Security Act (42 U.S.C. 426-1), as added by section 201(a)(3)(D)(ii) of the Social Security Independence and Program Improvements Act of 1994 (Public Law 103-296; 108 Stat. 1497), is redesignated as subsection (d).

(b) EXTENSION OF SECONDARY PAYER REQUIREMENTS FOR ESRD BENEFICIARIES.—Section 1862(b)(1)(C) of the Social Security Act (42 U.S.C. 1395y(b)(1)(C)) is amended by adding at the end the following new sentence: “With regard to immunosuppressive drugs furnished on or after the date of enactment of the Comprehensive Immunosuppressive Drug Coverage for Transplant Patients Act of 2003, this subparagraph shall be applied without regard to any time limitation.”.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to drugs furnished on or after the date of enactment of this Act.

**SEC. 4. PLANS REQUIRED TO MAINTAIN COVERAGE OF IMMUNOSUPPRESSIVE DRUGS.**

(a) APPLICATION TO CERTAIN HEALTH INSURANCE COVERAGE.—

(1) IN GENERAL.—Subpart 2 of part A of title XXVII of the Public Health Service Act (42 U.S.C. 300gg-4 et seq.) is amended by adding at the end the following:

“**SEC. 2707. COVERAGE OF IMMUNOSUPPRESSIVE DRUGS.**

“A group health plan (and a health insurance issuer offering health insurance coverage in connection with a group health plan) shall provide coverage of immunosuppressive drugs that is at least as comprehensive as the coverage provided by such plan or issuer on the day before the date of enactment of the Comprehensive Immunosuppressive Drug Coverage for Transplant Patients Act of 2003, and such requirement shall be deemed to be incorporated into this section.”.

(2) CONFORMING AMENDMENT.—Section 2721(b)(2)(A) of the Public Health Service Act (42 U.S.C. 300gg-21(b)(2)(A)) is amended by inserting “(other than section 2707)” after “requirements of such subparts”.

(b) APPLICATION TO GROUP HEALTH PLANS AND GROUP HEALTH INSURANCE COVERAGE UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(1) IN GENERAL.—Subpart B of part 7 of subtitle B of title I of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185 et seq.) is amended by adding at the end the following new section:

“**SEC. 714. COVERAGE OF IMMUNOSUPPRESSIVE DRUGS.**

“A group health plan (and a health insurance issuer offering health insurance coverage in connection with a group health plan) shall provide coverage of immunosuppressive drugs that is at least as comprehensive as the coverage provided by such plan or issuer on the day before the date of enactment of the Comprehensive Immunosuppressive Drug Coverage for Transplant Patients Act of 2003, and such requirement shall be deemed to be incorporated into this section.”.

(2) CONFORMING AMENDMENTS.—

(A) Section 732(a) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1185(a)) is amended by striking “section 711” and inserting “sections 711 and 714”.

(B) The table of contents in section 1 of the Employee Retirement Income Security Act of 1974 is amended by inserting after the item relating to section 713 the following new item:

“Sec. 714. Coverage of immunosuppressive drugs.”.

(c) APPLICATION TO GROUP HEALTH PLANS UNDER THE INTERNAL REVENUE CODE OF 1986.—Subchapter B of chapter 100 of the Internal Revenue Code of 1986 is amended—

(1) in the table of sections, by inserting after the item relating to section 9812 the following new item:

“Sec. 9813. Coverage of immunosuppressive drugs.”;

and

(2) by inserting after section 9812 the following:

“**SEC. 9813. COVERAGE OF IMMUNOSUPPRESSIVE DRUGS.**

“A group health plan shall provide coverage of immunosuppressive drugs that is at least as comprehensive as the coverage provided by such plan on the day before the date of enactment of the Comprehensive Immunosuppressive Drug Coverage for Transplant Patients Act of 2003, and such requirement shall be deemed to be incorporated into this section.”.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning on or after January 1, 2004.

By Mr. CORZINE:

S. 179. A bill to amend title 23, United States Code, to provide for a prohibition on use of mobile telephones while operating a motor vehicle; to the Committee on Environment and Public Works.

Mr. CORZINE. Mr. President, today I am introducing legislation, the Mobile Telephone Driving Safety Act, to enhance highway safety by encouraging States to restrict the use of cell phones by drivers while they are operating a motor vehicle.

I am introducing this legislation because of the significant threat posed by people who use cell phones while driving. According to a study by the Harvard Center for Risk Analysis released in December of 2002, “the use of cell phones by drivers may result in approximately 2,600 deaths, 330,000 moderate to critical injuries and 1.5 million instances of property damage in America per year”. Other studies have reached similar conclusions. One, published in the New England Journal of Medicine in 1997, concluded that the “use of cellular telephones in motor vehicles is associated with a quadrupling of the risks of a collision during the brief period of a call”. That study went on to say “this relative risk is similar to the hazard associated with driving with a blood alcohol level at the legal limit”.

States, counties and municipalities around the country have considered bans on hand-held cell phone use while driving. New York actually enacted such a ban in 2001. The Governor of New Jersey has proposed such a ban and related legislation has been unanimously approved by the New Jersey State Senate. A number of New Jersey municipalities also have chosen to enforce bans within their borders, including Marlboro, Carteret and Nutley.

This patchwork of laws, however, does not take the place of a consistent, nation-wide ban. Congress needs to step forward and pass legislation that will ban the use of hand-held cell phones nationwide.

The Mobile Telephone Driving Safety Act of 2003 is structured in a manner similar to other federal laws designed to promote highway safety, such as laws that encourage states to enact tough drunk driving standards. Under the legislation, a portion of Federal highway funds would be withheld from States that do not enact a ban on cell phone use while driving. Initially, this funding could be restored if states act to move into compliance. Later, the highway funding forfeited by one state would be distributed to other states that are in compliance. Experience has shown that the threat of losing highway funding is very effective in ensuring that states comply.

To meet the bill’s requirements, States would have to ban cell phone use while driving. However, such a ban

need not be absolute. It could include an exception where there are exceptional circumstances, such as the use of a phone to report a disabled vehicle or medical emergency. In addition, if a State makes a determination that the use of "hands free" cell phones does not pose a threat to public safety, such use could be exempted from the ban, as well.

This is a necessary bill to keep our streets and highways safe. I urge my colleagues to support this legislation and 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. 179

*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 "Mobile Telephone Driving Safety Act of 2003".

**SEC 2. MOBILE TELEPHONE USE WHILE OPERATING MOTOR VEHICLES.**

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code, is amended by adding at the end the following:

**"§ 165. Mobile telephone use while operating motor vehicles**

"(a) DEFINITION OF MOTOR VEHICLE.—In this section, the term 'motor vehicle' means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated only on a rail.

"(b) WITHHOLDING OF APPORTIONMENTS FOR NONCOMPLIANCE.—

"(1) FISCAL YEAR 2005.—The Secretary shall withhold 5 percent of the amount required to be apportioned to any State under each of paragraphs (1), (3), and (4) of section 104(b) on October 1, 2004, if the State does not meet the requirements of paragraph (3) on that date.

"(2) SUBSEQUENT FISCAL YEARS.—The Secretary shall withhold 10 percent of the amount required to be apportioned to any State under each of paragraphs (1), (3), and (4) of section 104(b) on October 1, 2005, and on October 1 of each fiscal year thereafter, if the State does not meet the requirements of paragraph (3) on that date.

"(3) REQUIREMENTS.—

"(A) IN GENERAL.—A State meets the requirements of this paragraph if the State has enacted and is enforcing a law that prohibits an individual from using a mobile telephone (other than a mobile telephone used as described in subparagraph (B)) while operating a motor vehicle, except in the case of an emergency or other exceptional circumstance (as determined by the State).

"(B) HANDS-FREE DEVICES.—A State law described in subparagraph (A) may permit an individual operating a motor vehicle to use a mobile telephone with a device that permits hands-free operation of the telephone if the State determines that such use does not pose a threat to public safety.

"(c) PERIOD OF AVAILABILITY; EFFECT OF COMPLIANCE AND NONCOMPLIANCE.—

"(1) PERIOD OF AVAILABILITY OF WITHHELD FUNDS.—Any funds withheld under subsection (b) from apportionment to any State shall remain available until the end of the fourth fiscal year following the fiscal year for which the funds are authorized to be appropriated.

"(2) APPORTIONMENT OF WITHHELD FUNDS AFTER COMPLIANCE.—If, before the last day of

the period for which funds withheld under subsection (b) from apportionment are to remain available for apportionment to a State under paragraph (1), the State meets the requirements of subsection (a)(3), the Secretary shall, on the first day on which the State meets the requirements, apportion to the State the funds withheld under subsection (b) that remain available for apportionment to the State.

"(3) PERIOD OF AVAILABILITY OF SUBSEQUENTLY APPORTIONED FUNDS.—

"(A) IN GENERAL.—Any funds apportioned under paragraph (2) shall remain available for expenditure until the end of the third fiscal year following the fiscal year in which the funds are so apportioned.

"(B) TREATMENT OF CERTAIN FUNDS.—Any funds apportioned under paragraph (2) that are not obligated at the end of the period referred to in subparagraph (A) shall be allocated equally among the States that meet the requirements of subsection (a)(3).

"(4) EFFECT OF NONCOMPLIANCE.—If, at the end of the period for which funds withheld under subsection (b) from apportionment are available for apportionment to a State under paragraph (1), the State does not meet the requirements of subsection (a)(3), the funds shall be allocated equally among the States that meet the requirements of subsection (a)(3)."

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code, is amended by adding at the end the following:

"165. Mobile telephone use while operating motor vehicles."

By Mr. DeWINE (for himself and Mr. VOINOVICH):

S. 180. A bill to establish the National Aviation Heritage Area, and for other purposes; to the Committee on Energy and Natural Resources.

Mr. DeWINE. Mr. President, today I join my friend and colleague from Ohio, Senator GEORGE VOINOVICH, to introduce the National Aviation Heritage Area Act, an act to establish a National Aviation Heritage Area within our home State of Ohio.

For hundreds of years prior to the 20th Century, man dreamt of flying. Some of the earliest records of mankind reveal a fascination with birds and the ability to leave the ground. In fact, the Renaissance revolution in art showed us many of the first recorded designs for achieving this feat. By 1903, man succeeded, altering the course of modern history.

This year, we mark the 100th anniversary of manned flight. I am proud to say that the famed Wright Brothers, Wilbur and Orville, were native Ohioans. These two men are important symbols of an evolving age of discovery, an age beginning with the Wright Brothers' first controlled, heavier-than-air flight on December 17, 1903. A mere half-a-century or so later, mankind was flying not just above the ground, but above our planet Earth, which was quickly followed by Neil Armstrong's first steps on the moon. It is amazing to just sit back and consider that all of these things, all of these incredible achievements have all occurred in a very short span of less than one hundred years.

There is so much to say about the historical and cultural significance of

the birth of aviation, but I think one of its unique educational aspects is its ability to be interactive with students outside of the classroom. And, that is one of the main reasons we are introducing our National Aviation Heritage Area legislation today.

Our bill seeks to help foster strong public and private investments in many of Ohio's aviation landmarks, landmarks that have enormous educational value. Some of these landmarks include the Wright Brothers' "Wright Cycle Company," located in Dayton and the Wright-Dunbar Interpretive Center, where students of all ages can learn about the painstaking measures the Wright Brothers and many of their predecessors took to achieve what today seems to be so commonplace. Other landmarks include the Huffman Prairie Flying Field, where, after the Wright Brothers' famous flight in Kitty Hawk, NC, the Brothers returned home to perfect the design of the world's first airplane and the Paul Laurence Dunbar State Memorial, which showcases this great African American poet's strong international voice for racial equality and justice. The Heritage Area also includes the Neil Armstrong Museum, which highlights the great achievements of man's first walk on the moon. If I may add also, Neil Armstrong is a native Ohioan.

Flight has become a very important square in the patchwork of our nation's history, and I am proud that my home State of Ohio has played such a large role in its evolution. We are reminded of how manned flight has changed our history every time we look skyward and see the crisscross of jet contrails. We are reminded of this every time we walk through the Rotunda of our very own U.S. Capitol and see the last frieze square that depicts the Wright Brothers and their invention. And, we are reminded of this by one of the great symbols of America, the eagle, a flying bird that represents the freedom of a people.

It is vital that we protect the sites that have played such an important role in aviation. In doing so, we can enhance the education and enrichment of our children and our grandchildren for many years to come.

By Mr. LEVIN (for himself and Mr. MCCAIN):

S. 181. A bill to require a review of accounting treatment of stock option plans, and the establishment of an appropriate stock option accounting principle within 1 year; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. LEVIN (for himself, Mr. MCCAIN, Mr. DURBIN, and Mr. FEINGOLD):

S. 182. A bill to amend the Internal Revenue Code of 1986 to provide that corporate tax benefits from stock option compensation expenses are allowed only to the extent such expenses

are included in a corporation's financial statements; to the Committee on Finance.

Mr. LEVIN. Mr. President, I am introducing today on behalf of myself and Sen. McCAIN two separate bills relating to stock options. Stock options are unfinished business from the last Congress. They are the 800-pound gorilla that has yet to be caged by corporate reform.

Stock options allow a company's employees, usually its top executives, to purchase company stock at a set price for a specified period of time, perhaps 10 years. If the stock price rises after the option is issued, the executive can exercise the option, buy the stock at the set price, and then sell it on the open market at a profit. Today, most CEOs of U.S. publicly traded companies receive a large percentage of their pay from stock options.

Despite their widespread use, stock options remain a stealth form of compensation because, under current accounting rules, they never have to appear on the company books as a compensation expense. In fact, they are the only form of compensation that companies do not have to book as an expense at any time. In addition, stock options are the only form of compensation that a company can claim as a deductible business expense on its tax return, even when no expense is ever recorded on the company books.

These stock option accounting and tax rules are inconsistent and illogical. The two bills we are introducing today, the Stock Option Accounting Review Act, and the Ending the Double Standard for Stock Options Act, were introduced in the last Congress to address this problem. Each bill tackles a different aspect of the stock option issue. One addresses stock option accounting; the other addresses the stock option tax deduction.

Last year, Senator McCAIN and I proposed the accounting provision as an amendment to the Sarbanes-Oxley corporate reform bill that was before the Senate in July. There appeared to be sufficient support to pass it at the time, but we were unable to obtain a vote on it or on any other stock option legislation. That is why we are back this Congress.

Congress failed to resolve the issue last year, even though stock option abuses were repeatedly linked to serious corporate abuses and dishonest accounting. In fact, virtually every corporate disaster that has struck in recent years has had a stock option component.

Enron, of course, was the poster child. Congressional investigations, including by the Permanent Subcommittee on Investigations on which I sit, showed that, at the same time Enron investors and employees were losing their shirts, Enron executives were cashing in their stock options for tens or hundreds of millions of dollars. Ken Lay, the Chairman of the Board, took home \$123 million from stock op-

tions in 2000 alone. Jeff Skilling, the CEO, took home over \$60 million. Another executive, Lou Pai, topped them all by cashing in Enron stock options, in 2000, for \$265 million.

Stock options also contributed to Enron's inflated earnings, since despite providing the lion's share of executive pay, this compensation never appeared on the company books as an expense nor was it ever deducted from earnings. And many have blamed stock options for encouraging Enron management to rig the company's financial statements through other accounting deceptions to help boost apparent income and, in turn, the company stock price, so they could sell their Enron stock at enormous profit.

Still others have noted that Enron used about \$600 million in stock option tax deductions to avoid paying any corporate income taxes in four out of the last five years before its bankruptcy while, at the same time, touting record amounts of corporate income. What is now only beginning to be understood is that Enron's stock option tax deductions played a central role in much of its wrongdoing, after all, Enron was able to inflate its corporate income with impunity, in part, because its stock option tax deductions allowed it to avoid paying taxes on any of its phony inflated income.

Enron was the poster child for stock option abuses, but it was far from the only company in that category last year. Worldcom, Tyco, Qwest Communications, and many others have stock option stories that are equally disturbing.

And the problems did not stop with companies engaged in accounting deceptions or other corporate misconduct. Even companies that never appeared on the 2002 rollover of corporate deception have been excoriated in media reports for giving huge stock option pay to executives while socking employees and investors with lower stock prices, mounting losses, and lousy corporate performance.

High tech companies that have been the biggest promoters of stock options have been some of the biggest culprits. Company after company in Silicon Valley paid their executives big bucks via stock options while laying off employees, losing money or market share, and stiffing investors. One example frequently cited in the media is Lawrence Ellison, CEO of Oracle Corp., who exercised options in 2001 to obtain profits of \$706 million, while his company's stock price dropped by more than 50 percent.

Aggregate stock option statistics are also sobering. Business Week, for example, has estimated that stock options now account for "a staggering 15 percent of all shares outstanding." Federal Reserve Chairman Alan Greenspan estimated that stock options have been used to overstate reported company earnings by an average of 6 to 9 percent. Perhaps that is why Chairman Greenspan has picked honest stock option accounting as his number one post-Enron reform.

Stock option abuses have been linked to inflated company earnings, dishonest accounting, and executive misconduct. These abuses have been facilitated by existing accounting and tax rules which allow stock option compensation to never appear on a company's books as an expense, even when a company claims this compensation as a business expense on its tax return. This double standard is fueling Enron-style abuses, and it is time for it to end.

Many in the U.S. business community apparently agree and, unlike the Congress, have taken direct action on the stock option issue. In fact, over the last year, there has been significant movement in the business world to end dishonest stock option accounting.

Over 120 companies, including such American giants as Coca-Cola, General Motors, General Electric, Dow Chemical, Wal-Mart, and Home Depot have announced that they will begin expensing options in 2003, joining longtime expensers like Boeing and Winn-Dixie. Standard and Poors has created additional pressure for honest stock option accounting by announcing a new "core earnings" calculation for companies which requires stock option compensation to be subtracted from a company's earnings.

Accounting experts are also moving. The International Accounting Standards Board in London has announced that, by the end of 2003, it will issue accounting standards requiring companies to expense stock options. The U.S. equivalent, the Financial Accounting Standards Board, or FASB, has announced that it will decide by the end of the first quarter of this year whether it will issue stock option accounting standards similar to those of the International Board.

While there has been a major shift in the U.S. business world toward honest stock option accounting, not all companies are on board. Some companies, especially those in the high tech sector, have announced that they will not expense stock options until forced to do so. That means, until FASB acts, there will be a discrepancy between those companies that are voluntarily expensing options and those that are not, when there ought to be a level playing field where everyone plays by the same accounting rules. It is this discrepancy that continues to make our stock option legislation relevant and necessary for Congressional action this year.

Let me describe both bills.

First is the Stock Option Accounting Review Act. This bill is very simple. It would direct FASB to conduct a fresh review of the current accounting treatment for stock options and, within one year, establish what it deems to be the appropriate stock option accounting standards.

The bill does not specify the stock option accounting standards that FASB should issue; that matter is left to the experts where it belongs. But

the bill does put the Senate on record as urging FASB to review the existing rules and take appropriate action within one year. This legislative directive is important, because the only other time the Senate has spoken on this issue, in 1994, the Senate majority urged FASB to keep allowing companies to exclude stock option expenses from their financial statements. The Senate's position contradicted FASB's position at the time which was to require stock option expensing. It is long past time for the Senate to rescind its mistaken advice.

The second bill we are introducing today is the Ending the Double Standard for Stock Options Act. This bill would not address the accounting treatment of stock options. Instead, it would address the tax treatment of stock option compensation, ending the costly double standard in federal law which allows a company to take a tax deduction for stock option compensation, even if the company does not show that compensation as a business expense on its financial statements.

Essentially, our bill would prevent a company from claiming a stock option expense on its tax return unless the company also includes that expense on its books. It would require companies to be consistent in how they treat stock options, and take a corporate tax deduction that mirrors the expense shown on the company books. If a company took the position that it incurred no expense from stock option compensation on its books, the bill would allow the company to take that position, but would also require it to take the same approach on its tax return and forego any deduction. The bill would stop companies from telling stockholders one thing, that it has no stock option expenses, while telling the opposite to Uncle Sam.

And to add insult to injury, in 2001, the IRS issued Revenue Ruling 2001-1 which determined that companies whose tax liability was erased through stock option expenses were not subject to the corporate alternative minimum tax. That revenue ruling meant that our most successful publicly traded companies, if they doled out enough stock options to insiders, could arrange their affairs to escape paying any taxes. That absurd result leaves the average taxpayer feeling like a chump for paying his fair share when a company like Enron can use its success in the stock market to apparently end up tax free.

One last point. Some opponents of stock option reform argue that reining in stock options would hurt the average worker, but this contention is nothing more than a red herring. While many average workers are eligible for stock options, few actually receive them. Stock options are overwhelmingly reserved for top corporate executives.

A recent Bureau of Labor Statistics survey did the research. This nationwide government survey found that in

2000, a banner year for stock options, only 1.7 percent of non-executive workers actually got any stock options. The BLS survey also looked at corporate executives and found that only about 5 percent of these corporate executives received any stock options. These results are consistent with the findings of a private sector group not associated with the government called the National Center for Employee Ownership, which favors stock options. Looking at a small sample of companies, the Center reported that 70 percent of all stock options were given to managers rather than other employees, and about 50 percent were given to the most senior executives. The reality is that stock options are a perk mainly reserved for a very small group, and neither average workers nor most executives would be affected by honest accounting or consistent tax and accounting treatment for stock options.

It is also important to understand that neither of our bills would bar any company from issuing stock options. Companies would still be able to issue stock options to their executives and other employees. The goal of this legislation is not to stop the use of stock options, but to promote honest accounting and consistent treatment of stock options on federal corporate tax returns.

Stock option abuses have damaged investor confidence in American business. I hope our colleagues will support enactment of these bills to help restore investor confidence and end stock option abuses. I ask unanimous consent to have reprinted in the RECORD after my remarks the text of both bills.

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

S. 181

*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 "Stock Option Accounting Review Act".

**SEC. 2. REVIEW OF STOCK OPTION ACCOUNTING TREATMENT.**

Section 108 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7218, 116 Stat. 768) is amended by adding at the end the following:

"(e) STOCK OPTION ACCOUNTING TREATMENT.—The standard setting body described in section 19(b)(1) of the Securities Act of 1933 shall, for purposes of establishing generally accepted accounting principles—

"(1) review the accounting treatment of employee stock options; and

"(2) not later than 1 year after the date of enactment of this subsection, adopt an appropriate generally accepted accounting principle for the treatment of employee stock options."

S. 182

*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 "Ending the Double Standard for Stock Options Act".

**SEC. 2. REQUIREMENTS FOR CONSISTENT TREATMENT OF STOCK OPTIONS BY CORPORATIONS.**

(a) CONSISTENT TREATMENT FOR TAX DEDUCTION.—Section 83(h) of the Internal Revenue

Code of 1986 (relating to deduction of employer) is amended—

(1) by striking "In the case of" and inserting:

"(1) IN GENERAL.—In the case of", and  
(2) by adding at the end the following new paragraph:

"(2) SPECIAL RULES FOR PROPERTY TRANSFERRED PURSUANT TO STOCK OPTIONS.—

"(A) IN GENERAL.—In the case of property transferred in connection with a stock option, the deduction otherwise allowable under paragraph (1) shall not exceed the amount the taxpayer has treated as an expense for the purpose of ascertaining income, profit, or loss in a report or statement to shareholders, partners, or other proprietors (or to beneficiaries). In no event shall such deduction be allowed before the taxable year described in paragraph (1).

"(B) SPECIAL RULES FOR CONTROLLED GROUPS.—The Secretary shall prescribe rules for the application of this paragraph in cases where the stock option is granted by a parent or subsidiary corporation (within the meaning of section 424) of the employer corporation."

(b) CONSISTENT TREATMENT FOR RESEARCH TAX CREDIT.—Section 41(b)(2)(D) of the Internal Revenue Code of 1986 (defining wages for purposes of credit for increasing research expenses) is amended by inserting at the end the following new clause:

"(iv) SPECIAL RULE FOR STOCK OPTIONS AND STOCK-BASED PLANS.—The term "wages" shall not include any amount of property transferred in connection with a stock option and required to be included in a report or statement under section 83(h)(2) until it is so included, and the portion of such amount which may be treated as wages for a taxable year shall not exceed the amount of the deduction allowed under section 83(h) for such taxable year with respect to such amount."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to property transferred and wages provided on or after the date of the enactment of this Act.

By Mr. LEVIN (for himself, Mr. NELSON of Florida, Mr. CORZINE, and Mr. BIDEN):

S. 183. A bill to address Securities and Exchange Commission authority to impose civil money penalties in administrative proceedings for violations of securities laws, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. LEVIN. Mr. President, I am introducing today legislation to provide the Securities and Exchange Commission with stronger administrative authority to detect, investigate, and punish corporate and individual misconduct. This legislation, the SEC Civil Enforcement Act, among other measures, would provide the SEC with new authority to impose administrative civil fines on those who violate federal securities laws. The bill is cosponsored by Senators BILL NELSON, CORZINE, and BIDEN.

The SEC has repeatedly requested the new enforcement tools that this bill would provide, and I ask unanimous consent to print in the RECORD after my remarks a copy of a letter from SEC Chairman Harvey Pitt supporting enactment of this legislation.

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

UNITED STATES SECURITIES AND  
EXCHANGE COMMISSION,  
Washington, DC, August 30, 2002.

Hon. CARL LEVIN,  
Chairman, Permanent Subcommittee on Investiga-  
tions, Russell Senate Office Building,  
Washington, DC.

DEAR CHAIRMAN LEVIN: This letter re-  
sponds to your letter of August 9th, seeking  
my views on your proposal to enhance the  
Commission's authority to seek civil pen-  
alties for violations of the federal securities  
laws, increase the penalties the Commission  
may seek, and eliminate a procedural re-  
quirement that may slow the Commission's  
efforts to trace and recover misappropriated  
investor funds.

The three additional enforcement tools  
you contemplate reflect recommendations  
we have made previously in an effort to fa-  
cilitate our goal of achieving "real-time en-  
forcement." Especially in light of recent  
events, I believe these proposals would en-  
hance our efforts and the interest of inves-  
tors. As you know, during this Congressional  
session, with the bipartisan support of Con-  
gress and the Administration, the Commis-  
sion already has been given, and has begun  
to implement, greater authority to pursue  
and punish corporate wrongdoers and en-  
hance corporate accountability. The addi-  
tional authority about which you inquire  
would be a welcome addition to our enforce-  
ment arsenal, if the proposals achieve bipar-  
tisan support.

Again, thank you for your interest in  
strengthening penalties for securities fraud  
violations. Please do not hesitate to contact  
me or Stephen Cutler, Director of the Divi-  
sion of Enforcement, at (202) 942-4500 if we  
can be of further assistance.

Yours truly,

HARVEY L. PITT.

Here is a description of what the bill  
would do.

First, the bill would grant the SEC  
additional administrative authority to  
impose civil monetary fines on those  
who violate federal securities laws.  
Under current law, only broker dealers,  
investment advisers, and certain other  
persons regulated by the SEC are now  
subject to civil fines. Our bill would ex-  
pand SEC authority to allow it to im-  
pose fines on such wrongdoers as, for  
example, corporate officers, directors,  
auditors, lawyers, or publicly traded  
companies, none of which can now be  
fined by the SEC in an administrative  
proceeding. These fines would, of  
course, be subject to judicial review, as  
are all current SEC administrative de-  
terminations.

Hearings held and reports issued by  
the Permanent Subcommittee on In-  
vestigations, which spent the last year  
investigating Enron's collapse, deter-  
mined that the Enron Board of Direc-  
tors and certain highly respected finan-  
cial institutions helped Enron carry  
out deceptive accounting transactions  
or other corporate abuses, misleading  
investors and analysts about the com-  
pany's finances. The latest hearing in  
December also highlighted the fact  
that the SEC needs additional tools to  
deal with financial institutions. Our  
bill would give the SEC new authority  
to impose an administrative fine on  
any bank or individual banker who vi-  
olates the federal securities laws includ-  
ing, as in Enron, by helping a public  
company doctor its books or engage in  
misleading transactions.

Second, this bill would significantly  
increase the maximum civil fine that  
the SEC could impose on those whom it  
has authority to regulate. The civil  
fines that the SEC currently may im-  
pose have maximum amounts that  
range from \$6,500 to \$600,000 per viola-  
tion. In a day and age where some  
CEOs are making \$100 million in a  
year, and a company like Enron re-  
ported gross revenues of \$100 billion in  
a single year, a civil fine of \$6,500 is  
laughable. Here is what one SEC staff  
document stated in June 2002, explain-  
ing why the agency is seeking an in-  
crease in its civil fine limits:

The current maximum penalty amounts  
may not have the desired deterrent effect on  
an individual or corporate violator. For ex-  
ample, an individual who commits a neg-  
ligent act is subject to a maximum penalty  
amount of \$6,500 per violation. This amount  
is so trivial it cannot possibly have a deter-  
rent effect on the violator.

Our bill would increase the maximum  
fines from a range of \$6,500 to \$600,000  
per violation, to a range that goes from  
\$100,000 to \$2 million per violation.  
When we are seeing corporate restate-  
ments and corporate misconduct in-  
volving billions of dollars, these larger  
cash fines are critical if they are to  
have an effective deterrent or punitive  
impact on wrongdoers in the corporate  
world today.

Third, the bill would grant the SEC  
new administrative authority, when  
the SEC has opened an official SEC in-  
vestigation, to subpoena financial  
records from a financial institution  
without having to notify the subject  
that such a records request has been  
made. This authority will allow the  
SEC to evaluate financial transactions,  
trace funds, and analyze relationships  
without having to alert the subject of  
the investigation to the SEC's actions.  
Under current law, the SEC either has  
to give the subject advance notice of  
the subpoena or obtain a court order  
that can delay notification for no  
longer than 90 days.

In the cases we are seeing today,  
where there are allegations that offi-  
cers, directors, and companies are  
using offshore accounts to deposit mil-  
lions of dollars, enlist foreign inves-  
tors, and affect the accounting and tax  
treatment of various complex trans-  
actions, the SEC must be able to look  
at financial records without giving the  
account holder an opportunity to move  
funds, change accounts, and further  
muddy the investigative waters. This  
authority is particularly important in  
light of the Patriot Act, which Con-  
gress enacted after the 9-11 tragedy,  
requiring the SEC to be on the lookout  
for money laundering through securi-  
ties accounts. The SEC cannot afford  
to alert potential money launderers to  
the agency's efforts to review their fi-  
nancial accounts for possible money  
laundering. This bill would bring the  
SEC's subpoena authority into align-  
ment with the subpoena authority of  
federal banking agencies that are al-  
ready exempted by statute from having

to notify account holders of agency  
subpoenas to review their financial  
records. Again, the SEC has requested  
this new enforcement tool, and this bill  
would provide it.

This bill is an important compliment  
to the new Sarbanes-Oxley law which  
stiffened criminal penalties for securi-  
ties fraud, because this bill would  
stiffen enforcement mechanisms on the  
civil side. Last year, I tried to incor-  
porate it into the Sarbanes-Oxley Act,  
but was unable to obtain a vote on my  
amendment. That is why I am reintrou-  
ducing the legislation this year. Since  
many corporate and accounting cases  
warrant civil rather than criminal  
treatment, strengthening the SEC's  
civil enforcement authority is another  
critical step in improving its effective-  
ness as an enforcement agency to deter  
and punish this misconduct.

Given the current disillusionment  
among the American people and other  
investors with American public compa-  
nies, Congress needs to provide leader-  
ship to restore investor confidence in  
our markets, in SEC oversight, and in  
company financial statements so that  
investors can trust them to reflect the  
true state of a company's financial  
condition. I hope my colleagues will  
join me in supporting this legislation  
and winning its enactment during the  
108th Congress.

I ask unanimous consent to have  
printed in the RECORD the full text of  
the bill.

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

S. 183

*Be it enacted by the Senate and House of Rep-  
resentatives of the United States of America in  
Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "SEC Civil  
Enforcement Act".

**SEC. 2. SECURITIES CIVIL ENFORCEMENT PROVI-  
SIONS.**

(a) AUTHORITY TO ASSESS CIVIL MONEY  
PENALTIES.—

(1) SECURITIES ACT OF 1933.—Section 8A of  
the Securities Act of 1933 (15 U.S.C. 77h-1) is  
amended by adding at the end the following  
new subsection:

“(g) AUTHORITY OF THE COMMISSION TO AS-  
SESS MONEY PENALTY.—

“(1) IN GENERAL.—In any cease-and-desist  
proceeding under subsection (a), the Com-  
mission may impose a civil monetary pen-  
alty if it finds, on the record after notice and  
opportunity for hearing, that a person is vi-  
olating, has violated, or is or was a cause of  
the violation of, any provision of this title or  
any rule or regulation thereunder, and that  
such penalty is in the public interest.

“(2) MAXIMUM AMOUNT OF PENALTY.—

“(A) FIRST TIER.—The maximum amount of  
penalty for each act or omission described in  
paragraph (1) shall be \$100,000 for a natural  
person or \$250,000 for any other person.

“(B) SECOND TIER.—Notwithstanding sub-  
paragraph (A), the maximum amount of pen-  
alty for such act or omission described in  
paragraph (1) shall be \$500,000 for a natural  
person or \$1,000,000 for any other person, if  
the act or omission involved fraud, deceit,  
manipulation, or deliberate or reckless dis-  
regard of a statutory or regulatory require-  
ment.

“(C) THIRD TIER.—Notwithstanding sub-  
paragraphs (A) and (B), the maximum

amount of penalty for each act or omission described in paragraph (1) shall be \$1,000,000 for a natural person or \$2,000,000 for any other person, if—

“(i) the act or omission involved fraud, deceit, manipulation, or deliberate or reckless disregard of a statutory or regulatory requirement; and

“(ii) such act or omission directly or indirectly resulted in substantial losses or created a significant risk of substantial losses to other persons or resulted in substantial pecuniary gain to the person who committed the act or omission.

“(3) EVIDENCE CONCERNING ABILITY TO PAY.—In any proceeding in which the Commission or the appropriate regulatory agency may impose a penalty under this section, a respondent may present evidence of the ability of the respondent to pay such penalty. The Commission or the appropriate regulatory agency may, in its discretion, consider such evidence in determining whether the penalty is in the public interest. Such evidence may relate to the extent of the person's ability to continue in business and the collectability of a penalty, taking into account any other claims of the United States or third parties upon the assets of that person and the amount of the assets of that person.”

(2) SECURITIES EXCHANGE ACT OF 1934.—Section 21B(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78u-2(a)) is amended—

(A) in paragraph (4), by striking “supervision;” and all that follows through the end of the subsection and inserting “supervision.”;

(B) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D), respectively, and moving the margins 2 ems to the right;

(C) by inserting “that such penalty is in the public interest and” after “hearing.”;

(D) by striking “In any proceeding” and inserting the following:

“(1) IN GENERAL.—In any proceeding”;

(E) by adding at the end the following:

“(2) OTHER MONEY PENALTIES.—In any proceeding under section 21C against any person, the Commission may impose a civil monetary penalty if it finds, on the record after notice and opportunity for hearing, that such person is violating, has violated, or is or was a cause of the violation of, any provision of this title or any rule or regulation thereunder, and that such penalty is in the public interest.”

(3) INVESTMENT COMPANY ACT OF 1940.—Section 9(d)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a-9(d)(1)) is amended—

(A) in subparagraph (C), by striking “therein;” and all that follows through the end of the paragraph and inserting “supervision.”;

(B) by redesignating subparagraphs (A) through (C) as clauses (i) through (iii), respectively, and moving the margins 2 ems to the right;

(C) by inserting “that such penalty is in the public interest and” after “hearing.”;

(D) by striking “In any proceeding” and inserting the following:

“(A) IN GENERAL.—In any proceeding”;

(E) by adding at the end the following:

“(B) OTHER MONEY PENALTIES.—In any proceeding under subsection (f) against any person, the Commission may impose a civil monetary penalty if it finds, on the record after notice and opportunity for hearing, that such person is violating, has violated, or is or was a cause of the violation of, any provision of this title or any rule or regulation thereunder, and that such penalty is in the public interest.”

(4) INVESTMENT ADVISERS ACT OF 1940.—Section 203(i)(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(i)(1)) is amended—

(A) in subparagraph (D), by striking “supervision;” and all that follows through the end of the paragraph and inserting “supervision.”;

(B) by redesignating subparagraphs (A) through (D) as clauses (i) through (iv), respectively, and moving the margins 2 ems to the right;

(C) by inserting “that such penalty is in the public interest and” after “hearing.”;

(D) by striking “In any proceeding” and inserting the following:

“(A) IN GENERAL.—In any proceeding”;

(E) by adding at the end the following:

“(B) OTHER MONEY PENALTIES.—In any proceeding under subsection (k) against any person, the Commission may impose a civil monetary penalty if it finds, on the record after notice and opportunity for hearing, that such person is violating, has violated, or is or was a cause of the violation of, any provision of this title or any rule or regulation thereunder, and that such penalty is in the public interest.”

(b) INCREASED MAXIMUM CIVIL MONEY PENALTIES.—

(1) SECURITIES ACT OF 1933.—Section 20(d)(2) of the Securities Act of 1933 (15 U.S.C. 77t(d)(2)) is amended—

(A) in subparagraph (A)(i)—

(i) by striking “\$5,000” and inserting “\$100,000”; and

(ii) by striking “\$50,000” and inserting “\$250,000”;

(B) in subparagraph (B)(i)—

(i) by striking “\$50,000” and inserting “\$500,000”; and

(ii) by striking “\$250,000” and inserting “\$1,000,000”; and

(C) in subparagraph (C)(i)—

(i) by striking “\$100,000” and inserting “\$1,000,000”; and

(ii) by striking “\$500,000” and inserting “\$2,000,000”.

(2) SECURITIES EXCHANGE ACT OF 1934.—

(A) PENALTIES.—Section 32 of the Securities Exchange Act of 1934 (15 U.S.C. 78ff) is amended—

(i) in subsection (b), by striking “\$100” and inserting “\$10,000”; and

(ii) in subsection (c)—

(I) in paragraph (1)(B), by striking “\$10,000” and inserting “\$500,000”; and

(II) in paragraph (2)(B), by striking “\$10,000” and inserting “\$500,000”.

(B) INSIDER TRADING.—Section 21A(a)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78u-1(a)(3)) is amended by striking “\$1,000,000” and inserting “\$2,000,000”.

(C) ADMINISTRATIVE PROCEEDINGS.—Section 21B(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78u-2(b)) is amended—

(i) in paragraph (1)—

(I) by striking “\$5,000” and inserting “\$100,000”; and

(II) by striking “\$50,000” and inserting “\$250,000”;

(ii) in paragraph (2)—

(I) by striking “\$50,000” and inserting “\$500,000”; and

(II) by striking “\$250,000” and inserting “\$1,000,000”; and

(iii) in paragraph (3)—

(I) by striking “\$100,000” and inserting “\$1,000,000”; and

(II) by striking “\$500,000” and inserting “\$2,000,000”.

(D) CIVIL ACTIONS.—Section 21(d)(3)(B) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)(3)(B)) is amended—

(i) in clause (i)—

(I) by striking “\$5,000” and inserting “\$100,000”; and

(II) by striking “\$50,000” and inserting “\$250,000”;

(ii) in clause (ii)—

(I) by striking “\$50,000” and inserting “\$500,000”; and

(II) by striking “\$250,000” and inserting “\$1,000,000”; and

(iii) in clause (iii)—

(I) by striking “\$100,000” and inserting “\$1,000,000”; and

(II) by striking “\$500,000” and inserting “\$2,000,000”.

(3) INVESTMENT COMPANY ACT OF 1940.—

(A) INELIGIBILITY.—Section 9(d)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a-9(d)(2)) is amended—

(i) in subparagraph (A)—

(I) by striking “\$5,000” and inserting “\$100,000”; and

(II) by striking “\$50,000” and inserting “\$250,000”;

(ii) in subparagraph (B)—

(I) by striking “\$50,000” and inserting “\$500,000”; and

(II) by striking “\$250,000” and inserting “\$1,000,000”; and

(iii) in subparagraph (C)—

(I) by striking “\$100,000” and inserting “\$1,000,000”; and

(II) by striking “\$500,000” and inserting “\$2,000,000”.

(B) ENFORCEMENT OF INVESTMENT COMPANY ACT.—Section 42(e)(2) of the Investment Company Act of 1940 (15 U.S.C. 80a-41(e)(2)) is amended—

(i) in subparagraph (A)—

(I) by striking “\$5,000” and inserting “\$100,000”; and

(II) by striking “\$50,000” and inserting “\$250,000”;

(ii) in subparagraph (B)—

(I) by striking “\$50,000” and inserting “\$500,000”; and

(II) by striking “\$250,000” and inserting “\$1,000,000”; and

(iii) in subparagraph (C)—

(I) by striking “\$100,000” and inserting “\$1,000,000”; and

(II) by striking “\$500,000” and inserting “\$2,000,000”.

(4) INVESTMENT ADVISERS ACT OF 1940.—

(A) REGISTRATION.—Section 203(i)(2) of the Investment advisers Act of 1940 (15 U.S.C. 80b-3(i)(2)) is amended—

(i) in subparagraph (A)—

(I) by striking “\$5,000” and inserting “\$100,000”; and

(II) by striking “\$50,000” and inserting “\$250,000”;

(ii) in subparagraph (B)—

(I) by striking “\$50,000” and inserting “\$500,000”; and

(II) by striking “\$250,000” and inserting “\$1,000,000”; and

(iii) in subparagraph (C)—

(I) by striking “\$100,000” and inserting “\$1,000,000”; and

(II) by striking “\$500,000” and inserting “\$2,000,000”.

(B) ENFORCEMENT OF INVESTMENT ADVISERS ACT.—Section 209(e)(2) of the Investment advisers Act of 1940 (15 U.S.C. 80b-9(e)(2)) is amended—

(i) in subparagraph (A)—

(I) by striking “\$5,000” and inserting “\$100,000”; and

(II) by striking “\$50,000” and inserting “\$250,000”;

(ii) in subparagraph (B)—

(I) by striking “\$50,000” and inserting “\$500,000”; and

(II) by striking “\$250,000” and inserting “\$1,000,000”; and

(iii) in subparagraph (C)—

(I) by striking “\$100,000” and inserting “\$1,000,000”; and

(II) by striking “\$500,000” and inserting “\$2,000,000”.

(C) AUTHORITY TO OBTAIN FINANCIAL RECORDS.—Section 21(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(h)) is amended—

(1) by striking paragraphs (2) through (8);

(2) in paragraph (9), by striking “(9)(A)” and all that follows through “(B) The” and inserting “(3) The”;

(3) by inserting after paragraph (1), the following:

“(2) ACCESS TO FINANCIAL RECORDS.—

“(A) IN GENERAL.—Notwithstanding section 1105 or 1107 of the Right to Financial Privacy Act of 1978, the Commission may obtain access to and copies of, or the information contained in, financial records of any person held by a financial institution, including the financial records of a customer, without notice to that person, when it acts pursuant to a subpoena authorized by a formal order of investigation of the Commission and issued under the securities laws or pursuant to an administrative or judicial subpoena issued in a proceeding or action to enforce the securities laws.

“(B) NONDISCLOSURE OF REQUESTS.—If the Commission so directs in its subpoena, no financial institution, or officer, director, partner, employee, shareholder, representative or agent of such financial institution, shall, directly or indirectly, disclose that records have been requested or provided in accordance with subparagraph (A), if the Commission finds reason to believe that such disclosure may—

“(i) result in the transfer of assets or records outside the territorial limits of the United States;

“(ii) result in improper conversion of investor assets;

“(iii) impede the ability of the Commission to identify, trace, or freeze funds involved in any securities transaction;

“(iv) endanger the life or physical safety of an individual;

“(v) result in flight from prosecution;

“(vi) result in destruction of or tampering with evidence;

“(vii) result in intimidation of potential witnesses; or

“(viii) otherwise seriously jeopardize an investigation or unduly delay a trial.

“(C) TRANSFER OF RECORDS TO GOVERNMENT AUTHORITIES.—The Commission may transfer financial records or the information contained therein to any government authority, if the Commission proceeds as a transferring agency in accordance with section 1112 of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3412), except that a customer notice shall not be required under subsection (b) or (c) of that section 1112, if the Commission determines that there is reason to believe that such notification may result in or lead to any of the factors identified under clauses (i) through (viii) of subparagraph (B) of this paragraph.”;

(4) by striking paragraph (10); and

(5) by redesignating paragraphs (11), (12), and (13) as paragraphs (4), (5), and (6), respectively.

By Mr. DODD (for himself, Ms. MIKULSKI, Mr. JEFFORDS, Mrs. MURRAY, Ms. LANDRIEU, and Mr. DAYTON):

S. 184. A bill to amend section 401(b)(2) of the Higher Education Act of 1965 regarding the Federal Pell Grant maximum amount; to the Committee on Health, Education, Labor, and Pensions.

Mr. DODD. Mr. President, I rise, and am joined by my colleagues Senator MIKULSKI, Senator JEFFORDS, SENATOR MURRAY, Senator LANDRIEU and Senator DAYTON, to introduce legislation to amend the Higher Education Act to improve access to higher education for low- and middle-income students by

doubling the authorized maximum Pell Grant within six years. This bill has the strong support of the Student Aid Alliance, whose 60 organizations represent students, colleges, parents, and others who care about higher education.

Pell Grants were established in the early 1970s by our former colleague, Claiborne Pell, of Rhode Island. They are the largest source of federal grant aid for college students. For millions of low- and middle-income students they are the difference between attending or not attending college. But, unfortunately, they don't make as much of a difference as they used to.

In 1975, the maximum appropriated Pell Grant covered all of the average student's tuition, fees, room, and board at community colleges. It covered about 80 percent of those costs at public universities and about 40 percent at private universities. Today, Pell Grant's purchasing power has dropped by more than 30 percent at community colleges and been more than cut in half at universities. It covers only 38 percent of the costs at public universities and 15 percent at private universities. That's not just a drop, it's a free-fall.

For students from the lowest income families, college is getting farther and farther out of reach. Since 1975, as a percentage of the family income of the poorest 20 percent of families, the cost of public universities has increased by half and the cost of private universities has doubled. For middle-income families, the cost of college also has increased significantly as a percentage of income.

As a result of all this, low- and middle-income students who want to attend college are forced to finance their education with an ever-increasing percentage of loans as opposed to grants, which effectively increases their cost of attendance even more and in many cases, keeps them from going to college at all.

Of course, the President's budget would have frozen the maximum Pell Grant. So, on top of leaving millions of children behind by failing to meet the bipartisan promises of the No Child Left Behind Act, the President's budget would leave even more children behind who work hard and do well in school and want to go on to college.

We can't kid ourselves, if we're serious about leaving no child behind, if we're serious about having a society where equal opportunity for all is more than just rhetoric, then we need to reinvigorate the Pell program.

The Student Aid Alliance put it very well, in talking about students, when they said that “investing in their future is investing in our nation's future.” We can start investing in our Nation's future by supporting the amendment that will be offered to the Omnibus appropriations bill today to increase the maximum appropriated Pell Grant to \$4,500.

That won't bring Pell Grant's purchasing power back to where it was in

1975, but it is a critical first step, and I intend to continue the effort through this bill and other measures as we reauthorize the Higher Education Act this Congress.

I hope that my colleagues will join me.

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. 184

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

**SECTION 1. FEDERAL PELL GRANT MAXIMUM AMOUNT.**

Section 401(b)(2) of the Higher Education Act of 1965 (20 U.S.C. 1070a(b)(2)) is amended—

(1) by redesignating subparagraph (B) as subparagraph (C);

(2) by amending subparagraph (A) to read as follows:

“(A) Except as provided in subparagraph (B), the amount of the Federal Pell Grant for a student eligible under this part shall be—

“(i) \$6,700 for academic year 2004–2005;

“(ii) \$7,600 for academic year 2005–2006;

“(iii) \$8,600 for academic year 2006–2007;

“(iv) \$9,600 for academic year 2007–2008;

“(v) \$10,600 for academic year 2008–2009; and

“(vi) \$11,600 for academic year 2009–2010,

less an amount equal to the amount determined to be the expected family contribution with respect to that student for that year.”; and

(3) by inserting after subparagraph (A) (as so amended) the following:

“(B) If the Secretary determines that the increase from one academic year to the next in the amount of the maximum Federal Pell Grant authorized under subparagraph (A) does not increase students' purchasing power (relative to the cost of attendance at an institution of higher education) by at least 5 percentage points, then the amount of the maximum Federal Pell Grant authorized under subparagraph (A) for the academic year for which the determination is made shall be increased by an amount sufficient to achieve such a 5 percentage point increase.”.

By Mr. DEWINE. (for himself and Mr. DURBIN):

S. 186. A bill to amend the Employee Retirement Income Security Act of 1974, the Public Health Service Act, and the Internal Revenue Code of 1986 to provide health insurance protections for individuals who are living organ donors; to the Committee on Health, Education, Labor, and Pensions.

Mr. DEWINE. Mr. President, I rise today to raise further awareness of an issue that affects over 22,000 people a year, and that issue is organ donation. The sad fact about organ donations is this: We have the medical know-how to save lives, but we lack the organs. We lack organs because most Americans simply are unaware of the life-giving difference they can make by choosing to become organ donors.

Sadly, each day the waiting list for those needing organs continues to grow. Today, over 80,000 people remain on the national transplant waiting list.

Right now, more than 56,000 people, alone, are waiting for kidney transplants. That number is expected to double within the next decade. Additionally, close to 6,000 people die each year just waiting for an available organ.

To remedy the organ shortage, we must increase public awareness. By educating the public and raising awareness, more people will choose to become organ donors. At the very least, through these efforts, we can encourage more families to discuss what their wishes are and whether they would want to be organ donors.

But, our efforts must not stop there. We must do more than just implement public awareness campaigns, because the face of organ donation is changing. For the first time ever, the number of living organ donors outnumbered cadaver donors. In 2001, there were 6,082 donor cadavers while 6,534 people opted to become living donors, usually giving up a healthy kidney to help a family member or friend.

Recognizing this, my colleague, Senator DURBIN, and I are introducing a bill today that would help protect living organ donors in the group insurance market. Our bill would ensure that those individuals who choose to be living organ donors are not discriminated against in the insurance marketplace. Our bill builds on the protections provided by the Health Insurance Portability and Accountability Act, so that living organ donors are not denied insurance nor are they applied discriminatory insurance premiums because of their living organ donor status.

Quite simply, a brother who donates a part of his kidney to his sister should not be denied health insurance. But tragically, that is what oftentimes happens. Frequently, individuals who are living organ donors are denied health insurance or restricted from the insurance market. Instead, we should celebrate living organ donors and remove obstacles and barriers for the successful donation of organs. Insurance concerns should not undermine someone's decision to be a living organ donor.

Some states are evaluating how living organ donors affect the market. States are amending their Family Medical Leave eligibility so that living organ donors can participate and benefit from the program. The Federal Government, with the Organ Donor Leave Act of 1999, offered 30 days paid leave to Federal employees who chose to be an organ donor. But, paid leave and job protection doesn't mean much if people are denied health insurance or are required to pay higher premiums because they donated an organ to save another person's life.

The impact of living organ donation is profound. A living organ donor not only can save the life of one patient, but can also take that person off the waiting list for a cadaver donation. That means the next person on the

waiting list is "bumped up" a spot, giving additional hope to the 86,000 persons on the national transplant waiting list.

Living organ donors give family members and friends a second chance at life and the opportunity to reduce the number of people on the waiting list to receive an organ. It is time for Congress to make a sensible decision in support of a person's decision to be a living organ donor.

I encourage my colleagues to join me in co-sponsoring this bill.

By Mr. EDWARDS:

S. 187. A bill to provide for the elimination of significant vulnerabilities in the information technology of the Federal Government, and for other purposes; to the Committee on Governmental Affairs.

Mr. EDWARDS. Mr. President, I rise today to introduce the National Cyber Security Leadership Act of 2003, a bill that calls on the Federal Government to lead by example in shoring up its computers and protecting them against cyber attacks.

I introduce this bill because our Nation's computers and networks are increasingly vulnerable to cyber attacks. A week after the September 11 attacks, a cyber attack spread across 86,000 computers over several days, causing unknown amounts of financial and economic damage. Two months before that, a cyber attack called Code Red infected 150,000 computers in 14 hours. According to cyber security experts, Federal computers have already been used as weapons in large-scale cyber attack.

There aren't just amateur teenage hackers. Terrorists, including al Qaeda operatives, have browsed Internet sites offering software that would help them take down power, water, transport and communications grids.

One of the principal reasons that companies do not act to secure their systems is that the Federal Government does not act to secure its own systems. Unfortunately, Federal agencies continue to be among the worst offenders failing to protect themselves against cyber attack. Last November, a Congressional report card gave 14 agencies a failing grade for their computer security efforts. These vulnerabilities leave our Federal agencies exposed to hackers, system shutdowns, and cyber terrorist infiltration.

Clearly, we need to act now to strengthen our computer systems. I believe the first step in this process is to have our Federal agencies lead by example.

The National Cyber Security Leadership Act of 2003 would establish higher standards for Federal Government computer safety. The National Institute of Standards and Technology would establish the standards after individual agencies conduct comprehensive tests of their network systems and report on their weaknesses. These procedures will strengthen our govern-

ment's resistance to cyber attacks and will demonstrate to the business community the tremendous value in conducting comprehensive security tests and monitoring new developments.

I have developed this important piece of legislation with assistance from Mr. Alan Paller, Director of Research for the SANS Institute; Mr. Franklin S. Reeder, Chairman of the Center for Internet Security and of the Computer System Security and Privacy Advisory Committee; and several computer security experts in the Federal Government.

We cannot afford to wait until we experience a computer meltdown. I urge my colleagues to join with me in helping our Federal agencies to lead by example.

By Mr. FEINGOLD (for himself, Mr. CORZINE, Mr. WYDEN, and Mr. NELSON of Florida):

S. 188. A bill to impose a moratorium on the implementation of datamining under the Total Information Awareness program of the Department of Defense and any similar program of the Department of Homeland Security, and for other purposes; to the Committee on the Judiciary.

Mr. FEINGOLD. Mr. President, I am pleased today to introduce the Data-Mining Moratorium Act of 2003. Like many Americans, I was surprised to learn during the last few months that the Department of Defense has spent hundreds of millions of dollars developing a data-mining system called Total Information Awareness while permitting the progeny of Total Information Awareness to appear in places like the Department of Homeland Security. The untested and controversial intelligence procedure known as datamining is capable of maintaining extensive files containing both public and private records on each and every American. Coupled with the expanded domestic surveillance already underway by this Administration, this unchecked system is a dangerous step forward and threatens one of the values that we're fighting for, freedom. The Administration has a heavy burden of proof that such extreme measures are necessary.

The Data-Mining Moratorium Act of 2003 would immediately suspend datamining in the Department of Defense and the Department of Homeland Security until Congress has conducted a thorough review of Total Information Awareness and the practice of datamining.

Without Congressional review and oversight, data-mining would allow the Department of Homeland Security, the Department of Defense and other government agencies to collect and analyze a combination of intelligence data and personal information like individuals' traffic violations, credit card purchases, travel records, medical records, communications records, and virtually any information collected on commercial or public databases. Through comprehensive data-mining, as envisioned

with Total Information Awareness, everything from people's video rentals or drugstore purchases made with a credit card to their most private health concerns could be fed into a computer and monitored by the Federal Government.

Using massive data mining, like Total Information Awareness, the government hopes to be able to detect potential terrorists. There is no evidence that data-mining will, in fact, prevent terrorism. And when one considers the potential for errors in data, for example, credit agencies that have data about John R. Smith on John D. Smith's credit report, the prospect of ensnaring many innocents is real. This approach might also lead to the same kinds of so-called "preventive" detentions that are unconstitutional and put more than 1,100 individuals in jail after September 11. Although none of these people were ever charged with orchestrating or aiding the attacks, they were often held for months on end, and went for weeks without access to counsel. There is every reason to be concerned that uncontrolled data-mining systems would lead to the same abuse of power.

The Administration's assurances that a data-mining system will not abuse our privacy rights ring hollow, particularly to those of us who questioned the breathtaking new Federal powers in the USA PATRIOT Act. We heard these same assurances when the Administration pressed for enactment of that sweeping legislation in the months after September 11th, that the government would act with restraint to ensure that its application of the Act would not infringe on our liberties. The opposite has turned out to be true. In fact, some of the most serious infringements on our personal freedoms in the USA PATRIOT Act can now contribute to the data-mining effort.

The USA PATRIOT Act allows the government to compel businesses to produce records about people who had only a remote contact with a person sought in connection with an investigation of terrorism, including sitting on an airplane with the suspect, or having used the same payphone as the suspect. Under the PATRIOT Act, any business records can be compelled, including those containing sensitive personal information like medical records from hospitals or doctors, financial records, or records of what books someone has taken out of the library. This information is exactly the kind of data that data-mining programs like Total Information Awareness will use when compiling its files on the American people.

The danger of data-mining is compounded not only by provisions in the USA PATRIOT Act, but also by the Administration's loosening of domestic surveillance restrictions for FBI agents last year, restrictions that were put in place following FBI abuses under J. Edgar Hoover. These various initiatives of the Administration are building on each other to give away more

and more of our personal information, and give away more and more of our personal freedoms.

It is reasonable to ask Americans to sacrifice some personal freedom like submitting to more extensive security screenings at airports. But should we allow the government to track our every move, from what items we purchase online, to our medical records, to our financial records, without limits and without accountability? I believe most Americans would say that that's a police state, not the America we know and love. We would catch more terrorists in a police state. I don't doubt that. But that's not a country in which most Americans would want to live.

Each time we have been told that government authorities would use restraint with its new powers, but Congress and the American people should not find comfort in these assurances, especially since they have been made by an Administration that has been operating in greater and greater secrecy. The Administration must suspend this massive data mining project until Congress can determine whether the proposed benefits of this practice come at too high a price to our privacy and personal liberties.

I urge my colleagues to support this measure, and 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. 188

*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 "Data-Mining Moratorium Act of 2003".

**SEC. 2. FINDINGS.**

Congress makes the following findings:

(1) Use of advanced technology is an essential tool in the fight against terrorism.

(2) There has been no demonstration that data-mining by a government, including data-mining such as that which is to occur under the Total Information Awareness program, is an effective tool for preventing terrorism.

(3) Data-mining under the Total Information Awareness program or a similar program would provide the Federal Government with access to extensive files of private as well as public information on an individual.

(4) There are significant concerns regarding the extent to which privacy rights of individuals would be adversely affected by data-mining carried out by their government.

(5) Congress has not reviewed any guidelines, rules, or laws concerning implementation and use of data-mining by Federal Government agencies.

**SEC. 3. MORATORIUM ON IMPLEMENTATION OF TOTAL INFORMATION AWARENESS PROGRAM FOR DATA MINING.**

(a) MORATORIUM.—During the period described in subsection (b), no officer or employee of the Department of Defense or the Department of Homeland Security may take any action to implement or carry out for data-mining purposes any part of (including any research or development under)—

(1) the Department of Defense component of the Total Information Awareness program

or any other data-mining program of the Department of Defense; or

(2) any data-mining program of the Department of Homeland Security that is similar or related to the Total Information Awareness program.

(b) MORATORIUM PERIOD.—The period referred to in subsection (a) for a department of the Federal Government is the period beginning on the date of the enactment of this Act and ending on the date (after the date of the enactment of this Act) on which there is enacted a law specifically authorizing data-mining by such department.

**SEC. 4. REPORTS ON DATA-MINING ACTIVITIES.**

(a) REQUIREMENT FOR REPORT.—The Secretary of Defense, the Attorney General, and the head of each other department or agency of the Federal Government that is engaged in any activity to use or develop data-mining technology shall each submit to Congress a report on all such activities of the department or agency under the jurisdiction of that official.

(b) CONTENT OF REPORT.—A report submitted under subsection (a) shall include, for each activity to use or develop data-mining technology that is required to be covered by the report, the following information:

(1) A thorough description of the activity.

(2) A thorough discussion of the plans for the use of such technology.

(3) A thorough discussion of the policies, procedures, and guidelines that are to be applied in the use of such technology for data-mining in order to—

(A) protect the privacy rights of individuals; and

(B) ensure that only accurate information is collected.

(c) TIME FOR REPORT.—Each report required under subsection (a) shall be submitted not later than 90 days after the date of the enactment of this Act.

**SEC. 5. CONSTRUCTION OF PROVISIONS.**

Nothing in this Act shall be construed to preclude the Department of Defense or the Department of Homeland Security from conducting—

(1) computer searches of public information; or

(2) computer searches that are based on a particularized suspicion of an individual.

By Mr. WYDEN (for himself, Mr. ALLEN, Mr. LIEBERMAN, Mr. WARNER, Ms. MIKULSKI, Mr. HOLLINGS, Ms. LANDRIEU, Mrs. CLINTON, Mr. LEVIN, and Mr. BAYH):

S. 189. A bill to authorize appropriations for nanoscience, nanoengineering, and nanotechnology research, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mr. WYDEN. Mr. President, far from the stuff of science fiction, nanotechnology has become a reality in the lives of many Americans. While there is tremendous potential for further study in this field, nanotechnology's current impacts range from the pedestrian to the extraordinary. A TV commercial demonstrates the practicality of nanotechnology through stain-resistant pants. Prosthetic and medical implants have been improved through molecularly designed surfaces that interact with the cells of the body. There is no question that this field will dramatically change the way Americans live.

I was pleased that my colleagues in the Commerce Committee in the last Congress recognized the tremendous potential of nanotechnology and passed this bill out of committee with unanimous bipartisan support. Nanotechnology innovations will bring enormous benefits to America's economy and to nearly every aspect of life in the coming decades. My own judgment is the nanotechnology revolution has the potential to change America on a scale equal to, if not greater than, the computer revolution. I am determined that the United States will not miss, but will mine the opportunities of nanotechnology. At present, efforts in the nanotechnology field are strewn across a half-dozen Federal agencies. I want America to marshal its various nanotechnology efforts into one driving force to remain the world's leader in this burgeoning field. And I believe Federal support is essential to achieving that goal.

Legislation I am introducing today will provide a smart, accelerate, and organized approach to nanotechnology research, development, and education. In my view, there are three major steps America must take to ensure the highest success for its nanotechnology efforts.

First, a National nanotechnology Research Program should be established to superintend long-term fundamental nanoscience and engineering research. The program's goals will be to ensure America's leadership and economic competitiveness in nanotechnology, and to make sure ethical and social concerns are taken into account alongside the development of this discipline.

Second, the Federal Government should support nanoscience through a program of research grants, and also through the establishment of nanotechnology research centers. These centers would serve as key components of a national research infrastructure, bringing together experts from the various disciplines that must intersect for nanoscale projects to succeed and building a network that includes State-supported centers. As these research efforts take shape, educational opportunities will be the key to their long-term success. Through this legislation, I commit to helping students who would enter the field of nanotechnology. This discipline requires multiple areas of expertise. Students with the drive and the talent to tackle physics, chemistry, and the material sciences simultaneously deserve all the support we can offer.

Third, the government should create connections across its agencies to aid in the meshing of various nanotechnology efforts. These could include a national steering office, and a Presidential nanotechnology Advisory Committee, modeled on the President's Information Technology Advisory Committee.

I also believe that as these organizational support structures are put into place, rigorous evaluation must take

place to ensure the maximum efficiency of our efforts. Personally, I would call for an annual review of America's nanotechnology efforts from the Presidential Advisory Committee, and a periodic review from the National Academy of Sciences. In addition to monitoring our own progress, the United States should keep abreast of the world's nanotechnology efforts through a series of benchmarking studies.

If the Federal Government fails to get behind nanotechnology now with organized, goal-oriented support, this Nation runs the risk of falling behind others in the world who recognize the potential of this discipline. Nanotechnology is already making pants more stain-resistant, making windows self-washing and making car parts stronger with tiny particles of clay. What America risks missing is the next generation of nanotechnology. In the next wave, nanoparticles and nanodevices will become the building blocks of our health care, agriculture, manufacturing, environmental cleanup, and even national security.

America risks missing a revolution in electronics, where a device the size of a sugar cube could hold all of the information in the Library of Congress. Today's silicon-based technologies can only shrink so small. Eventually, nanotechnologies will grow devices from the molecular level up. Small though they may be, their capabilities and their impact will be enormous. Spacecraft could be the size of mere molecules.

America risks missing a revolution in health care. In my home State, Oregon State University researchers are working on the microscale to create lapel-pin-sized biosensors that use the color-changing cells of the Siamese fighting fish to provide instant visual warnings when a biotoxin is present. An antimicrobial dressing for battlefield wounds is already available today, containing silver nanocrystals that prevent infection and reduce inflammation. The health care possibilities for nanotechnology are limitless. Eventually, nanoscale particles will travel human bodies to detect and cure disease. Chemotherapy could attack individual cancer cells and leave healthy cells intact. Tiny bulldozers could unclog blocked arteries. Human disease will be fought cell by cell, molecule by molecule, and nanotechnology will provide victories over disease that we can't even conceive today.

America risks missing a host of beneficial breakthroughs. American scientists could be the first to create nanomaterials for manufacturing and design that are stronger, lighter, harder, self-repairing, and safer. Nanoscale devices could scrub automobile pollution out of the air as it is produced. Nanoparticles could cover armor to make American soldiers almost invisible to enemies and even tend their wounds. nanotechnology could grow steel stronger than what's made today, with little or no waste to pollute the environment.

Moreover, and this is even more important given our struggling economy, America risks missing an economic revolution based on nanotechnology. With much of nanotechnology existing in a research milieu, venture capitalists are already investing \$1 billion in American nanotech interests this year alone. It's estimated that nanotechnology will become a trillion-dollar industry over the next 10 years. As nanotechnology grows, the ranks of skilled workers needed to discover and apply its capabilities must grow too. In the nanotechnology revolution, areas of high unemployment could become magnets for domestic production, engineering and research for nanotechnology applications—but only if government doesn't miss the boat.

Our country's National Nanotechnology Initiative is a step in the right direction. This Nation has already committed substantial funds to nanotechnology research and development in the coming years. But funding is not enough. There must be careful planning to make sure that money is used for sound science over the long-term. That is the reason for the legislation I am issuing today. The strategic planning it prescribes will ensure that scientists get the support they need to realize nanotechnology's greatest potential.

In 1944 the visionary President Franklin Delano Roosevelt requested a leading American scientist's opinion on advancing the United States' scientific efforts to benefit the world. Dr. Vannevar Bush offered his reply to President Harry S Truman the next year, following FDR's death. In his report to the President, Dr. Bush wrote, "The Government should accept new responsibilities for promoting the flow of new scientific knowledge and the development of scientific talent in our youth. These responsibilities are the proper concern of the Government, for they vitally affect our health, our jobs, and our national security. It is in keeping also with basic United States policy that the Government should foster the opening of new frontiers and this is the modern way to do it."

Those principles, so true nearly 60 years ago, are truer still today. I propose that the government now accept new responsibilities in promoting and developing nanotechnology. I am pleased to be joined on this legislation by Senators ALLEN, LIEBERMAN, MIKULSKI, HOLLINGS, LANDRIEU, CLINTON, and LEVIN. I ask unanimous consent that this statement be entered in the RECORD.

By Mrs. FEINSTEIN:

S. 190. A bill to establish the Director of National Intelligence as head of the intelligence community, to modify and enhance authorities and responsibilities relating to the administration of intelligence and the intelligence community, and for other purposes; to the Select Committee on Intelligence.

Mrs. FEINSTEIN. Mr. President, I rise today to offer the Intelligence Community Leadership Act of 2003. This legislation creates the position of Director of National Intelligence to provide budget and statutory authority over coordinating our intelligence efforts. This will help assure that the sort of communication problems that prevented the various elements of our intelligence community from working together effectively before September 11 never happens again.

Today there are 14 different agencies and departments which make up the Intelligence Community: the Central Intelligence Agency, the Defense Intelligence Agency, the National Security Agency, the National Reconnaissance Office, the National Imagery and Mapping Agency, Army Intelligence, Air Force Intelligence, Marine Corps Intelligence, intelligence elements of the Departments of State, Treasury, Energy, as well as the Federal Bureau of Investigation and the United States Coast Guard. Together they make up a huge network, with thousands of employees and a significant, secret, budget.

Interestingly, there is no real head of this sprawling Community. In law the Director of Central Intelligence leads both the CIA and the Intelligence Community, but in practice he is unable to exercise meaningful control and leadership. The Community is plagued by acute turf battles, incompatible information systems and uncoordinated operations. The present structure makes coordination and movement of personnel within the Intelligence Community more difficult than it should be.

Last Spring I offered legislation to address this problem, S. 2645, which created the position of Director of National Intelligence.

Since then the Joint Inquiry of the Senate and House Intelligence Committees completed its investigations into the Intelligence Community role in the attacks of September 11.

The Joint Inquiries' major recommendation was the creation of a "Director of National Intelligence", DNI, with real authority to run the Intelligence Community, separate from the head of the CIA, and thus free from having to run both the Community and one of its major constituent agencies.

Working with those recommendations, I have updated the bill I introduced last year to reflect the Joint Inquiries' findings. The changes include adding specific language to ensure that the new Director of National Intelligence has meaningful and effective budget and personnel authority.

Specifically this legislation would create the new position of Director of National Intelligence who would head the intelligence community, serving at the pleasure of the President, with the proper and necessary authority to coordinate activities, direct priorities, and develop and execute the budget for our nation's national intelligence community.

The DNI would be responsible for all of the functions now performed by the Director of Central Intelligence in his role as head of the intelligence community, while a separate individual would be Director of the CIA.

Nominated by the President and confirmed by the Senate, the DNI would be empowered to create and execute the national intelligence budget in conjunction with the various intelligence agencies within our government.

The Director of the Central Intelligence Agency, DCIA, freed from the double burden as head of the intelligence community, would then be able to concentrate on the critical missions of the CIA alone: Assure the collection of intelligence from human sources, and that intelligence is properly correlated, evaluated, and disseminated throughout the intelligence community and to decision makers.

I recognize that this bill will certainly not solve every problem within the intelligence community, but I believe it is an important, perhaps critical, first step. My hope is that introduction of this bill will move the much-needed debate on Intelligence Community reform forward.

By Mr. DEWINE:

S. 191. A bill to amend title XVIII of the Social Security Act to provide adequate coverage for immunosuppressive drugs furnished to beneficiaries under the medicare program that have received a kidney transplant, and for other purposes; to the Committee on Finance.

Mr. DEWINE. Mr. President, I rise today to join my friend and colleague, Senator DURBIN, in introducing a bill to help organ transplant patients maintain access to the life-saving drugs necessary to prevent their immune systems from rejecting their new organs.

Tragically, today over 86,000 Americans are waiting for a donor organ. Those individuals who are blessed to receive an organ transplant must take immunosuppressive drugs every day for the life of their transplant. Failure to take these drugs significantly increases the risk that the transplanted organ will be rejected.

We need this bill, because Federal law is compromising the success of organ transplants. Let me explain. Right now, current Medicare policy denies certain transplant patients coverage for the drugs needed to prevent rejection. Medicare does not pay for anti-rejection drugs for Medicare beneficiaries, who received their transplants prior to becoming a Medicare beneficiary. So, for instance, if a person received a transplant at age 64 through his or her health insurance plan, when that person retires and relies on Medicare for health care coverage, he or she would no longer have immunosuppressive drug coverage.

Medicare only pays for anti-rejection drugs for transplants performed in a Medicare-approved transplant facility.

However, many beneficiaries are completely unaware of this fact and how it can jeopardize their future coverage of immunosuppressive drugs. To receive an organ transplant, a person must be very ill and many are far too ill at the time of transplantation to be researching the intricate nuances of Medicare coverage policy.

End Stage Renal Disease, ESRD, patients qualify for Medicare on the basis of needing dialysis. If End Stage Renal Disease patients receive a kidney transplant, they qualify for Medicare coverage for three years after the transplant. After the three years are up, they lose not only their general Medicare coverage, but also their coverage for immunosuppressive drugs.

The amendment that Senator DURBIN and I are introducing today would remove the Medicare limitations and make clear that all Medicare beneficiaries including End Stage Renal Disease patients who have had a transplant and need immunosuppressive drugs to prevent rejection of their transplant, will be covered as long as such anti-rejection drugs are needed.

In the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act, Congress eliminated the 36-month time limitation for transplant recipients who both receive a Medicare eligible transplant and are eligible for Medicare based on age or disability. Our bill would provide the same indefinite coverage to kidney transplant recipients who are not Medicare-aged or Medicare-disabled.

I urge my colleagues to support this legislation and help those who receive Medicare-eligible transplants to gain access to the immunosuppressive drugs they need to live healthy, productive lives.

By Mr. CORZINE:

S. 192. A bill to amend title 23, United States Code, to provide for criminal and civil liability for permitting an intoxicated arrestee to operate a motor vehicle; to the Committee on Environment and Public Works.

Mr. CORZINE. Mr. President, today I am introducing legislation that would address the serious national problem of drunk driving. This bill, entitled "John's Law of 2003," would help ensure that when drunken drivers are arrested, they cannot simply get back into the car and put the lives of others in jeopardy.

On July 22, 2000, Navy Ensign John Elliott was driving home from the United States Naval Academy in Annapolis for his mother's birthday when his car was struck by another car. Both Ensign Elliott and the driver of that car were killed. The driver of the car that caused the collision had a blood alcohol level that exceeded twice the legal limit.

When makes this tragedy especially distressing is that this same driver had been arrested and charged with driving under the influence of alcohol, DUI, just three hours before the crash. After

being processed for that offense, he had been released into the custody of a friend who drove him back to his car and allowed him to get behind the wheel, with tragic results.

We need to ensure that drunken drivers do not get back behind the wheel before they sober up. New Jersey took steps to do this when they enacted John's Law at the State level. I am pleased to offer a Federal version of this legislation today.

This bill would require States to impound the vehicle of an offender for a period of at least 12 hours after the offense. This would ensure that the arrestee cannot get back behind the wheel of his car until he is sober.

Further, the bill would require States to ensure that if a DUI offender arrestee is released into the custody of another, that person must be provided with notice of his or her potential civil or criminal liability for permitting the arrestee's operation of a motor vehicle while intoxicated. While this bill does not create new liability under Federal law, notifying such individuals of their prospective liability under State law should encourage them to act responsibly.

John's Law of 2003 is structured in a manner similar to other Federal laws designed to promote highway safety, such as laws that encourage States to enact tough drunk driving standards. Under the legislation, a portion of Federal highways funds would be withheld from States that do not comply. Initially, this funding could be restored if States move into compliance. Later, the highway funding forfeited by one State would be distributed to other States that are in compliance. Experience has shown that the threat of losing highway funding is very effective in ensuring that States comply.

Mr. President, I believe that this legislation would help make our roads safer and save many lives. I hope my colleagues will support it, and 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. 192

*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 "John's Law of 2003".

#### SEC. 2. LIABILITY FOR PERMITTING AN INTOXICATED ARRESTEE TO OPERATE A MOTOR VEHICLE.

(a) IN GENERAL.—Subchapter I of chapter 1 of title 23, United States Code, is amended by adding at the end the following:

##### “§ 165. Liability for permitting an intoxicated arrestee to operate a motor vehicle

“(a) DEFINITION OF MOTOR VEHICLE.—In this section, the term ‘motor vehicle’ means a vehicle driven or drawn by mechanical power and manufactured primarily for use on public highways, but does not include a vehicle operated only on a rail.

“(b) WITHHOLDING OF APPORTIONMENTS FOR NONCOMPLIANCE.—

“(1) FISCAL YEAR 2005.—The Secretary shall withhold 5 percent of the amount required to be apportioned to any State under each of paragraphs (1), (3), and (4) of section 104(b) on October 1, 2004, if the State does not meet the requirements of paragraph (3) on that date.

“(2) SUBSEQUENT FISCAL YEARS.—The Secretary shall withhold 10 percent of the amount required to be apportioned to any State under each of paragraphs (1), (3), and (4) of section 104(b) on October 1, 2005, and on October 1 of each fiscal year thereafter, if the State does not meet the requirements of paragraph (3) on that date.

“(3) REQUIREMENTS.—A State meets the requirements of this paragraph if the State has enacted and is enforcing a law that is substantially as follows:

“(A) WRITTEN STATEMENT.—If a person is summoned by or on behalf of a person who has been arrested for public intoxication in order to transport or accompany the arrestee from the premises of a law enforcement agency, the law enforcement agency shall provide that person with a written statement advising him of his potential criminal and civil liability for permitting or facilitating the arrestee's operation of a motor vehicle while the arrestee remains intoxicated. The person to whom the statement is issued shall acknowledge, in writing, receipt of the statement, or the law enforcement agency shall record the fact that the written statement was provided, but the person refused to sign an acknowledgment. The State shall establish the content and form of the written statement and acknowledgment to be used by law enforcement agencies throughout the State and may issue directives to ensure the uniform implementation of this subparagraph. Nothing in this subparagraph shall impose any obligation on a physician or other health care provider involved in the treatment or evaluation of the arrestee.

“(B) IMPOUNDMENT OF VEHICLE OPERATED BY ARRESTEE; CONDITIONS OF RELEASE; FEE FOR TOWING, STORAGE.—

“(i) If a person has been arrested for public intoxication, the arresting law enforcement agency shall impound the vehicle that the person was operating at the time of arrest.

“(ii) A vehicle impounded pursuant to this subparagraph shall be impounded for a period of 12 hours after the time of arrest or until such later time as the arrestee claiming the vehicle meets the conditions for release in clause (iv).

“(iii) A vehicle impounded pursuant to this subparagraph may be released to a person other than the arrestee prior to the end of the impoundment period only if—

“(I) the vehicle is not owned or leased by the person under arrest and the person who owns or leases the vehicle claims the vehicle and meets the conditions for release in clause (iv); or

“(II) the vehicle is owned or leased by the arrestee, the arrestee gives permission to another person, who has acknowledged in writing receipt of the statement to operate the vehicle and the conditions for release in clause (iv).

“(iv) A vehicle impounded pursuant to this subparagraph shall not be released unless the person claiming the vehicle—

“(I) presents a valid operator's license, proof of ownership or lawful authority to operate the vehicle, and proof of valid motor vehicle insurance for that vehicle;

“(II) is able to operate the vehicle in a safe manner and would not be in violation driving while intoxicated laws; and

“(III) meets any other conditions for release established by the law enforcement agency.

“(v) A law enforcement agency impounding a vehicle pursuant to this subparagraph is

authorized to charge a reasonable fee for towing and storage of the vehicle. The law enforcement agency is further authorized to retain custody of the vehicle until that fee is paid.

“(c) PERIOD OF AVAILABILITY; EFFECT OF COMPLIANCE AND NONCOMPLIANCE.—

“(1) PERIOD OF AVAILABILITY OF WITHHELD FUNDS.—Any funds withheld under subsection (b) from apportionment to any State shall remain available until the end of the fourth fiscal year following the fiscal year for which the funds are authorized to be appropriated.

“(2) APPORTIONMENT OF WITHHELD FUNDS AFTER COMPLIANCE.—If, before the last day of the period for which funds withheld under subsection (b) from apportionment are to remain available for apportionment to a State under paragraph (1), the State meets the requirements of subsection (a)(3), the Secretary shall, on the first day on which the State meets the requirements, apportion to the State the funds withheld under subsection (b) that remain available for apportionment to the State.

“(3) PERIOD OF AVAILABILITY OF SUBSEQUENTLY APPORTIONED FUNDS.—

“(A) IN GENERAL.—Any funds apportioned under paragraph (2) shall remain available for expenditure until the end of the third fiscal year following the fiscal year in which the funds are so apportioned.

“(B) TREATMENT OF CERTAIN FUNDS.—Any funds apportioned under paragraph (2) that are not obligated at the end of the period referred to in subparagraph (A) shall be allocated equally among the States that meet the requirements of subsection (a)(3).

“(4) EFFECT OF NONCOMPLIANCE.—If, at the end of the period for which funds withheld under subsection (b) from apportionment are available for apportionment to a State under paragraph (1), the State does not meet the requirements of subsection (a)(3), the funds shall be allocated equally among the States that meet the requirements of subsection (a)(3).”.

(b) CONFORMING AMENDMENT.—The analysis for subchapter I of chapter 1 of title 23, United States Code, is amended by adding at the end the following:

“165. Liability for permitting an intoxicated arrestee to operate a motor vehicle.”.

By Mr. HATCH (for himself, Mrs. FEINSTEIN, Mr. STEVENS, Mr. MILLER, Mr. CAMPBELL, Mr. MCCAIN, Mr. BREAUX, Mr. CRAIG, Mr. ENSIGN, Mr. LUGAR, Mrs. LINCOLN, Mr. BAUCUS, Mr. BOND, Mr. LOTT, Mr. HOLLINGS, Mr. DAYTON, Mr. SESSIONS, Mr. NELSON of Nebraska, Mr. INHOFE, Mr. BUNNING, Mr. ALLARD, Ms. COLLINS, Mr. CRAPO, Mr. DEWINE, Mr. FRIST, Mr. GRASSLEY, Mr. HAGEL, Mrs. HUTCHISON, Mr. ROBERTS, Mr. WARNER, Mr. ALLEN, Mr. BROWNBACK, Mr. BURNS, Mr. DOMENICI, Mr. GREGG, Mr. SANTORUM, Mr. SHELBY, Ms. SNOWE, Mr. GRAHAM of South Carolina, Mr. CORNYN, Mr. TALENT, and Mr. ALEXANDER):

S.J. Res 4. A joint resolution proposing an amendment to the Constitution of the United States authorizing Congress to prohibit the physical desecration of the flag of the United States; to the Committee on the Judiciary.

Mr. HATCH. Mr. President, it is with profound honor and reverence that I,

together with my friend and colleague, Senator FEINSTEIN, introduce a bipartisan constitutional amendment to permit Congress to prohibit the physical desecration of the American flag.

The American flag serves as a symbol of our great Nation. The flag represents, in a way nothing else can, the common bond shared by an otherwise diverse people. As a sponsor and long-time supporter of the proposed constitutional amendment to protect the American flag, I am very pleased, but not surprised, by the way Americans have been waving the flag as a symbol of solidarity following the September 11 attacks of 2001. The emotion that Americans feel when they see the stars and stripes confirms my view that the flag is much more than a piece of cloth—it is a unifying force that represents the common core ideals all Americans share. Whatever our differences of party, race, religion, or socio-economic status, the flag reminds us that we are very much one people, united in a shared destiny, bonded in a common faith in our nation.

More than a decade ago, Supreme Court Justice John Paul Stevens reminded us of the significance of our unique emblem when he wrote:

A country's flag is a symbol of more than nationhood and national unity. It also signifies the ideas that characterize the society that has chosen that emblem as well as the special history that has animated the growth and power of those ideas. . . . So it is with the American flag. It is more than a proud symbol of the courage, the determination, and the gifts of a nation that transformed 13 fledgling colonies into a world power. It is a symbol of freedom, of equal opportunity, of religious tolerance, and of goodwill for other peoples who share our aspirations.

Throughout our history, the flag has captured the hearts and minds of all types of people—ranging from school teachers to union workers, traffic cops, grandmothers, and combat veterans. In 1861, President Abraham Lincoln called our young men to put their lives on the line to preserve the Union. When Union troops were beaten and demoralized, General Ulysses Grant ordered a detachment of men to make an early morning attack on Lookout Mountain in Tennessee. When the fog lifted from Lookout Mountain, the rest of the Union troops saw the American flag flying and cheered with a newfound courage. This courage eventually led to a nation of free men—not half-free and half-slave.

In 1941, President Franklin Roosevelt called on all Americans to fight the aggression of the Axis powers. After suffering numerous early defeats, the free world watched in awe as five Marines and one sailor raised the American flag on Iwo Jima. Their undaunted, courageous act, for which three of the six men died, inspired the Allied troops to attain victory over fascism.

In 1990, President Bush called on our young men and women to go to the Mideast for Operations Desert Shield and Desert Storm. After an unprovoked

attack by the terrorist dictator Saddam Hussein on the Kingdom of Kuwait, American troops, wearing arm patches with the American flag on their shoulders, led the way to victory. General Norman Schwarzkopf addressed a joint session of Congress describing the American men and women who fought for the ideals symbolized by the American flag:

[W]e were Protestants and Catholics and Jews and Moslems and Buddhists, and many other religions, fighting for a common and just cause. Because that's what your military is. And we were black and white and yellow and brown and red. And we noticed that when our blood was shed in the desert, it didn't separate by race. It flowed together.

General Schwarzkopf then thanked the American people for their support, stating:

The prophets of doom, the naysayers, the protesters and the flag-burners all said that you wouldn't stick by us, but we knew better. We knew you'd never let us down. By golly, you didn't.

The pages of our history show that when this country has called our young men and women to serve under the American flag from Lookout Mountain to Iwo Jima to Kuwait, they have given their blood and lives. The crosses at Arlington, the Iwo Jima memorial, and the Vietnam Memorial honor those sacrifices. But there were those who did not.

In 1984, Greg Johnson led a group of radicals in a protest march in which he doused an American flag with kerosene and set it on fire as his fellow protestors chanted: "America, the red, white, and blue, we spit on you." Sadly, the radical extremists, most of whom have given nothing, suffered nothing, and who respect nothing, would rather burn and spit on the American flag than honor it.

Contrast this image with the deeds of Roy Benavidez, an Army Sergeant from Texas, who led a helicopter extraction force to rescue a reconnaissance team in Vietnam. Despite being wounded in the leg, face, back, head, and abdomen by small arms fire, grenades, and hand-to-hand combat with vicious North Vietnamese soldiers, Benavidez held off the enemy and carried several wounded to the helicopters, until finally collapsing from a loss of blood. Benavidez earned the Medal of Honor. When Benavidez was buried in Arlington National Cemetery, the honor guard placed an American flag on his coffin and then folded it and gave it to his widow. The purpose of Roy Benavidez' heroic sacrifice—and the purpose of the American people's ratification of the First Amendment—was not to protect the right of radicals like Greg Johnson to burn and spit on the American flag.

The American people have long distinguished between the First Amendment right to speak and write one's political opinions and the disrespectful, and often violent, physical destruction of the flag. For many years, the people's elected representatives in Congress and 49 state legislatures passed statutes prohibiting the physical dese-

cration of the flag. Our founding fathers, Chief Justice Earl Warren, and Justice Hugo Black believed these laws to be completely consistent with the First Amendment's protection of the spoken and written word and not disrespectful, extremist conduct.

In 1989, however, the Supreme Court abandoned the history and intent of the First Amendment to embrace a philosophy that made no distinction between oral and written speech about the flag and extremist, disrespectful destruction of the flag. In *Texas v. Johnson*, five members of the Court, for the first time ever, struck down a flag protection statute. The majority argued that the First Amendment had somehow changed and now prevented a state from protecting the American flag from radical, disrespectful, and violent actions. When Congress responded with a federal flag protection statute, the Supreme Court, in *United States v. Eichman*, used its new and changed interpretation of the First Amendment to strike it down by another five-to-four vote.

Under this new interpretation of the First Amendment, it is assumed that the people, their elected legislators, and the courts can no longer distinguish between expressions concerning the flag that are more akin to spoken and written expression and expressions that constitute the disrespectful physical desecration of the flag. Because of this assumed inability to make such distinctions, it is argued that all of our freedoms to speak and write political ideas are wholly dependent on Greg Johnson's newly created "right" to burn and spit on the American flag.

This ill-advised and radical philosophy fails because its basic premise—that laws and judges cannot distinguish between political expression and disrespectful physical desecration—is so obviously false. It is precisely this distinction that laws and judges did in fact make for over 200 years. Just as judges have distinguished which laws and actions comply with the constitutional command to provide "equal protection of the laws" and "due process of law," so too have judges been able to distinguish between free expression and disrespectful destruction.

Certainly, extremist conduct such as smashing in the doors of the State Department may be a way of expressing one's dissatisfaction with the nation's foreign policy objectives. And one may even consider such behavior speech. Laws, however, can be enacted preventing such actions in large part because there are peaceful alternatives that can be equally powerful. After all, right here in the United States Senate, we prohibit speeches or demonstrations of any kind, even the silent display of signs or banners, in the public galleries.

Moreover, it was not this radical philosophy of protecting disrespectful destruction that the people elevated to the status of constitutional law. Such an extremist philosophy was never

ratified. Such a philosophy is not found in the original and historic intent of the First Amendment. Thus, in this Senator's view, the Supreme Court erred in *Texas v. Johnson* and in *United States v. Eichman*.

Since Johnson and Eichman, constitutional scholars have opined that an attempt by Congress to protect the flag with another statute would fail in light of the new interpretation currently embraced by the Supreme Court. Thus, an amendment is the only legal means to protect the flag.

This amendment affects only the most radical forms of conduct and will leave untouched the current constitutional protections for Americans to speak their sentiments in a rally, to write their sentiments to their newspaper, and to vote their sentiments at the ballot box. The amendment simply restores the traditional and historic power of the people's elected representatives to prohibit the radical and extremist physical desecration of the flag.

Restoring legal protection to the American flag will not place us on a slippery slope to limit other freedoms. No other symbol of our bi-partisan national ideals has flown over the battlefields, cemeteries, football fields, and school yards of America. No other symbol has lifted the hearts of ordinary men and women seeking liberty around the world. No other symbol has been paid for with so much blood of our countrymen. The American people have paid for their flag, and it is our duty to let them protect it.

This amendment offers Senators, from both sides of the aisle, the opportunity to stand united for the protection of the sacred symbol of our nation.

Restoring legal protection to the American flag is not, nor should it be, a partisan issue. More than 40 Senators, both Republicans and Democrats, have already joined with Senator FEINSTEIN and myself as original cosponsors of this amendment. I am pleased that this amendment has the unqualified support of our distinguished colleagues: Senators TED STEVENS; ZELL MILLER; JOHN MCCAIN; JOHN B. BREAU; LARRY E. CRAIG; JOHN E. ENSIGN; RICHARD G. LUGAR; BLANCHE LINCOLN; MAX BAUCUS; CHRISTOPHER S. BOND; TRENT LOTT; ERNEST F. HOLLINGS; MARK DAYTON; JEFF SESSIONS; E. BENJAMIN NELSON; JAMES M. INHOFE; JIM BUNNING; WAYNE ALLARD; SUSAN M. COLLINS; MICHAEL D. CRAPO; MICHAEL DEWINE; BILL FRIST; CHARLES E. GRASSLEY; CHUCK HAGEL; KAY BAILEY HUTCHINSON; PAT ROBERTS; JOHN W. WARNER; GEORGE ALLEN; SAM BROWNBACK; CONRAD R. BURNS; PETE V. DOMENICI; JUDD GREGG; RICK SANTORUM; RICHARD C. SHELBY; OLYMPIA J. SNOWE; LINDSEY GRAHAM; JOHN CORNYN; JAMES TALENT; LAMAR ALEXANDER; BEN NIGHTHORSE CAMPBELL.

Polls have shown that 80 percent of the American people want the opportunity to vote to protect their flag. Numerous organizations from the Amer-

ican Legion to the Women's War Veterans to the African-American Women's clergy all support the flag protection amendment. All 50 State legislatures have passed resolutions calling for constitutional protection for the flag.

I am, therefore, proud to rise today to introduce a constitutional amendment that would restore to the people's elected representatives the right to protect our unique national symbol, the American flag, from acts of physical desecration.

I ask unanimous consent that the text of the proposed amendment be printed in the RECORD.

I am very honored to be a cosponsor with my dear friend from California, Senator FEINSTEIN. I appreciate the effort and unwavering support she has put forth in this battle. I am proud and privileged to be able to work with her.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S.J. RES. 4

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within 7 years after the date of its submission for ratification:*

“ARTICLE—

“The Congress shall have power to prohibit the physical desecration of the flag of the United States.”.

#### SUBMITTED RESOLUTIONS

#### SENATE RESOLUTION 22—EX-PRESSING THE SENSE OF THE SENATE REGARDING THE IMPLEMENTATION OF THE NO CHILD LEFT BEHIND ACT OF 2001

Mr. DORGAN (for himself and Mr. CONRAD) submitted the following resolution; which was referred to the Committee on Health, Education, Labor, and Pensions:

S. RES. 22

Whereas all students, no matter where they live, should receive the highest quality education possible, and Congress and the President enacted the No Child Left Behind Act of 2001 (Public Law 107-110) to ensure high academic standards and the tools and resources to meet those standards;

Whereas the No Child Left Behind Act of 2001 imposes many new requirements and challenges for States, school districts, and individual educators;

Whereas many States and school districts are struggling to understand the requirements of the No Child Left Behind Act of 2001, even as additional regulations and guidance continue to be forthcoming from the Department of Education;

Whereas the small size, remoteness, and lack of resources of many rural schools pose potential additional problems in imple-

menting the No Child Left Behind Act of 2001;

Whereas many rural schools and school districts have very small numbers of students, such that the performance of a few students on the assessments required by the No Child Left Behind Act of 2001 can determine the progress or lack of progress of that school or school district;

Whereas the small number of students in many rural schools can make the disaggregation of testing results difficult and even statistically unreliable;

Whereas some of the options created for students attending failing schools, including the choice to attend another public school and the availability of supplemental tutoring services, simply may not be available in rural areas or may be prohibitively expensive due to the cost of transportation over long distances;

Whereas many rural schools already have shortages of teachers in key subject areas, rural teachers frequently teach in multiple subject areas, and rural teachers tend to be older, and lower paid than their urban counterparts;

Whereas many experienced teachers and paraprofessionals in rural schools may not meet the definition of “highly qualified” in the No Child Left Behind Act of 2001 and rural school districts will have difficulty competing with large school districts in recruiting and retaining quality teachers;

Whereas the No Child Left Behind Act of 2001 imposes many new requirements on schools and school districts, but the President's budget request for fiscal year 2003 does not provide the level of funding needed and authorized to meet those requirements and in fact cuts funding by \$90,000,000 for programs contained in the No Child Left Behind Act of 2001; and

Whereas a majority of the States are being forced to cut budgets and local governments are also struggling with revenue shortfalls that make it difficult to provide the increased resources necessary to implement the No Child Left Behind Act of 2001 in the absence of adequate federal funding: Now, therefore, be it

*Resolved, That—*

(1) the Secretary of Education should provide the maximum flexibility possible in assisting predominantly rural States and school districts in meeting the unique challenges presented to them by the No Child Left Behind Act of 2001 (Public Law 107-110);

(2) the President should, in his fiscal year 2004 budget request, request the full levels of funding authorized under the No Child Left Behind Act of 2001 for all programs, including the Rural Education Achievement Program (20 U.S.C. 7341 et seq.); and

(3) it is the sense of the Senate that, if the President does not request and Congress does not provide full funding for the No Child Left Behind Act of 2001 in fiscal year 2004, Congress should suspend the enforcement of the implementation of the requirements of the No Child Left Behind Act of 2001 until full funding is provided.

Mr. DORGAN. Mr. President, today, I am submitting a Sense of the Senate Resolution that expresses my concerns about the implementation of the No Child Left Behind Act.

I supported this law when it was passed by the Senate with overwhelming bipartisan support, and I still support it. In general, I think it is very appropriate and important for us as a Nation to demand very high standards of performance from our schools and to identify those schools that